

Washington State Register

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filed not later than April 2, 1997

CITATION

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

PUBLIC INSPECTION OF DOCUMENTS

A copy of each document filed with the code reviser's office, pursuant to chapter 34.05 RCW, is available for public inspection during normal office hours. The code reviser's office is located on the ground floor of the Legislative Building in Olympia. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. Telephone inquiries concerning material in the Register or the Washington Administrative Code (WAC) may be made by calling (360) 753-7470.

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CERTIFICATE

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

DENNIS W. COOPER
Code Reviser

STATE MAXIMUM INTEREST RATE

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

The maximum allowable interest rate applicable for the month of April 1997 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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The Washington State Register is an official publication of the state of Washington. It contains proposed, emergency, and permanently adopted administrative rules, as well as other documents filed with the code reviser's office pursuant to RCW 34.08.020 and 42.30.075. Publication of any material in the Washington State Register is deemed to be official notice of such information.

Mary F. Gallagher Dilley
Chair, Statute Law Committee

Dennis W. Cooper
Code Reviser

Gary Reid
Chief Assistant Code Reviser

Kerry S. Radcliff
Editor

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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) **PREPROPOSAL**-includes the Preproposal Statement of Inquiry that will be used to solicit public comments on a general area of proposed rule making before the agency files a formal notice.
- (b) **PROPOSED**-includes the full text of formal proposals, continuances, supplemental notices, and withdrawals.
- (c) **PERMANENT**-includes the full text of permanently adopted rules.
- (d) **EMERGENCY**-includes the full text of emergency rules and rescissions.
- (e) **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.
- (f) **TABLE**-includes a cumulative table of the WAC sections that are affected in the current year.
- (g) **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].

1996 - 1997

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 12:00 NOON--</i>			<i>Count 20 days from--</i>	<i>For hearing on or after</i>
96-16	Jul 10	Jul 24	Aug 7	Aug 21	Sep 10
96-17	Jul 24	Aug 7	Aug 21	Sep 4	Sep 24
96-18	Aug 7	Aug 21	Sep 4	Sep 18	Oct 8
96-19	Aug 21	Sep 4	Sep 18	Oct 2	Oct 22
96-20	Sep 4	Sep 18	Oct 2	Oct 16	Nov 5
96-21	Sep 25	Oct 9	Oct 23	Nov 6	Nov 26
96-22	Oct 9	Oct 23	Nov 6	Nov 20	Dec 10
96-23	Oct 23	Nov 6	Nov 20	Dec 4	Dec 24
96-24	Nov 6	Nov 20	Dec 4	Dec 18, 1996	Jan 7, 1997
97-01	Nov 21	Dec 5	Dec 19, 1996	Jan 2, 1997	Jan 22
97-02	Dec 5	Dec 19, 1996	Jan 2, 1997	Jan 15	Feb 4
97-03	Dec 26, 1996	Jan 8, 1997	Jan 22	Feb 5	Feb 25
97-04	Jan 8	Jan 22	Feb 5	Feb 19	Mar 11
97-05	Jan 22	Feb 5	Feb 19	Mar 5	Mar 25
97-06	Feb 5	Feb 19	Mar 5	Mar 19	Apr 8
97-07	Feb 19	Mar 5	Mar 19	Apr 2	Apr 22
97-08	Mar 5	Mar 19	Apr 2	Apr 16	May 6
97-09	Mar 26	Apr 9	Apr 23	May 7	May 27
97-10	Apr 9	Apr 23	May 7	May 21	Jun 10
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97-20	Sep 3	Sep 17	Oct 1	Oct 15	Nov 4
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97-23	Oct 22	Nov 5	Nov 19	Dec 3	Dec 23
97-24	Nov 5	Nov 19	Dec 3	Dec 17, 1997	Jan 6, 1998

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 enacted in 1982 to minimize the impact of state regulations on small business. Amended in 1994, the act requires a small business economic impact analysis of proposed rules that impose more than a minor cost on twenty percent of the businesses in all industries, or ten percent of the businesses in any one industry. The Regulatory Fairness Act defines industry as businesses within a four digit SIC classification, and for the purpose of this act, small business is defined by RCW 19.85.020 as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees."

Small Business Economic Impact Statements (SBEIS)

A small business economic impact statement (SBEIS) must be prepared by state agencies when a proposed rule meets the above criteria. Chapter 19.85 RCW requires the Washington State Business Assistance Center (BAC) to develop guidelines for agencies to use in determining whether the impact of a rule is more than minor and to provide technical assistance to agencies in developing a SBEIS. All permanent rules adopted under the Administrative Procedure Act, chapter 34.05 RCW, must be reviewed to determine if the requirements of the Regulatory Fairness Act apply; if an SBEIS is required it must be completed before permanent rules are filed with the Office of the Code Reviser.

Mitigation

In addition to completing the economic impact analysis for proposed rules, state agencies must take reasonable, legal, and feasible steps to reduce or mitigate the impact of rules on small businesses when there is a disproportionate impact on small versus large business. State agencies are encouraged to reduce the economic impact of rules on small businesses when possible and when such steps are in keeping with the stated intent of the statute(s) being implemented by proposed rules. Since 1994, small business economic impact statements must contain a list of the mitigation steps taken, or reasonable justification for not taking steps to reduce the impact of rules on small businesses.

When is an SBEIS Required?

When:

The proposed rule has more than a minor (as defined by the BAC) economic impact on businesses in more than twenty percent of all industries or more than ten percent of any one industry.

When is an SBEIS Not Required?

When:

The rule is proposed only to comply or conform with a federal law or regulation, and the state has no discretion in how the rule is implemented;

There is less than minor economic impact on business;

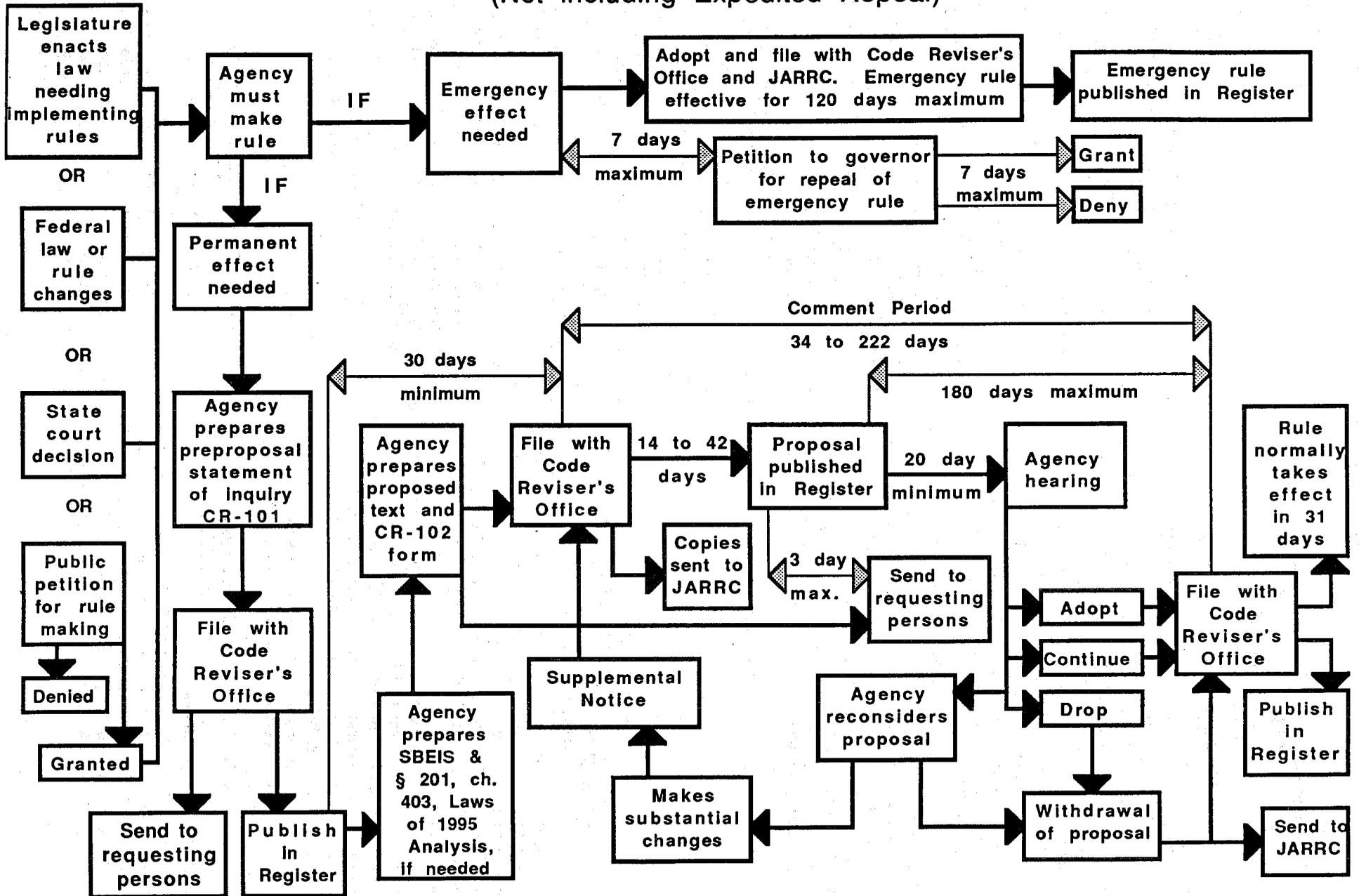
The rule REDUCES costs to business (although an SBEIS may be a useful tool for demonstrating this reduced impact);

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

The rule is pure restatement of state statute.

RULE-MAKING PROCESS

(Not including Expedited Repeal)



WSR 97-08-004
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
FISH AND WILDLIFE

[Filed March 20, 1997, 2:36 p.m.]

Subject of Possible Rule Making: Amend Canada goose season.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 77.12.040.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To reduce the length of the southwest Washington Canada goose season, so that additional days may be added to the late goose damage season.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: United States Fish and Wildlife Service (USFWS), the department follows the regulations set forth by the USFWS.

Process for Developing New Rule: [No information supplied by agency.]

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Dave Brittell, Assistant Director, Wildlife Management Program, Washington Department of Fish and Wildlife, 600 Capitol Way North, Olympia, WA 98501-1091, (360) 902-2504, FAX (360) 902-2162, contact by May 15, 1997.

Expected Filing Date: June 1997.

Evan Jacoby
 Rules Coordinator

March 24, 1997
 S. A. Moon
 Deputy Secretary
 for Operations

PREPROPOSAL

WSR 97-08-023
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF HEALTH

(Board of Hearing and Speech)

[Filed March 26, 1997, 9:40 a.m.]

Subject of Possible Rule Making: Chapter 18.35 RCW (1996) created the certification of audiologists and speech-language pathologists. Examinations are required for certification. Nationally recognized examinations may be used to determine if applicants are qualified for certification.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.35.040 and 18.35.161.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rules are needed to define the examination process required for certification of audiologists and speech-language pathologists. Rules will provide those individuals desiring certification with the needed information regarding eligibility.

Process for Developing New Rule: The program will work closely with the profession in developing rules. Two public meetings were held to provide an opportunity for public input. The meetings were held in Tacoma and Spokane. The program promoted participation from state-wide school districts who employ speech-language pathologists; the University of Washington, Washington State University and Western Washington University; hospitals and clinics throughout the state and professional associations for speech-language pathologists. Further input has been requested from members of the public who attended the public meetings. From these efforts draft language will be developed and shared for on-going direction from interested persons.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Diane Young, Program Manager, Board of Hearing and Speech, 1300 Quince Street, P.O. Box 47869, Olympia, WA 98504-7869, (360) 753-1817, (360) 586-0205, FAX (360) 586-7774.

March 10, 1997
 Diane Young, Program Manager
 Board of Hearing and Speech

WSR 97-08-016
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF TRANSPORTATION

[Filed March 24, 1997, 3:10 p.m.]

Subject of Possible Rule Making: Revise chapter 468-105 WAC, Public advisory elections for selected state transportation facilities.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 47.46 RCW as revised in 1996 legislative session (SSB 6753).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rule is revised to reflect legislative changes in 1996 (SSB 6753) and to reflect department commitment indicated in letter to Senator Karen Fraser, Chair, Joint Administrative Rules [Review] Committee, dated March 18, 1996.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Changes prescribed in statute (chapter 47.46 RCW) and by Joint Administrative Rules [Review] Committee.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Rhonda Brooks, Program Manager, Washington State Department of Transportation, P.O. Box 47395, Olympia, WA 98504-7395, (360) 664-2911, FAX (360) 664-2770.

WSR 97-08-024
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF HEALTH

(Board of Hearing and Speech)

[Filed March 26, 1997, 9:43 a.m.]

Subject of Possible Rule Making: Chapter 18.35 RCW (1996) was expanded to include the certification of audiologists and speech-language pathologists. The legislature implemented education requirements for individuals applying for certification. Applicants are required to have a degree from a board-approved institution of higher learning, which

includes completion of a supervised clinical practicum experience as defined by rules adopted by the board.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.35.040 (2)(b) and 18.35.161.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rules are needed to provide definition of education requirements for certification. Individuals applying for certification must have a degree from a board-approved institution and complete clinical practicum experience defined by the board. Rules providing definitions for these institutions and the practicum will clarify the requirements necessary for certification.

Process for Developing New Rule: The program will work closely with the profession in developing rules. Two public meetings were held to provide an opportunity for public input. The meetings were held in Tacoma and Spokane. The program promoted participation from state-wide school districts who employ audiologists and speech-language pathologists; the University of Washington, Washington State University and Western Washington University; hospitals and clinics throughout the state and professional associations for audiologists and speech-language pathologists. Further input has been requested from members of the public who attended the public meetings. From these efforts draft language will be developed and shared for on-going direction from interested persons.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Diane Young, Program Manager, Board of Hearing and Speech, 1300 Quince Street, P.O. Box 47869, Olympia, WA 98504-7869, (360) 753-1817, (360) 586-0205, FAX (360) 586-7774.

March 10, 1997
Diane Young, Program Manager
Board of Hearing and Speech

WSR 97-08-035
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medical Assistance Administration)
(Public Assistance)

[Filed March 27, 1997, 11:11 a.m.]

Subject of Possible Rule Making: WAC 388-511-1160 SSI-related resource exemptions.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.08.090, 74.09.530, and 20 CFR 416.1218.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Ensure appropriate exemption of an automobile when determining medical eligibility of an SSI-related person.

Process for Developing New Rule: The department will distribute draft material for an internal and external review process. All comments are taken into consideration before issuance of final rule.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Joanie Scotson, Program Manager, Medical Assistance Administration, Mailstop 45530, Olym-

pia, WA 98504-5530, phone (360) 753-7462, FAX (360) 753-7315, TDD 1-800-848-5429.

March 25, 1997
Merry A. Kogut, Manager
Rules and Policies Assistance Unit

WSR 97-08-036
PREPROPOSAL STATEMENT OF INQUIRY
UTILITIES AND TRANSPORTATION
COMMISSION

[Filed March 27, 1997, 11:15 a.m.]

Subject of Possible Rule Making: Rules relating to pay telephones and alternate operator service providers, Docket No. UT-970301. Provisions that might be affected are currently codified in WAC 480-120-137, 480-120-138, 480-120-141 and 480-120-142, especially in WAC 480-120-137 and 480-120-141. Other sections relating to these topics might also be affected.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 80.01.040(4), 80.36.520.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: (1) The Telecommunications Act of 1996 imposed requirements on these services and state rules should be made consistent with requirements of the federal law and federal rules promulgated thereunder; (2) if warranted by information about specific consumer problems, additional consumer protection provisions may be considered; and (3) housekeeping provisions such as conforming descriptive names will be considered.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Federal Communications Commission regulates comparable interstate service and preempted aspects of intrastate service. The major reason for this rule making is to bring state rules into conformity with federal requirements to the extent feasible. This will be done by a review and study of pertinent federal laws, federal rules, and other resources.

Process for Developing New Rule: Agency study; and the commission will call for written comments, and may provide the opportunity for additional written comments. The commission will schedule an informal workshop with interested persons in a manner designed to develop consensus regarding any rule proposal. See below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Interested persons may contact the Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250, (360) 753-6451, FAX (360) 586-1150. Such persons may submit comments, as specified below, or may ask to be included in the commission's list of interested persons for the proceeding.

Written Comments: Written comments in response to the CR-101 from persons interested in the subject matter of this proposed rule making may be filed with the commission secretary, referencing Docket No. UT-970301, not later than April 30, 1997. All commenters are asked, but not required, to file an original and ten copies of their written comments. The commission also requests, but does not require, that

comments be provided on a 3 1/2 inch IBM formatted high-density disk, in WordPerfect version 51. [5.1], 6.0 or 6.1, labeled with the docket number of this proceeding and the commenter's name and type of software used. The commission may offer additional opportunities to provide written comments. Interested persons may file additional written comments in response to any such invitation. Interested persons may also attend and participate in the workshop described below and in any other workshop that may be scheduled. The commission will provide written notice of any additional preproposal workshops to all commenters and to any other persons specifically asking to receive notice in this rule-making proceedings.

Notice of Workshop: A workshop will be held on May 5, 1997, beginning at 9:30 a.m., in Room 206 of the Commission's Headquarters Office, 1300 South Evergreen Park Drive S.W., Olympia, WA. The commission's teleconference bridge line will be available for this workshop. A limited number of teleconference ports will be available for the Olympia workshop and will be assigned one to an organization, first come first served. Remaining open ports on the day of the workshop will be assigned to provide more ports per organization if they are requested. Persons wishing to attend via the teleconference bridge line must contact Vicki Elliott, (360) 753-2126, no later than 3:00 p.m., Thursday, May 1, 1997. If interest warrants doing so, the commission will schedule additional workshops in other locations, such as Seattle, Spokane, or Yakima.

March 26, 1997
Steve McLellan
Secretary

WSR 97-08-038

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF ECOLOGY

[Order 97-06—Filed March 27, 1997, 12:19 p.m.]

Subject of Possible Rule Making: Revise forest practices rules (chapters 222-12 and 222-16 WAC) addressing water quality associated with forest management activities and define requirements for the Forest Practices Board manual. Forest practices rule changes are incorporated by reference, pursuant to WAC 173-202-020, Washington forest practices rules and regulations to protect water quality.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 90.48.420 and 76.09.040.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Under current forest practices, studies show water quality and habitat degradation. Changes to forest management practices proposed will improve or protect riparian areas and water quality.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: State agencies: Natural Resources, Fish and Wildlife. Federal agencies: Environmental Protection Agency, National Marine Fisheries Service, United States Fish and Wildlife Service, and United States Forest Service. Others: Indian tribes. Ecology and the Forest Practices Board copromulgate rules that overlap forest practices and water quality. Natural resources has regulatory responsibili-

ties. Rules are based on TFW recommendations which include these agencies, among others.

Process for Developing New Rule: Negotiated rule making; and agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by sending comments to Doug Rushton, Water Quality Program, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6180, FAX (360) 407-6426. Interested parties can contact the above numbers regarding timber, fish, wildlife upcoming meetings where this rule may be discussed.

March 26, 1997
Linda G. Crerar
Assistant Director
Water Programs

WSR 97-08-055

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF FINANCIAL INSTITUTIONS

[Filed April 1, 1997, 8:36 a.m.]

Subject of Possible Rule Making: Broker-dealer practices relating to sales of securities on the premises of financial institutions.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 21.20.450.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To provide guidance to broker-dealers on their responsibilities when they sell securities on the premises of financial institutions. To ensure that customers who purchase securities through broker-dealer on bank premises understand that who they are dealing with and that the products they purchase are not insured.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Federal banking regulators (the Federal Deposit Insurance Corporation, Office of Thrift Supervision, Federal Reserve Board, and Office of the Comptroller of the Currency). In addition, National Association of Securities Dealers-Regulation, a self-regulatory organization for broker-dealers. The rules being considered for adoption are being developed to harmonize with the rules of the other regulators.

Process for Developing New Rule: The rules being considered are uniform rules that are being developed through a national notice and comment process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Suzanne Sarason, Securities Division, Department of Financial Institutions, P.O. Box 9033, Olympia, WA 98507-9033, voice (360) 902-8760, FAX (360) 586-5068, e-mail ssarason@dfi.wa.gov.

March 27, 1997
John L. Bley
Director

WSR 97-08-056
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
FINANCIAL INSTITUTIONS

[Filed April 1, 1997, 8:37 a.m.]

Subject of Possible Rule Making: Adoption of the North American Securities Administrators Association (NASAA) World Class Foreign Issuer exemption.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 21.20.450.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Provides an exemption from registration for substantial foreign issuers that might otherwise have to register. Domestic issuers of similar financial standing would typically qualify for an exemption from registration.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Securities offerings are regulated federally by the Securities and Exchange Commission. Most states also have laws relating to securities. This exemption was adopted by NASAA only after the SEC, the states and the public had the opportunity for comment.

Process for Developing New Rule: NASAA policy statements are drafted by committees made up of representatives from several states. The drafts are distributed to internal and external comment and are adopted pursuant to a vote by the NASAA members.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Bill Beatty, Securities Division, Department of Financial Institutions, P.O. Box 9033, Olympia, WA 98507-9033, (360) 902-8760, FAX (360) 586-5068, e-mail bbeatty@dfi-wa.gov.

March 27, 1997
 John L. Bley
 Securities Administrator

WSR 97-08-057
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
FINANCIAL INSTITUTIONS

[Filed April 1, 1997, 8:38 a.m.]

Subject of Possible Rule Making: Amendments to WAC 460-44A-506 and related sections to reflect the recent passage of the National Securities Markets Improvement Act of 1996 (NSMIA).

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 21.20.450.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: NSMIA preempts certain securities and transactions from state registration and exemption requirements. One of the affected provisions in WAC 460-44A-506, which provides an exemption from registration. Amendment is needed so that Washington's regulations conform to federal law.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The federal Securities and Exchange Commission and other states also regulate securities. The North Ameri-

can Securities Administrators Association (NASAA) has formed a committee to draft model language and has circulated that language for comment by the states and the SEC.

Process for Developing New Rule: The need for, and the language of, the amendment is dictated by NSMIA. The North American Securities Administrators Association (NASAA) has formed a committee to draft model language and has circulated that language for comment by the states and the SEC.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Bill Beatty, Securities Division, Department of Financial Institutions, P.O. Box 9033, Olympia, WA 98507-9033, (360) 902-8760, FAX (360) 586-5068, e-mail bbeatty@dfi.wa.gov.

March 27, 1997
 John L. Bley
 Securities Administrator

WSR 97-08-058
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
FINANCIAL INSTITUTIONS

[Filed April 1, 1997, 8:39 a.m.]

Subject of Possible Rule Making: To add the certified investment management analyst ("CIMA") designation to others as an alternative to the Series 24 or Series 7 examinations; to correct misreference of accredited personal financial specialist to personal financial specialist; to amend rules relating to the "holding out" provisions relating to investment advisers or investment adviser representatives; and to correct misreferences.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 21.20.450.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Adding CIMA designation to list of designations already recognized due to substantial equivalence of study programs; update APFS designation to PFS; to amend the "holding out" rules relating to investment advisers or investment adviser representatives; and to correct misreference to WAC 460-20A-100 (recodified as WAC 460-21B-030) and the misreference to WAC 460-21A-010 instead of WAC 460-21B-010.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Investment advisers and their representatives who continue to be subject to state registration requirements rather than federal Securities and Exchange Commission requirements may use the CIMA designation instead of taking Series 24 or Series 7 examinations. Other changes to clarify and correct state references.

Process for Developing New Rule: CIMA study program has been determined to be substantially equivalent to those currently recognized. Review of regulations determined need to correctly recognize renamed PFS program (previously named as APFS program); to amend "holding out" rules; and to clarify or correct other references.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before

publication by contacting Brad Ferber, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, (360) 902-8760, FAX (360) 586-5068.

March 27, 1997
John L. Bley
Director

WSR 97-08-059
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
FINANCIAL INSTITUTIONS

[Filed April 1, 1997, 8:40 a.m.]

Subject of Possible Rule Making: Changes to chapter 460-24A WAC, the rules relating to investment advisers and investment adviser representatives, including changes to WAC 460-24A-220 which defines dishonest and unethical practices of investment advisers.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 21.20.450.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The purpose of these rule changes are to make our rules governing investment advisers consistent with those of other states and to respond to the National Securities Markets Improvement Act of 1996 which reallocated federal and state responsibilities in the regulation of investment advisers.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Securities and Exchange Commission also regulates investment advisers but as of July 1997, there will be investment advisers will be registered with either the SEC or with the states but not with both.

Process for Developing New Rule: The rules to be adopted are uniform rules developed nationally through a process of notice and comment. The uniform rules parallel rules adopted by the SEC.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Suzanne Sarason, Securities Division, Department of Financial Institutions, P.O. Box 9033, Olympia, WA 98507-9033, voice (360) 902-8760, FAX (360) 586-5068, e-mail ssarason@dfi.wa.gov.

March 27, 1997
John L. Bley
Director

WSR 97-08-060
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
FINANCIAL INSTITUTIONS

[Filed April 1, 1997, 8:41 a.m.]

Subject of Possible Rule Making: Definition of dishonest and unethical practices under RCW 21.20.110(7) for broker-dealers and securities salespersons and for investment advisers and investment adviser representatives.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 21.20.450.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The present rules defining dishonest and unethical practices do not provide sufficient guidance for broker-dealers and salespersons and for investment advisers and representatives on their responsibilities when recommending securities transactions for their customers.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Securities and Exchange Commission governs broker-dealers and investment advisers. The rules considered for adoption are being developed through a notice and comment procedure that included the SEC.

Process for Developing New Rule: The rules being considered are uniform rules that are being developed through a national notice and comment process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Suzanne Sarason, Securities Division, Department of Financial Institutions, P.O. Box 9033, Olympia, WA 98507-9033, voice (360) 902-8760, FAX (360) 586-5068, e-mail ssarason@dfi.wa.gov.

March 27, 1997
John L. Bley
Director

WSR 97-08-069
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING

(Architects)

[Filed April 1, 1997, 3:22 p.m.]

Subject of Possible Rule Making: Architect fees.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.08.340, 18.08.370, and 18.08.430.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Compliance with RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Interested persons may participate in rule drafting by contacting James D. Hanson, Administrator, P.O. Box 9045, Olympia, WA 98507-9045, phone (360) 753-1153, TDD (360) 586-2788, FAX (360) 664-2551. All interested persons will be added to the agency's mailing list for this rule proposal.

April 1, 1997
James D. Hanson
Administrator

WSR 97-08-072
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Adult Services Administration)
 (Public Assistance)
 [Filed April 2, 1997, 8:12 a.m.]

Subject of Possible Rule Making: Amend WAC 388-15-196(6) and related sections. Amendment will (1) exempt certain in-home care providers from the required twenty-two hour "fundamentals of caregiving" curriculum and the mandatory continuing education requirements and (2) allow in-home care providers to challenge the required twenty-two hour "fundamentals of caregiving" or the "modified fundamentals of caregiving" training through competency testing.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.39A.030.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: (1) Exempts parent providers of adults with developmental disabilities from the required twenty-two hour "fundamentals of caregiving" training and allows the parents to take a modified curriculum relevant to parent providers and (2) provides in-home caregivers an opportunity to challenge the required training by successfully passing the department's caregiver's competency test.

Process for Developing New Rule: (1) Conduct public meetings with stakeholders which allows for discussions by agencies involved and encourages input from consumers, providers, and case managers. (2) Provide an opportunity for public comment through mass mailings and announcing the department's intent to stakeholders, in-home caregivers, and the public at large. (3) Proposed changes will be filed and published in the Washington State Register in accordance with the Administrative Procedure Act. A public hearing will be conducted before any final action is taken on proposed amendments.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. For questions concerning in-home caregivers competency test contact Casey Zimmer, Aging and Adult Services Administration, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 407-0431.

For questions concerning exemptions for parents of adults with developmental disabilities contact Sue PoltI, Division of Developmental Disabilities, Mailstop 45310, Olympia, WA 98504-5310, phone (360) 902-8474.

April 1, 1997
 Merry A. Kogut, Manager
 Rules and Policies Assistance Unit

WSR 97-08-075
PREPROPOSAL STATEMENT OF INQUIRY
SECRETARY OF STATE
 (Corporations Division)
 [Filed April 2, 1997, 8:47 a.m.]

Subject of Possible Rule Making: Define commercial coventurer, strike definition of "revenue" and "cost of solicitation." Establish contents of registration form for commercial coventurer and fees.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 19.09 RCW, Charitable Solicitations Act, specifically, RCW 19.09.020, 19.09.079, 19.09.190, and 19.09.315.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To create a subcategory of commercial fund-raisers, which are generally known as commercial coventurers.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Office of the Attorney General may bring legal action to enforce the Charitable Solicitations Act, but does not engage in rule making.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Frances Sant, Corporations, Office of the Secretary of State, 505 East Union, P.O. Box 40234, 1st Floor, Olympia, WA 98504-0234, (360) 753-7115, ext. 261, FAX (360) 664-4250.

April 2, 1997
 Donald F. Whiting
 Assistant Secretary of State

WSR 97-08-079
PREPROPOSAL STATEMENT OF INQUIRY
INTERAGENCY COMMITTEE
FOR OUTDOOR RECREATION
 [Filed April 2, 1997, 9:58 a.m.]

Subject of Possible Rule Making: (1) WAC 286-13-040 Applications, plans, and matching resources—Deadlines; (2) WAC 286-13-110 Income; and (3) WAC 286-13-115 Discrimination, preferences.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 43.98A.060(1), 43.98A.070(5), 43.99.080(2), 46.09.240(1), 77.12.720(4).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: (1) To clarify the time period allowed for project agreement execution. (2) To consider adoption of one of two rules regarding how income gained in an IAC assisted area may be used: (a) Rewrite current WAC to improve clarity, but make no substantive change or (b) rewrite current WAC to improve clarity and allow such income to off-set sponsor matching share(s) and be used for operation and maintenance of any unit in the sponsor's system. (3) To limit a sponsor in restricting users of IAC grant assisted projects on the basis of residence (preferential reservations, permits, fees, etc.).

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: These rule changes involve: Local agencies (including park and recreation, port, school, and other special districts); state agencies (including State Parks, Fish and Wildlife, Natural Resources); and federal agencies (including Bureau of Land Management, Forest Service, and National Park Service); and Native American Tribes. Copies of the recommended changes will be provided to Interagency Committee for Outdoor Recreation's advisory committees for comment and later considered for adoption in a public meeting.

Process for Developing New Rule: It is our intent to advance this rule proposal through a participatory process that includes distribution of an initial proposal to all interested parties that have made themselves known to us, encouragement of comments via United States Postal mail, e-mail, telephone, and in person. Based on any comments, revisions will be considered before presentation of final recommendations to Interagency Committee for Outdoor Recreation's board for adoption in an advertised and open public meeting.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by providing comments to Greg Lovelady, Rules Coordinator, Interagency Committee for Outdoor Recreation, Natural Resources Building, P.O. Box 40917, Olympia, WA 98504-0917, (360) 902-3008, e-mail GREGL@iac.wa.gov, FAX (360) 902-3008; or appear to testify on July 18, 1997, Yakima Area Arboretum and Botanical Garden, Garden View Room, 1401 Arboretum Drive, Yakima, WA. Comments received before June 11, 1997, will be mailed to Interagency Committee for Outdoor Recreation for review in advance of public testimony meeting.

April 1, 1997
Gregory W. Lovelady
Rules Coordinator

WSR 97-08-080

PREPROPOSAL STATEMENT OF INQUIRY EVERETT COMMUNITY COLLEGE

[Filed April 2, 1997, 10:07 a.m.]

Subject of Possible Rule Making: WAC 132E-111-010 College procedures on disclosure of student information.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 28B.50 RCW, 34 CFR 99 Family Education Rights and Privacy Act of 1974 (Buckley Amendment).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To delineate the terms under which student information can and cannot be released.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Higher education institutions complying with federal laws.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Please respond in writing to Juli Boyington, Rules Coordinator, Everett Community College, 801 Wetmore Avenue, Everett, WA 98201, FAX (206) 388-9531.

April 1, 1997
Juli Boyington
Rules Coordinator

WSR 97-08-081

PREPROPOSAL STATEMENT OF INQUIRY EVERETT COMMUNITY COLLEGE

[Filed April 2, 1997, 10:08 a.m.]

Subject of Possible Rule Making: WAC 132E-133-020 Organization.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapters 28B.50, 34.05 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Changes to chapter 132E-133 WAC are for purposes of address and office title clarification.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Washington Community and Technical Colleges.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Please respond in writing to Juli Boyington, Rules Coordinator, Everett Community College, 801 Wetmore Avenue, Everett, WA 98201, phone (206) 388-9202, FAX (206) 388-9531.

April 1, 1997
Juli Boyington
Rules Coordinator

WSR 97-08-083

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF AGRICULTURE

[Filed April 2, 1997, 10:48 a.m.]

Subject of Possible Rule Making: WAC 16-536-040, consider the petition from the industry to increase the assessment on all varieties of dry peas and lentils from one percent of net receipts at final point of sale to two percent.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Washington State Enabling Act of 1961, Commodity Boards, chapter 15.65 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The dry pea and lentil industry faces reduced federal funding in the area of research and market development. Without an assessment increase, the industry may lose its entire research program and its competitive position in the domestic and export markets.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: The amendment of a marketing order shall be accomplished according to the procedures set forth in chapter 15.65 RCW, Washington State Enabling Act of 1961, which includes conducting a referendum vote of the affected producers.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. A public hearing will be set to give interested parties an opportunity to participate and comment on the proposed marketing order. Contact Walter Swenson, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1928, FAX (360) 902-2089; or Tim McGreevy, Washington Dry Pea and Lentil Commission, 5071 Highway 8 West, Moscow, ID 83843, phone (208) 882-3023, FAX (208) 882-6406.

April 2, 1997
William E. Brookreson
Assistant Director
Agency Operations

WSR 97-08-088**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF AGRICULTURE**

[Filed April 2, 1997, 11:34 a.m.]

Subject of Possible Rule Making: Update livestock identification program WACs to provide consistent language and fee levels with July 1, 1997, statutory reductions; to expand the use of self-inspection slips to further reduce inspection costs for industry and to reduce paperwork and relieve program expenditures by reducing mandatory inspection points.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 16.57.160, 16.57.220, 16.57.240, 16.57.350, 16.58.050, 16.58.030, 16.58.130, 16.65.037, and 16.65.090.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Program licensing and inspection fees are reduced by 20% effective July 1, 1997. In order to operate this mandated program for livestock owners in a cost-effective manner services must be reduced which includes scheduling hours when inspectors will be available for livestock inspections at public livestock markets, slaughter plants and certified feed lots. Additional clarity is provided to current rules to be consistent with statutory requirements.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Coordination with the United States Department of Agriculture—Grain Inspection, Packers and Stockyards Administration (GIPSA) accomplished through discussion and sharing of draft information.

Process for Developing New Rule: Proposed rules will be made available to stakeholders and interested parties for comment.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Washington State Department of Agriculture, Attention: Marcia Greene, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1852 or FAX (360) 902-2086.

April 2, 1997
Julie C. Sandberg
Assistant Director

WSR 97-08-005
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed March 20, 1997, 3:13 p.m.]

Supplemental Notice to WSR 97-03-096.

Preproposal statement of inquiry was filed as WSR 96-08-029.

Title of Rule: Chapter 308-57 WAC, reporting destroyed vehicles.

Purpose: To incorporate the effects of SSB 6271, chapter 26, Laws of 1996, into the procedures for reporting destroyed vehicles. This supplemental notice is to amend the proposed rules adding comments provided during the public hearing of February 25, 1997.

Statutory Authority for Adoption: RCW 46.01.110 and 46.12.075.

Statute Being Implemented: RCW 46.12.005, 46.12.050, and 46.12.075.

Summary: SSB 6271 created a new class of vehicle referred to as a "salvage vehicle." The proposed rule making will incorporate this new class of vehicle into the procedures for reporting and branding the ownership documents of vehicles reported as destroyed pursuant to RCW 46.12.070.

Reasons Supporting Proposal: The proposed rule making is in support of legislation enacted by the 1996 session of the legislature.

Name of Agency Personnel Responsible for Drafting: Marlene Epp, 1125 Washington Street S.E., Olympia, WA, (360) 902-3823; Implementation: Eric Andersen, 1125 Washington Street S.E., Olympia, WA, (360) 902-4045; and Enforcement: Nancy Kelly, 1125 Washington Street S.E., Olympia, WA, (360) 902-3754.

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: New section WAC 308-57-050, instructions for application of certificate of ownership for a vehicle reported destroyed.

Proposal Changes the Following Existing Rules: Amendatory sections WAC 308-57-010, adding conditions for determining when a vehicle is considered destroyed; WAC 308-57-030, amending conditions for perfecting the sale of a vehicle after it has been reported as destroyed; and WAC 308-57-040, describing the brand or inscription that will be displayed on the certificates of ownership and registration on destroyed vehicles that have been rebuilt.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030. The proposed rule making does not impose more than a minor cost on businesses in an industry.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The contents of the proposed rules are explicitly and specifically dictated by statute.

Hearing Location: Highways-Licenses Building, Conference Room 303, 1125 Washington Street S.E., Olympia, WA, on May 7, 1997, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Jack Lince, phone (360) 902-3773, by May 6, 1997, TDD (360) 664-8885.

Submit Written Comments to: Jack L. Lince, Contracts Manager, Title and Registration Services, P.O. Box 2957, Olympia, WA 98507-2957, FAX (360) 664-0831, by May 6, 1997.

Date of Intended Adoption: May 14, 1997.

March 20, 1997

Nancy Kelly, Administrator
 Title and Registration Services

AMENDATORY SECTION (Amending WSR 91-04-025, filed 1/29/91, effective 3/1/91)

WAC 308-58-010 Definitions. (1) For the purpose of RCW 46.12.070, destruction of a vehicle or total loss, less salvage value, shall mean the vehicle is:

(a) Dismantled with the intention of never again operating it as a vehicle; or

(b) Damaged to the extent that the cost of repair exceeds its market value immediately prior to the damage; or

(c) Damaged to the extent that the cost of repairing it plus its salvage value in its damaged condition exceeds or approximately equals the market value in its repaired or restored condition; or

(d) Damaged to the extent that the owner, an insurer, or other person acting on behalf of the owner, has determined the vehicle is uneconomical to repair. "Uneconomical to repair" means the cost of parts, labor, and salvage value is greater than the economic value placed on the repaired vehicle by the owner.

(2) For the purpose of RCW 46.12.070, the settlement of an insurance claim as a total loss, less salvage value shall mean the date on which an insurance company actually makes payment to the claimant for the damage.

AMENDATORY SECTION (Amending Order TL/RG 44, filed 9/30/88)

WAC 308-58-030 Sale of salvage. (1) ~~After ((the title has been sent to the department of licensing as a part of the report of destruction, and the owner decides to sell the damaged vehicle, it))~~ a vehicle has been reported destroyed pursuant to RCW 46.12.070, the vehicle may be sold by the insurer using a bill of sale instead of ((the title)) a release of interest on a certificate of ownership. The bill of sale must ((include the statement that the vehicle's title has been sent to Olympia as a part of the report of destruction. In the case of a registered owner, his signature on the bill of sale must be notarized to convey his interest in the vehicle to a purchaser unless the purchaser is a licensed auto wrecker or dealer in which case a bill of sale need not be notarized. In the case of an insurer, the bill of sale must)) be signed by ~~((someone authorized by the insurance company to sign on its behalf. The title of the person signing for the insurance company must be shown on the bill of sale))~~ a representative of the insurer and provide their appellative title. The representative's signature need not be notarized.

~~((An auto))~~ (2) After a vehicle has been reported destroyed pursuant to RCW 46.12.070 and the vehicle is retained by the registered owner, the vehicle may be sold in

its present condition using a bill of sale. The bill of sale must be signed by the owner of record and the signature notarized.

(3) A motor vehicle wrecker licensed (~~(under)~~) pursuant to chapter 46.80 RCW may utilize a bill of sale issued in accordance with (~~(the preceding paragraph)~~) subsections (1) and (2) of this section in lieu of a (~~(title)~~) certificate of ownership to comply with RCW 46.80.090.

AMENDATORY SECTION (Amending WSR 92-15-022, filed 7/6/92, effective 8/6/92)

WAC 308-58-040 (~~(Destroyed)~~) Salvage vehicles rebuilt. (~~(Certificates of ownership and registration reissued for a)~~) (1) Salvage vehicles (~~(reported destroyed that is less than four years old will contain the word "rebuilt" in an appropriate location on the)~~) defined in RCW 46.12.005 whose certificate of ownership or other authorized documentation has been turned in to the department pursuant to RCW 46.12.070, shall be issued certificates of ownership and (~~(the certificate of)~~) registration pursuant to RCW 46.12.075. Certificates of ownership and registration shall prominently display a REBUILT inscription on the face of the document. (~~(This description)~~) The inscription will continue to appear on every subsequent certificates of ownership and registration issued (~~(by the department)~~) for this vehicle.

(2) The application for certificate of ownership of (~~(the)~~) a rebuilt salvage vehicle will be accompanied by a release of interest or a bill of sale transferring ownership to the applicant and a Washington state patrol inspection (~~(if the vehicle is to be operated in Washington)~~), as provided in WAC 308-56A-460.

NEW SECTION

WAC 308-58-050 Destroyed vehicle retitled. The application for certificate of ownership to a vehicle shown on department records as destroyed, pursuant to RCW 46.12.070, must be accompanied by the following:

(1) A release of interest on the certificate of ownership, a notarized release of interest or notarized bill of sale from the owner of record, or a bill of sale from a licensed vehicle wrecker or insurer; and

(2) A Washington state patrol inspection as provided in WAC 308-56A-460.

WSR 97-08-007
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Division of Developmental Disabilities)
(Institutions)

[Filed March 24, 1997, 1:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 97-03-098.

Title of Rule: Division of Developmental Disabilities family support program, chapter 275-27 WAC, developmental disabilities services.

Purpose: Clarify and limit the use of state funds expended under the Division of Developmental Disabilities family support program.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.040.

Summary: Clarifies and limits the use of funding under the family support program. The Division of Developmental Disabilities is converting policy governing family support to rule as required by chapter 34.05 RCW.

Reasons Supporting Proposal: To provide consistency and equity in the application of this program.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Rita Dickey, Box 45310, Olympia, WA 98504, (360) 902-8451.

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: This rule clarifies the use of funding under the family support program and describes flexible use of funds. The reduction of family support funds is outlined when another service, such as Medicaid personal care is authorized. Service need level amounts are stated and the policy for emergency authorization is described. Clarification on notification and the treatment of exceptions is included.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Does not affect small businesses.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. RCW 34.05.328 does not apply to the Department of Social and Health Services.

Hearing Location: Lacey Government Center (behind Tokyo Bento restaurant), 1009 College Street S.E., Room 104-A, Lacey, WA 98503, on May 6, 1997, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Leslie Baldwin by April 22, 1997, TDD (360) 902-8324, or (360) 902-7540.

Submit Written Comments to: Leslie Baldwin, Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail lbaldwin@dshs.wa.gov, FAX (360)-902-8292, by May 6, 1997.

Date of Intended Adoption: No sooner than May 7, 1997.

March 20, 1997
Merry A. Kogut, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending Order 3230, filed 8/9/91, effective 9/9/91)

WAC 275-27-023 Exemptions. (1) The department may approve an exemption to a specific rule in this chapter as defined under WAC 275-27-020(7) provided an:

(a) Assessment of the exemption shall not undermine the legislative intent of Title 71A RCW; and

(b) Evaluation of the exemption request shows granting the exemption shall not adversely effect the quality of the services, supervision, health, and safety of department-served persons.

(2) Agencies and individual providers shall retain a copy of each department-approved exemption.

(3) Exemption requests are not subject to appeal.

AMENDATORY SECTION (Amending Order 3702, filed 2/1/94, effective 3/4/94)

WAC 275-27-220 Family support services. (1) The ~~((department's intent))~~ purpose of the family support ~~((services shall be))~~ program is to:

(a) Reduce or eliminate the need for out-of-home residential placement of a client where the in-home placement is in the client's best interest;

(b) Allow a client to live in the most independent setting possible; and

(c) Have access to services best suited to a client's needs.

(2) The department's family support services shall include, ~~((but not be limited to,))~~ the following services:

(a) ~~((Emergency or planned))~~ Respite care, including the use of community activities which provide respite;

(b) Attendant care;

(c) Nursing;

(d) Therapeutic services, including:

(i) Physical therapy;

(ii) Occupational therapy;

(iii) Behavior management therapy; and

(iv) Communication therapy; or

(v) Counseling for the client relating to a disability; provided these therapeutic services are not covered by another resource such as medicaid, private insurance, public schools, or child development services funding.

~~((d))~~ The purchase, rental, loan, or refurbishment of specialized equipment, environmental modifications, and other adaptations; and

~~((e))~~ Other service approved by the director or designee as described under subsection (1) of this section))

(3) Up to nine hundred dollars of the service need level amount in subsection (7)(b) of this section may be used during a designated service period for flexible use as follows. The requested service must be necessary as a result of the disability of the client.

(a) Training and supports including parenting classes and disability related support groups;

(b) Specialized equipment and supplies including the purchase, rental, loan or refurbishment of specialized equipment or adaptive equipment not covered by another resource including Medicaid. Mobility devices such as walkers and wheelchairs are included, as well as communication devices and medical supplies such as diapers for those more than three years of age;

(c) Environmental modification including home repairs for damages, and modifications to the home needed because of the disability of the client;

(d) Medical/dental services not covered by any other resource. This may include the payment of insurance premiums and deductibles and is limited to the expenses of the client;

(e) Nursing services provided by a registered nurse or licensed practical nurse that cannot be provided by an unlicensed care giver. Nursing services include, but are not

limited to, ventilation, catheterization, insulin shots, etc., when not covered by another resource;

(f) Special formulas or specially prepared foods needed because of the disability of the client;

(g) Parent/family counseling dealing with a diagnosis, grief and loss issues, genetic counseling and behavior management;

(h) Specialized clothing adapted for a physical disability, excessive wear clothing, or specialized footwear;

(i) Specialized utility costs including extraordinary supplemental utility costs related to the client's disability or medical condition;

(j) Transportation costs for gas or tickets (ferry fare, transit cost) for a client to get to essential services and appointments, if another resource is not available;

(k) Other services approved by the DDD regional administrator or designee that will replace or reduce ongoing departmental expenditures and will reduce the risk of out-of-home placement. Exemption requests under this section are not subject to appeal.

(4) Payment for services specified in subsection (3), except (3)(a) and (h), shall cover only the portion of cost attributable to the client.

(5) Requests must be received by DDD no later than midway through the service authorization period unless circumstances exist justifying an emergency.

(6) A plan shall be developed jointly by the family and the department ~~((shall authorize services to the family for a specified time limited))~~ for each service authorization period. The department may choose whether to contract directly with the vendor, to authorize purchase by another agency, or may reimburse the parent of the client.

~~((a))~~ (7) Emergency Services. Emergency funds may be requested for use in response to a single incident or situation or short term crisis such as care giver hospitalization, absence, or incapacity. The request shall include anticipated resolution of the situation. Funds shall be provided for a limited period not to exceed two months. All requests are to be reviewed and approved or denied by the regional administrator or designee.

(8) A departmental service authorization shall state the type, amount, and period (duration) of service. Each department authorization shall constitute a new service for a new period.

~~((b))~~ (9) If the client becomes eligible and begins to receive services under Medicaid Personal Care as defined in WAC 388-15-880 through 388-15-890, the family support funding will be reduced at the beginning of the next month of service. The family will receive notice of the reconfiguration of services at least five working days before the beginning of the month.

(10) If requested family support services are not authorized, such actions shall be deemed a denial of services.

~~((e))~~ (11) Family support services may be authorized below the amount requested by the family for the period. When, during the authorized service period, family support services are reduced or terminated below the amount specified in service authorizations, the department shall deem such actions as a reduction or termination of services.

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~~((4) The department shall authorize family support services in accordance with department established policies. The department shall base periodic service authorizations on:~~

~~(a) Requests for family support services described in subsection (2) of this section;~~

~~(b) Service need levels as described in section 223 of this chapter;~~

~~(c) Availability of family support funding;~~

~~(d) The family's ability to purchase services required by a minor client as described under WAC 275-27-221 based on family provided financial information; and~~

~~(e) Authorization by a review committee, in each regional office, which reviews each request for service.~~

~~(5) The department shall authorize family support services contingent upon the applicant providing accurate and complete information concerning family income and disability related expenses as requested by the department.~~

~~(6) The department shall ensure service authorizations do not exceed maximum amounts for each service need level based on the availability of funds.~~

~~(7) The department shall not authorize a birth parent, adoptive parent, or stepparent living in the same household as the client as the direct care provider for respite, attendant, nursing, therapy, or counseling services for a child seventeen years of age or younger.~~

~~(8) The department shall ensure subsections (4)(d) and (5) of this section are only in effect until July 31, 1995.)~~

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

NEW SECTION

WAC 275-27-222 Service need level rates. (1) The department shall base periodic service authorizations on:

(a) Requests for family support services described in WAC 275-27-220(2) of this section;

(b) Service need levels as described in WAC 275-27-220(3) of this chapter. Service need level lid amounts are as follows:

(i) Clients designated for service need level one (WAC 275-27-223) may receive up to nine hundred twenty-three dollars per month or two thousand two hundred seventy-three dollars per month if the client requires licensed nursing care in the home:

(A) If a client is receiving funding through Medicaid Personal Care or other DSHS in-home residential support, the maximum payable through family support shall be four hundred nine dollars per month;

(B) If the combined total of family support services at this maximum plus in-home support is less than nine hundred twenty-three dollars additional family support can be authorized to bring the total to nine hundred twenty-three dollars.

(ii) Clients designated for service need level two may receive up to three hundred sixty-five per month if not receiving funding through Medicaid personal care:

(A) If a client is receiving funds through Medicaid personal care or other DSHS in-home residential support service, the maximum receivable through family support shall be two hundred five dollars per month;

(B) If the combined total of family support services at this maximum plus in-home support is less than three hundred sixty-five dollars, additional family support can be authorized to bring the total to three hundred sixty-five dollars.

(iii) Clients designated for service need level three may receive up to two hundred five dollars per month provided the client is not receiving Medicaid personal care. If the client is receiving Medicaid personal care or other DSHS in-home residential support service, the maximum receivable through family support shall be one hundred three dollars per month; and

(iv) Clients designated for service level four may receive up to one hundred three dollars per month family support services.

(c) Availability of family support funding;

(d) Authorization by a review committee, in each regional office, which reviews each request for service.

(2) The department shall authorize family support services contingent upon the applicant providing accurate and complete information on disability-related requests.

(3) The department shall ensure service authorizations do not exceed maximum amounts for each service need level based on the availability of funds.

(4) The department shall not authorize a birth parent, adoptive parent, or stepparent living in the same household as the client as the direct care provider for respite, attendant, nursing, therapy, or counseling services for a child seventeen years of age or younger.

AMENDATORY SECTION (Amending Order 3702, filed 2/1/94, effective 3/4/94)

WAC 275-27-223 Service need levels. (1) The department shall use service need levels to determine periodic family support service authorizations.

(2) The department shall determine service need levels in order of priority for funding as follows:

(a) Service need level 1: Client is at immediate risk of out-of-home placement without the provision of family support services. The client needs intensive residential support to assist the client's family to care for the family's child or adult requiring nursing services, attendant care, or support due to difficult behaviors. A client shall:

(i) Have received, over the past three months, at least ten days or eighty hours of service; or

(ii) Requires at least ten days or eighty hours per month of service to prevent immediate out-of-home placement, based upon an assessment conducted by the department;

(b) Service need level 2: Client is at high risk of out-of-home placement without the provision of family support services and has one or more of the following documented in writing:

(i) The client:

(A) Currently receives adult protective services or division of children and family services as an active:

(I) Child protective service client;

(II) Child welfare service client; or

(III) Family reconciliation service client.

(B) Has returned home from foster care or group care placement within the last six months;

(C) Has a serious medical problem requiring close and ongoing monitoring and/or specialized treatment, such as:

- (I) Apnea monitor;
- (II) Tracheotomy;
- (III) Heart monitor;
- (IV) Ventilator;
- (V) Constant monitoring due to continuous seizures;
- (VI) Immediate life-saving intervention due to life threatening seizures;
- (VII) Short bowel syndrome; or
- (VIII) Brittle bone syndrome.

(D) Has a dual diagnosis based on current mental health DSM Axis I diagnosis;

(E) Has an extreme behavioral challenge resulting in health and safety issues for self and/or others which:

(I) Resulted in serious physical injury to self or others within the last year;

(II) For a client who is two years of age or older, requires constant monitoring when awake for personal safety reasons; or

(III) Is of imminent danger to self or others as determined by a psychiatrist, psychologist, or other qualified professional.

(F) Is ten years of age or older or weighs forty pounds or more, requires lifting, and needs direct physical assistance in three or more of the following areas:

- (I) Bathing;
- (II) Toileting;
- (III) Feeding;
- (IV) Mobility; or
- (V) Dressing.

(ii) The caregiver:

(A) Is a division of developmental disabilities client;

(B) Has a physical or medical problem that interferes with providing care; or

(C) Has serious mental health or substance abuse problems and:

(I) Is receiving counseling for these problems; or

(II) Has received or applied for counseling within the past six months.

(c) Service need level 3: The family is at risk of significant deterioration which could result in an out-of-home placement of the client without provision of family support services due to the following:

(i) The client requires direct physical assistance, above what is typical for such client's age, in three or more of the following areas:

- (A) Bathing;
- (B) Toileting;
- (C) Feeding;
- (D) Mobility; or
- (E) Dressing.

(ii) The client has current behavioral episodes resulting in:

- (A) Physical injury to the client or others;
- (B) Substantial damage to property; and/or
- (C) Chronic sleep pattern disturbances or chronic continuous screaming behavior.

(iii) The client has medical problems requiring substantial extra care; and/or

(iv) The family is:

- (A) Experiencing acute and/or chronic stress;

(B) Has acute or chronic physical limitations; or

(C) Has acute or chronic mental or emotional limitations.

(d) Service need level 4: Family needs temporary or ongoing services in order to:

(i) Receive support to relieve and/or prevent stress of caregiver/family; or

(ii) Enhance the current functioning of the family.

(3) The department, through regional review committees, shall determine service need level of the client's service request by reviewing information received from the client, family, and other sources about:

(a) Whether client is an active recipient of services from the division of children and family services or adult protective services;

(b) Whether indicators of risk of out-of-home placement exist, and the imminence of such an event. The department's assessment of such risk may include:

(i) Review of family's requests for placement;

(ii) History of family's involvement with children's protective services or adult protective services;

(iii) Client's current adjustment;

(iv) Parental history of psychiatric hospitalization;

(v) Clinical assessment of family's condition; and

(vi) Statements from other professionals.

(c) Caregiver conditions, such as acute and/or chronic:

(i) Stress;

(ii) Physical limitations; and

(iii) Mental and/or emotional impairments.

(d) Client's need for intense medical, physical, or behavioral support;

(e) Family's ability to use typical community resources;

(f) Availability of private, local, state, or federal resources to help meet the need for family support;

(g) Severity and chronicity of family or client problems; and

(h) Degree to which family support services will:

(i) Ameliorate or alleviate such problems; and

(ii) Reduce the risk of out-of-home placement.

AMENDATORY SECTION (Amending Order 2596, filed 2/5/88)

WAC 275-27-400 Notification. (1) The department shall notify the client or applicant, the parent when the client or applicant is a minor, and the guardian when the client or applicant is an adult, of the following decisions:

(a) Denial or termination of eligibility set forth in WAC 275-27-030;

(b) Development or modification of the individual service plan set forth in WAC 275-27-060;

(c) Authorization, denial, reduction, or termination of services set forth in WAC 275-27-230; and

(d) Admission or readmission to, or discharge from, a residential habilitation center.

(2) The notice shall set forth appeal rights pursuant to WAC 275-27-500 and a statement that the client's case manager can be contacted for an explanation of the reasons for the action.

(3)(a) The department shall provide notice of a denial or partial authorization of a family support services request and a statement of reason for denial or partial authorization, or

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reduction to the person or persons described in subsection (1) of this section. The department shall send such notice no later than five working days before the end of the month previous to the month for which service was requested;

(b) The department shall make available an administrative review of a decision to deny or partially authorize services upon receipt of a written request by a person or persons described in subsection (1) of this section to the administrator of the region in which the client is living. The regional office must receive a request for administrative review by the last working day of the month;

(c) The client shall state in the written request why the client or client's family believes their service priority designation is not correct;

(d) Upon receipt of request for administrative review, the regional administrator or designee shall review the request and the client file; and

(e) The department shall send the results of the administrative review to the client and/or family within the first five working days of the service month for which the client is being denied or receiving a partial authorization for services.

(4) The department shall provide at least thirty days' advance notice of action to terminate a client's eligibility, terminate or reduce a client's service, or discharge a client from a residential habilitation center to the community(~~or~~ except for the). Transfer or removal of a client from a service set forth in WAC 275-27-500 (5)(f) is governed by that section, and reduction of family support funding during the service authorization period is covered by subsection (3)(a) of this section.

(5) All parties affected by such department decision shall be consulted, whenever possible, during the decision process by the responsible field services regional office in person and/or by telephone.

(6) The division shall ensure notification to the school district in which a school-aged child is to be placed when a placement decision is reached.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 275-27-221 Family financial participation.

WSR 97-08-025
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed March 26, 1997, 9:46 a.m.]

Original Notice.

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

Title of Rule: WAC 246-282-990 Shellfish program certification fees.

Purpose: The Office of Shellfish Programs of the Department of Health proposes an increase in shellfish certificate fees to address increased program costs.

Other Identifying Information: All proposed increases are at or below the fiscal growth factor for FY 1997, 4.45%.

Statutory Authority for Adoption: RCW 69.30.030 and 43.20B.020.

Summary: The proposed amendment increases the fee for each of the annual shellfish certificates issued by the Department of Health by approximately 4.45%.

Reasons Supporting Proposal: The increase is necessary to continue current levels of program activity.

Name of Agency Personnel Responsible for Drafting: Ned Therien, Airdustrial Center, Building 4, Olympia, (360) 664-4372; Implementation and Enforcement: Jennifer Tebaldi, Airdustrial Center, Building 4, Olympia, (360) 664-3257.

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: The proposed amendment will increase annual shellfish certificates in every category, affecting approximately three hundred fifty shellfish operations. Increasing program costs make it necessary to increase fees in order to maintain current program service levels.

Proposal Changes the Following Existing Rules: Proposed annual shellfish certificate fee increases: Shellstock shipper with less than 50 acres - from \$250 to \$260. Shellstock shipper with 50 or greater acres - from \$400 to \$415. Shucker packer (plant floor space less than 2,000 sq. ft.) - from \$450 to \$470. Shucker packer (plant floor space between 2,000 and 5,000 sq. ft.) - from \$550 to \$570. Shucker packer (plant floor space over 5,000 sq. ft.) - from \$1,000 to \$1,040.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025(2), a small business economic impact statement is not required for rule making under categories listed in RCW 34.05.310(4), including rules that set or adjust fees pursuant to legislative standards. This proposal adjusts fees pursuant to legislative standards and therefore is exempt from the small business economic impact statement requirement.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This rule proposal only increases fees already established in WAC 246-282-990. Section 201, chapter 403, Laws of 1995, does not apply to rules that set or adjust fees.

Hearing Location: Department of Health, Airdustrial Center, Building 4, Conference Room, 7171 Cleanwater Lane, Olympia, WA 98504, on May 8, 1997, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Ned Therien by May 1, 1997, TDD (800) 833-6388, or FAX (360) 586-4499.

Submit Written Comments to: Ned Therien, Office of Shellfish Programs, P.O. Box 47824, Olympia, WA 98504-7824, FAX (360) 586-4499, by May 8, 1997.

Date of Intended Adoption: May 15, 1997.

March 25, 1997
Bruce Miyahara
Secretary

AMENDATORY SECTION (Amending WSR 96-16-073, filed 8/6/96, effective 10/1/96)

WAC 246-282-990 Shellfish program certification fees. (1) Annual certificate fees shall be:

Type of Operation	Annual Fee
Shellstock Shipper	
0 - 49 Acres	(\$250-) \$260.
50 or greater Acres	(\$400-) \$415.
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	(\$450-) \$470.
Plants with floor space > 2000 sq. ft. and < 5000 sq. ft.	(\$550-) \$570.
Plants with floor space > 5000 sq. ft.	(\$1,000-) \$1,040.

(2) Type of operations are defined as follows:

(a) "Shellstock shipper" shall mean shippers growing, harvesting, buying, or selling shellstock. Shellstock shippers are not authorized to shuck shellfish or to repack shucked shellfish.

(b) "Shucker-packer" shall mean shippers shucking and packing shellfish. A shucker-packer may act as a shellstock dealer.

(3) "Export certificate" means a certificate issued by the department to a licensed shucker-packer or shellstock shipper for use in the foreign export of a lot or shipment of shellfish. The fee for each export certificate shall be \$10.

WSR 97-08-041
PROPOSED RULES
BOARD OF
PILOTAGE COMMISSIONERS
 [Filed March 28, 1997, 8:25 a.m.]

Original Notice.

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

Title of Rule: Pilotage rates for the Puget Sound pilotage district.

Purpose: To establish a Puget Sound pilotage district annual tariff.

Other Identifying Information: WAC 296-116-300 (recodified as WAC 363-116-300).

Statutory Authority for Adoption: RCW 88.16.035.

Statute Being Implemented: RCW 88.16.035.

Summary: The proposed rule reflects a 2.58% increase in all categories except transportation to be charged for pilotage services in the Puget Sound pilotage district for the 1997-98 tariff year.

Reasons Supporting Proposal: RCW 88.16.035 requires that a tariff be set annually.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Pilotage Commission, 1008 Western Avenue, Seattle, WA, (206) 515-3904.

Name of Proponent: Puget Sound pilots, private.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Current rates for the Puget Sound pilotage district expire on June 30, 1997. New rates must be set annually.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule as proposed by the Puget Sound pilots would increase the tariff for pilotage services in the Puget

Sound pilotage district by 2.58% over the present tariff in all categories except transportation.

Proposal Changes the Following Existing Rules: The proposed rule is a 2.58% increase over the existing tariff in all categories except transportation.

The board may adopt a rule that varies from the proposed rule upon consideration of oral and written testimony from other interested parties and the public.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is being considered in the context of the required annual revision to the rates charged for pilotage services. The application of the 2.58% increase is clear in the proposed tariff shown below and represents a minor economic impact on shipping costs.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Marine Exchange Conference Center, 2701 1st Avenue, Suite 110, Seattle, WA 98121, on May 8, 1997, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Peggy Larson by May 5, 1997, (206) 515-3904.

Submit Written Comments to: Mr. Larry Vognild, Chairman, FAX (206) 515-3969, by May 1, 1997.

Date of Intended Adoption: May 8, 1997.

March 27, 1997
 Peggy Larson
 Administrator

PROPOSED

AMENDATORY SECTION (Amending WSR 96-12-017, filed 5/29/96, effective 7/1/96)

WAC 296-116-300 Pilotage rates for the Puget Sound pilotage district. Effective 0001 hours July 1, ((1996)) 1997, through 2400 hours June 30, ((1997)) 1998.

CLASSIFICATION	RATE
Ship length overall (LOA) Charges:	per LOA rate schedule in this section
Boarding fee: Per each boarding/deboarding at the Port Angeles pilot station.	(\$ 35.00) \$ 36.00
Harbor shift - Live ship (Seattle Port)	LOA Zone I
Harbor shift - Live ship (other than Seattle Port)	LOA Zone I
Harbor shift - Dead ship	Double LOA Zone I
Dead ship towing charge: LOA of tug + LOA of tow + beam of tow	Double LOA Zone
Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.	
Waterway and bridge charges: Ships up to 90' beam: A charge of (\$187.00) \$192.00 shall be in addition to bridge fees for any vessel movements both inbound and outbound required to transit south of Spokane Street Bridge in Seattle, south of Eleventh Street Bridge in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of (\$89.00) \$91.00 per bridge.	

Ships 90' beam and/or over:

A charge of ~~(\$251.00)~~ \$257.00 shall be in addition to bridge fees for any vessel movements both inbound and outbound required to transit south of Spokane Street Bridge in Seattle and south of Eleventh Street Bridge in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of ~~(\$176.00)~~ \$181.00 per bridge.

(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)

Two or three pilots required:

In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second and/or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.

Compass adjustment ~~(\$250.00)~~ \$256.00
 Radio direction finder calibration ~~(\$250.00)~~ \$256.00
 Launching vessels ~~(\$377.00)~~ \$387.00
 Trial trips, 6 hours or less
 (Minimum ~~(\$708.00)~~ \$726.00) ~~(\$118.00)~~ \$121.00
 per hr.

Trial trips, over 6 hours (two pilots) ~~(\$236.00)~~ \$242.00
 per hr.

Shilshole Bay — Salmon Bay ~~(\$147.00)~~ \$151.00
 Salmon Bay — Lake Union ~~(\$115.00)~~ \$118.00
 Lake Union — Lake Washington (plus LOA zone from Webster Point) ~~(\$147.00)~~ \$151.00
 Cancellation charge LOA Zone I

Cancellation charge — Port Angeles (when a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for pilot or when a pilot order is cancelled less than twelve hours prior to the original ETA.) LOA Zone II

Docking delay after anchoring: ~~(\$118.00)~~ \$121.00
 per hr.

Applicable harbor shift rate to apply, plus ~~(\$118.00)~~ \$121.00 per hour standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is ~~(\$118.00)~~ \$121.00 for every hour or fraction thereof.

Sailing delay: ~~(\$118.00)~~ \$121.00
 per hour

No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is ~~(\$118.00)~~ \$121.00 for every hour or fraction thereof.

Slowdown: ~~(\$118.00)~~ \$121.00
 per hour

When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of ~~(\$118.00)~~ \$121.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.

Tonnage charges:

0 to 20,000 gross tons:
 Additional charge to LOA zone mileage of ~~(\$0.0060)~~ \$0.0062 a gross ton for all gross tonnage up to 20,000 gross tons.

20,000 to 50,000 gross tons:
 Additional charge to LOA zone mileage of ~~(\$0.0608)~~ \$0.0624 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

50,000 gross tons and up:
 In excess of 50,000 gross tons, the charge shall be ~~(\$0.0727)~~ \$0.0746 per gross ton.

For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.

Delayed arrival-Port Angeles: ~~(\$118.00)~~ \$121.00
 per hour

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of ~~(\$118.00)~~ \$121.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the ETA is delayed to six hours or more beyond the original ETA, a cancellation charge shall be assessed, in addition to all other appropriate charges, if the ETA was not amended at least twelve hours prior to the original ETA.

Transportation to vessels on Puget Sound:

March Point or Anacortes	\$144.00
Bangor	84.00
Bellingham	158.00
Bremerton	44.00
Cherry Point	175.00
Dupont	85.00
Edmonds	27.00
Everett	52.00
Ferndale	173.00
Manchester	66.00
Mukilteo	52.00
Olympia	108.00
Point Wells	27.00
Port Gamble	77.00
Port Townsend (Indian Island)	109.00
Seattle	15.00
Semiahmoo (Blaine)	196.00
Tacoma	56.00
Tacoma Smelter	66.00
Winslow	42.00

- (a) Intraharbor transportation for the Port Angeles port area - transportation between Port Angeles pilot station and Port Angeles harbor docks - \$15.00.
- (b) Interport shifts: Transportation paid to and from both points.
- (c) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is cancelled on or before scheduled reporting time, transportation paid one way only.
- (d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.
- (e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x \$1.80 per mile.

Delinquent payment charge: 1 1/2% per month after 45 days from first billing.

Nonuse of pilots: Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage fees on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.

LOA rate schedule

The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes retirement fund contributions.

LOA	ZONE I	ZONE II	ZONE III	ZONE IV	ZONE V	ZONE VI
	Intra Harbor	0-30 Miles	31-50 Miles	51-75 Miles	76-100 Miles	101 Miles & Over
(Up to 449)	176	275	478	715	966	1256
450	459	182	282	481	726	981
460	469	186	285	488	738	996
470	479	191	293	494	753	999
480	489	196	299	496	768	1005

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490	499	199	302	502	781	1016	1281
500	509	209	307	511	791	1024	1290
510	519	212	314	516	802	1035	1294
520	529	215	325	524	806	1044	1306
530	539	223	330	531	815	1061	1319
540	549	226	335	542	824	1078	1331
550	559	230	345	546	837	1085	1344
560	569	238	359	556	844	1097	1358
570	579	244	363	560	847	1108	1366
580	589	255	370	573	854	1115	1381
590	599	266	377	576	858	1131	1396
600	609	275	388	584	861	1144	1403
610	619	292	392	594	865	1157	1416
620	629	303	397	601	875	1169	1432
630	639	319	405	608	877	1178	1445
640	649	322	414	614	880	1191	1456
650	659	355	422	625	887	1205	1470
660	669	362	426	630	891	1217	1482
670	679	375	437	637	906	1231	1490
680	689	381	446	645	917	1242	1506
690	699	392	453	654	933	1256	1536
700	719	410	467	667	942	1279	1554
720	739	435	481	684	956	1306	1581
740	759	453	502	698	966	1331	1609
760	779	471	521	713	981	1358	1630
780	799	494	543	726	996	1381	1659
800	819	514	560	741	1001	1403	1683
820	839	531	579	758	1016	1432	1704
840	859	554	604	772	1028	1456	1734
860	879	574	625	787	1056	1482	1757
880	899	594	644	802	1080	1506	1783
900	919	612	663	816	1106	1536	1810
920	939	631	684	837	1131	1554	1832
940	959	654	702	848	1157	1581	1856
960	979	670	723	863	1178	1609	1883
980	999	694	741	878	1205	1630	1907
1000 & over	713	766	893	1231	1659	1933))	
Up to 449	181	282	490	733	991	1288	
450 - 459	187	289	493	745	1006	1295	
460 - 469	191	292	501	757	1022	1299	
470 - 479	196	301	507	772	1025	1302	
480 - 489	201	307	509	788	1031	1308	
490 - 499	204	310	515	801	1042	1314	
500 - 509	214	315	524	811	1050	1323	
510 - 519	217	322	529	823	1062	1327	
520 - 529	221	333	538	827	1071	1340	
530 - 539	229	339	545	836	1088	1353	
540 - 549	232	344	556	845	1106	1365	
550 - 559	236	354	560	859	1113	1379	
560 - 569	244	368	570	866	1125	1393	
570 - 579	250	372	574	869	1137	1401	
580 - 589	262	380	588	876	1144	1417	
590 - 599	273	387	591	880	1160	1432	
600 - 609	282	398	599	883	1174	1439	
610 - 619	300	402	609	887	1187	1453	
620 - 629	311	407	617	898	1199	1469	
630 - 639	327	415	624	900	1208	1482	
640 - 649	341	425	630	903	1222	1494	
650 - 659	364	433	641	910	1236	1508	
660 - 669	371	437	646	914	1248	1520	
670 - 679	385	448	653	929	1263	1528	
680 - 689	391	458	662	941	1274	1545	
690 - 699	402	465	671	957	1288	1576	
700 - 719	421	479	684	966	1312	1594	
720 - 739	446	493	702	981	1340	1622	
740 - 759	465	515	716	991	1365	1651	
760 - 779	483	534	731	1006	1393	1672	
780 - 799	507	557	745	1022	1417	1702	
800 - 819	527	574	760	1027	1439	1726	
820 - 839	545	594	778	1042	1469	1748	
840 - 859	568	620	792	1055	1494	1779	
860 - 879	589	641	807	1083	1520	1802	
880 - 899	609	661	823	1108	1545	1829	
900 - 919	628	680	837	1135	1576	1857	
920 - 939	647	702	859	1160	1594	1879	

940 - 959	671	720	870	1187	1622	1904
960 - 979	687	742	885	1208	1651	1932
980 - 999	712	760	901	1236	1672	1956
1000 & over	731	786	916	1263	1702	2044

WSR 97-08-044
WITHDRAWAL OF PROPOSED RULES
OFFICE OF
INSURANCE COMMISSIONER

[Filed March 28, 1997, 2:45 p.m.]

After review of the public comments concerning their adoption, proposed rules concerning managed care plans, Insurance Commissioner Matter No. R 96-4, filed with the code reviser on December 3, 1996, and published at WSR 96-24-083, are hereby withdrawn in accordance with RCW 34.05.335 and WAC 1-21-060.

Deborah Senn
 Insurance Commissioner

WSR 97-08-045
PROPOSED RULES
INSURANCE COMMISSIONER'S OFFICE

[Filed March 28, 1997, 2:50 p.m.]

Continuance of WSR 97-03-090.

Preproposal statement of inquiry was filed as WSR 96-17-028.

Title of Rule: Personal injury protection.

Other Identifying Information: Insurance Commissioner Matter No. R 96-6.

Summary: Continuation of adoption date.

Date of Intended Adoption: May 9, 1997.

March 31 [28], 1997

Deborah Senn
 Insurance Commissioner

WSR 97-08-046
PROPOSED RULES
INSURANCE COMMISSIONER'S OFFICE

[Filed March 28, 1997, 2:56 p.m.]

Continuance of WSR 97-05-006.

Preproposal statement of inquiry was filed as WSR 96-17-080.

Title of Rule: Criteria for determining when the benefits provided in a contract are and are not reasonable to the amount charged by health carriers as regulated under RCW 48.44.010(3) and 48.46.020(1).

Other Identifying Information: Insurance Commissioner Matter No. R 96-7.

Summary: Continuation of adoption date.

Date of Intended Adoption: May 8, 1997.

March 28, 1997

Greg J. Scully
 Chief Deputy Commissioner

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WSR 97-08-051
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed March 31, 1997, 11:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 96-22-107 filed on November 6, 1996.

Title of Rule: Chapter 296-17 WAC, Workers' compensation classifications and reporting rules—Drywall industry.

Purpose: Agency is proposing to modify drywall rules through the addition of nine new classifications and a provision allowing owners to deduct the material they install from the amount to be reported to the Department of Labor and Industries.

Statutory Authority for Adoption: RCW 51.04.020(1), 51.16.035, and 51.16.100.

Statute Being Implemented: RCW 51.16.035.

Summary: The department proposes to amend WAC 296-17-45006, special drywall industry rules; amend WAC 296-17-45003, general construction industry rules; establish nine new risk classifications for the drywall industry, WAC 296-17-52118 through 296-17-52126; amend WAC 296-17-89502, base rates table for the new classifications; and repeal three existing classification definitions, WAC 296-17-52114, 296-17-52115, and 296-17-52117.

Reasons Supporting Proposal: RCW 51.16.035 requires labor and industries to maintain a classification plan and rating system which facilitates the collection of premium and encourages workplace safety. The changes proposed are intended to achieve this goal on a voluntary basis.

Name of Agency Personnel Responsible for Drafting: Frank Romero, Classification Services, Tumwater, Washington, (360) 902-4748; **Implementation:** Kathy Kimbel, Program Manager for Employer Services, Tumwater, Washington, (360) 902-4835; and **Enforcement:** Doug Mathers, Chief Field Auditor, Tumwater, Washington, (360) 902-4750.

Name of Proponent: Department of Labor and Industries, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Contractors have asked labor and industries to change the way premiums are charged within the drywall industry. For most industries, workers' compensation insurance rates are based on hours worked by employees. While the worker hour system works well for most industries this method of paying premium is unfair when a large segment of workers within an industry are not paid an hourly wage. The drywall industry is one in which many workers are paid on the basis of material installed (piece work), not the hours they work. As a result, employers have developed a variety of ways of converting payroll to hours worked. In many instances the conversion of payroll to hours worked has resulted in the under reporting of work hours to us. Under reporting results in higher premiums paid by employers. To help remedy the problem of under reporting and provide greater fairness to employers engaged in drywall work the basis of premium is proposed to be changed from hours worked to material installed. To help minimize the effects that this change might have on the affected contractor

community the department is offering discounted rates to employers that meet certain conditions. A special provision is also provided that allows owners of business to subtract the material they install from the total when reporting and paying premiums.

Proposal Changes the Following Existing Rules: The proposed rules, change the basis of how workers' compensation premiums are paid; establish nine new classifications, four of which, have discounted rates; repeals three existing drywall classifications; establishes new base rates for the classifications on a material basis (square feet); and modifies an existing general reporting rule applicable to construction contractors.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Contractors are currently keeping material records for other purposes including the pricing of their services and making bid proposals. The proposed premium rates are set at the same overall level as the rates adopted under a worker hour system for 1997 so the industry will face no added costs with these changes. Industrial Insurance Laws do not provide or allow different treatment for small businesses. The proposed rules do not require employers to purchase new equipment, add employees or keep new records. Changes included in this filing should further reduce the amount of premium employers are required to pay.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. Agency believes that section 201 does not apply to the rules covered by this filing. The agency has voluntarily complied with section 201 with regard to this filing. Analysis pertinent to this filing is contained in the department's rule-making file.

Hearing Location: Auditorium, 7273 Linderson Way S.W., Tumwater, WA, on May 22, 1997, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Classification Services at (360) 902-4776, by May 5, 1997.

Submit Written Comments to: FAX (360) 902-4721, by May 21, 1997.

Date of Intended Adoption: May 27, 1997.

March 31, 1997

Gary Moore
 Director

AMENDATORY SECTION (Amending WSR 97-06-007, filed 2/24/97, effective 4/1/97)

WAC 296-17-45003 Building, construction and erection contractor reporting rules. (1) **Who does this rule apply to?** If you are a building, construction or erection contractor and we have assigned one or more of the following classifications to your business this rule applies to you: 0101, 0102, 0103, 0104, 0105, 0107, 0108, 0201, 0202, 0210, 0212, 0214, 0217, 0219, 0301, 0302, 0303, 0306, 0307, 0403, 0502, 0504, 0506, 0507, 0508, 0509, 0510, 0511, 0512, 0513, 0514, 0516, 0517, 0518, 0519, 0521, 0522, 0523, 0524, 0525, 0526, 0527, 0528, 0529, 0530, 0531, 0532, 0533, 0534, 0601, 0602, 0603, 0607, 0608, and 0701.

(2) **How are classifications assigned to my business?** We will assign a classification or number of separate classifications which describe the business(es) you are involved in. For example, if you are a plumbing contractor

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we will assign a plumbing classification to your business (classification 0306). The plumbing classification covers all of the various phases of plumbing work such as rough in plumbing work, house to sewer hookup if performed by employees of the plumbing contractor and installation of the fixtures. In some cases we will assign several classifications to your business. For example, if you were building a house (single-family dwelling) and you were going to do the foundation, framing, roofing and finish carpentry we would assign your business classification 0217 for the foundation work; classification 0510 for framing the structure; classification 0507 for installing the roofing material; and classification 0513 for finish carpentry work. We will not assign separate classifications to your business for work activities which are included within a classification which we have assigned to your business. For example, if you are a concrete foundation contractor and you employ a carpenter to make and set foundation forms, you would report the carpenters hours in the concrete foundation classification (0217) and not a carpentry classification (0510).

(3) What happens if I have several classifications assigned to my business but I did not keep track of the time my employees spent on the different phases of construction. If we have assigned more than one classification to your business, you must keep track of the actual time your employees spend under each classification which we have assigned to your business. If we audit your business, and we find that you did not keep accurate time records required by WAC 296-17-35201 we will assign all work hours in question to the highest rated classification applicable to the work hours in question.

(4) Who can I call if questions on how to use the different classification which you have assigned to my business? We would be happy to assist you with this and other questions you might have. You can call us at (360) 902-4817 Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m. Pacific time and one of our representatives will assist you.

(5) Can I report all of my construction operations under one classification? Yes, you can report all construction operations in one classification if we have preapproved it. To obtain this approval you must contact your policy manager. Your policy manager will ask you for a breakdown of the estimated project hours by phase of construction for the construction project. We will send you a letter confirming the classification which will apply to a project when you have requested a single classification.

(6) If you approve a single classification for one of my projects does this preapproval apply to all of my projects? No, the single classification approval only applies to a specific project or group of projects which are specified in our letter to you.

(7) Can I be held liable for unpaid premiums of subcontractors which I use? Yes, if you want to avoid being held responsible for unpaid premiums on work you subcontract out to others (RCW 51.12.070), you should only use currently licensed or registered contractors (chapter 18.27 or 19.28 RCW).

(8) How can I be sure that a contractor is licensed or registered with you? The best way is to ask the contractor for their license or registration number and expiration date and then call us to verify that the information is correct. It's

a good idea to write this information down somewhere that you can locate easily, it may come in handy in the future. If we audit you, we will ask you for a list of the subcontractors that you have used during a specific period of time, their license or registration number and the expiration date of the license or registration. You can simplify the audit by making and keeping this list as a part of your regular business records.

(9) What happens if you audit me and I do not have a list of the contractors described in subsection (8) of this section? If we audit you, and you are unable to provide us with this list while we are doing the audit, we will allow you a reasonable amount of time to provide us with this list. In the event that you do not provide us this list, or we cannot verify that a contractor that you used has paid premiums on the work you subcontracted to them and they were either not licensed or registered, or we determine that their license or registration was not current when you used them, we will charge you for the premiums they should have paid.

(10) Do I need any other information on subcontracted work? If you purchase materials such as but not limited to roofing material, framing lumber, concrete, or sheet rock, and supply this material to a contractor on a job you are working on, you should keep a record which shows the volume of material you have supplied (square feet) to the contractor; the project name or location; the date when the material was given to the contractor or delivered to the construction site; the approximate completion date of the contracted work; the name of the contractor that performed the work for you; their contractor license or registration number; and the expiration date of their license or registration. We will ask you for this information if we audit your business.

(11) What classification should I use to report construction site cleanup by my employees? You should report the cleanup of construction debris in the same classification that applied to the work which generated the debris unless another classification treatment is provided for in other rules. For example, if you are a roofing contractor and you have an employee pick up roofing debris at the construction (project) site, you would report the employee involved in the site cleanup in the roofing classification (0507). If you are the general contractor at a construction site and have either classification 0510 "wood frame building construction" or classification 0518 "nonwood frame building construction" assigned to your business you would report site cleanup in the classification applicable to the type of building you are constructing. For example, if you are a general contractor and you are engaged in building a single-family wood frame dwelling, you would report construction site cleanup by your employees in classification 0510 "wood frame building construction." An example of where construction site cleanup is treated differently is drywall work. Employees of nonbuilding material dealers engaged in wallboard scrapping are reported in either classification 0529 or classification 0534 as applicable.

(12) I am a construction site clean-up contractor, my employees only pick up construction debris, we do no construction work, what classification do I report site cleanup in? If your employees are cleaning a construction site where a wood frame building was erected you would report their work time in classification 0510 "wood frame

building construction." If your employees are cleaning a construction site where a nonwood frame building was erected you would report their work time in classification 0518 "nonwood frame building construction." If your employees are cleaning other nonbuilding construction sites you would report their work time in the same classification that applied to the construction work that generated the nonbuilding construction debris. For example, if you are doing site cleanup for a concrete contractor that was involved in pouring and finishing sidewalks and drive ways, you would report the work time of your employees involved in this construction site clean-up project in classification 0217 "concrete flatwork." The classification treatment of nonbuilding material dealers engaged in wallboard cleanup (scrapping) are to be reported in either classification 0529 or classification 0534 as applicable.

(13) **What classification should I use to report the work time of my employees when they are involved in the set up of scaffolding, hoists, cranes, towers or elevators at a construction site?** We use the same classification treatment for this type of work as we do with construction site cleanup. For example, if you are a roofing contractor and you have an employee set up scaffolding at the construction (project) site, you would report the employee involved in the set up of scaffolding in the roofing classification (0507). If you are the general contractor at a construction site and have either classification 0510 "wood frame building construction" or classification 0518 "nonwood frame building construction" assigned to your business you would report the set up of scaffolding at the construction in the classification applicable to the type of building you are constructing. For example, if you are a general contractor and you are engaged in building a single-family wood frame dwelling, you would report scaffolding set up by your employees in classification 0510 "wood frame building construction." Helicopter services that are engaged to assist in lifting beams, air conditioning units, statues and other objects on to buildings or structures are to be reported separately in classification 6803.

(14) **Is preoccupancy cleanup of a building by my employees classified the same as debris cleanup at a construction site?** Since your understanding of what preoccupancy clean-up work is may be different from ours, we need to share with you our understanding before we can answer this question. Our understanding in this area is that preoccupancy cleanup occurs after the building is finished. The clean-up work consists of washing paint and over spray from windows, vacuuming carpets, washing floors and fixtures, and dusting woodwork, doors and cabinets. If you have employees whose duties are limited to this type of cleaning we will allow you to report their work time in classification 6602 "janitors."

(15) **If I have an employee who does some construction work, construction site cleanup and preoccupancy cleanup can I divide their work time between the janitor and a construction classification?** No, we will not permit you to divide the work time of an employee between the janitor classification and a construction classification. If you have an employee who does preoccupancy clean-up work for you, and that employee also performs other nonpreoccupancy clean-up work for you such as construction work, shop work or construction site debris clean-up work, then you must

report all of their work time in the applicable construction or nonshop classification. We would be happy to assist you with this and other questions you might have. You can call us at the phone number listed in subsection (4) of this section and one of our representatives will assist you.

(16) **Can I use a shop classification to report the work time of one of my employees who works in my shop or yard?** If you have a shop or yard where you maintain and store construction equipment and machinery, and/or store materials which you use in your construction business, you may qualify for a separate shop classification. There are several conditions which must be met before we will assign a shop classification to your business. A separate rule (WAC 296-17-675) describes these conditions. If you would like to see if you qualify for a shop classification you can call us at the phone number listed in subsection (4) of this section and one of our representatives will assist you.

(17) **What classification do I use to report my construction superintendent or project manager?** We have a special classification (4900) which may apply to your business but there are several conditions which must be met before we will assign this classification to your business. A separate rule (WAC 296-17-64999) describes these conditions. If you would like to see if you qualify for a special classification you can call us at the phone number listed in subsection (4) of this section and one of our representatives will assist you.

AMENDATORY SECTION (Amending WSR 97-06-007, filed 2/24/97, effective 4/1/97)

WAC 296-17-45006 Special drywall industry rule.

(1) **Why are we changing the way you pay premiums?** Under Washington law (RCW 51.16.035), we are given the authority to establish how workers' compensation insurance rates are computed. For most industries, workers' compensation insurance rates are based on hours worked by employees. While the worker hour system works well for most industries, this method of paying premium is unfair when a large segment of workers within an industry are not paid an hourly wage. The drywall industry is one in which many workers are paid on the basis of material installed (piece work), not the hours they work. As a result, employers have developed a variety of different ways of converting payroll to hours worked to comply with our hourly reporting requirements. In many instances the conversion of payroll to hours worked has resulted in the under reporting of work hours to us. Under reporting results in higher premium rates which you pay. To help remedy the problems caused by using work hours as the basis of how you pay premiums, and to provide greater fairness to employers engaged in drywall work, the premium for classifications 0522, 0523, 0524 ~~((and)),~~ 0525, 0526, 0527, 0528, 0529, 0530, 0531, 0532, 0533, and 0534 is based on material ~~((installed))~~ (square feet).

(2) **How can I qualify for a discounted rate?** For each drywall industry classification, we will establish a second classification covering the same activity. The second classification will carry a discounted rate. To qualify for a discounted classification and rate you will be required to meet all of the following conditions:

~~(a) ((Attend a special claims, risk management and premium reporting workshop which we will offer.))~~ Attend two workshops that we will offer. One workshop covers claims and risk management practices. The other workshop will cover premium reporting and recordkeeping. Be sure to sign in so that you receive credit for attending.

(b) Submit complete and accurate premium reports when they are due and be current with all premium reports and payments. If you owe us money (premiums) for any quarter or period prior to December 31, 1996, we will allow you to report in the discounted classifications ((provided that all current reports and premiums are filed and paid on time and you)). To meet this condition you must file all reports required by this section when due; pay the required premiums on time; and if you have not paid premiums which were due for any quarterly report you submitted to us prior to and including the fourth quarter 1996 (December 31, 1996), maintain a current payment agreement with us for any past due premium. You will not be allowed to use a discounted classification if you fail to submit reports ((and)), or make premium payments on time for any period beginning with the first quarter 1997. This requirement applies to any classification assigned to your business and for any exposure (hours, square feet, etc.) which occurs after January 1, 1997.

(c) Provide us with a supplemental quarterly report which shows by employee the employee's name and Social Security number, the wages you paid them during the quarter, the basis for how they are paid, (piece rate, commission, hourly, etc.) their rate of pay per unit/hour, and a notation as to whether they are an installer, finisher, scraper, painter, etc.

(d) Provide us with a voluntary release of information form that we can give to the material supply dealer that you use. We will use this release form to obtain material and supply/purchase sales records in the event of an audit. This will aid us as we verify the information you supply us on your premium and supplemental reports. If we need to verify the information that you supplied us, we will send you written notice before we contact your material supply dealer.

(e) For any work which you subcontract to others, you must maintain the records described in WAC 296-17-45003.

(f) Keep and retain the payroll and employment records described in WAC 296-17-35201.

If you do not meet all of the above conditions, we will not assign the discounted rates to your business and you will be required to pay premiums in the nondiscounted classification(s).

(3) Can I be disqualified from using the discounted rates? Yes, your business will be disqualified from using the discounted premium rates if you do not file premium reports on time; if you fail to pay premiums on time; ((or)) if you under report or misclassify the work performed by your employees; if you fail to maintain the payments in a payment agreement you have entered into with us; or fail to meet any other condition set forth in this rule.

(4) How long will I be disqualified from using the discounted classifications? If we disqualify your business from using the discounted classifications, the disqualification will be for three years (thirty-six months) from the period of last noncompliance.

(5) I have several businesses, if one of my businesses is disqualified from using the discounted rates will that

affect my other businesses? Yes, if you have ownership interest in a business which has been disqualified from using the discounted rates, and you also have ownership interest in other construction businesses which have separate industrial insurance accounts or subaccounts, all businesses in which you have ownership interest will be disqualified from using the discounted rates. This includes a business which you own or owned that is in bankruptcy status and for which you have not entered into a payment agreement, if you owe us any money; or money that you owe us which we wrote off as an uncollectible debt.

(6) What if I make a mistake in how I reported to you, should I correct the error? Yes, you should send in a revised report with an explanation of the error you are trying to correct. If we audit your business, and we determine that you have under reported exposure in any classification assigned to your business, all exposure which you reported in the discounted classifications for the audit period will be reclassified to the nondiscounted classifications.

(7) If I disagree with an audit or other decision can I still use the discounted rates while we are resolving the issue? Yes, if you are involved in a dispute with us over the status of an independent contractor, the issue being whether an individual is a covered worker; the proper classification of work your employees performed((?)); or under reporting((?)); you may qualify for the discounted classifications by paying the disputed amount while the issue is under dispute. ((If)) In the event the issue is resolved in your favor we will refund any moneys which you paid which were disputed. We will not pay interest on the refunded amount. If you do not pay the audit balance or disputed amount when requested or post an equivalent bond, you will not be permitted to use any of the discounted classifications.

(8) I am the owner of the business, and I do some of the work myself, can I deduct the work I do from the total square feet to be reported to you? Yes, as an owner of the business you can deduct the amount of work that you did from the total square feet which you are going to report to us.

(9) How do I calculate and report this deduction to you? To claim this deduction you must send us a report which shows by job, project, site or location the total amount of material that was installed or finished at that job, project, site or location; the amount of material which you as the owner installed and/or finished at the job, project, site or location; the hours that it took you to install and/or finish the material you are claiming deduction for, the total material installed and/or finished by employees at the job, project, site or location; and the hours the employees worked by job, project, site or location. This report must accompany the quarterly report in which you are claiming a deduction. If there are several owners, you must supply this information for each owner you wish to claim a deduction for.

NEW SECTION

WAC 296-17-52118 Classification 0526.

Wallboard taping - discounted rate

This classification excludes wallboard installation, wallboard priming and texturing, wallboard stocking, and wallboard scrapping which is to be reported separately in classification applicable to the work being performed.

Special note: The basis of premium for this classification is material finished (square feet).

NEW SECTION

WAC 296-17-52119 Classification 0527.

Wallboard priming and texturing - discounted rate
This classification includes incidental painting when performed by employees of an employer subject to this classification, but excludes wallboard installation, wallboard taping, wallboard stocking, and wallboard scrapping which is to be reported separately in classification applicable to the work being performed.

Special note: The basis of premium for this classification is material finished (square feet).

NEW SECTION

WAC 296-17-52120 Classification 0528.

Wallboard stocking by nonmaterial dealer employees - discounted rate

This classification excludes wallboard stocking by building material dealer employees which is to be reported separately in classification 1101, wallboard installation, wallboard taping, wallboard priming and texturing and wallboard scrapping which is to be reported separately in classification applicable to the work being performed.

Special note: The basis of premium for this classification is material stocked (square feet).

NEW SECTION

WAC 296-17-52121 Classification 0529.

Wallboard scrapping by nonmaterial dealer employees - discounted rate

This classification excludes wallboard scrapping by building material dealer employees which is to be reported separately in classification 1101, wallboard installation, wallboard taping, wallboard stocking, and wallboard priming and texturing which is to be reported separately in classification applicable to the work being performed.

Special note: The basis of premium for this classification is material stocked (square feet).

NEW SECTION

WAC 296-17-52122 Classification 0530.

Wallboard installation - nondiscounted rate
This classification excludes wallboard taping, wallboard priming, wallboard texturing work, wallboard stocking and wallboard scrapping which is to be reported separately in the classification applicable to the work being performed. This classification does not apply to employees of a building material dealer engaged in stocking or scrapping which are to be reported separately in classification 1101.

Special note: The basis of premium for this classification is material installed (square feet).

NEW SECTION

WAC 296-17-52123 Classification 0531.

Wallboard taping - nondiscounted rate
This classification excludes wallboard installation, wallboard priming and texturing, wallboard stocking, and wallboard scrapping which is to be reported separately in classification applicable to the work being performed.

Special note: The basis of premium for this classification is material finished (square feet).

NEW SECTION

WAC 296-17-52124 Classification 0532.

Wallboard priming and texturing - nondiscounted rate
This classification includes incidental painting when performed by employees of an employer subject to this classification, but excludes wallboard installation, wallboard taping, wallboard stocking, and wallboard scrapping which is to be reported separately in classification applicable to the work being performed.

Special note: The basis of premium for this classification is material finished (square feet).

NEW SECTION

WAC 296-17-52125 Classification 0533.

Wallboard stocking by nonmaterial dealer employees - nondiscounted rate

This classification excludes wallboard stocking by building material dealer employees which is to be reported separately in classification 1101, wallboard installation, wallboard taping, wallboard priming and texturing and wallboard scrapping which is to be reported separately in classification applicable to the work being performed.

Special note: The basis of premium for this classification is material stocked (square feet).

NEW SECTION

WAC 296-17-52126 Classification 0534.

Wallboard scrapping by nonmaterial dealer employees - nondiscounted rate

This classification excludes wallboard scrapping by building material dealer employees which is to be reported separately in classification 1101, wallboard installation, wallboard taping, wallboard stocking, and wallboard priming and texturing which is to be reported separately in classification applicable to the work being performed.

Special note: The basis of premium for this classification is material stocked (square feet).

AMENDATORY SECTION (Amending WSR 97-06-007, filed 2/24/97, effective 4/1/97)

WAC 296-17-89502 Industrial insurance accident fund, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications. The base rates as set forth below are for classifications whose premium rates are based on units other than hours worked.

Base Rates Effective
(~~January~~) April 1, 1997

Class	Accident Fund	Medical Aid Fund	Supplemental Pension Fund
0522	0.0242	0.0090	0.0003
0523	0.0151	0.0059	0.0003
0524	(0.0160)	0.0060	
	0.0145	0.0054	0.0003
0525	0.0100	0.0039	0.0003
0526	0.0093	0.0036	0.0003
0527	0.0007	0.0003	0.0001
0528	0.0024	0.0009	0.0001
0529	0.0015	0.0006	0.0001
0530	0.0218	0.0081	0.0003
0531	0.0141	0.0055	0.0003
0532	0.0010	0.0004	0.0001
0533	0.0036	0.0014	0.0001
0534	0.0024	0.0009	0.0001

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 296-17-52114 Classification 0522.
- WAC 296-17-52115 Classification 0523.
- WAC 296-17-52117 Classification 0525.

**WSR 97-08-061
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Securities Division)
[Filed April 1, 1997, 8:43 a.m.]**

Original Notice.

Preproposal statement of inquiry was filed as WSR 95-21-038.

Title of Rule: Accredited investor exemption.

Purpose: Adoption of an exemption from registration for offers and sales of securities to accredited investors which permits public solicitation consistent with the North American Securities Administrators Association (NASAA) model accredited investor exemption.

Other Identifying Information: WAC 460-44A-300 (new section).

Statutory Authority for Adoption: RCW 21.20.450, 21.20.320(17).

Statute Being Implemented: Chapter 21.20 RCW.

Summary: The proposal would provide an exemption for offers and sales to accredited investors. Limited general solicitation would be permitted. Once the issuer has determined that a potential investor is accredited, further information may be provided. The exemption is similar in concept to California's 25102(n) exemption and the SEC's corresponding rule 1001. It is anticipated that the SEC will adopt a similar rule to allow such offerings on an interstate basis.

Reasons Supporting Proposal: The proposal will help promote small business capital formation and will provide for increased uniformity.

Name of Agency Personnel Responsible for Drafting: Nelda Shannon, 210 11th Avenue S.W., Olympia, (360) 902-8760; Implementation: John L. Bley, 210 11th Avenue S.W., Olympia, (360) 902-8760; and Enforcement: Deborah R. Bortner, 210 11th Avenue S.W., Olympia, (360) 902-8760.

Name of Proponent: Securities Division, Department of Financial Institutions, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposal would provide an exemption from registration for certain offers and sales to accredited investors. Limited general solicitation would be permitted. Once the issuer has determined that a potential investor is accredited, further information may be provided. The exemption may not be used by persons with significant disciplinary histories or by blind pools. The exemption is similar in concept to California's 25102(n) exemption and the SEC's corresponding rule 1001. It is anticipated that the SEC will adopt a similar rule pursuant to section 3(b) of the Securities Act of 1933 to allow such offerings on an interstate basis. The proposed rule is based on the NASAA model accredited investor exemption.

Proposal does not change existing rules. The proposal would create a new section in chapter 460-44A WAC.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposal does not impose additional costs on business.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Department of Financial Institutions is not one of the agencies listed in section 201.

Hearing Location: Department of Financial Institutions, Securities Division, Executive Conference Room, 300 General Administration Building, 210 11th Avenue S.W., Olympia, WA 98504, on June 25, 1997, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Darlene Christianson by June 20, 1997, TDD (360) 664-8126, or (360) 902-8760.

Submit Written Comments to: N. Shannon, P.O. Box 9033, Olympia, WA 98507-9033, FAX (360) 586-5068, by June 24, 1997.

Date of Intended Adoption: August 6, 1997.

March 27, 1997
John L. Bley
Director

NEW SECTION

WAC 460-44A-300 Exemption for offers and sales to accredited investors pursuant to a public solicitation.

(1) Any offer or sale of a security by an issuer in a transaction that meets the requirements of this rule and any exemption adopted by the Securities and Exchange Commission pursuant to Section 3(b) of the Securities Act of 1933 which provides for public solicitation of accredited investors, shall be exempt under RCW 21.20.320(17).

(2) Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited

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investors. "Accredited investor" shall have the meaning indicated in WAC 460-44A-501(1).

(3) The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(4) The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within twelve months of sale, except a resale to an accredited investor or pursuant to a registration statement effective under RCW 21.20.190 or RCW 21.20.230, shall be presumed to be with a view to distribution and not for investment. Securities issued under this exemption may only be resold pursuant to registration or an exemption under the Securities Act of Washington, chapter 21.20 RCW.

(5)(a) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(i) Within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(ii) Within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

(iii) Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(iv) Is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(b) Subsection (5)(a) shall not apply if:

(i) The party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

(ii) Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment or decree, waives the disqualification; or

(iii) The issuer establishes that it did not know and in the exercise of reasonable care could not have known that a disqualification existed under subsection (5)(a).

(6)(a) A general announcement of the proposed offering may be made by any means.

(b) The general announcement shall include only the following information, unless additional information is specifically permitted by the securities administrator:

(i) The name, address and telephone number of the issuer of the securities;

(ii) The name, a brief description and price (if known) of any security to be issued;

(iii) A brief description of the business of the issuer in twenty-five words or less;

(iv) The type, number and aggregate amount of securities being offered;

(v) The name, address and telephone number of the person to contact for additional information; and

(vi) A statement that:

(A) Sales will only be made to accredited investors;

(B) No money or other consideration is being solicited or will be accepted; and

(C) The securities have not been registered with or approved by any state securities agency or the U.S. Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

(7) The issuer, in connection with an offer, may provide information in addition to the general announcement under subsection (6), if such information:

(a) Is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(b) Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(8) No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(9) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this rule.

(10) The issuer shall file with the administrator a notice of transaction, a consent to service of process, a copy of the general announcement, and a fee of three hundred dollars within fifteen days after the first sale in this state.

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 97-08-062

PROPOSED RULES

UNIVERSITY OF WASHINGTON

[Filed April 1, 1997, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 96-20-114.

Title of Rule: Chapter 478-276 WAC, Governing access to public records (at the University of Washington) and the University of Washington address updates throughout Title 478 WAC.

Purpose: To amend the University of Washington's rules, governing access to public records, to comply with RCW 42.17.290 Protection of public records—Public access and RCW 42.17.300 Charges for copying. Also to update office addresses and name changes throughout Title 478 WAC.

Statutory Authority for Adoption: RCW 28B.20.130 and chapter 34.05 RCW.

Statute Being Implemented: RCW 28B.20.130, 42.17.290, and 42.17.300.

Summary: WAC 478-04-020, corrects address or name changes; WAC 478-108-020, corrects address or name changes; WAC 478-160-035, 478-160-040, 478-160-050, 478-160-060, 478-160-065, 478-160-085, 478-160-105, 478-160-110, 478-160-120, 478-160-125, 478-160-130, 478-160-140, 478-160-160, 478-160-162, 478-160-175, 478-160-210, 478-160-230, 478-160-246, 478-160-290, 478-160-295, 478-160-310 and 478-160-320, corrects address or name changes and clarifies language of a rule without changing its effect; WAC 478-250-050 and 478-250-060, corrects typographical errors and address or name changes; WAC 478-276-030 and 478-276-040, repeals redundant and obsolete information; WAC 478-276-060, removes obsolete delegation of authority and corrects address or name change; WAC 478-276-070, revises section caption and clarifies business hours for Public Records Office; WAC 478-276-080, clarifies language of a rule without changing its effect; WAC 478-276-100, expands section caption, corrects address or name changes, and clarifies the University of Washington's intent to charge for photocopying, what that charge covers, and that this charge is based upon statute; WAC 478-276-105, adds new section regarding the protection of public records; and WAC 478-276-140, corrects address or name changes.

Reasons Supporting Proposal: Amendments to chapter 478-276 WAC bring these rules into compliance with RCW 42.17.290 and 42.17.300. Repealed sections of chapter 478-276 WAC remove redundant information now established in chapter 478-04 WAC, Organization, and remove obsolete references. Amendments to chapters 478-04, 478-108, 478-160, 478-250, and 478-276 WAC update incorrect addresses and various office name changes.

Name of Agency Personnel Responsible for Drafting: Emily Hill, Public Records Officer, 1 Visitors Information Center, University of Washington, (206) 543-9180 and Rebecca Goodwin Deardorff, Administrative Procedures Officer, 7 Visitors Information Center, University of Washington, (206) 543-9199; Implementation: Emily Hill, Public Records Officer, 1 Visitors Information Center, University of Washington, (206) 543-9180; and Enforcement: Norman G. Arkans, Associate Vice-President and Executive Director of University Relations, 400 Gerberding Hall, University of Washington, (206) 543-2560.

Name of Proponent: University of Washington, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Amendments to chapter 478-276 WAC appeared as WSR 96-20-114; all other changes are exempt from the preproposal statement per RCW 34.05.310 (4)(d).

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

Explanation of Rule, its Purpose, and Anticipated Effects: The University of Washington's rules governing access to public records (chapter 478-276 WAC) need to be amended to reflect recent changes in state statutes. Specifically, RCW 42.17.290 requires agencies to adopt rules concerning the protection of its public records and RCW 42.17.300 sets new standards regarding charges for copying

agency records. Also, all University of Washington addresses need to be amended to reflect changes from the campus mailstop system to the United States Postal Service's box number system, as well as other miscellaneous housekeeping changes for these same rules (chapters 478-04, 478-108, 478-160, 478-250, and 478-276 WAC).

Proposal Changes the Following Existing Rules: Rules Amended: WAC 478-04-020, 478-108-020, 478-160-035, 478-160-040, 478-160-050, 478-160-060, 478-160-065, 478-160-085, 478-160-105, 478-160-110, 478-160-120, 478-160-125, 478-160-130, 478-160-140, 478-160-160, 478-160-162, 478-160-175, 478-160-210, 478-160-230, 478-160-246, 478-160-290, 478-160-295, 478-160-310, 478-160-320, 478-250-050, 478-250-060, 478-276-060, 478-276-070, 478-276-080, 478-276-100, and 478-276-140.

Rules Repealed: WAC 478-276-030 and 478-276-040.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The University of Washington has determined that these rules are not subject to the Regulatory Fairness Act, chapter 19.85 RCW.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. These rules do not qualify as "significant legislative rules."

Hearing Location: Husky Union Building (HUB), Room 106B, University of Washington, Seattle, Washington, on May 8, 1997, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact University of Washington Disability Services Office, by April 24, 1997, TDD (206) 543-6452, or (206) 543-6450.

Submit Written Comments to: Rebecca Goodwin Deardorff, Administrative Procedures Officer, Administrative Procedures Office via one of the following: Campus mail: Box 355509; United States mail: University of Washington, 4014 University Way N.E., Seattle, WA 98105-6203; e-mail: adminpro@u.washington.edu; or FAX (206) 543-0786, by May 8, 1997.

Date of Intended Adoption: June 13, 1997.

March 31, 1997

Rebecca Goodwin Deardorff
Administrative Procedures Officer

AMENDATORY SECTION (Amending WSR 90-15-005, filed 7/6/90, effective 8/6/90)

WAC 478-04-020 Organization—Operation—Information. (1) Organization. The University of Washington is established in Title 28B RCW as a public institution of higher education. The institution is governed by a nine-member board of regents, appointed by the governor. The board employs a president, who acts as the chief executive officer of the institution. The president establishes the structure of the administration.

(2) Operation. The administrative office of the University of Washington is at the following address:

University of Washington
Office of the President
301 (~~Administration, AH-30~~) Gerberding Hall
(~~University of Washington~~)
Box 351230
Seattle, (~~Washington~~) WA 98195-1230

(3) Information. Additional and detailed information concerning the educational offerings may be obtained from the catalog, copies of which are available at the following address:

University of Washington
Office of the Registrar
209 Schmitz (~~(, PD-10)~~) Hall
(~~(University of Washington)~~)
Box 355850
Seattle, (~~(Washington)~~) WA 98195-5850

AMENDATORY SECTION (Amending WSR 90-15-005, filed 7/6/90, effective 8/6/90)

WAC 478-108-020 Application for adjudicative proceeding. An application for an adjudicative proceeding shall be in writing. The application shall include the signature of the applicant, the nature of the matter for which an adjudicative proceeding is sought, and an explanation of the facts involved. Application forms are available at the following address:

University of Washington
Visitors Information Center
4014 University Way N.E. (~~(, HI-22~~
~~University of Washington)~~)
Seattle, (~~(Washington 98195)~~) WA 98105-6203

(for internal campus mail use: Box 355502). An application for an adjudicative proceeding should be submitted to the above address within twenty days of the agency action giving rise to the application, unless otherwise provided for by statute or rule.

AMENDATORY SECTION (Amending WSR 92-12-011, filed 5/22/92, effective 6/22/92)

WAC 478-160-035 Application forms for undergraduate standing. To apply for freshman, transfer or post-baccalaureate status, either an "Application for admission to an undergraduate college or school" or an "Application for admission to four-year colleges and universities in the state of Washington" must be submitted to the (~~(Office of Admissions, PC 30, 320 Schmitz Hall, University of Washington, Seattle, Washington 98195.)~~) following address:

University of Washington
Office of Admissions
320 Schmitz Hall
Box 355840
Seattle, WA 98195-5840

An application form with complete instructions will be provided to prospective applicants upon request.

AMENDATORY SECTION (Amending WSR 92-12-011, filed 5/22/92, effective 6/22/92)

WAC 478-160-040 Admission of undergraduate students through the educational opportunity program. In recognition of the numerous factors which may have interfered with the earlier education of students from certain ethnic minorities and/or poverty environments, the university offers an educational opportunity program.

Minority and disadvantaged students are encouraged, regardless of their previous academic records, to apply (~~(for admission to the university through this program)~~).

Prospective applicants may obtain undergraduate application forms and additional information by contacting the (~~(Office of Minority Affairs, PC 45, 375 Schmitz Hall, University of Washington, Seattle, WA 98195.)~~) following office:

University of Washington
Office of Admissions
380 Schmitz Hall
Box 355840
Seattle, WA 98195-5840

AMENDATORY SECTION (Amending WSR 92-12-011, filed 5/22/92, effective 6/22/92)

WAC 478-160-050 Application forms for international students. International students who have sufficient financial support, international students who intend to transfer to the university from another United States school, and international students who wish to attend summer quarter only must submit an "Undergraduate international admission application" to the (~~(Office of Admissions, PC 30, 320 Schmitz Hall, University of Washington, Seattle, WA 98195.)~~) following address:

University of Washington
Office of Admissions
320 Schmitz Hall
Box 355840
Seattle, WA 98195-5840

The application form with complete instructions will be provided to prospective applicants upon request.

AMENDATORY SECTION (Amending WSR 92-12-011, filed 5/22/92, effective 6/22/92)

WAC 478-160-060 Requests for reconsideration of admission decision. Applicants who are denied admission may request further consideration by presenting a written petition and additional information in support of their application. Such requests should be addressed to the (~~(Committee on Admissions and Academic Standards, Office of Admissions, PC 30, 320 Schmitz Hall, University of Washington, Seattle, WA 98195.)~~) following address:

University of Washington
Committee on Admissions and Academic Standards
Office of Admissions
320 Schmitz Hall
Box 355840
Seattle, WA 98195-5840

AMENDATORY SECTION (Amending WSR 92-12-011, filed 5/22/92, effective 6/22/92)

WAC 478-160-065 Admission of former students. Former undergraduate students who wish to resume study in the degree or certificate program for which they were last registered and graduate students who are officially on leave and who wish to return to the university must submit a

"Returning student reenrollment application" form to the registration office.

Applications may be obtained by contacting the (~~Registration Office, PD-10, 225 Schmitz Hall, University of Washington, Seattle, WA 98195.~~) following office:

University of Washington
Registration Office
225 Schmitz Hall
Box 355850
Seattle, WA 98195-5850

Returning former students are advised to file such an application *at least* four months in advance of the quarter they intend to return.

Former students who completed a degree or certificate program at the time they were last enrolled and former graduate students must apply as new students if they wish to return to the university.

AMENDATORY SECTION (Amending WSR 92-12-011, filed 5/22/92, effective 6/22/92)

WAC 478-160-085 Application forms. Prospective applicants to the graduate school may obtain an "Application for admission to the graduate school" by writing to the graduate program adviser of the department in which the applicant expects to engage in a program of study or by writing to the (~~Office of Graduate Admissions, AD-10, 98 Administration Building, University of Washington, Seattle, WA 98195.~~) following address:

University of Washington
Office of Graduate Admissions
98 Gerberding Hall
Box 351280
Seattle, WA 98195-1280

An application form with instructions will be provided to prospective graduate or visiting graduate applicants upon request.

AMENDATORY SECTION (Amending WSR 92-12-011, filed 5/22/92, effective 6/22/92)

WAC 478-160-105 Admission to the school of dentistry—Application forms. Application forms may be obtained by writing to the (~~School of Dentistry, SC-62, D-322 Health Sciences Building, Seattle, WA 98195.~~) following address:

University of Washington School of Dentistry
Office of the Dean
D-322 Health Sciences Building
Box 356365
Seattle, WA 98195-6365

The deadline for filing an application is determined by the University of Washington school of dentistry and can be obtained from the (~~Office of the Dean, SC-62, D-322 Health Sciences Building, Seattle, Washington 98195.~~) address above.

AMENDATORY SECTION (Amending Order 80-2, filed 10/21/80)

WAC 478-160-110 Admission to the school of law—Application forms. Applicants to the first-year class may obtain application forms by contacting the (~~Director of Admissions, School of Law, Condon Hall, JB-20 Seattle, WA 98195.~~) following office:

University of Washington School of Law
Director of Admissions
Condon Hall
1100 N.E. Campus Parkway
Seattle, WA 98105-6617

(for internal campus mail use: Box 354600). The deadline for filing an application is determined by the University of Washington school of law and can be obtained from the (~~Director of Admissions, School of Law, Condon Hall, JB-20, Seattle, Washington 98195.~~) address above.

AMENDATORY SECTION (Amending WSR 92-12-011, filed 5/22/92, effective 6/22/92)

WAC 478-160-120 Admission to the school of law with advanced standing—Application forms. Application for admission with advanced standing may be obtained from the (~~School of Law, Condon Hall, Seattle, WA 98195.~~) following address:

University of Washington School of Law
Director of Admissions
Condon Hall
1100 N.E. Campus Parkway
Seattle, WA 98105-6617

(for internal campus mail use: Box 354600). The deadline for filing an application is determined by the University of Washington school of law and can be obtained from the (~~Director of Admissions, School of Law, Condon Hall, JB-20, Seattle, Washington 98195.~~) address above.

AMENDATORY SECTION (Amending Order 78-4, filed 6/15/78)

WAC 478-160-125 Admission to the school of medicine. The University of Washington school of medicine publishes complete information regarding its policies, procedures, and programs which may be obtained (~~from the Committee on Admissions, Office of the Dean, SC-64, A-320 Health Sciences Building, University of Washington, Seattle, Washington 98195.~~) by contacting the following office:

University of Washington School of Medicine
Committee on Admissions
Office of the Dean
A-320 Health Sciences Building
Box 356340
Seattle, WA 98195-6340

(or phone: (206) 543-7212).

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AMENDATORY SECTION (Amending WSR 92-12-011, filed 5/22/92, effective 6/22/92)

WAC 478-160-130 First-year admission to the school of medicine—Application forms. The school of medicine is a participant in the American medical college application service program (AMCAS). Application forms may be obtained by writing to ~~((AMCAS, Suite 301, 1776 Massachusetts N.W., Washington, D.C. 20036.))~~ the following address:

American Medical College Application Service
Suite 301
1776 Massachusetts N.W.
Washington, D.C. 20036

The deadline for filing an application is determined by the University of Washington school of medicine and can be obtained ~~((from the Committee on Admissions, Office of the Dean SC 64, A-320 Health Sciences Building, University of Washington School of Medicine, Seattle, Washington 98195.))~~ by contacting the following office:

University of Washington School of Medicine
Committee on Admissions
Office of the Dean
A-320 Health Sciences Building
Box 356340
Seattle, WA 98195-6340

(or phone: (206) 543-7212). Applicants are encouraged to file applications twelve months prior to desired date of entry.

AMENDATORY SECTION (Amending WSR 92-12-011, filed 5/22/92, effective 6/22/92)

WAC 478-160-140 Application for transfer to the school of medicine. Application for transfer to the school of medicine may be obtained by writing to the ~~((Committee on Admissions, Office of the Dean SC 64, A-320 Health Sciences Building, University of Washington School of Medicine, Seattle, Washington 98195.))~~ following address:

University of Washington School of Medicine
Committee on Admissions
Office of the Dean
A-320 Health Sciences Building
Box 356340
Seattle, Wa 98195-6340

The deadline for filing an application is determined by the University of Washington school of medicine and can be obtained from the ~~((Committee on Admissions, Office of the Dean SC 64, A-320 Health Sciences Building, University of Washington School of Medicine, Seattle, Washington 98195.))~~ address above, or phone: (206) 543-7212.

AMENDATORY SECTION (Amending WSR 92-12-011, filed 5/22/92, effective 6/22/92)

WAC 478-160-160 Applications for housing and financial aid. An application for admission *does not* constitute an application for either housing accommodations or financial aid, *nor* does an application for housing or an award of financial aid constitute an application for admission. Information and applications for housing may be

obtained from the ~~((Office of Housing and Food Services, PC 50, 301 Schmitz Hall, University of Washington, Seattle, WA 98195. Information and applications for financial aid may be obtained from the Office of Financial Aid, PE 20, 105 Schmitz Hall, University of Washington, Seattle, WA 98195.))~~ following address:

University of Washington
Office of Housing and Food Services
301 Schmitz Hall
Box 355842
Seattle, WA 98195-5842

Information and applications for financial aid may be obtained from the following address:

University of Washington
Office of Student Financial Aid
105 Schmitz Hall
Box 355880
Seattle, WA 98195-5880

AMENDATORY SECTION (Amending WSR 90-15-005, filed 7/6/90, effective 8/6/90)

WAC 478-160-162 Financial aid information. Federal, state, and private financial aid applications and information may be obtained at the following address:

University of Washington
Office of Student Financial Aid
105 Schmitz Hall~~((PE 20~~
~~University of Washington))~~
Box 355880
Seattle, WA 98195-5880

Award of federal and state aid will be made in accordance with applicable federal and state laws and regulations.

AMENDATORY SECTION (Amending WSR 91-16-001, filed 7/25/91, effective 8/25/91)

WAC 478-160-175 Credit definitions. Credit courses are offered either for resident credit or for extension credit.

(1) Most courses offered through University of Washington extension are offered for resident credit, and grades earned in such courses are transcribed as resident credit and are included in the student's resident cumulative grade-point average.

(2) Courses offered through correspondence study, and some other courses, are offered for extension credit. These credits and grades are not included in the resident grade-point average, and students may apply only ninety such university credits toward an undergraduate degree. Extension credit courses are identified by an "X" prefix when listed in catalog material.

Additional information concerning credit courses may be obtained by contacting ~~((University of Washington Extension at 5001 25th Ave. N.E., Seattle, WA 98195.))~~ the following office:

University of Washington Extension
5001 25th Ave. N.E.
Seattle, WA 98105-4190

(for internal campus mail use: Box 354221, or phone: (206) 543-2300).

AMENDATORY SECTION (Amending WSR 92-12-011, filed 5/22/92, effective 6/22/92)

WAC 478-160-210 Change of residence application forms. Nonresident students who desire to apply for a change in resident status must complete and submit a Washington institutions of higher education "Residency questionnaire" to the (~~Residence Classification Office, PD-10, 209 Schmitz Hall, University of Washington, Seattle, Washington 98195.~~) following address:

University of Washington
Residence Classification Office
264 Schmitz Hall
Box 355850
Seattle, WA 98195-5850

A residency questionnaire (including a section in which the student may explain his or her view of the matter) and complete instructions will be mailed to students upon request. The residence classification office shall provide to the student a written statement of the reasons for any decision it makes within ten days of taking action on the "Residency questionnaire." This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, governing brief adjudicatory proceedings, the provisions of which are hereby adopted.

AMENDATORY SECTION (Amending WSR 92-12-011, filed 5/22/92, effective 6/22/92)

WAC 478-160-230 Appeal of change of residence determination. Any student wishing to appeal an action of the residence classification office may request administrative review through the (~~Residence Classification Review Committee, PD-10, 209 Schmitz Hall, University of Washington, Seattle, Washington 98195.~~) following committee:

University of Washington
Residence Classification Review Committee
264 Schmitz Hall
Box 355850
Seattle, WA 98195-5850

Appeals must be requested orally or in writing within twenty-one days from the date of student receipt of the written response required by WAC 478-160-210. Decisions of the residence classification review committee shall be rendered within twenty days of receipt of the request for review. The residence classification review committee shall issue the institution's final decision.

Forms appropriate for this purpose may be obtained from the (~~Residence Classification Office, PD-10, 209 Schmitz Hall, University of Washington, Seattle, Washington 98195.~~) following address:

University of Washington
Residence Classification Office
264 Schmitz Hall
Box 355850
Seattle, WA 98195-5850

AMENDATORY SECTION (Amending WSR 92-12-011, filed 5/22/92, effective 6/22/92)

WAC 478-160-246 Enrollment confirmation deposit for new and returning students for autumn, winter and spring quarters. An enrollment confirmation deposit is required of new students and of returning students in autumn, winter and spring quarters. If space is not available when the payment is received, the payment will be returned. The fee is only refundable pursuant to WAC 478-160-256.

Further information about the enrollment confirmation deposit may be obtained from the (~~Registration Office, PD-10, 225 Schmitz Hall, University of Washington, Seattle, Washington 98195.~~) following address:

University of Washington
Registration Office
225 Schmitz Hall
Box 355850
Seattle, WA 98195-5850

AMENDATORY SECTION (Amending WSR 92-12-011, filed 5/22/92, effective 6/22/92)

WAC 478-160-290 Withdrawal from the university. Withdrawal from the university is official when written notification has been filed with the (~~Registration Office, PD-10, 225 Schmitz Hall, University of Washington, Seattle, Washington 98195.~~) following office:

University of Washington
Registration Office
225 Schmitz Hall
Box 355850
Seattle, WA 98195-5850

Students who officially withdraw may be entitled by law to a refund of all or a portion of the tuition and fees for a given quarter depending on the time of the quarter the withdrawal is completed.

An official withdrawal during the first *fourteen* calendar days of autumn, or winter, or spring quarter shall result in the student's permanent record showing only the date of withdrawal.

During summer quarter official withdrawals shall be entered on the student's permanent record as follows:

(1) For full-quarter courses, during the first *fourteen* calendar days of the quarter only the date of withdrawal shall be entered.

(2) For "a" term courses, during the first *seven* calendar days of the quarter only the date of withdrawal shall be entered.

(3) For "b" term courses, during the first *seven* calendar days of "b" term only the date of withdrawal shall be entered.

AMENDATORY SECTION (Amending WSR 92-12-011, filed 5/22/92, effective 6/22/92)

WAC 478-160-295 Military withdrawals. (1) If a student is conscripted into the armed forces or is called to active military duty, he or she may be entitled to a full refund or academic credit depending on the time of the quarter the student officially withdraws. Official withdraw-

als must be in writing, signed by the student, and accompanied by a copy of the military orders.

(2) A student who withdraws may receive credit for courses or a full refund, under the following schedule:

(a) Students who withdraw through the seventh week of the academic quarter receive a full refund of fees. No academic credit is awarded.

(b) Students who withdraw after the seventh week of the academic quarter may choose to receive academic credit or a full refund of fees.

(3) Complete information is available from the ~~((Registration Office, PD 10, 225 Schmitz Hall, University of Washington, Seattle, Washington 98195.))~~ following address:

University of Washington
Registration Office
225 Schmitz Hall
Box 355850
Seattle, WA 98195-5850

AMENDATORY SECTION (Amending WSR 92-12-011, filed 5/22/92, effective 6/22/92)

WAC 478-160-310 Change of school or college. An undergraduate student desiring to transfer from one school or college within the university to another must obtain approval from the deans or the deans' designees of the two schools or colleges concerned. Change of college forms may be obtained from and must be submitted to the ~~((Registration Office, PD 10, 225 Schmitz Hall, University of Washington, Seattle, Washington 98195.))~~ following address:

University of Washington
Registration Office
225 Schmitz Hall
Box 355850
Seattle, WA 98195-5850

AMENDATORY SECTION (Amending WSR 92-12-011, filed 5/22/92, effective 6/22/92)

WAC 478-160-320 Special instructional programs offered summer quarter. In recognition of the special needs of students who can attend the university only in the summer, a number of institutes, workshops, and special programs are offered each summer quarter. Because the nature and content of the programs vary from year to year, interested persons are invited to contact the ~~((Summer Quarter Office, 5001 25th Ave NE, GH 26, Seattle, WA 98195.))~~ following address:

University of Washington
Summer Quarter Office
5001 25th Ave. N.E.
Seattle, WA 98105-4190

(for internal campus mail use: Box 354226) to obtain a copy of the *Summer Quarter Bulletin and Time Schedule*.

AMENDATORY SECTION (Amending WSR 91-10-031, filed 4/24/91, effective 5/25/91)

WAC 478-250-050 University rules coordination ~~((office)).~~ (1) ~~((The))~~ University rules coordination ~~((office))~~ shall be conducted by the administrative procedures office

under the direction of the administrative procedures officer who reports to the office of the vice-president for university relations.

(2) The administrative procedures officer shall have knowledge of the subjects of rules being proposed or prepared within the university, maintain the records of any such action, and respond to public ~~((inquires))~~ inquiries about possible, proposed, or existing rules and the identity of university personnel developing, reviewing, or commenting on them.

AMENDATORY SECTION (Amending WSR 91-10-031, filed 4/24/91, effective 5/25/91)

WAC 478-250-060 Rule indexing. (1) Content. The university ~~((rules coordination))~~ administrative procedures office shall maintain an index of final orders, declaratory orders, interpretive statements, and policy statements, as defined by RCW 42.17.260~~((4))~~ (5), issued after June 30, 1990, by the board of regents of the University of Washington, the president of the University of Washington, or their designees.

(2) Form. The index shall reference final orders, declaratory orders, interpretive statements, or policy statements by one or more of the following classifications: Date of implementation, organizational unit, or subject matter.

AMENDATORY SECTION (Amending WSR 91-10-031, filed 4/24/91, effective 5/25/91)

WAC 478-276-060 Public records officer. For purposes of compliance with chapter 42.17 RCW, ~~((a public records officer shall be designated by the president of the university. The))~~ duties of the public records officer shall ~~((be as provided by the president of the university and may))~~ include but not be limited to: The implementation of the university's rules and regulations regarding release of public records, coordinating the staff of the ~~((visitors' information center))~~ public records office in this regard, and generally coordinating compliance by the university with the public records disclosure requirements of chapter 42.17 RCW. The person so designated shall be ~~((located in the Visitors' Information Center, 4014 University Way N.E., University of Washington, Seattle, Washington 98105.))~~ at the following location:

University of Washington
Public Records Office
Visitors Information Center
4014 University Way N.E.
Seattle, WA 98105-6203

(for internal campus mail use: Box 355502).

AMENDATORY SECTION (Amending Order 73-5, filed 5/29/73)

WAC 478-276-070 ~~((Office hours.))~~ Times for inspection and copying. ~~((For the purposes of this chapter, the office hours of the visitors' information center shall be the regular business hours of the University of Washington.))~~ Public records of the University of Washington shall be available for inspection and copying during the regular office

hours of the public records office: Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays.

AMENDATORY SECTION (Amending WSR 91-10-031, filed 4/24/91, effective 5/25/91)

WAC 478-276-080 Requests for public records. In accordance with requirements of chapter 42.17 RCW, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records required to be disclosed by chapter 42.17 RCW, may be inspected or copied, or copies of such records may be obtained, by members of the public upon compliance with the following procedures: All requests shall be directed to the public records officer at the address set forth in WAC 478-276-140. The request shall include the following information:

- (1) The name of the person requesting the records (~~or some other means of identifying that person~~);
- (2) The time of day and calendar date on which the request was made; and
- (3) The public record(s) requested.

AMENDATORY SECTION (Amending WSR 91-10-031, filed 4/24/91, effective 5/25/91)

WAC 478-276-100 Inspection of public records—Copying—Costs. (1) Public records of the University of Washington required to be disclosed by chapter 42.17 RCW, shall be made available for inspection and copying at the (~~visitors' information center~~) public records office under the supervision of the public records officer. Arrangements for photocopying of documents in accordance with RCW 42.17.300 shall be made by the university in such a way as to protect the records from damage or disorganization and to prevent excessive interference with other essential functions of the agency.

(2) No fee shall be charged for the inspection of public records. The university (~~may~~) imposes a charge for providing copies of public records and for the costs of envelopes, postage, and other charges as allowed by statute. Such charges shall not exceed the amount necessary to reimburse the university for (~~its~~) actual costs (incident to such copying) as allowed by law.

(3) No person shall be provided a copy of a public record which has been copied by the university at the request of such person until and unless such person has tendered payment for the charge for providing such copying.

NEW SECTION

WAC 478-276-105 Protection of public records. Access to any "writing," as defined in WAC 478-276-020(2), shall be restricted to the viewing area designated by the university. No document shall be physically removed by a member of the public from the viewing area for any reason whatsoever. Nor shall any member of the public who is viewing documents disassemble, deface, or cause the disorganization of documents for any reason whatsoever.

AMENDATORY SECTION (Amending Order 81-2, filed 10/2/81)

WAC 478-276-140 (~~Visitors' information center~~) Public records office—Address. All requests for public records to the University of Washington shall be addressed as follows: (~~University of Washington, c/o Public Records Officer, Visitors' Information Center, 4014 University Way N.E., HI 22, Seattle, Washington 98105~~)

University of Washington
Public Records Officer
Public Records Office
4014 University Way N.E.
Seattle, WA 98105-6203

(for internal campus mail use: Box 355502. The telephone number of the (~~visitors' information center is 543-9198~~) public records office is 543-9180, FAX: 543-0786.)

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|-----------------|--|
| WAC 478-276-030 | Description of central and field organization of the University of Washington. |
| WAC 478-276-040 | General course and method of government. |

**WSR 97-08-067
PROPOSED RULES
HEALTH CARE AUTHORITY
(Basic Health Plan)
[Filed April 1, 1997, 1:33 p.m.]**

Original Notice.

Preproposal statement of inquiry was filed as WSR 96-19-075.

Title of Rule: Washington Basic Health Plan.

Purpose: Rules for eligibility and enrollment processes and for administering the Washington Basic Health Plan.

Statutory Authority for Adoption: RCW 70.47.050.

Statute Being Implemented: Chapter 70.47 RCW.

Summary: Revising Basic Health Plan rules to clarify policies regarding limited enrollment due to budget constraints, and modifying rules for recertification and disenrollment for good cause.

Reasons Supporting Proposal: Basic Health Plan has reached funding and enrollment limits. Rules need to be revised to clarify policies regarding enrollment limits. Rules regarding eligibility, recertification and disenrollment for good cause have also been modified to be more appropriate, in light of enrollment limits.

Name of Agency Personnel Responsible for Drafting: Rosanne Reynolds, Lacey, Washington, (360) 923-2948; Implementation and Enforcement: Linda Melton, Lacey, Washington, (360) 923-2996.

Name of Proponent: Health Care Authority, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Revises rules for implementation of a reservation list and modifies other sections of the rules that are affected, such as disenrollment for good cause, reenrollment after disenrollment, and waiting period for preexisting conditions. Updates definitions to streamline administration.

Proposal Changes the Following Existing Rules: Existing rules for implementation of a reservation list are changed to allow for enrollment of applicants who are unaffected by budget limitations. Other sections are modified to clarify how the reservation list will affect portability, the waiting period for preexisting conditions, and reenrollment after disenrollment. Definitions are modified to streamline administration.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required. The Joint Administrative Rules Review Committee has not requested the filing of a small business economic impact statement, and costs to businesses will be negligible.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. Section 201, chapter 403, Laws of 1995, do not apply to the Health Care Authority unless requested by the Joint Administrative Rules Review Committee or applied voluntarily.

Hearing Location: Health Care Authority, 676 Woodland Square Loop S.E., Building B, 3rd Floor Conference Room, Lacey, WA 98504, on May 7, 1997, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Nikki Woehl by April 25, 1997, (360) 923-2805.

Submit Written Comments to: Rosanne Reynolds, Basic Health Plan, P.O. Box 42683, Olympia, WA 98504-2683, FAX (360) 412-4276, by May 9, 1997.

Date of Intended Adoption: May 23, 1997.

April 1, 1997
Elin Meyer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 96-15-024, filed 7/9/96, effective 8/9/96)

WAC 182-25-010 Definitions. The following definitions apply throughout these rules.

(1) "Administrator" means the administrator of the Washington state health care authority (HCA) or designee.

(2) "Appeal procedure" means a formal written procedure for resolution of problems or concerns raised by enrollees which cannot be resolved in an informal manner to the enrollee's satisfaction.

(3) "Basic health plan" (or BHP) means the system of enrollment and payment on a prepaid capitated basis for basic health care services administered by the administrator through managed health care systems.

(4) "BHP plus" means the program of expanded benefits available to children through coordination between the department of social and health services (DSHS) and basic health plan. To be eligible for the program children must be under age nineteen, with a family income at or below two hundred percent of federal poverty level, as defined by the United States Department of Health and Human Services. They must be Washington state residents, not eligible for Medicare, and may be required to meet additional DSHS eligibility requirements.

(5) "Co-payment" means a payment indicated in the schedule of benefits which is made by an enrollee to a health care provider or to the MHCS.

(6) "Covered services" means those services and benefits in the BHP schedule of benefits (as outlined in the member handbook issued to the enrollee, or to a subscriber on behalf of the enrollee), which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable co-payments.

(7) "Disenrollment" means the termination of covered services in BHP for a subscriber and dependents, if any.

(8) "Effective date of enrollment" means the first date, as established by BHP, on which an enrollee is entitled to receive covered services from the enrollee's respective managed health care system.

(9) "Dependent." The following are eligible as dependents under BHP:

(a) Lawful spouse of the subscriber, if not legally separated, who resides in the same residence.

(b) Dependent child who is an unmarried child and who is:

(i) Younger than age nineteen and is one of the following: A natural child, stepchild or legally adopted child of a subscriber; or a child who has been placed with a subscriber pending adoption or is under legal guardianship of a subscriber.

(ii) Younger than age twenty-three and is a registered student in full-time attendance at an accredited secondary school, college, university, technical college or school of nursing. Dependent student eligibility continues year-round, including the quarter or semester following graduation, for those who attend full time (except for school holidays and scheduled spring and summer breaks) provided (~~the subscriber is covered at the same time;~~) the dependent limiting age has not been exceeded; and the dependent meets all other eligibility requirements.

(c) Legal dependent of any age who is incapable of self-support due to disability.

(10) "Eligible full-time employee" means an employee who meets all eligibility requirements in WAC 182-25-030 and who is regularly scheduled to work thirty or more hours per week for an employer. The term includes a self-employed individual (including a sole proprietor or a partner of a partnership, and may include an independent contractor) if the individual:

(a) Is regularly scheduled to work thirty hours or more per week; and

(b) Derives at least seventy-five percent of his or her income from a trade or business that is licensed to do business in Washington.

Persons covered under a health benefit plan pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 shall not be considered eligible employees for purposes of minimum participation requirements.

(11) "Eligible part-time employee" means an employee who meets all the criteria in subsection (10) of this section, but who is regularly scheduled to work fewer than thirty hours per week for an employer.

(12) "Employee" means one who is in the employment of an employer, as defined by RCW 50.04.080.

(13) "Employer" means an enterprise licensed to do business in Washington state, as defined by RCW 50.04.080.

(14) "Enrollee" means a person who meets all eligibility requirements, who is enrolled in BHP, and for whom applicable premium payments have been made.

(15) "Family" means an individual or an individual and spouse, if not legally separated, and dependents. For purposes of eligibility determination and enrollment in the plan, an individual cannot be a member of more than one family.

(16) "Financial sponsor" means a person, organization or other entity, approved by the administrator, that is responsible for payment of all or a designated portion of the monthly premiums on behalf of a subscriber and any dependents.

(17) "Gross family income" means total cash receipts, as defined in (a) of this subsection, before taxes, from all sources, for subscriber and dependents whether or not they are enrolled in BHP, with the exceptions noted in (b) of this subsection.

(a) Income includes:

(i) Money wages, tips and salaries before any deductions;

(ii) Net receipts from nonfarm self-employment (receipts from a person's own unincorporated business, professional enterprise, or partnership, after deductions for business expenses);

(iii) Net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses);

(iv) Regular payments from Social Security, railroad retirement, unemployment compensation, strike benefits from union funds, workers' compensation, veterans' payments, public assistance, alimony, child support, military family allotments, private pensions, government employee pensions (including military retirement pay), and regular insurance or annuity payments;

(v) Work study or training stipends;

(vi) ~~College or university scholarships, grants, fellowships and assistantships, if received as or convertible by the recipient into cash;~~

~~(vii)) Dividends and interest accessible to the enrollee without a penalty;~~

~~((viii)) (vii) Net rental income, net royalties, periodic receipts from estates or trusts, and net gambling or lottery winnings.~~

(b) Income does not include the following types of money received:

(i) Capital gains;

(ii) Any assets drawn down as withdrawals from a bank, the sale of property, a house or a car;

(iii) Tax refunds, gifts, loans, lump-sum inheritances, one-time insurance payments, or compensation for injury (except workers' compensation);

(iv) Noncash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, and housing assistance;

(v) Income earned by dependent children;

(vi) Income of a family member who resides in another household when such income is not available to the subscriber or dependents seeking enrollment in BHP;

(vii) College or university scholarships, grants, fellowships and assistantships ~~((if not convertible to cash));~~

(viii) Documented child care expenses for the care of a dependent child of a subscriber may be deducted (at a rate set by the administrator and consistent with Internal Revenue Service requirements) when calculating gross family income. To qualify for this deduction, the subscriber must be employed during the time the child care expenses were paid, and payment may not be paid to a parent or step parent of the child or to a dependent child of the subscriber or his/her spouse.

(18) "Home care agency" means a private or public agency or organization that administers or provides home care services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence, and is licensed by the department of social and health services (DSHS) as a home care agency. In order to qualify, the agency must be under contract with one of the following DSHS programs: Chore, Medicaid Personal Care, Community Options Program Entry System (COPES) or Respite Care (up to level three).

(19) "Insurance broker" or "agent" means a person who is currently licensed as a disability insurance broker or agent, according to the laws administered by the office of the insurance commissioner under chapter 48.17 RCW.

(20) "Managed health care system" (or "MHCS") means any health care organization (including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof) which has entered into a contract with the HCA to provide basic health care services.

(21) "Medicaid" means the Title XIX Medicaid program administered by the department of social and health services, and includes the medical care programs provided to the "categorically needy" and the "medically needy" as defined in chapter 388-503 WAC.

(22) "Medicare" means programs established by Title XVIII of Public Law 89-97, as amended, "Health Insurance for the Aged and Disabled."

(23) "Nonsubsidized enrollee" or "full premium enrollee" means an individual who enrolls in BHP, as the subscriber or dependent, and who pays or on whose behalf is paid the full costs for participation in BHP, without subsidy from the HCA.

(24) "Open enrollment" means a time period designated by the administrator during which enrollees may enroll additional dependents or apply to transfer their enrollment from one managed health care system to another. There shall be at least one annual open enrollment period of at least twenty consecutive days.

(25) "Participating employee" means an employee of a participating employer or home care agency who has met all the eligibility requirements and has been enrolled for coverage under BHP.

(26) "Participating employer" means an employer who has been approved for enrollment in BHP as an employer group.

(27) "Preexisting condition" means any illness, injury or condition for which, in the three months immediately preceding an enrollee's effective date of enrollment in BHP:

(a) Treatment, consultation or a diagnostic test was recommended for or received by the enrollee; or

(b) The enrollee was prescribed or recommended medication; or

(c) Symptoms existed which would ordinarily cause a reasonably prudent individual to seek medical diagnosis, care or treatment.

(28) "Premium" means a periodic payment, based upon gross family income and determined under RCW 70.47.060(2), which an individual, their employer or a financial sponsor makes to BHP for subsidized or nonsubsidized enrollment in BHP.

(29) "Provider" or "health care provider" means a health care professional or institution duly licensed and accredited to provide covered services in the state of Washington.

(30) "Rate" means the per capita amount, including administrative charges and any applicable premium and prepayment tax imposed under RCW 48.14.020, negotiated by the administrator with and paid to a managed health care system, to provide BHP health care benefits to enrollees.

(31) "Schedule of benefits" means the basic health care services adopted and from time to time amended by the administrator, which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable co-payments, as described in the member handbook.

(32) "Service area" means the geographic area served by a managed health care system as defined in its contract with HCA.

(33) "Subscriber" is a person who applies to BHP on his/her own behalf and/or on behalf of his/her dependents, if any, who meets all applicable eligibility requirements, is enrolled in BHP, and for whom the monthly premium has been paid. Notices to a subscriber and, if applicable, a financial sponsor or employer shall be considered notice to the subscriber and his/her enrolled dependents.

(34) "Subsidized enrollee" or "reduced premium enrollee" means an individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income does not exceed twice the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

(35) "Subsidy" means the difference between the amount of periodic payment the HCA makes to a managed health care system on behalf of a subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

AMENDATORY SECTION (Amending WSR 96-15-024, filed 7/9/96, effective 8/9/96)

WAC 182-25-020 BHP benefits. (1) The administrator shall design and from time to time may revise BHP benefits, according to the requirements of chapter 70.47 RCW, as amended. These benefits will include physician services, prescription drugs and medications, and inpatient and outpatient hospital services, limited mental health care services, limited chemical dependency services, limited organ

transplant services, and all services necessary for prenatal, postnatal and well-child care, and will emphasize proven preventive and primary care services. The Medicaid scope of benefits may be provided by BHP as the BHP plus program through coordination with DSHS for children under the age of nineteen, who are found to be Medicaid eligible. BHP benefits may include co-payments, waiting periods, limitations and exclusions which the administrator determines are appropriate and consistent with the goals and objectives of the plan. BHP benefits will be subject to a three-month waiting period for preexisting conditions. Exceptions (for example, maternity, prescription drugs, services for a newborn or newly adopted child) are outlined in the schedule of benefits. Credit toward the waiting period will be given for any continuous period of time for which an enrollee was covered under similar health coverage if that coverage was in effect at any time during the three-month period immediately preceding the date of reservation or application for coverage under BHP. A list of BHP benefits, including co-payments, waiting periods, limitations and exclusions, will be provided to the subscriber.

(2) In designing and revising BHP benefits, the administrator will consider the effects of particular benefits, co-payments, limitations and exclusions on access to necessary health care services, as well as the cost to the enrollees and to the state, and will also consider generally accepted practices of the health insurance and managed health care industries.

(3) Prior to enrolling in BHP, each applicant will be given a written description of covered benefits, including all co-payments, waiting periods, limitations and exclusions, and be advised how to access information on the services, providers, facilities, hours of operation, and other information descriptive of the managed health care system(s) available to enrollees in a given service area.

(4) BHP will mail to all subscribers written notice of any changes in the amount and scope of benefits provided under BHP, or policy changes regarding premiums and co-payments at least thirty days prior to the due date of the premium payment for the month in which such revisions are to take effect. The administrator may make available a separate schedule of benefits for children, eighteen years of age and younger, for those dependent children in the plan.

AMENDATORY SECTION (Amending WSR 96-15-024, filed 7/9/96, effective 8/9/96)

WAC 182-25-030 Eligibility. (1) To be eligible for enrollment in BHP, an individual must:

(a) Not be eligible for Medicare; and

(b) Reside within the state of Washington.

Persons not meeting these criteria, as evidenced by information submitted on the application for enrollment or otherwise obtained by BHP, will not be enrolled. An enrollee who subsequently fails to meet these criteria, or who is later determined to have failed to meet the criteria at the time of enrollment, will be disenrolled from the plan as provided in WAC 182-25-090.

(2) To be eligible for subsidized enrollment in BHP, an individual must have a gross family income that does not exceed two hundred percent of federal poverty level as adjusted for family size and determined annually by the U.S.

Department of Health and Human Services, and must pay, or have paid on their behalf, the monthly BHP premium.

(3) To be eligible for nonsubsidized enrollment in BHP, an individual may have any income level and must pay, or have paid on their behalf, the full costs for participation in BHP, including the cost of administration, without subsidy from the HCA.

(4) An individual otherwise eligible for enrollment in BHP may be denied enrollment if the administrator has determined that acceptance of additional enrollment would exceed limits established by the legislature, would jeopardize the orderly development of BHP or would result in an overexpenditure of BHP funds. In the event that the administrator closes or limits enrollment and to the extent funding is available, BHP will continue to accept and process applications for enrollment (~~but will not process those applications for determination of eligibility. BHP will place the names of applicants on a waiting list in the order in which applications are received, and will so notify the applicants~~) from:

(a) Applicants who will pay the full premium;

(b) Children eligible for BHP Plus;

(c) Pregnant women who, prior to April 1, 1997, apply to BHP, are referred and qualify for maternity benefits through DSHS;

(d) Children eligible for subsidized BHP, who were referred to DSHS for BHP Plus coverage, but were found ineligible for BHP Plus;

(e) Employees of a home care agency group enrolled or applying for coverage under WAC 182-25-060;

(f) Eligible individual home care providers;

(g) Licensed foster care workers; and

(h) Limited enrollment of new employer groups.

Subject to availability of funding, additional space for enrollment may be reserved for other applicants as determined by the administrator, in order to ensure continuous coverage and service for current individual and group accounts. (For example: Transferring enrollees enrolled prior to the implementation of the reservation list from nonsubsidized to subsidized BHP; adding new family members to an existing account; transferring enrollees between group and individual accounts; reinstating enrollees who are otherwise eligible under WAC 182-25-090 to return to BHP after a limited break in coverage due to late payment or other coverage; adding newly hired employees to an existing employer group; or adding new or returning members of federally recognized native American tribes to that tribe's currently approved financial sponsor group.) Applicants for subsidized BHP who are not in any of these categories may reserve space on a reservation list to be processed according to the date the reservation or application is received by BHP. In the event that enrollment is reopened by the administrator, applicants whose names appear on the (~~waiting~~) reservation list will be notified by BHP of the opportunity to enroll. BHP may require new application forms and documentation from applicants on the (~~waiting~~) reservation list, or may contact applicants to verify continued interest in applying, prior to determining their eligibility.

AMENDATORY SECTION (Amending WSR 96-15-024, filed 7/9/96, effective 8/9/96)

WAC 182-25-040 Enrollment in the plan. (1) Any individual applying for enrollment in BHP must submit a signed, completed BHP application for enrollment. Applications for enrollment of children under the age of eighteen must be signed by the child's parent or legal guardian, who shall also be held responsible for payment of premiums due on behalf of the child. If an applicant is accepted for enrollment, the applicant's signature acknowledges the applicant's obligation to pay the monthly premium in accordance with the terms and conditions identified in the member handbook. Applications for subsidized enrollment on behalf of children under the age of nineteen shall be referred to the department of social and health services for Medicaid eligibility determination, unless the family chooses not to access this option.

(2) Each applicant shall list all eligible dependents to be enrolled and supply other information and documentation as required by BHP and, where applicable, DSHS medical assistance.

(a) Documentation will be required, showing the amount and sources of the applicant's gross family income. Acceptable documentation will include a copy of the applicant's most recently filed federal income tax form, and/or other documentation that shows year-to-date income, or income for the most recent thirty days or complete calendar month as of the date of application. An average of documented income received over a period of several months may be used for purposes of eligibility determination. Income documentation shall be required for the subscriber and dependents, with the exceptions listed under WAC 182-25-010 (17)(b).

(b) Documentation of Washington state residency shall also be required, displaying the applicant's name and address. Other documentation may be accepted if the applicant does not have a physical residence.

(c) BHP may request additional information from applicants for purposes of establishing or verifying eligibility, premium responsibility or managed health care system selection.

(d) Submission of incomplete or inaccurate information may delay or prevent an applicant's enrollment in BHP. Intentional submission of false information may result in disenrollment of the subscriber and all enrolled dependents.

(3) Each member may be enrolled in only one BHP account. Each family applying for enrollment must designate a managed health care system from which the applicant and all enrolled dependents will receive covered services. All applicants from the same family who are covered under the same account must receive covered services from the same managed health care system (with the exception of cases in which a subscriber who is paying child support for his/her dependents lives in a different service area). No applicant will be enrolled for whom designation of a managed health care system has not been made as part of the application for enrollment. The administrator will establish procedures for the selection of managed health care systems, which will include conditions under which an enrollee may change from one managed health care system to another. Such procedures will allow enrollees to change from one managed health care system to another during open enroll-

ment, or otherwise upon showing of good cause for the transfer.

(4) Managed health care systems may assist BHP applicants in the enrollment process, but must provide them with the toll-free number for BHP, information on all MHCS available within the applicant's county of residence and an estimate of the premium the applicant would pay for each available MHCS.

(5) Insurance brokers or agents who have met all statutory and regulatory requirements of the office of the insurance commissioner, are currently licensed through the office of the insurance commissioner, and who have completed BHP's training program, will be paid a commission for assisting eligible applicants to enroll in BHP.

(a) Individual policy commission: Subject to availability of funds, and as a pilot program, BHP will pay a one-time fee to any currently licensed insurance broker or agent who sells BHP to an eligible individual applicant if that applicant has never been a BHP member in the past.

(b) Group policy commission: Subject to availability of funds, and as a pilot program, fees paid for the sale of BHP group coverage to an eligible employer will be based on the number of employees in the group for the first and second months of the group's enrollment.

(c) Insurance brokers or agents must provide the prospective applicant with the BHP toll-free information number and inform them of BHP benefits, limitations, exclusions, waiting periods, co-payments, all managed health care systems available to the applicant within his/her county of residence and the estimated premium for each of them.

(d) All statutes and regulations of the office of the insurance commissioner will apply to brokers or agents who sell BHP, except they will not be required to be appointed by the MHCS.

(e) BHP will not pay renewal commissions.

(6) Except as provided in WAC 182-25-030(4), applications for enrollment will be reviewed by BHP within thirty days of receipt and those applicants satisfying the eligibility criteria and who have provided all required information, documentation and premium payments will be notified of their effective date of enrollment.

(7) Eligible applicants will be enrolled in BHP in the order in which their completed applications, including all required documentation, have been received by BHP, provided that the applicant also remits full payment of the first premium bill to BHP by the due date specified by BHP. In the event a reservation list is implemented, eligible applicants will be enrolled in accordance with WAC 182-25-030(4).

(8) Not all family members are required to apply for enrollment in BHP; however, any family member for whom application for enrollment is not made at the same time that other family members apply, may not subsequently enroll as a family member until the next open enrollment period, unless the subscriber has experienced a qualifying change in family status:

(a) The loss of other continuous health care coverage, for family members who have previously waived coverage, upon proof of continuous medical coverage from the date the subscriber enrolled;

(b) Marriage; or

(c) Birth, adoption or change in dependency or custody of a child or adult dependent. Eligible newborn or newly adopted children may be enrolled effective from the date of birth or physical placement for adoption provided that application for enrollment is submitted to BHP within sixty days of the date of birth or such placement for adoption.

(9) Any enrollee who voluntarily disenrolls from BHP for reasons other than ineligibility or enrollment in other health care coverage may not reenroll for a period of twelve months from the effective date of disenrollment. After the twelve-month period, or if the enrollee disenrolled for reasons of ineligibility or enrollment in other health care coverage, he/she may reenroll in BHP, subject to enrollment limits and portability and preexisting condition policies as referenced in WAC 182-25-020(1) and 182-25-030(4) and specified in the member handbook, provided he/she is determined by BHP to be otherwise eligible for enrollment as of the date of application. With the exception of enrollees under group coverage, enrollees who are disenrolled from BHP for nonpayment, in accordance with WAC 182-25-090(2)(~~(- more than twice in a twelve-month period, and who have a lapse in coverage of one month or more,))~~) may not reenroll for a minimum period of twelve months from the effective date of ((the third)) disenrollment if they fail to pay the reenrollment premium for the next month of coverage prior to BHP's reenrollment deadline, or if they are disenrolled for nonpayment more than twice in a twelve-month period. If a reservation list has been implemented, an enrollee who was disenrolled in accordance with WAC 182-25-090(2) and is eligible to enroll from the reservation list prior to the end of the required twelve-month wait for reenrollment, will not be reenrolled until the end of the twelve-month period. If an enrollee who was disenrolled in accordance with WAC 182-25-090(2) satisfies the required twelve-month wait for reenrollment while on the reservation list, enrollment will not be completed until funding is available to enroll him or her from the reservation list.

(10) On a schedule approved by the administrator, BHP will request verification of information from all or a subset of enrollees ("recertification"), requiring new documentation of income if the enrollee has had a change in income that would result in a different subsidy level. For good cause, BHP may require recertification on a more widespread or more frequent basis. Enrollees who fail to comply with a recertification request will be ((disenrolled from BHP)) converted to nonsubsidized enrollment for at least one month, until new income documentation has been submitted and processed. Each enrollee is responsible for notifying BHP within thirty days of any changes which could affect the enrollee's eligibility or premium responsibility. If, as a result of recertification, BHP determines that a subsidized enrollee's income exceeds twice the poverty level according to the federal income guidelines, and that the enrollee knowingly failed to inform BHP of such increase in income, BHP may bill the enrollee for the subsidy paid on the enrollee's behalf during the period of time that the enrollee's income exceeded twice the poverty level.

AMENDATORY SECTION (Amending WSR 96-15-024, filed 7/9/96, effective 8/9/96)

WAC 182-25-090 Disenrollment from BHP. (1) An enrollee or employer group may disenroll effective the first day of any month by giving BHP at least ten days prior written notice of the intention to disenroll. Reenrollment in BHP shall be subject to the provisions of WAC 182-25-040(9). The administrator shall also establish procedures for notice by an enrollee of a disenrollment decision, including the date upon which disenrollment shall become effective. Nonpayment of premium by an enrollee shall be considered an indication of the enrollee's intention to disenroll from BHP.

(2) BHP may disenroll any enrollee or group from BHP for good cause, which shall include:

(a) Failure to meet the eligibility requirements set forth in WAC 182-25-030, 182-25-050, 182-25-060, and 182-25-070;

(b) Nonpayment of premium;

(c) Repeated failure to pay co-payments in full on a timely basis;

(d) Fraud or knowingly providing false information;

(e) Abuse or intentional misconduct; ~~((and))~~

(f) Risk to the safety or property of MHCS staff, providers, patients or visitors; and

(g) Refusal to accept or follow procedures or treatment determined by a MHCS to be essential to the health of the enrollee, where the managed health care system demonstrates to the satisfaction of BHP that no professionally acceptable alternative form of treatment is available from the managed health care system, and the enrollee has been so advised by the managed health care system.

In the event that an employer group, a home care agency group or a financial sponsor group is disenrolled under these provisions, the employer or sponsor and all members of that group will be notified of the disenrollment and the enrollees will be offered coverage under individual accounts. BHP will make every effort to transfer the enrollees to individual accounts without a break in coverage; however, the enrollee will be responsible for ensuring that payment is received by BHP prior to the final disenrollment date for that month.

Enrollees who are disenrolled from BHP in accordance with (c), (d), (e) or (f) of this subsection may not reenroll for a period of twelve months from the effective date of disenrollment. With the exception of enrollees under group coverage, enrollees who are disenrolled from BHP for nonpayment, in accordance with (b) of this subsection (~~more than twice in a twelve-month period, and who have a lapse in coverage of one month or more;~~) may not reenroll for a minimum period of twelve months from the effective date of ~~((the third))~~ disenrollment if they fail to pay the reenrollment premium for the next month of coverage prior to BHP's reenrollment deadline, or if they are disenrolled for nonpayment more than twice in a twelve-month period. If a reservation list has been implemented, an enrollee who was disenrolled in accordance with WAC 182-25-090(2) and is eligible to enroll from the reservation list prior to the end of the required twelve-month wait for reenrollment, will not be reenrolled until the end of the twelve-month period. If an enrollee who was disenrolled in accordance with WAC 182-

25-090(2) satisfies the required twelve-month wait for reenrollment while on the reservation list, enrollment will not be completed until funding is available to enroll him or her from the reservation list.

BHP shall provide the enrollee or the parent, legal guardian or sponsor of an enrolled dependent with advance written notice of its intent to disenroll the enrollee. Such notice shall specify an effective date of disenrollment, which shall be at least ten days from the date of the notice, and shall describe the procedures for disenrollment, including the enrollee's right to appeal the disenrollment decision as set forth in WAC 182-25-100 and 182-25-105. Prior to the effective date specified, if the enrollee submits an appeal to BHP contesting the disenrollment decision, as provided in WAC 182-25-105, disenrollment shall not become effective until the date, if any, established as a result of BHP's appeal procedure, provided that the enrollee otherwise remains eligible and continues to make all premium payments when due; and further provided that the enrollee does not create a risk of violent, aggressive or harassing behavior, assault or battery or purposeful damage to or theft of managed health care system property, or the property of staff or providers, patients or visitors while on the property of the managed health care system or one of its participating providers.

(3) Any enrollee who knowingly provides false information to BHP or to a participating managed health care system may be disenrolled by BHP and may be held financially responsible for any covered services fraudulently obtained through BHP.

WSR 97-08-071
WITHDRAWAL OF PROPOSED RULES
GAMBLING COMMISSION
(By the Code Reviser's Office)

[Filed April 1, 1997, 4:00 p.m.]

WAC 230-12-215 and 230-02-126, proposed by the Gambling Commission in WSR 96-19-083 and 96-19-085, appearing in issue 96-19 of the State Register, which was distributed on October 2, 1996, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 97-08-073
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Division of Alcohol and Substance Abuse)
(Public Assistance)

[Filed April 2, 1997, 8:17 a.m.]

Supplemental Notice to WSR 97-02-009.
Preproposal statement of inquiry was filed as WSR 96-22-027.

Title of Rule: Certification requirements for chemical dependency treatment service providers.

PROPOSED

Purpose: (1) Amend chapter 440-22 WAC sections and add new sections necessary to redefine the terms chemical dependency (CD) counselor and CD intern and add requirement to obtain "certification of qualification" and "letter of enrollment" respectively. (2) Amend chapter 440-22 WAC sections necessary to add the requirement for certified CD programs to adopt the patient placement criteria published by the American Society of Addiction Medicine (ASAM) as the standard for patient admissions, continuing care, transfers, and discharges. (3) Amend WAC 440-22-005, 440-22-225, 440-22-230, 440-22-310, and 440-22-335 to correct language or further explain the current regulations.

Statutory Authority for Adoption: RCW 70.96A.040 and [70.96A].090.

Statute Being Implemented: Chapter 70.96A RCW.

Summary: Supplemental filed to add additional language (WAC 440-22-253) to describe counselor/intern application process.

Reasons Supporting Proposal: (1) and (2) described in "Purpose" section are drafted and proposed at request of several chemical dependency provider associations.

Name of Agency Personnel Responsible for Drafting: Division of Alcohol and Substance Abuse, Gary Reynolds, Lacey, Washington, (360) 438-8054; Implementation and Enforcement: Division of Alcohol and Substance Abuse, Certification Section, Lacey, Washington, (360) 438-8052.

Name of Proponent: Margaret Jones, President, Association of Alcoholism and Addictions Programs; Don Thomas, President, Washington State Association of Independent Outpatient Programs; John Horngren, Chairman, Washington State Adolescent Chemical Dependency Treatment Providers; Leo Whiteford, Chairman, Northwest Indian Council on Chemical Dependency, and Northwest Indian Alcohol/Drug Specialist Certification Board; Diane Hall, President, Chemical Dependency Professionals of Washington State; Lanny Minuto, President, Chemical Dependency Counselor Certification Board; and Tom Armstrong, President, Northwest Chapter, National Association of Addiction Treatment Providers, private; and Department of Social and Health Services, Division of Alcohol and Substance Abuse, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: (1) Amendments will require CD counselor interns to obtain a "letter of enrollment" and CD counselors to obtain a "certificate of qualification" from the department which provides evidence that they meet the minimum respective standards described in chapter 440-22 WAC and are thereby qualified to work in state-approved CD programs. The changes will place responsibility for obtaining these credentials on the interns and counselors. This change will benefit all concerned (counselors, administrators, and Division of Alcohol and Substance Abuse program auditors) by (a) reducing the large amount of paperwork currently required in agency personnel files to provide evidence interns and counselors meet the qualification requirements; and (b) will provide a single page credential that interns and counselors can provide to certified CD program employers attesting they are qualified to work in state-approved CD treatment facilities. New sections are added to provide the rules for denial, expiration, suspension, or revocation of CD

counselor certificate of qualification. This is necessary for the provision of due process. The amendment to add the knowledge exam and supervisor/peer review will bring the WAC standard into agreement with standards currently used by this state's private CD certification boards and by national CD certification boards. This addition provides additional tools for professional quality assurance by asking CD counselors to pass a knowledge exam and provide supervisor and peer counselor's attestation to the counselor's competency. A grandparenting section is included excluding currently qualified counselors from the knowledge exam requirement. SUPPLEMENTAL: Adds CIs to grandparenting process (WAC 440-22-250). WAC 440-22-253 adds procedures for acquiring the letters of enrollment and certificate of qualification. Makes other minor cleanup changes.

(2) Amendments add a requirement for all state certified CD treatment programs to adopt and use the patient placement criteria published by the American Society of Addiction Medicine (ASAM) in making patient decisions for admission placement, continuing care, transfer, and discharge. This will provide Washington state's CD treatment programs with a nationally recognized, state of the art, criteria for making these decisions in line with several other states in the nation. Currently, there is no common standard being employed leaving patients and clinicians alike vulnerable to inappropriate placement, continuing care, transfer and discharge decisions. The ASAM standards are considered the most widely accepted criteria available within the CD field and will provide a "common language" for all professionals working in state-approved CD programs. No changes made to these sections in supplemental filing. SUPPLEMENTAL: No changes.

(3) Amendment to WAC 440-22-005(47), (definition for "vulnerable adult") brings the definition into conformance with a recent change in this definition in RCW 43.43.830; WAC 440-22-225 adds wording to clarify acceptable training and work experience for probation assessment officers; WAC 440-22-230 removes a date reference for youth chemical dependency counselors that has passed; WAC 440-22-310 (2)(i) changes the current placement for the requirement for "patient redisclosure statement" into its own subsection. This will help mitigate confusion that the current placement of this wording in the WAC has caused; and WAC 440-22-335(3) adds wording to clarify this requirement. SUPPLEMENTAL: Adds definition to WAC 440-22-005 for CD Counselor Certification Board and separates youth chemical dependency counselor definition into a separate definition.

Proposal Changes the Following Existing Rules: (1) Amends chemical dependency (CD) counselor qualification standards in WAC 440-22-005, 440-22-180, 440-22-200, 440-22-220, 440-22-225, 440-22-230, 440-22-240, and 440-22-250 by adding a knowledge exam and supervisor/peer review process; amending the definitions sections for CD counselors and CD interns and other sections describing requirements and process for obtaining "certificate of qualification" and "letter of endorsement" for CD counselors and CD interns respectively; adds new sections WAC 440-22-253, 440-22-255, and 440-22-257 to the chapter describing denial, expiration, suspension, or revocation of CD intern/counselor letter or endorsement/certificate of qualification.

(2) Amends WAC 440-22-005, 440-22-300, 440-22-320, 440-22-325, and 440-22-335 by adding a requirement for certified treatment agencies to use patient placement criteria published by the American Society of Addiction Medicine (ASAM) as the standard for making admission placement, continuing care, transfer, and discharge decisions.

(3) Amends the following sections of chapter 440-22 WAC to correct or clarify language: WAC 440-22-005, definition for "vulnerable adult" to bring it into conformance with an amendment to this definition in RCW 43.43.830; WAC 440-22-225, adding clarification language; WAC 440-22-230, removing an effective date that has been passed; WAC 440-22-310 (2)(i), corrected to clarify rule; and WAC 440-22-335(3), add additional explanatory language.

A small business economic impact statement has been prepared under chapter 19.85 RCW. No change in the small business economic impact statement from that published in WSR 97-02-009 for original submission of these amendments.

A copy of the statement may be obtained by writing to Gary Reynolds, WAC Coordinator, Division of Alcohol and Substance Abuse, P.O. Box 45330, Olympia, WA 98504-5330, phone (360) 438-8054, FAX (360) 438-8057, e-mail/Internet reynogl@dshs.wa.gov.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Department of Social and Health Services is not a named agency under RCW 34.05.328.

Hearing Location: Lacey Government Center (behind Tokyo Bento restaurant), 1009 College Street S.E., Room 104-A, Lacey, WA 98503, on May 27, 1997, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Leslie Baldwin, Rules Coordinator, by May 6, 1997, (360) 902-7540 voice or TDD (360) 902-8324 or (360) 902-8317.

Submit Written Comments to and Include WAC Numbers: Leslie Baldwin, Rules Coordinator, Rules and Policy Assistance Unit, Department of Social and Health Services, P.O. Box 45850, Olympia, WA 98504-5850, e-mail lbaldwin@dshs.wa.gov, FAX (360) 902-8292, by May 27, 1997.

Date of Intended Adoption: No sooner than May 28, 1997.

April 1, 1997
Merry A. Kogut, Manager
Rules and Policies Assistance Unit

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 97-09 issue of the Register.

WSR 97-08-076
PROPOSED RULES
SECRETARY OF STATE
(Corporations Division)
[Filed April 2, 1997, 8:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 97-03-014.

Title of Rule: Chapter 434-120 WAC, Charitable solicitation organizations and charitable trust.

Purpose: To revise the form for charitable organization registration and commercial fund-raiser registration. To clarify the financial standards for charitable organizations and commercial fund-raisers.

Statutory Authority for Adoption: RCW 19.09.075, 19-09.079, 19.09.210, and 19.09.315.

Statute Being Implemented: RCW 19.09.075, 19-09.079, 19.09.210, and 19.09.315.

Summary: There have been request[s] from constituents to clarify, review and revise the registration and financial reporting requirements for charities and commercial fund-raisers.

Reasons Supporting Proposal: These rules update forms to comply with other WAC changes and simplify reporting requirements for charitable organizations.

Name of Agency Personnel Responsible for Drafting: Frances Sant, 505 East Union, 1st Floor, Olympia, WA 98504, (360) 753-7120, ext. 261; **Implementation and Enforcement:** Colleen Kemp, 505 East Union, 1st Floor, Olympia, WA 98504, (360) 753-7120, ext. 258.

Name of Proponent: Office of the Secretary of State, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 434-120-040, new section to describe how registrants financial information will be used and provided to the general public; WAC 434-120-105, description of the content of the registration form and solicitation report for charitable organizations; WAC 434-120-130, description of financial standards for charitable organizations; WAC 434-120-215, description of the content of the registration form and solicitation report for commercial fund-raisers; and WAC 434-120-255, description of financial standards for commercial fund-raisers.

Proposal Changes the Following Existing Rules: WAC 434-120-105, information collected on registration and renewal forms will facilitate better information for public disclosure. Use of the federal information tax return (990 and 990PF) and use of the uniform registration form, with the required addendum will be accepted.

WAC 434-120-130, charitable organizations shall provide a financial statement within thirty days from date of request.

WAC 434-120-215, information collected on registration and renewal forms will facilitate better information for public disclosure.

WAC 434-120-255, commercial fund-raisers shall provide a financial statement within thirty days from date of request.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no fiscal impact being made on small business by this rule-making order.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Office of the Secretary of State, 2nd Floor, Legislative Building, Olympia, WA 98504, on May 28, 1997, at 8:30 a.m.

Assistance for Persons with Disabilities: Contact Barbara Simeon by May 15, 1997, TDD (360) 586-4250, or (360) 586-0393.

Submit Written Comments to: Frances Sant, P.O. Box 40244, Olympia, WA 98504-0244, FAX (360) 664-4250, by May 23, 1997.

Date of Intended Adoption: June 30, 1997.

April 1, 1997

Donald F. Whiting
Assistant Secretary of State

NEW SECTION

WAC 434-120-040 Public information derived from registration. Registrations forms, and attachments, filed by charitable organizations and commercial fund-raiser pursuant to WAC 434-120-105 and WAC 434-120-215 are available for public inspection or copying. For purposes of public reports derived from that registration information, the Secretary shall calculate, and make available to the public, the following information:

(1) For charitable organizations, the percentage of total expenditures in a reporting year allocated to charitable program services. This shall be calculated as follows:

(a) For organizations required to file a federal information tax return, by dividing the amount reported as "program services" (e.g. line 13 of the form 990) by the amount reported as "total expenses" (e.g. line 17 of form 990) and multiplying by 100; or

(b) For organizations not required to file a federal informational tax return, by dividing the amount reported as expended for charitable purposes by the amount reported as total expenses.

(2) For commercial fund-raisers the percentage of the proceeds of charitable solicitations which are paid to or retained by charitable organizations. This shall be calculated by dividing the amount reported pursuant to WAC 434-120-215 (2)(n)(iii)(B) by the amount reported pursuant to WAC 434-120-215 (2)(n)(iii)(A), and multiplying by 100.

AMENDATORY SECTION (Amending WSR 94-01-004, filed 12/1/93, effective 1/1/94)

WAC 434-120-105 Form. (1) Charitable organizations registering under this act shall use ~~((the combined charitable organization, charitable trust, and public benefit))~~ the registration form available in the office of the corporations division ~~((or shall provide, by letter, the required information organized and topically sectioned in exactly the following manner))~~. The Secretary of State shall develop a form in compliance with this rule. The secretary may accept the Uniform Registration Statement developed by the National Association of State Charity Officials if accompanied by an addendum developed by the secretary for use in Washington, if the uniform form and addendum contain all of the information required by this rule. The secretary's failure to affirmatively reject or return an incomplete registration or other filing that does not fully comply with these rules or chapter 19.09 RCW shall not excuse the failure to comply.

(2) A registration form is not complete, and will not be accepted for filing, unless it includes:

~~((1) Section I. The name, address, and telephone number of the charitable organization; and the name under which the organization will solicit contributions.~~

~~(2) Section II. The name, address, and telephone number of the corporate officers, directors of the board, or persons~~

~~accepting responsibility for the organization; and the names of the three officers, directors, or employees who receive the greatest amount of compensation from the organization. If this is a consolidated registration, then list the names of the three officers or employees of the parent organization.~~

~~(3) Section III. The purpose of the charitable organization; the names and addresses of beneficiaries or the selected group of persons or activities which the charitable organization supports; and to whom assets would be given in the event of dissolution.~~

~~(4) Section IV. Whether or not the organization has a federal income tax exempt status, and, if so, the basis. Attach a copy of the letter or other written proof of the status declaration if granted under 26 U.S.C. 501 (c)(3) by the Internal Revenue Service. Include the name, address, and telephone number of the entity that prepares, compiles, reviews, or audits the financial statement of the charitable organization.)~~

(a) The name of the organization, and every address (including both physical address and any mailing address if different), telephone number(s), FAX numbers(s), and taxpayer identification number, including those of all offices, chapters, branches, and affiliates used in charitable solicitations reflected in the registration including any electronic mail or Internet addresses used by the organization;

(b) All of the names under which the organization will solicit contributions;

(c) If incorporated, the corporate name, unified business identifier number, state and date of incorporation, or if not incorporated, the type of organization and date established;

(d) The end date of its current fiscal year;

(e) The court or other forum, case number and title of all legal actions, if any, in which a judgment or final order was entered, or action is currently pending, against any organization or individual required to be identified in the registration. "Actions" include any administrative or judicial proceeding alleging that the entity has failed to comply with these rules, chapter 19.09 RCW, or state or federal laws pertaining to taxation, revenue, charitable solicitation, or recordkeeping, whether such action has been instituted by a public agency or a private person or entity;

(f) A list of all states where the organization is registered for charitable solicitations, including any other names under which the organization is currently registered or has been registered in the past three years;

(g) The name, address, and telephone number of the officers or of persons accepting responsibility for the organization;

(h) The names of the three officers or employees receiving the greatest amount of compensation from the organization;

(i) The purpose of the charitable organization, including, if applicable, the names and addresses of any specific beneficiaries which the charitable organization supports and to whom assets would be distributed to in the event of dissolution;

(j) Whether the charitable organization is exempt from federal income tax, and, if so, attaching a copy of the letter by which the Internal Revenue Service granted such status to its initial registration;

(k) The name and address of the person or entity with authority for the preparation of financial statements or the

maintenance of financial information on behalf of the organization;

(l) The name, address and telephone number of an individual with expenditure authority who can respond to questions regarding expenditures of funds, and the names and addresses of any commercial fund raiser and any commercial coventurer who have the authority to expend funds or incur obligations on behalf of the organization;

(m) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305;

(n) A solicitation report of the charitable organization for the preceding fiscal year including:

((5) Section V. A financial statement in the form of a solicitation report, which includes the following information:

(a) From a newly formed entity that has not completed its first accounting year, the annual budget expenditures approved by the board of directors or other responsible person(s), which must clearly identify the reported figures as budget estimates not based upon actual funds expended; or, from an entity that has completed one or more accounting years but has not previously registered under this act, its actual expenditures from the preceding fiscal year, and its proposed budget for the coming fiscal year; and

(i) The number and types of solicitations planned; and

(ii) From the existing entity, total revenue for the preceding year and the amount that was used for the charitable purpose;

In addition, seven months after registration all newly formed entities shall file a six month report containing actual budget figures:

(b) From charitable organizations registering for the second or more years, the following information from the preceding fiscal year:))

(iii) ((A solicitation report that contains the gross revenue applied to charitable purposes, fund raising costs, and other expenses, which are figured in accordance with WAC 434-120-125, including the amount of any compensation allocated to charitable purposes and paid to a commercial fund raiser or other entity, who is not a bona fide employee, as defined in RCW 19.09.020(1), for fund raising services; and

(iv))) The name, physical address, and telephone number of any commercial fund raiser used by the organization;

(i) The types of solicitations conducted; and

(ii) The name, physical address, and telephone number of any commercial fund-raiser, including any commercial coventurer conducting solicitations on behalf of the organization in Washington during the period covered by this report; and

(iii) Either;

(A) A copy of the charitable organization's federal informational tax return (Form 990 or Form 990 PF, but not form 990EZ) covering the period covered by this report. The form shall include lines on which to report the amounts reported on the return as "program services" and "total expenses"; or

(B) If the charitable organization files a federal informational tax return (Form 990 EZ) or is not required to file a federal information tax return, the total dollar value of all support received from solicitations and all other sources, total expenditures during the reporting period and the amount

of those expenditures devoted directly to charitable program services;

(o) The form shall also include a space within which any charitable organization may provide additional information which the organization believes would be of assistance in understanding other reported information, or to provide context for reported information.

(3) Solicitation reports shall not report estimates, but shall report actual figures. If the organization did not directly or indirectly conduct any charitable solicitations in the previous accounting year, it shall file a supplemental registration form no later than the end of the ninth month after registering which provides a complete solicitation report with actual figures from the first six months of activity after registering, if it raises at least twelve thousand five hundred dollars during that six months.

(4) A parent organization may file a consolidated registration form, including the solicitation report, when registering including the solicitation information required for each of its related foundations, supporting organizations, chapters, branches, or affiliates in the state of Washington, which are supervised or controlled by the parent organization. A parent organization may report financial information either separately or in consolidated form for all subsidiary organizations. A filing by the parent organization relieves each subsidiary organization identified in that filing of any duty to file independently. ((Alternatively, it may file a single combined solicitation report including funds raised by all such units of the parent organization and listing the individual names of all units who raised five thousand dollars or more in the preceding year.

(6) Section VI: A signed statement from the entity who prepares, compiles, reviews, or audits the financial statement who is listed under the requirement of WAC 434-120-105(4), attesting that the figures of the solicitation report are consistent with the organization's annual financial statement; and a written list of the copies of any annual or periodic reports on file that were made by the charitable organization and its subsidiaries, or affiliates, if any, which substantiate the figures; and

(7) An irrevocable appointment of the secretary to receive service of process in non criminal proceedings:))

(5) All charitable solicitation organization registrations shall be signed by the president, treasurer, or comparable officer of the organization or, in the absence of officers, person responsible for the organization, whose signature shall be notarized.

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.

[AMENDATORY SECTION (Amending WSR 94-01-004, filed 12/1/93, effective 1/1/94)]

WAC 434-120-130 ((Auditing standards and requirements)) Financial standards. ((A charitable organization's solicitation report shall be signed by the following entities

who attest that the figures are consistent with the annual financial statement:

(1) ~~Those with a gross revenue of less than three hundred fifty thousand dollars a year, shall submit an annual solicitation report signed by the president and treasurer, or absent a board of directors and officers, two persons responsible for the organization, and the entity listed in the registration form as required by WAC 434-120-105(4) who prepared the financial statement or made the compilation, review, or audit report that supports the solicitation report; and~~

(2) ~~Those having a gross revenue of more than three hundred fifty thousand dollars annually, shall submit an annual solicitation report signed by the president, treasurer, and the entity listed in the registration form according to WAC 434-120-105(4) who made the "audit report" of the solicitation report.~~

Upon the written request of the secretary, attorney general, or county prosecutor, an organization shall submit an audit report for the year requested within thirty working days from the date of request.)

Upon the request of the attorney general, secretary or the county prosecutor, a charitable organization shall submit a financial statement containing, but not limited to, the following information within 30 days from date of request.

(1) The gross amount of the contributions pledged and the gross amount collected.

(2) The amount thereof, given or to be given to charitable purposes represented together with details as to the manner of distribution as may be required.

(3) The aggregate amount paid and to be paid for the expenses of such solicitation.

(4) The amounts paid to and to be paid to commercial fund raisers or charitable organizations.

(5) Copies of any annual or periodic reports furnished by the charitable organization, of its activities during or for the same fiscal period, to its parent organization, subsidiaries, or affiliates, if any.

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

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.

[AMENDATORY SECTION (Amending WSR 95-11-135, filed 5/24/95, effective 6/24/95)]

WAC 434-120-215 Form. (1) Commercial fund-raisers registering under this act shall use the commercial fund-raiser registration form available ~~((from the))~~ in the office of the corporations division. The Secretary of State shall develop a form in compliance with this rule. The Secretary's failure to affirmatively reject or return an incomplete registration or other filing that does not fully comply with these rules or chapter 19.09 RCW, shall not excuse the failure to comply. The secretary's acceptance of a registration or other filing which violates these rules or chapter 19.09 RCW shall not excuse the violation.

(2) A registration form is not complete, and will not be accepted for filing, unless it includes:

((a) The organization's name, physical and mailing address, and telephone number of the commercial fund-

raising entity and all names and addresses including without limitation all public or private postal box addresses under which contributions are solicited.

(b) The name(s); address(es); and telephone number(s); of the individual(s); responsible for the activities of the entity in Washington; and a list of the states and Canadian provinces in which the entity has solicited funds;

(2) The name(s), address(es), and telephone number(s) of the owner(s) and principal officer(s) of the commercial fund-raising entity; and the names of the three officers or employees receiving the greatest amount of compensation from the organization;

(3) The name and address of the entity that prepares, reviews, or audits the financial statement;

(4)(a) For an entity that has never before registered under the Solicitations Act, a solicitation report based on the aggregate financial fund-raising conducted in other states or, if an accounting year has not been completed in any state, a solicitation report filed by the end of the fourth operating month which reports actual financial information regarding the organization's first three months of operations in Washington, a three-month report containing actual financial information.

(b) For those who have previously conducted solicitations in Washington state, a solicitation report based on the previous accounting year. The report shall contain the following information:

(i) The number and types of fund-raising services conducted;

(ii) The name of each charitable organization to whom this entity has provided fund-raising services;

(iii) The total value of contributions received on behalf of each charitable organizations by or as response to the commercial fund-raiser, its affiliate or another entity retained by the commercial fund-raiser;

(iv) The actual amounts of money raised for each charitable organization after the fund-raising costs paid by each charitable organization has been deducted in accordance with the written agreement made prior to the solicitation;

(v) The name, address, and telephone number of any other commercial fund-raiser retained in the conduct of providing fund-raising services;

(5)(a) For funds that were raised and paid on a net revenue basis to each contracting organization or for each campaign in which the charitable organization paid any portion of the expenses, a solicitation report consistent with the audited annual financial statement signed by the entity who is listed as required by subsection (3) of this regulation; or

(b) For funds that were raised and paid on a percentage of gross revenue basis, a solicitation report, which shows the total revenue from each campaign conducted for each individual organization and the amount received by each charitable organization. This report must be verified and signed by the entity, who is required to be listed in subsection (3) of this section, and the president or treasurer of the charitable organization for which the funds were raised. The fund-raiser shall submit individual solicitation reports for each campaign.)

(a) The name of the organization, and every address (including both physical address and any mailing address if different), telephone number(s), FAX number(s), of the

commercial fundraising entity under which contributions are being solicited or received, including any electronic mail or Internet addresses used by the organization;

(b) The name(s); address(es); and telephone number(s) of the individual(s) responsible for fundraising activities of the entity in Washington.

(c) If incorporated, the corporate name, unified business identifier number, state and date of incorporation, or if not incorporated, the type of organization and date established;

(d) The end date of its current fiscal year;

(e) The court or other forum, case number and title of all legal actions, if any, in which a judgment or final order was entered, or action is currently pending, against any organization or individual required to be identified in the registration. "Actions" include any administrative or judicial proceeding alleging that the entity has failed to comply with these rules, chapter 19.09 RCW, or state or federal laws pertaining to taxation, revenue, charitable solicitation, or recordkeeping, whether such action has been instituted by a public agency or a private person or entity;

(f) A list of all states where the organization is registered for fundraising, including any other names under which the organization is currently registered or has been registered in the past three years;

(g) The name, address, and telephone number of the officers or of persons accepting responsibility for the organization;

(h) The names of the three officers or employees receiving the greatest amount of compensation from the organization;

(k) The name and address of the person or entity with authority for the preparation of financial statements or the maintenance of financial information on behalf of the organization;

(l) The name, address and telephone number of an individual with expenditure authority who can respond to questions regarding expenditures of funds, and the names and addresses of any charitable organizations who have given the commercial fund raiser authority to expend funds or incur obligations on behalf of the organization.

(m) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305;

(n) A solicitation report of the fund-raising activities of the entity for the preceding fiscal year including:

(i) The types of fund-raising services conducted;

(ii) The name of each charitable organization to whom this entity has provided fundraising services;

(iii) The total dollar value of the following:

(A) Contributions received, either by your organization or the charities with whom you contract, as a result of services provided by your organization during the year shown above. (This is the total amount of money raised, regardless of who has possession of funds.)

(B) Funds either retained by, or paid to, the charities with whom you contract, after your fees and any expenses have been subtracted. (This is the portion of money raised that the charities receive or keep after all fund-raising expenses have been deducted.)

(iv) The name, address, and telephone number of any other commercial fund-raiser retained in the conduct of providing fundraising services.

(o) The form shall also include a space within which any the organization may provide additional information which the organization believes would be of assistance in understanding other reported information, or to provide context for reported information.

(3) Solicitation reports shall not report estimates, but shall report actual figures. If the organization did not directly or indirectly conduct any fundraising activities in the previous accounting year, it shall file a supplemental registration form no later than the end of the ninth month after registering which provides a complete solicitation report with actual figures from the first six months of activity after registering.

(4) All commercial fund-raisers registrations shall be signed by an officer or owner of the commercial fund-raiser.

~~((5)(a) For funds that were raised and paid on a net revenue basis to each contracting organization or for each campaign in which the charitable organization paid any portion of the expenses, a solicitation report consistent with the audited annual financial statement signed by the entity who is listed as required by subsection (3) of this regulation; or~~

~~(b) For funds that were raised and paid on a percentage of gross revenue basis, a solicitation report, which shows the total revenue from each campaign conducted for each individual organization and the amount received by each charitable organization. This report must be verified and signed by the entity, who is required to be listed in subsection (3) of this section, and the president or treasurer of the charitable organization for which the funds were raised. The fund-raiser shall submit individual solicitation reports for each campaign.~~

~~(6) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings.~~

~~All commercial fund-raiser registrations shall be signed by an officer or owner of the commercial fund-raiser.))~~

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.

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

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.

[AMENDATORY SECTION (Amending WSR 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94)]

~~WAC 434-120-255 ((Auditing standards and requirements)) Financial standards. ((Each commercial fund-raiser shall make one or more annual solicitation reports for each campaign conducted or in which it participated, whether engaged by another commercial fund-raiser or by a charitable organization to solicit or conduct a solicitation. Each solicitation report shall be signed by the entity listed under WAC 434-120-215(3) who attests that the figures are consistent with the annual financial statement.~~

~~(1) Those whose solicitations or offers to solicit result in less than three hundred fifty thousand dollars from all contributions made on behalf of charitable organizations in~~

WSR 97-08-077
PROPOSED RULES
FOREST PRACTICES BOARD

[Filed April 2, 1997, 8:59 a.m.]

~~Washington shall have on file for three years the complete compilation, review, or audit report of the financial statement that was filed in the form of a solicitations report and signed by the entity named as required by WAC 434-120-215(3).~~

~~(2) Those whose solicitations and offers to solicit result in more than three hundred fifty thousand dollars from all contributions made on behalf of charitable organizations in the state of Washington shall have on file an audit report of the financial statement that was filed in the form of a solicitation report and signed by the entity named as required by WAC 434-120-215(3).~~

~~(3)(a) A commercial fund raiser who engages another commercial fund raiser to solicit funds or conduct a solicitation on behalf of a charitable organization is responsible for and shall include the total contributions and the total expenses related to that campaign in its solicitations report of that campaign.~~

~~(b) If a reporting commercial fund raiser's contributions and expenses for a campaign are included in another commercial fund raiser's solicitations report, the reporting fund raiser shall list in its report the name of that fund raiser, the name of the charitable organization, the dates of the campaign, and the total contributions and expenses for which it was responsible.~~

~~The annual financial statement in the form of a solicitation report, as verified in accordance with the auditing standards, shall be filed with the application required in WAC 434-124-215.~~

~~(4) Upon written demand by the secretary, the attorney general, or the county prosecutor, a commercial fund raiser shall submit an audit report for the year requested within thirty working days.)) Upon the request of the attorney general, secretary or the county prosecutor, a commercial fund-raiser shall submit a financial statement containing, but not limited to, the following information within 30 days from date of request.~~

(1) The gross amount of the contributions pledged and the gross amount collected.

(2) The amount thereof, retained by the charitable organization, given or to be given to charitable organizations represented together with details as to the manner of distribution as may be required.

(3) The aggregate amount paid and to be paid for the expenses of such solicitation.

(4) The amounts paid to and to be paid to charitable organizations.

(5) Copies of any annual or periodic reports furnished by the fundraising organization, of its activities during or for the same fiscal period, to its parent organization, subsidiaries, or affiliates, if any.

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

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.

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.

Supplemental Notice to WSR 94-17-156, 95-04-073, 95-14-028, 95-24-093, 96-04-076, 96-05-090, 96-09-099, 96-13-004, and 96-20-120.

Preproposal statement of inquiry was filed as WSR 94-13-066.

Title of Rule: Amendment to forest practices rules, Title 222 WAC.

Purpose: The purpose of this proposed rule is to identify critical wildlife habitat (state) for the marbled murrelet.

Statutory Authority for Adoption: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050.

Statute Being Implemented: Chapter 76.09 RCW.

Summary: Alternative 1 - Occupied Stand Approach: Amends WAC 222-16-010 and 222-16-080.

Alternative 2 - Marbled Murrelet Watershed Administrative Unit Approach: Amends WAC 222-16-010 and 222-16-080.

Alternative 3 - DNR Staff Proposal for Marbled Murrelets: Amends WAC 222-12-090, 222-16-010, 222-16-080, 222-24-030, 222-30-050, 222-30-060, 222-30-065, 222-30-070 and 222-30-100; and new sections WAC 222-10-042 and 222-16-087.

Reasons Supporting Proposal: This rule was originally proposed and published in the same notices as the proposed rules for the northern spotted owl. The Forest Practices Board adopted the owl rules on May 22, 1996, but continued the marbled murrelet portions of the proposal. A Forest Practices Board committee reviewed the original proposal in light of new information. The board directed on March 25, 1997, that the alternatives shown below be filed as a supplemental notice.

Name of Agency Personnel Responsible for Drafting: Judith Holter, 1111 Washington Street S.E., Olympia, WA 98504-7012, (360) 902-1412; Implementation and Enforcement: John Edwards, 1111 Washington Street S.E., Olympia, WA 98504-7012, (360) 902-1730.

Name of Proponent: Forest Practices Board, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These proposed rules identify critical wildlife habitat (state) for a threatened species, the marbled murrelet. Any applications for forest practices within such habitat are classed as Class IV-Special and require additional environmental review in order to identify the potential for substantial material damage to public resources. The proposal's purpose is to identify and classify as Class IV-Special all forest practices that have the potential for a substantial adverse impact on the environment because of impacts on marbled murrelets.

Two alternatives were originally proposed for the marbled murrelet: (1) The occupied stand approach; and (2) the marbled murrelet watershed administrative unit approach. This supplemental notice adds the DNR staff proposal as a third alternative. All three approaches identify critical wildlife habitat (state).

The Forest Practices Board is soliciting public comments on these alternatives. A final environmental impact statement on the first two alternatives was published in May 1996. A draft supplemental EIS was prepared on the detection area approach alternatives, and a final supplemental EIS is being prepared. Copies of environmental documents can be obtained by contacting the Forest Practices Board secretary at the address listed below.

Proposal Changes the Following Existing Rules: Changes to existing rules include: For the marbled murrelet, each alternative includes new definitions and identifies critical wildlife habitat (state).

The Department of Natural Resources staff alternative adds SEPA guidance, a marbled murrelet special landscape, and criteria for avoiding disturbance to occupied marbled murrelet sites during the critical nesting season.

A small business economic impact statement has been prepared under chapter 19.85 RCW. The small business economic impact statement was filed as WSR 95-24-096 and published in WSR 96-01.

A copy of the statement may be obtained by writing to Forest Practices Board Recording Secretary, Department of Natural Resources, Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1413, or FAX (360) 902-1784.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. A statement of proposed rule making under RCW 34.05.320 for this rule making was filed prior to July 23, 1995. See WSR 94-17-156.

Hearing Location: Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA, on June 24, 1997, at 5 p.m.

Assistance for Persons with Disabilities: Contact Forest Practices Board Recording Secretary by June 15, 1997, TDD (360) 902-1431, or (360) 902-1413.

Submit Written Comments to: Judith Holter, Department of Natural Resources, Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, FAX (360) 902-1784, by June 24, 1997.

Date of Intended Adoption: July 10, 1997.

March 31, 1997

Jennifer M. Belcher

Commissioner of Public Lands

FOREST PRACTICES BOARD PROPOSED RULES FOR THE MARBLED MURRELET OCCUPIED STAND APPROACH

AMENDATORY SECTION (Amending WSR 96-12-038, filed 5/31/96, effective 7/1/96)

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: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); 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, whitepine, crabapple, or aspen, and may be associated with open water. This includes nutrient-poor fens. See the *Forest Practices Board Manual*.

"**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.

"Cooperative spotted owl habitat enhancement agreement (CHEA)" see WAC 222-16-100(2).

"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 nesting season" means for marbled murrelets - April 1 to August 15.

"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.

"Daily peak activity" means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

"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.

"Demographic support" means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

"Department" means the department of natural resources.

"Dispersal habitat" see WAC 222-16-085(2).

"Dispersal support" means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat found within RMZs, WMZs or other required and voluntary leave areas.

"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, hard-stem bulrush and cattails; fens may have an overstory of spruce 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.

"Median home range circle" means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

"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.

"Northern spotted owl site center" means the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

- Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.
- Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.
- Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"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.

"Occupied marbled murrelet site" means a contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occurs:

- A nest is located; or
- Downy chicks or eggs or egg shells are found; or
- Marbled murrelets are detected flying below, through, into or out of the forest canopy; or
- Birds calling from a stationary location within the area; or
- Birds circling above the canopy; or
- A contiguous forested area which is not suitable marbled murrelet habitat in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

The outer perimeter of the occupied site shall be presumed to be the beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat." For sites defined above, it shall be the beginning of any gap greater than 300 feet wide where one or more of the distinguishing vegetative characteristics important to murrelets is lacking.

The department shall rely upon the department of fish and wildlife for the determination of location of these occupied marbled murrelet sites.

"Old forest habitat" see WAC 222-16-085 (1)(a).

"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.

"SOSEA goals" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"Spotted owl dispersal habitat" see WAC 222-16-085(2).

"Spotted owl special emphasis areas (SOSEA)" means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

"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.

"Sub-mature habitat" see WAC 222-16-085 (1)(b).

"Suitable marbled murrelet habitat" means a contiguous forested area with all of the following characteristics:

- Within 40 miles of marine waters;
- Containing at least eight trees per acre equal to or greater than 32 inches dbh;
- At least 40% of the trees equal to or greater than 32 inches are Douglas-fir, western hemlock, western red cedar or sitka spruce; and
- Containing at least two nesting platforms per acre. Nesting platforms shall include any horizontal limb, tree structure, or deformity equal to or greater than seven inches in diameter and 50 feet or more in height above the ground.

"Suitable spotted owl habitat" see WAC 222-16-085(1).

"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.

"Young forest marginal habitat" see WAC 222-16-085 (1)(b).

AMENDATORY SECTION (Amending WSR 96-12-038, filed 5/31/96, effective 7/1/96)

WAC 222-16-080 Critical wildlife habitats (state) and critical habitat (federal) of threatened and endangered species. (1) Critical wildlife habitats (state) of threatened or endangered species and specific forest practices designated as Class IV-Special are as follows:

(a) Bald eagle - harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of a known active nest site, documented by the department of wildlife, between the dates of January 1 and August 15 or 0.25 mile at other times of the year; and within 0.25 mile of a communal roosting site. Communal roosting sites shall not include refuse or garbage dumping sites.

(b) Gray wolf - harvesting, road construction, or site preparation within 1 mile of a known active den site, documented by the department of wildlife, between the dates of March 15 and July 30 or 0.25 mile from the den site at other times of the year.

(c) Grizzly bear - harvesting, road construction, aerial application of pesticides, or site preparation within 1 mile of a known active den site, documented by the department of wildlife, between the dates of October 1 and May 30 or 0.25 mile at other times of the year.

(d) Mountain caribou - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active breeding area, documented by the department of wildlife.

(e) Oregon silverspot butterfly - harvesting, road construction, aerial or ground application of pesticides, or site preparation within 0.25 mile of an individual occurrence, documented by the department of wildlife.

(f) Peregrine falcon - harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of a known active nest site, documented by the department of wildlife, between the dates of March 1 and July 30; or harvesting, road construction, or aerial application of pesticides within 0.25 mile of the nest site at other times of the year.

(g) Sandhill crane - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active nesting area, documented by the department of wildlife.

(h) Northern spotted owl - the following shall apply through June 30, 1996: Harvesting, road construction, or aerial application of pesticides on the most suitable 500 acres of nesting, roosting, and foraging habitat surrounding the northern spotted owl site center. The most suitable habitat shall be determined by the department in cooperation with the department of fish and wildlife, tribes, and others with applicable expertise. Consideration shall be given to habitat quality, proximity to the activity center and contiguity in selecting the most suitable 500 acres of habitat.

Beginning July 1, 1996, the following shall apply for the northern spotted owl:

(i) **Within a SOSEA boundary** (see maps in WAC 222-16-086), except as indicated in (h)(ii) of this subsection, harvesting, road construction, or aerial application of pesticides on suitable spotted owl habitat within a median home range circle that is centered within the SOSEA or on adjacent federal lands.

(ii) **Within the Entiat SOSEA**, harvesting, road construction, or aerial application of pesticides within the areas indicated for demographic support (see WAC 222-16-086(2)) on suitable spotted owl habitat located within a median home range circle that is centered within the demographic support area.

(iii) **Outside of a SOSEA**, harvesting, road construction, or aerial application of pesticides, between March 1 and August 31 on the seventy acres of highest quality suitable spotted owl habitat surrounding a northern spotted owl site center located outside a SOSEA. The highest quality suitable habitat shall be determined by the department in cooperation with the department of fish and wildlife. Consideration shall be given to habitat quality, proximity to the activity center and contiguity.

(iv) **Small parcel northern spotted owl exemption.** Forest practices proposed on the lands owned or controlled by a landowner whose forest land ownership within the SOSEA is less than or equal to 500 acres and where the forest practice is not within 0.7 mile of a northern spotted owl site center shall not be considered to be on lands designated as critical wildlife habitat (state) for northern spotted owls.

(i) Western pond turtle - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known individual occurrence, documented by the department of wildlife.

(j) Marbled murrelet.

(i) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within an occupied marbled murrelet site.

(ii) Operation of heavy equipment, during the critical nesting season, within an occupied marbled murrelet site.

(iii) Use of aircraft below 1,300 feet above ground level, during the critical nesting season, over an occupied marbled murrelet site or the required managed buffer zone adjacent to that site.

(iv) Harvesting within a 300 foot wide managed buffer zone adjacent to an occupied marbled murrelet site that results in less than a residual stem stand density of 75 trees per acre greater than 6 inches dbh; provided that 25 of which shall be greater than 12 inches dbh including five trees greater than 20 inches dbh, where they exist. The primary consideration for the design of managed buffer zone widths and leave tree retention patterns shall be to mediate edge effects. The width of the buffer zone may be reduced in some areas to a minimum of 200 feet and extended to a maximum of 400 feet as long as an average of 300 feet is maintained.

(v) Blasting and slash burning, during the critical nesting season, within 0.25 mile of an occupied marbled murrelet site.

(vi) Harvesting, road construction, operation of heavy equipment, timber hauling, or use of aircraft below 1,300 feet above ground level, during the daily peak activity

periods within the critical nesting season, within 0.25 mile of an occupied marbled murrelet site.

(vii) Marbled murrelet critical wildlife habitat (state) shall not include habitat where a current marbled murrelet survey has been conducted and no use of the suitable marbled murrelet habitat by a bird has been detected. Surveys shall be conducted utilizing a survey protocol which is acceptable to the department of fish and wildlife.

(viii) Site status determination and completion of marbled murrelet surveys shall not be a landowner responsibility.

(ix) This rule is intended to be interim and shall be changed as necessary, such as upon completion of a state or federal recovery plan for the marbled murrelet or significant new information.

(2) The following critical habitats (federal) designated by the United States Secretary of the Interior, or specific forest practices within those habitats, have been determined to not have the potential for a substantial impact on the environment:

None listed.

(3) For the purpose of identifying forest practices which have the potential for a substantial impact on the environment with regard to threatened or endangered species newly listed by the Washington fish and wildlife commission and/or the United States Secretary of the Interior, the department shall after consultation with the department of fish and wildlife, prepare and submit to the board a proposed list of critical wildlife habitats (state) of threatened or endangered species. This list shall be submitted to the board within 15 days of the listing of the species. The department shall, at a minimum, consider potential impacts of forest practices on habitats essential to meeting the life requisites for each species listed as threatened or endangered. Those critical wildlife habitats (state) adopted by the board shall be added to the list in subsection (1) of this section. See WAC 222-16-050 (1)(b)(i).

(4) For the purpose of identifying any areas and/or forest practices within critical habitats (federal) designated by the United States Secretary of the Interior which do not have the potential for a substantial impact on the environment, the department shall, after consultation with the department of fish and wildlife, submit to the board a proposed list of any forest practices and/or areas proposed for exclusion from Class IV - special forest practices. The department shall submit the list to the board within 120 days of the date the United States Secretary of the Interior publishes a final rule designating critical habitat (federal) in the Federal Register. Those critical habitats excluded by the board from Class IV - Special shall be added to the list in subsection (2) of this section. See WAC 222-16-050 (1)(b)(ii).

(5)(a) Except for bald eagles under subsection (1)(a) of this section, the critical wildlife habitats (state) of threatened and endangered species and specific forest practices designated in subsection (1) of this section are intended to be interim. These interim designations shall expire for a given species on the earliest of:

(i) The effective date of a regulatory system for wildlife protection referred to in (b) of this subsection or of substantive rules on the species.

(ii) The delisting of a threatened or endangered species by the Washington fish and wildlife commission.

(b) The board shall examine current wildlife protection and department authority to protect wildlife and develop and recommend a regulatory system, including baseline rules for wildlife protection. To the extent possible, this system shall:

(i) Use the best science and management advice available;

(ii) Use a landscape approach to wildlife protection;

(iii) Be designed to avoid the potential for substantial impact to the environment;

(iv) Protect known populations of threatened and endangered species of wildlife from negative effects of forest practices consistent with RCW 76.09.010; and

(v) Consider and be consistent with recovery plans adopted by the department of fish and wildlife pursuant to RCW 77.12.020(6) or habitat conservation plans or 16 U.S.C. 1533(d) rule changes of the Endangered Species Act.

(6) Regardless of any other provision in this section, forest practices applications shall not be classified as Class IV-Special based on critical wildlife habitat (state) (WAC 222-16-080(1)) or critical habitat (federal) (WAC 222-16-050(1)(b)(ii)) for a species if the forest practices are consistent with one of the following proposed for protection of the species:

(a) A habitat conservation plan and permit or an incidental take statement covering such species approved by the Secretary of the Interior or Commerce pursuant to 16 U.S.C. §1536 (b) or 1539 (a); an "unlisted species agreement" covering such species approved by the U.S. Fish and Wildlife Service or National Marine Fisheries Service; or a "no-take letter" or other cooperative or conservation agreement entered into with a federal or state fish and wildlife agency pursuant to its statutory authority for fish and wildlife protection that addresses the needs of the affected species and that is subject to review under the National Environmental Protection Act, 42 U.S.C. §4321 et seq., or the State Environmental Policy Act, chapter 43.21C RCW, as applicable;

(b) A rule adopted by the U.S. Fish and Wildlife Service for the conservation of a particular threatened species pursuant to 16 U.S.C. 1533(d);

(c) A special wildlife management plan (SWMP) developed by the landowner and approved by the department in consultation with the department of fish and wildlife;

(d) A bald eagle management plan approved under WAC 232-12-292;

(e) A landowner option plan (LOP) for northern spotted owls developed pursuant to WAC 222-16-100(1); or

(f) A cooperative spotted owl habitat enhancement agreement (CHEA) developed pursuant to WAC 222-16-100(2).

In those situations where one of the options above has been used, forest practices applications may still be classified as Class IV-Special based upon the presence of one or more of the factors listed in WAC 222-16-050(1), other than critical wildlife habitat (state) or critical habitat (federal) for the species covered by the existing plan.

(7) The department, in consultation with the department of fish and wildlife, shall review each SOSEA to determine whether the goals for that SOSEA are being met through approved plans, permits, statements, letters, or agreements

referred to in subsection (6) of this section. Based on the consultation, the department shall recommend to the board the suspension, deletion, modification or reestablishment of the applicable SOSEA from the rules. The department shall conduct a review for a particular SOSEA upon approval of a landowner option plan, a petition from a landowner in the SOSEA, or under its own initiative.

(8) The department, in consultation with the department of fish and wildlife, shall report annually to the board on the status of the northern spotted owl to determine whether circumstances exist that substantially interfere with meeting the goals of the SOSEAs.

FOREST PRACTICES BOARD PROPOSED RULES FOR THE MARBLED MURRELET MM-WATERSHED ADMINISTRATIVE UNIT APPROACH

AMENDATORY SECTION (Amending WSR 96-12-038, filed 5/31/96, effective 7/1/96)

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: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); 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, whitepine, crabapple, or aspen, and may be associated with open water. This includes nutrient-poor fens. See the *Forest Practices Board Manual*.

"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.

"Cooperative spotted owl habitat enhancement agreement (CHEA)" see WAC 222-16-100(2).

"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 nesting season" means for marbled murrelets - April 1 to August 15.

"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.

"Daily peak activity" means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

"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.

"Demographic support" means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

"Department" means the department of natural resources.

"Dispersal habitat" see WAC 222-16-085(2).

"Dispersal support" means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat found within RMZs, WMZs or other required and voluntary leave areas.

"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, hard-stem bulrush and cattails; fens may have an overstory of spruce 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, intermedi-

ate 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.

"Marbled murrelet - watershed administrative units (MM-WAU)" means those watershed administrative units containing an occupied marbled murrelet site or in which a marbled murrelet has been detected and documented by the department of fish and wildlife.

"Median home range circle" means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

"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.

"Northern spotted owl site center" means the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.

Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.

Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"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.

"Occupied marbled murrelet site" means a stand of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occurs:

- Stands where a nest is located; or
- Stands where downy chicks or eggs or egg shells are found; or
- Stands where marbled murrelets are detected flying below, through, into or out of the forest canopy within or adjacent to a stand; or
- Birds calling from a stationary location within the stand; or
- Birds circling above the canopy.

The department shall rely upon the department of fish and wildlife for the determination of location of these occupied marbled murrelet sites.

"Old forest habitat" see WAC 222-16-085 (1)(a).

"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.

"**SOSEA goals**" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"**Spoil**" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"**Spotted owl dispersal habitat**" see WAC 222-16-085(2).

"**Spotted owl special emphasis areas (SOSEA)**" means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

"**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.

"**Sub-mature habitat**" see WAC 222-16-085 (1)(b).

"**Suitable marbled murrelet habitat**" means timber stands with all of the following characteristics:

- Within 40 miles of marine waters;
- Containing at least eight trees per acre equal to or greater than 32 inches dbh;
- At least 40% of the trees equal to or greater than 32 inches are Douglas-fir, western hemlock, western red cedar or sitka spruce;
- Containing at least two nesting platforms per acre. Nesting platforms shall include any horizontal limb, tree structure, or deformity equal to or greater than seven inches in diameter and 50 feet or more in height above the ground;
- At least (5) (10) (25) acres in size; or

- Any stand identified as an occupied marbled murrelet site documented by the department of fish and wildlife.

"**Suitable spotted owl habitat**" see WAC 222-16-085(1).

"**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.

"**Young forest marginal habitat**" see WAC 222-16-085 (1)(b).

AMENDATORY SECTION (Amending WSR 96-12-038, filed 5/31/96, effective 7/1/96)

WAC 222-16-080 Critical wildlife habitats (state) and critical habitat (federal) of threatened and endangered species. (1) Critical wildlife habitats (state) of threatened or endangered species and specific forest practices designated as Class IV-Special are as follows:

(a) Bald eagle - harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of a known active nest site, documented by the department of wildlife, between the dates of January 1 and August 15 or 0.25 mile at other times of the year; and within 0.25 mile of a communal roosting site. Communal roosting sites shall not include refuse or garbage dumping sites.

(b) Gray wolf - harvesting, road construction, or site preparation within 1 mile of a known active den site, documented by the department of wildlife, between the dates of March 15 and July 30 or 0.25 mile from the den site at other times of the year.

(c) Grizzly bear - harvesting, road construction, aerial application of pesticides, or site preparation within 1 mile of a known active den site, documented by the department of wildlife, between the dates of October 1 and May 30 or 0.25 mile at other times of the year.

(d) Mountain caribou - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active breeding area, documented by the department of wildlife.

(e) Oregon silverspot butterfly - harvesting, road construction, aerial or ground application of pesticides, or site preparation within 0.25 mile of an individual occurrence, documented by the department of wildlife.

(f) Peregrine falcon - harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of a known active nest site, documented by the department of wildlife, between the dates of March 1 and July 30; or harvesting, road construction, or aerial application of pesticides within 0.25 mile of the nest site at other times of the year.

(g) Sandhill crane - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active nesting area, documented by the department of wildlife.

(h) Northern spotted owl - the following shall apply through June 30, 1996: Harvesting, road construction, or aerial application of pesticides on the most suitable 500 acres of nesting, roosting, and foraging habitat surrounding the northern spotted owl site center. The most suitable habitat shall be determined by the department in cooperation with the department of fish and wildlife, tribes, and others with applicable expertise. Consideration shall be given to habitat quality, proximity to the activity center and contiguity in selecting the most suitable 500 acres of habitat.

Beginning July 1, 1996, the following shall apply for the northern spotted owl:

(i) **Within a SOSEA boundary** (see maps in WAC 222-16-086), except as indicated in (h)(ii) of this subsection, harvesting, road construction, or aerial application of pesticides on suitable spotted owl habitat within a median home range circle that is centered within the SOSEA or on adjacent federal lands.

(ii) **Within the Entiat SOSEA**, harvesting, road construction, or aerial application of pesticides within the areas indicated for demographic support (see WAC 222-16-086(2)) on suitable spotted owl habitat located within a median home range circle that is centered within the demographic support area.

(iii) **Outside of a SOSEA**, harvesting, road construction, or aerial application of pesticides, between March 1 and August 31 on the seventy acres of highest quality suitable spotted owl habitat surrounding a northern spotted owl site center located outside a SOSEA. The highest quality suitable habitat shall be determined by the department in cooperation with the department of fish and wildlife. Consideration shall be given to habitat quality, proximity to the activity center and contiguity.

(iv) **Small parcel northern spotted owl exemption.** Forest practices proposed on the lands owned or controlled by a landowner whose forest land ownership within the SOSEA is less than or equal to 500 acres and where the forest practice is not within 0.7 mile of a northern spotted owl site center shall not be considered to be on lands designated as critical wildlife habitat (state) for northern spotted owls.

(i) Western pond turtle - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known individual occurrence, documented by the department of wildlife.

(j) Marbled murrelet.

(i) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within an occupied marbled murrelet site.

(ii) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction in suitable

marbled murrelet habitat within a MM-WAU, provided that, marbled murrelet critical wildlife habitat (state) shall not include suitable marbled murrelet habitat within a MM-WAU where a current marbled murrelet survey has been conducted and no use of the suitable marbled murrelet habitat by a bird has been detected. Surveys shall be conducted utilizing a survey protocol which is acceptable to the department of fish and wildlife.

(iii) Operation of heavy equipment, during the critical nesting season, within an occupied marbled murrelet site.

(iv) Use of aircraft below 1,300 feet above ground level, during the critical nesting season, over an occupied marbled murrelet site or the required managed buffer zone adjacent to that site.

(v) Harvesting within a 300 foot wide managed buffer zone adjacent to an occupied marbled murrelet site that results in less than a residual stem stand density of 75 trees per acre greater than 6 inches dbh; provided that 25 of which shall be greater than 12 inches dbh including five trees greater than 20 inches dbh, where they exist. The primary consideration for the design of managed buffer zone widths and leave tree retention patterns shall be to mediate edge effects. The width of the buffer zone may be reduced in some areas to a minimum of 200 feet and extended to a maximum of 400 feet as long as an average of 300 feet is maintained.

(vi) Blasting and slash burning, during the critical nesting season, within 0.25 mile of an occupied marbled murrelet site.

(vii) Harvesting, road construction, operation of heavy equipment, timber hauling, or use of aircraft below 1,300 feet above ground level, during the daily peak activity periods within the critical nesting season, within 0.25 mile of an occupied marbled murrelet site.

(viii) Site status determination and completion of marbled murrelet surveys shall not be a landowner responsibility.

(ix) This rule is intended to be interim and shall be changed as necessary, such as upon completion of a state or federal recovery plan for the marbled murrelet or significant new information.

(2) The following critical habitats (federal) designated by the United States Secretary of the Interior, or specific forest practices within those habitats, have been determined to not have the potential for a substantial impact on the environment:

None listed.

(3) For the purpose of identifying forest practices which have the potential for a substantial impact on the environment with regard to threatened or endangered species newly listed by the Washington fish and wildlife commission and/or the United States Secretary of the Interior, the department shall after consultation with the department of fish and wildlife, prepare and submit to the board a proposed list of critical wildlife habitats (state) of threatened or endangered species. This list shall be submitted to the board within 15 days of the listing of the species. The department shall, at a minimum, consider potential impacts of forest practices on habitats essential to meeting the life requisites for each species listed as threatened or endangered. Those critical wildlife habitats (state) adopted by the board shall be added

to the list in subsection (1) of this section. See WAC 222-16-050 (1)(b)(i).

(4) For the purpose of identifying any areas and/or forest practices within critical habitats (federal) designated by the United States Secretary of the Interior which do not have the potential for a substantial impact on the environment, the department shall, after consultation with the department of fish and wildlife, submit to the board a proposed list of any forest practices and/or areas proposed for exclusion from Class IV - special forest practices. The department shall submit the list to the board within 120 days of the date the United States Secretary of the Interior publishes a final rule designating critical habitat (federal) in the Federal Register. Those critical habitats excluded by the board from Class IV - Special shall be added to the list in subsection (2) of this section. See WAC 222-16-050 (1)(b)(ii).

(5)(a) Except for bald eagles under subsection (1)(a) of this section, the critical wildlife habitats (state) of threatened and endangered species and specific forest practices designated in subsection (1) of this section are intended to be interim. These interim designations shall expire for a given species on the earliest of:

(i) The effective date of a regulatory system for wildlife protection referred to in (b) of this subsection or of substantive rules on the species.

(ii) The delisting of a threatened or endangered species by the Washington fish and wildlife commission.

(b) The board shall examine current wildlife protection and department authority to protect wildlife and develop and recommend a regulatory system, including baseline rules for wildlife protection. To the extent possible, this system shall:

(i) Use the best science and management advice available;

(ii) Use a landscape approach to wildlife protection;

(iii) Be designed to avoid the potential for substantial impact to the environment;

(iv) Protect known populations of threatened and endangered species of wildlife from negative effects of forest practices consistent with RCW 76.09.010; and

(v) Consider and be consistent with recovery plans adopted by the department of fish and wildlife pursuant to RCW 77.12.020(6) or habitat conservation plans or 16 U.S.C. 1533(d) rule changes of the Endangered Species Act.

(6) Regardless of any other provision in this section, forest practices applications shall not be classified as Class IV-Special based on critical wildlife habitat (state) (WAC 222-16-080(1)) or critical habitat (federal) (WAC 222-16-050 (1)(b)(ii)) for a species if the forest practices are consistent with one of the following proposed for protection of the species:

(a) A habitat conservation plan and permit or an incidental take statement covering such species approved by the Secretary of the Interior or Commerce pursuant to 16 U.S.C. §1536 (b) or 1539 (a); an "unlisted species agreement" covering such species approved by the U.S. Fish and Wildlife Service or National Marine Fisheries Service; or a "no-take letter" or other cooperative or conservation agreement entered into with a federal or state fish and wildlife agency pursuant to its statutory authority for fish and wildlife protection that addresses the needs of the affected species and that is subject to review under the National

Environmental Protection Act, 42 U.S.C. §4321 et seq., or the State Environmental Policy Act, chapter 43.21C RCW, as applicable;

(b) A rule adopted by the U.S. Fish and Wildlife Service for the conservation of a particular threatened species pursuant to 16 U.S.C. 1533(d);

(c) A special wildlife management plan (SWMP) developed by the landowner and approved by the department in consultation with the department of fish and wildlife;

(d) A bald eagle management plan approved under WAC 232-12-292;

(e) A landowner option plan (LOP) for northern spotted owls developed pursuant to WAC 222-16-100(1); or

(f) A cooperative spotted owl habitat enhancement agreement (CHEA) developed pursuant to WAC 222-16-100(2).

In those situations where one of the options above has been used, forest practices applications may still be classified as Class IV-Special based upon the presence of one or more of the factors listed in WAC 222-16-050(1), other than critical wildlife habitat (state) or critical habitat (federal) for the species covered by the existing plan.

(7) The department, in consultation with the department of fish and wildlife, shall review each SOSEA to determine whether the goals for that SOSEA are being met through approved plans, permits, statements, letters, or agreements referred to in subsection (6) of this section. Based on the consultation, the department shall recommend to the board the suspension, deletion, modification or reestablishment of the applicable SOSEA from the rules. The department shall conduct a review for a particular SOSEA upon approval of a landowner option plan, a petition from a landowner in the SOSEA, or under its own initiative.

(8) The department, in consultation with the department of fish and wildlife, shall report annually to the board on the status of the northern spotted owl to determine whether circumstances exist that substantially interfere with meeting the goals of the SOSEAs.

FOREST PRACTICES BOARD PROPOSED RULES FOR THE MARBLED MURRELET DNR STAFF PROPOSAL

NEW SECTION

WAC 222-10-042 Marbled murrelets. The effective date of this section is July 1, 1997. The following policies shall apply to forest practices subject to SEPA where the forest practices may cause adverse impacts to marbled murrelets.

(1) Within marbled murrelet detection areas, marbled murrelet habitat containing 2 or more platforms per acre in stands 7 acres and greater as determined by the methodology identified in WAC 222-12-090(14), in the absence of more site specific data including but not limited to survey information, stand data, stand status, fire or wind history, is assumed to have a higher likelihood of marbled murrelet presence. Forest practices that will adversely impact this habitat will have a probable significant adverse impact on the environment.

(2) Within stands of 7 acres and greater containing 6 or more platforms per acre, in the absence of more site specific

PROPOSED

data, including but not limited to survey information, stand data, stand status, fire or wind history, it is assumed that these stands have a high likelihood of marbled murrelet presence. Forest practices that will adversely impact these stands will have a probable significant adverse impact on the environment.

(3) Within the southwest special landscape, marbled murrelet habitat containing 4 or more platforms per acre in stands 7 acres and greater as determined by the methodology identified in WAC 222-12-090(14) is assumed to have a high likelihood of marbled murrelet presence. Forest practices that will adversely impact this habitat will have a probable significant adverse impact on the environment.

(4) Adequate suitable marbled murrelet habitat and a 300 foot buffer adjacent to the stand should be maintained to protect the site nesting and rearing viability of the marbled murrelets associated with each occupied site.

(5) When determining whether a forest practice will have a probable significant adverse impact on the environment, the department shall evaluate the impacts on the state-wide, regional (Southwest Washington, Olympic Peninsula, Hood Canal, North Puget Sound, South Puget Sound and South Cascades) and local (within the detection area) marbled murrelet populations and associated habitats. The department should consider a variety of information including but not limited to survey data, habitat quality and patch size, the amount of edge in relation to the area of habitat, amount of interior habitat, distance from saltwater, detection rates at the site center, the amount and quality of habitat, the likelihood of predation and the recovery goals for the marbled murrelet.

(6) When a landowner has a federally approved "safe harbor" agreement and harvesting is conducted in accordance with that agreement, the department in consultation with the department of fish and wildlife may conclude, depending on the adequacy of the agreement, that there is a low likelihood that forest practices will adversely impact this habitat and may not have a probable adverse impact on the environment.

AMENDATORY SECTION (Amending WSR 92-15-113, filed 7/21/92, effective 8/21/92)

WAC 222-12-090 Forest practices board manual. When approved by the board the manual serves as an advisory technical supplement to these forest practices regulations. The department, in cooperation with the departments of fisheries, wildlife, agriculture, ecology, and such other agencies, affected Indian tribes, or interested parties as may have appropriate expertise, is directed to prepare, and submit to the board for approval, revisions to the forest practices board manual. The manual shall include:

(1) **Method for determination of adequate shade requirements on streams** needed for use with WAC 222-30-040.

(2) **The standard methods** for measuring channel width, stream gradient and flow which are used in the water typing criteria WAC 222-16-030.

(3) **A chart** for establishing recommended permanent culvert sizes and associated data.

(4) **Guidelines** for clearing slash and debris from Type 4 and 5 Waters.

(5) **Guidelines** for landing location and construction.

(6) **Guidelines** for determining acceptable stocking levels.

(7) **Guidelines** for calculating average widths of riparian management zones.

(8) **Guidelines** for wetland delineation.

(9) **Guidelines** for wetland replacement or substitution.

(10) A list of nonnative wetland plant species.

(11) The standard methodology, which shall specify the quantitative methods, indices of resource conditions, and definitions, for conducting watershed analysis under chapter 222-22 WAC. The department, in consultation with Timber/Fish/Wildlife's Cooperative Monitoring, Evaluation and Research Committee (CMER), may make minor modifications to the version of the standard methodology approved by the board. Substantial amendments to the standard methodology requires approval by the board.

(12) A list of special concerns related to aerial application of pesticides developed under WAC 222-16-070(3).

(13)

(14) Survey protocol for marbled murrelets. The Pacific seabird survey protocol shall be used for determining presence and absence of marbled murrelets in a stand. The department shall, in consultation with the department of fish and wildlife, develop a protocol for determining the presence and number of platforms per acre in a stand.

AMENDATORY SECTION (Amending WSR 96-12-038, filed 5/31/96, effective 7/1/96)

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: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); 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, whitepine, crabapple, or aspen, and may be associated with open water. This includes nutrient-poor fens. See the *Forest Practices Board Manual*.

"**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.

"**Cooperative spotted owl habitat enhancement agreement (CHEA)**" see WAC 222-16-100(2).

"**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 nesting season**" means for marbled murrelets - April 1 to August 31.

"**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.

"**Daily peak activity**" means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

"**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.

"**Demographic support**" means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

"**Department**" means the department of natural resources.

"**Dispersal habitat**" see WAC 222-16-085(2).

"**Dispersal support**" means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat found within RMZs, WMZs or other required and voluntary leave areas.

"**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, hard-

stem bulrush and cattails; fens may have an overstory of spruce 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.

"Marbled murrelet detection area" means an area of land associated with a visual or audible detection of a

marbled murrelet, made by a qualified surveyor using the Pacific seabird protocol as identified in WAC 222-12-090(14). The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section (approximately 5,760 acres, more or less).

"Median home range circle" means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

"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.

"Northern spotted owl site center" means the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.

Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.

Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"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.

"Occupied marbled murrelet site" means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

(a) A nest is located; or

(b) Downy chicks or eggs or egg shells are found; or

(c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or

(d) Birds calling from a stationary location within the area; or

(e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1 mile from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or

(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(4) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1 mile from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(5) In determining the existence and location of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in compliance with survey protocols referenced in WAC 222-12-090(14).

"**Old forest habitat**" see WAC 222-16-085 (1)(a).

"**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.

"SOSEA goals" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"Spotted owl dispersal habitat" see WAC 222-16-085(2).

"Spotted owl special emphasis areas (SOSEA)" means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

"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.

"Sub-mature habitat" see WAC 222-16-085 (1)(b).

"Suitable marbled murrelet habitat" means a contiguous forested area with all of the following indicators:

(1) Within 50 miles of marine waters;

(2) At least 40% of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;

(3) Containing at least one nesting platform per acre in trees greater than or equal to 36 inches dbh. Nesting platforms shall include any horizontal limb, tree structure, or deformity equal to or greater than 7 inches in diameter and 50 feet or more in height above the ground; and

(4) At least 7 acres in size, including all timber containing nesting platforms within 300 feet of, and contiguous to, the trees described in (2) above; provided that

(5) Suitable marbled murrelet habitat does not include forested areas where the department, in consultation with the department of fish and wildlife, has reviewed an assessment of the habitat, conducted in accordance with the board manual by a wildlife biologist with appropriate expertise, and determined that the habitat is not likely to be occupied by marbled murrelets.

"Suitable spotted owl habitat" see WAC 222-16-085(1).

"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.

"Young forest marginal habitat" see WAC 222-16-085 (1)(b).

AMENDATORY SECTION (Amending WSR 96-12-038, filed 5/31/96, effective 7/1/96)

WAC 222-16-080 Critical wildlife habitats (state) and critical habitat (federal) of threatened and endangered species. (1) Critical wildlife habitats (state) of threatened or endangered species and specific forest practices designated as Class IV-Special are as follows:

(a) Bald eagle - harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of a known active nest site, documented by the department of wildlife, between the dates of January 1 and August 15 or 0.25 mile at other times of the year; and within 0.25 mile of a communal roosting site. Communal roosting sites shall not include refuse or garbage dumping sites.

(b) Gray wolf - harvesting, road construction, or site preparation within 1 mile of a known active den site, documented by the department of wildlife, between the dates of March 15 and July 30 or 0.25 mile from the den site at other times of the year.

(c) Grizzly bear - harvesting, road construction, aerial application of pesticides, or site preparation within 1 mile of a known active den site, documented by the department of wildlife, between the dates of October 1 and May 30 or 0.25 mile at other times of the year.

(d) Mountain caribou - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active breeding area, documented by the department of wildlife.

(e) Oregon silverspot butterfly - harvesting, road construction, aerial or ground application of pesticides, or site preparation within 0.25 mile of an individual occurrence, documented by the department of wildlife.

(f) Peregrine falcon - harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of a known active nest site, documented by the department of wildlife, between the dates of March 1 and July 30; or harvesting, road construction, or aerial application of pesticides within 0.25 mile of the nest site at other times of the year.

(g) Sandhill crane - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active nesting area, documented by the department of wildlife.

(h) Northern spotted owl - the following shall apply through June 30, 1996: Harvesting, road construction, or aerial application of pesticides on the most suitable 500 acres of nesting, roosting, and foraging habitat surrounding the northern spotted owl site center. The most suitable habitat shall be determined by the department in cooperation with the department of fish and wildlife, tribes, and others with applicable expertise. Consideration shall be given to habitat quality, proximity to the activity center and contiguity in selecting the most suitable 500 acres of habitat.

Beginning July 1, 1996, the following shall apply for the northern spotted owl:

(i) **Within a SOSEA boundary** (see maps in WAC 222-16-086), except as indicated in (h)(ii) of this subsection, harvesting, road construction, or aerial application of pesticides on suitable spotted owl habitat within a median home range circle that is centered within the SOSEA or on adjacent federal lands.

(ii) **Within the Entiat SOSEA**, harvesting, road construction, or aerial application of pesticides within the areas indicated for demographic support (see WAC 222-16-086(2)) on suitable spotted owl habitat located within a median home range circle that is centered within the demographic support area.

(iii) **Outside of a SOSEA**, harvesting, road construction, or aerial application of pesticides, between March 1 and August 31 on the seventy acres of highest quality suitable spotted owl habitat surrounding a northern spotted owl site center located outside a SOSEA. The highest quality suitable habitat shall be determined by the department in cooperation with the department of fish and wildlife. Consideration shall be given to habitat quality, proximity to the activity center and contiguity.

(iv) **Small parcel northern spotted owl exemption.** Forest practices proposed on the lands owned or controlled by a landowner whose forest land ownership within the SOSEA is less than or equal to 500 acres and where the forest practice is not within 0.7 mile of a northern spotted owl site center shall not be considered to be on lands designated as critical wildlife habitat (state) for northern spotted owls.

(i) Western pond turtle - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known individual occurrence, documented by the department of wildlife.

(j) Marbled murrelet.

(i) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within an occupied marbled murrelet site or within a marbled murrelet detection area within suitable habitat containing 2 or more platforms per acre in stands of at least 7 acres in size.

(ii) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within suitable marbled murrelet habitat containing 6 platforms per acre in stands at least 7 acres in size.

(iii) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within a marbled murrelet special landscape, as identified in

WAC 222-12-087, within murrelet habitat with 4 or more platforms per acre in stands at least 7 acres in size.

(iv) Except for landowners owning less than 50 total acres of forest land that does not contain an occupied marbled murrelet site.

(2) The following critical habitats (federal) designated by the United States Secretary of the Interior, or specific forest practices within those habitats, have been determined to not have the potential for a substantial impact on the environment:

~~(None listed.)~~ Marbled murrelet critical habitat (federal) listed May 24, 1996.

(3) For the purpose of identifying forest practices which have the potential for a substantial impact on the environment with regard to threatened or endangered species newly listed by the Washington fish and wildlife commission and/or the United States Secretary of the Interior, the department shall after consultation with the department of fish and wildlife, prepare and submit to the board a proposed list of critical wildlife habitats (state) of threatened or endangered species. This list shall be submitted to the board within 15 days of the listing of the species. The department shall, at a minimum, consider potential impacts of forest practices on habitats essential to meeting the life requisites for each species listed as threatened or endangered. Those critical wildlife habitats (state) adopted by the board shall be added to the list in subsection (1) of this section. See WAC 222-16-050 (1)(b)(i).

(4) For the purpose of identifying any areas and/or forest practices within critical habitats (federal) designated by the United States Secretary of the Interior which do not have the potential for a substantial impact on the environment, the department shall, after consultation with the department of fish and wildlife, submit to the board a proposed list of any forest practices and/or areas proposed for exclusion from Class IV - special forest practices. The department shall submit the list to the board within 120 days of the date the United States Secretary of the Interior publishes a final rule designating critical habitat (federal) in the Federal Register. Those critical habitats excluded by the board from Class IV - Special shall be added to the list in subsection (2) of this section. See WAC 222-16-050 (1)(b)(ii).

(5)(a) Except for bald eagles under subsection (1)(a) of this section, the critical wildlife habitats (state) of threatened and endangered species and specific forest practices designated in subsection (1) of this section are intended to be interim. These interim designations shall expire for a given species on the earliest of:

(i) The effective date of a regulatory system for wildlife protection referred to in (b) of this subsection or of substantive rules on the species.

(ii) The delisting of a threatened or endangered species by the Washington fish and wildlife commission.

(b) The board shall examine current wildlife protection and department authority to protect wildlife and develop and recommend a regulatory system, including baseline rules for wildlife protection. To the extent possible, this system shall:

(i) Use the best science and management advice available;

(ii) Use a landscape approach to wildlife protection;

(iii) Be designed to avoid the potential for substantial impact to the environment;

(iv) Protect known populations of threatened and endangered species of wildlife from negative effects of forest practices consistent with RCW 76.09.010; and

(v) Consider and be consistent with recovery plans adopted by the department of fish and wildlife pursuant to RCW 77.12.020(6) or habitat conservation plans or 16 U.S.C. 1533(d) rule changes of the Endangered Species Act.

(6) Regardless of any other provision in this section, forest practices applications shall not be classified as Class IV-Special based on critical wildlife habitat (state) (WAC 222-16-080(1)) or critical habitat (federal) (WAC 222-16-050 (1)(b)(ii)) for a species if the forest practices are consistent with one of the following proposed for protection of the species:

(a) A habitat conservation plan and permit or an incidental take statement covering such species approved by the Secretary of the Interior or Commerce pursuant to 16 U.S.C. §1536 (b) or 1539 (a); an "unlisted species agreement" covering such species approved by the U.S. Fish and Wildlife Service or National Marine Fisheries Service; or a "no-take letter" or other cooperative or conservation agreement entered into with a federal or state fish and wildlife agency pursuant to its statutory authority for fish and wildlife protection that addresses the needs of the affected species and that is subject to review under the National Environmental Protection Act, 42 U.S.C. §4321 et seq., or the State Environmental Policy Act, chapter 43.21C RCW, as applicable;

(b) A rule adopted by the U.S. Fish and Wildlife Service for the conservation of a particular threatened species pursuant to 16 U.S.C. 1533(d);

(c) A special wildlife management plan (SWMP) developed by the landowner and approved by the department in consultation with the department of fish and wildlife;

(d) A bald eagle management plan approved under WAC 232-12-292;

(e) A landowner option plan (LOP) for northern spotted owls developed pursuant to WAC 222-16-100(1); or

(f) A cooperative spotted owl habitat enhancement agreement (CHEA) developed pursuant to WAC 222-16-100(2).

In those situations where one of the options above has been used, forest practices applications may still be classified as Class IV-Special based upon the presence of one or more of the factors listed in WAC 222-16-050(1), other than critical wildlife habitat (state) or critical habitat (federal) for the species covered by the existing plan.

(7) The department, in consultation with the department of fish and wildlife, shall review each SOSEA to determine whether the goals for that SOSEA are being met through approved plans, permits, statements, letters, or agreements referred to in subsection (6) of this section. Based on the consultation, the department shall recommend to the board the suspension, deletion, modification or reestablishment of the applicable SOSEA from the rules. The department shall conduct a review for a particular SOSEA upon approval of a landowner option plan, a petition from a landowner in the SOSEA, or under its own initiative.

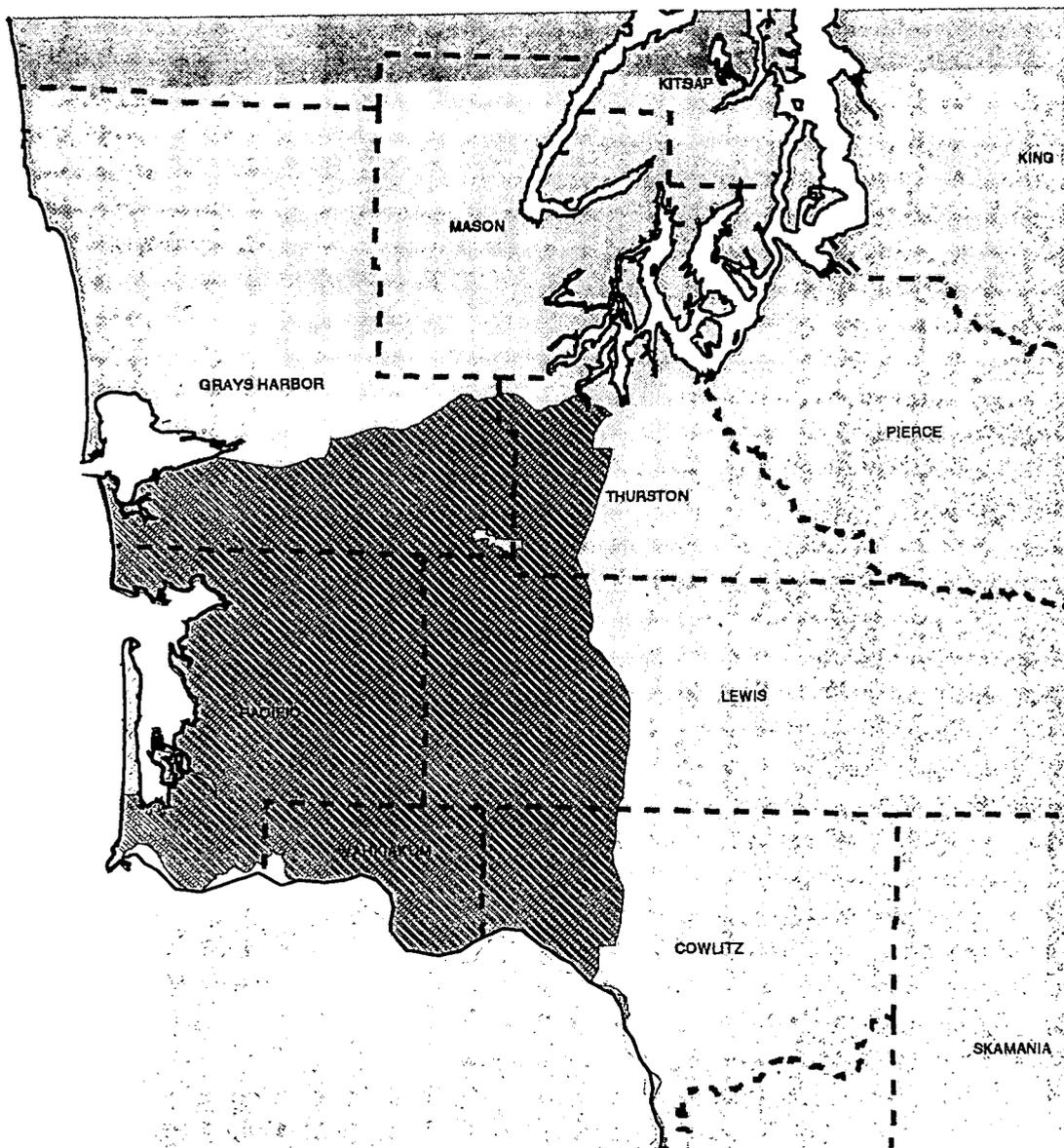
(8) The department, in consultation with the department of fish and wildlife, shall report annually to the board on the

status of the northern spotted owl to determine whether circumstances exist that substantially interfere with meeting the goals of the SOSEAs.

NEW SECTION

WAC 222-16-087 Marbled murrelet special landscape. Marbled murrelet special landscape means the following geographic area as mapped. A detailed map of the marbled murrelet special landscape indicating the boundaries is available from the department at its regional offices.

Southwest Washington Special Landscape



PROPOSED

AMENDATORY SECTION (Amending WSR 96-12-038, filed 5/31/96, effective 7/1/96)

WAC 222-24-030 Road construction. (1) **Right of way timber.** Merchantable right of way timber shall be removed or decked in suitable locations where the decks will not be covered by fill material or act as support for the fill or embankment.

***(2) Debris burial.**

(a) In permanent road construction, do not bury:

(i) Loose stumps, logs or chunks containing more than 5 cubic feet in the load-bearing portion of the road, except as puncheon across wetlands or for culvert protection.

(ii) Any significant amount of organic debris within the top 2 feet of the load-bearing portion of the road, except as puncheon across wetlands or for culvert protection.

(iii) Excessive accumulation of debris or slash in any part of the load-bearing portion of the road fill, except as puncheon across wetlands or for culvert protection.

(b) In the cases where temporary roads are being constructed across known areas of unstable soils and where possible construction failure would directly impact waters, the requirements in (a), (i), (ii) and (iii) of this subsection shall apply. A temporary road is a roadway which has been opened for the purpose of the forest practice operation in question, and thereafter will be an inactive or abandoned road.

(3) **Compact fills.** During road construction, fills or embankments shall be built up by layering. Each layer shall be compacted by operating the tractor or other construction equipment over the entire surface of the layer. Chemical compacting agents may be used in accordance with WAC 222-38-020.

***(4) Stabilize soils.** When soil, exposed by road construction, appears to be unstable or erodible and is so located that slides, slips, slumps, or sediment may reasonably be expected to enter Type 1, 2, 3 or 4 Water and thereby cause damage to a public resource, then such exposed soil areas shall be seeded with grass, clover, or other ground cover, or be treated by erosion control measures acceptable to the department. Avoid introduction of nonnative plant species, as listed in the board manual, to wetlands and wetland management zones.

***(5) Channel clearance.** Clear stream channel of all debris and slash generated during operations prior to the removal of equipment from the vicinity, or the winter season, whichever is first.

***(6) Drainage.**

(a) All required ditches, culverts, cross drains, drainage dips, water bars, and diversion ditches shall be installed concurrently with the construction of the roadway.

(b) Uncompleted road construction to be left over the winter season or other extended periods of time shall be drained by outsliping or cross draining. Water bars and/or dispersion ditches may also be used to minimize eroding of the construction area and stream siltation. Water movement within wetlands must be maintained.

***(7) Moisture conditions.** Construction shall be accomplished when moisture and soil conditions are not likely to result in excessive erosion and/or soil movement, so as to avoid damage to public resources.

***(8) End haul/sidecasts.** End haul or overhaul construction is required where significant amounts of sidecast material would rest below the 50-year flood level of a Type 1, 2, 3, or 4 Water, within the boundary of a Type A or Type B Wetland or wetland management zones or where the department determines there is a potential for mass soil failure from overloading on unstable slopes or from erosion of side cast material causing damage to the public resources.

***(9) Waste disposal.** When spoil, waste and/or other debris is generated during construction, this material shall be deposited or wasted in suitable areas or locations and be governed by the following:

(a) Spoil or other debris shall be deposited above the 50-year flood level of Type 1, 2, 3, or 4 Waters or in other locations so as to prevent damage to public resources. The material shall be stabilized by erosion control measures as necessary to prevent the material from entering the waters.

(b) All spoils shall be located outside of Type A and Type B Wetlands and their wetland management zones. Spoils shall not be located within the boundaries of forested wetlands without written approval of the department and unless a less environmentally damaging location is unavailable. No spoil area greater than 0.5 acre in size shall be allowed within wetlands.

(10) **Disturbance avoidance.** Road construction, operation of heavy equipment and blasting within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and August 31, provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

(11) Disturbance avoidance for marbled murrelets.

(a) Road construction and operation of heavy equipment shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season; and

(b) Blasting shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the critical nesting season.

(c) Provided that, these restrictions shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

AMENDATORY SECTION (Amending WSR 96-12-038, filed 5/31/96, effective 7/1/96)

WAC 222-30-050 Felling and bucking. ***(1) Falling along water.**

(a) No trees will be felled into Type 1, 2 and 3 Waters, or Type A or B Wetlands except trees which cannot practically and safely be felled outside the stream, lake or pond using techniques in general use and these trees must then be removed promptly.

Such felling and removing in Type 1, 2 or 3 Waters shall comply with the hydraulic project approval of the departments of fisheries or wildlife.

(b) Within riparian management zones, and wetland management zones fall trees favorable to the lead consistent with safety standards to yard or skid away from the waters. The use of directional falling, lining, jacking and staged falling techniques are encouraged.

(c) Trees may be felled into Type 4 Water if logs are removed as soon thereafter as practical. See forest practices board manual guidelines for clearing slash and debris from Type 4 and 5 Water.

*** (2) Bucking in water.**

(a) No bucking or limbing shall be done on trees or portions thereof lying between the banks of Type 1, 2 or 3 Waters or in open water areas of Type A Wetlands, except as necessary to remove the timber from the water.

(b) Where bucking or limbing is done between the banks of a Type 4 Water, care shall be taken to minimize accumulation of slash in the water.

*** (3) Falling near riparian management zones, wetland management zones and setting boundaries.** Reasonable care shall be taken to avoid felling trees into riparian management zones, wetland management zones and areas outside the harvest unit.

(4) **Falling in selective and partial cuts.** Reasonable care shall be taken to fall trees in directions that minimize damage to residual trees.

(5) **Disturbance avoidance.** Felling and bucking within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and August 31 provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

(6) Disturbance avoidance for marbled murrelets. Felling and bucking shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

AMENDATORY SECTION (Amending WSR 96-12-038, filed 5/31/96, effective 7/1/96)

WAC 222-30-060 Cable yarding. *** (1) Type 1, 2 and 3 Waters.** No timber shall be cable yarded in or across a Type 1, 2 or 3 Waters except where the logs will not materially damage the bed of waters, banks or riparian management zones and removals from Type 1, 2 or 3 Water have hydraulic project approval of the departments of fisheries or wildlife.

*** (2) Type A or B Wetlands.** No timber shall be cable yarded in or across Type A or B Wetlands without written approval from the department.

*** (3) Deadfalls.** Any logs which are firmly embedded in the bed of a Type 1, 2, 3 and 4 Waters shall not be removed or unnecessarily disturbed without approval of the departments of fisheries or wildlife.

*** (4) Yarding in riparian management zones and wetland management zones.** Where timber is yarded from or across a riparian management zone, or wetland management zone reasonable care shall be taken to minimize damage to the vegetation providing shade to the stream or open water areas and to minimize disturbance to understory vegetation, stumps and root systems. Where practical and consistent with good safety practices, logs shall be yarded in the direction in which they lie and away from Type A or B Wetlands or Type 1, 2 and 3 Waters until clear of the wetland management zone or riparian management zone.

(5) Direction of yarding.

(a) Uphill yarding is preferred.

(b) Where downhill yarding is used, reasonable care shall be taken to lift the leading end of the log to minimize downhill movement of slash and soils.

*** (c)** When yarding parallel to a Type 1, 2 or 3 Water channel below the 50-year flood level or within the riparian management zone, reasonable care shall be taken to minimize soil disturbance and to prevent logs from rolling into the stream, lake, pond, or riparian management zone.

(6) Disturbance avoidance. The operation of heavy equipment within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and August 31 provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

(7) Disturbance avoidance for marbled murrelets. Yarding or operation of heavy equipment shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

AMENDATORY SECTION (Amending WSR 96-12-038, filed 5/31/96, effective 7/1/96)

WAC 222-30-065 Helicopter yarding. (1) Helicopter operations within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and August 31, provided that, this restriction shall not apply if:

~~((1))~~ (a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

~~((2))~~ (b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

(2) Helicopter operations shall not be allowed:

(a) Over an occupied marbled murrelet site or the required managed buffer zone adjacent to that site during the critical nesting season; or

(b) Within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season.

(c) Provided that, these restrictions shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

AMENDATORY SECTION (Amending WSR 96-12-038, filed 5/31/96, effective 7/1/96)

WAC 222-30-070 Tractor and wheeled skidding systems. *(1) Typed waters and wetlands.

(a) Tractor and wheeled skidders shall not be used in Type 1, 2 or 3 Water, except with approval by the department and with a hydraulic project approval of the departments of fisheries or wildlife.

(b) In order to maintain wetland water movement and water quality, and to prevent soil compaction, tractor or wheeled skidders shall not be used in Type A or B Wetlands without prior written approval of the department.

(c) Within all wetlands, tractors and wheeled skidder systems shall be limited to low impact harvest systems. Ground based logging systems operating in wetlands shall only be allowed within wetlands during periods of low soil moisture or frozen soil conditions.

(d) Skidding across any flowing Type 4 Water shall be minimized and when done, temporary stream crossings shall be used, if necessary, to maintain stream bed integrity.

(e) Whenever skidding in or across any type water, the direction of log movement between stream banks shall be as close to right angles to the stream channel as is practical.

***(2) Riparian management zone.**

(a) Logging will be permitted within the zone. However, any use of tractors, wheeled skidders, or other yarding machines within the zone must be as described in an approved forest practices application or otherwise approved in writing by the department.

(b) Where skidding in or through the riparian management zone is necessary, the number of skidding routes through the zone shall be minimized.

(c) Logs shall be skidded so as to minimize damage to leave trees and vegetation in the riparian management zone, to the extent practical and consistent with good safety practices.

***(3) Wetlands management zones.**

(a) Logging will be permitted within wetland management zones.

(b) Where feasible logs shall be skidded at least with one end suspended from the ground so as to minimize soil disturbance and damage to leave trees and vegetation in the wetland management zone.

(c) Tractors, wheeled skidders, or other ground based harvesting systems shall not be used within the minimum WMZ width without written approval of the department.

***(4) Deadfalls.** Logs firmly embedded in the bed or bank of Type 1, 2, 3 or 4 Waters shall not be removed or unnecessarily disturbed without hydraulic project approval of the departments of fisheries or wildlife.

***(5) Moisture conditions.** Tractor and wheeled skidders shall not be used on exposed erodible soils or saturated soils when soil moisture content is so high that unreasonable soil compaction, soil disturbance, or wetland, stream, lake or pond siltation would result.

(6) Protection of residual timber. Reasonable care shall be taken to minimize damage from skidding to the stems and root systems of residual timber and to young reproduction.

***(7) Skid trail construction.**

(a) Skid trails shall be kept to the minimum feasible width.

(b) Reasonable care shall be taken to minimize the amount of sidecast required and shall only be permitted above the 50-year flood level.

(c) Skid trails shall be outslopped where practical, but be insloped where necessary to prevent logs from sliding or rolling downhill off the skid trail.

***(8) Skid trail maintenance.** Upon completion of use and termination of seasonal use, skid trails on slopes in exposed soils shall be water barred where necessary to prevent soil erosion.

***(9) Slope restrictions.** Tractor and wheeled skidders shall not be used on slopes where in the opinion of the department this method of operation would cause unnecessary or material damage to a public resource.

(10) Disturbance avoidance. The operation of heavy equipment within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and August 31, provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

(11) Disturbance avoidance for marbled murrelets.
Operation of heavy equipment shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

AMENDATORY SECTION (Amending WSR 96-12-038, filed 5/31/96, effective 7/1/96)

WAC 222-30-100 Slash disposal or prescribed burning. (1) Slash disposal techniques:

***(a)** Any conventional method of slash disposal may be used, except in Type A or B Wetlands, wetland management zones, and riparian management zones and on sites where the department determines that a particular method would cause unreasonable risk to public resources or unreasonably damage site productivity. Conventional methods of slash disposal include the following: Controlled broadcast burning; pile or windrow and burn; pile or windrow without burning; mechanical scatter and compaction; scarification; chip, mulch or lop and scatter; burying; and physical removal from the forest lands: *Provided*, That on land shown to have low productivity potential the landowner or operator shall obtain the department's approval of its regeneration plan prior to utilizing controlled broadcast burning as a slash disposal technique. In riparian management zones, slash disposal shall be by hand, unless approved

by the department. Scarification shall not be allowed within wetlands. Machine piling is discouraged in wetlands.

(b) All slash burning requires a burning permit from the department which provides for compliance with the smoke management plan and reasonable care to protect Type A and B Wetlands, wetland management zones, riparian management zones, soil, residual timber, public resources, and other property.

*(c) Location of slash piles. Except where burning will be completed before the next ordinary high-water season, slash shall not be piled or windrowed below the 50-year flood level of any Type 1, 2, 3 or 4 Water or in locations from which it could be expected to enter any stream, lake or pond.

(2) **Slash isolation, reduction, or abatement** is required when the department determines there is an extreme fire hazard according to law (see WAC 332-24-360).

(3) **Slash disposal** is required where the forest landowner has applied for and been granted an extension of time for reforestation on the grounds that slash disposal is necessary or desirable before reforestation.

*(4) **Removing slash and debris from streams.**

"Slash" or "debris" which can reasonably be expected to cause significant damage to the public resource shall be removed from Type 1, 2, 3 or 4 Waters, to above the 50-year flood level and left in a location or manner minimizing risk of re-entry into the stream, lake or pond and if substantial accumulations of slash exist below the 50-year flood level of Type 1, 2, 3 or 4 Waters, slash disposal is required. See the forest practices board manual for "Guidelines for clearing slash and debris from Type 4 and 5 Waters."

*(5) **Fire trails.**

(a) Construct dips, water bars, cross drainage and ditches as needed to control erosion.

(b) Reasonable care shall be taken to minimize excavation during fire trail construction and sidecast shall only be permitted above the 50-year flood level.

(c) Fire trails shall not be located within Type A or B Wetlands, wetland management zones, or riparian zones without prior written approval of the department. Hand constructed fire trails are preferred within forested wetlands. When machine built fire trails are necessary for control of burning, trail width and excavation shall be minimized.

(6) **Disturbance avoidance.** Burning within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and August 31, provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

(7) **Disturbance avoidance for marbled murrelets.**

Slash disposal or prescribed burning shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

WSR 97-08-085

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 95-16—Filed April 2, 1997, 10:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 95-24-083.

Title of Rule: State Environmental Policy Act rules, chapter 197-11 WAC.

Purpose: Implement changes to the State Environmental Policy Act, chapter 43.21C RCW mandated by chapter 347, Laws of 1995 (ESHB 1724).

Statutory Authority for Adoption: Chapter 43.21C RCW, chapter 347, Laws of 1995 (ESHB 1724).

Statute Being Implemented: Chapter 43.21C RCW.

Summary: The Department of Ecology, in conjunction with the Department of Community, Trade and Economic Development (CTED), was directed to develop changes to the State Environmental Policy Act (SEPA) rules. The changes are intended to better integrate environmental review pursuant to SEPA (chapter 43.21C RCW) with the Growth Management Act (chapter 36.70A RCW).

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Neil Aaland, Ecology Headquarters, Lacey, (360) 407-7045.

Name of Proponent: Department of Ecology, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The SEPA rules contain procedures for evaluating the potential environmental impacts of a proposal and criteria for conditioning or denying a proposal when specific adverse environmental impacts are identified. The proposed amendments are intended to better integrate environmental review and project review; shift environmental review from the project review stage to the planning stage; and encourage greater reliance on requirements in comprehensive plans, development regulations, and other laws.

Proposal Changes the Following Existing Rules: Amendments include (1) a new category called "planned action" which does not require a threshold determination; (2) a new optional determination of nonsignificance (DNS) process to allow a county/city planning under the Growth Management Act (GMA) to indicate on the notice of application that a DNS is likely and not require a second comment period when the DNS is issued; (3) new timing requirements for threshold determinations for GMA counties/cities; (4) revision of the appeals section to reflect legislative changes; (5) addition of categorical exemptions established by statute; (6) reduction of the DNS comment period from fifteen to fourteen days; (7) reduction of the scoping notice comment period when the scoping notice is combined with the notice of application; (8) changes in the SEPA Register process; and (9) correction of a number of typographical errors.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules unit of the Department of Ecology has determined that no small business economic impact statement is required.

Ecology has prepared amendments to chapter 197-11 WAC. These are designed to allow local governments to

designate an area as a planned action. Implementation of the planned action provisions should significantly reduce costs to businesses while increasing costs to the public sector. Since the amendments do not increase compliance costs for business and industry, no small business economic impact statement is required under the Regulatory Fairness Act, chapter 19.85 RCW. Since implementation of the planned action provisions is voluntary, the rule does not compel any costs for local government.

Ecology will be doing a cost/benefit analysis on this rule amendment. Anyone wishing to discuss costs or benefits should contact Brian Sharbono at (360) 407-6991, at bsha461@ecy.wa.gov, or at Department of Ecology, Economics and Regulatory Research, P.O. Box 47600, Olympia, WA 98504-7600.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: On May 6, at 7-9 p.m., at the Department of Ecology, North 4601 Monroe, Spokane; and on May 8, at 7-9 p.m., at the Seattle Center, Shaw Room, Seattle.

Assistance for Persons with Disabilities: Contact Neil Aaland by April 28, 1997, TDD (360) 407-6006, or (360) 407-7045.

Submit Written Comments to: Neil Aaland, Senior Planner, Central Programs, Department of Ecology, P.O. Box 47703, Olympia, WA 98504-7703, FAX (360) 407-6904, by May 23, 1997.

Date of Intended Adoption: July 2, 1997.

April 2, 1997
Tom Fitzsimmons
Director

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-055 Timing of the SEPA process. (1) **Integrating SEPA and agency activities.** The SEPA process shall be integrated with agency activities at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to seek to resolve potential problems.

(2) **Timing of review of proposals.** The lead agency shall prepare its threshold determination and environmental impact statement (EIS), if required, at the earliest possible point in the planning and decision-making process, when the principal features of a proposal and its environmental impacts can be reasonably identified.

(a) A proposal exists when an agency is presented with an application or has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal *and* the environmental effects can be meaningfully evaluated.

(i) The fact that proposals may require future agency approvals or environmental review shall not preclude current consideration, as long as proposed future activities are specific enough to allow some evaluation of their probable environmental impacts.

(ii) Preliminary steps or decisions are sometimes needed before an action is sufficiently definite to allow meaningful environmental analysis.

(b) Agencies shall identify the times at which the environmental review shall be conducted either in their procedures or on a case-by-case basis. Agencies may also organize environmental review in phases, as specified in WAC 197-11-060(5).

(c) Appropriate consideration of environmental information shall be completed before an agency commits to a particular course of action (WAC 197-11-070).

(d) A GMA county/city is subject to additional timing requirements (see WAC 197-11-310).

(3) **Applications and rule making.** The timing of environmental review for applications and for rule making shall be as follows:

(a) At the latest, the lead agency shall begin environmental review, if required, when an application is complete. The lead agency may initiate review earlier and may have informal conferences with applicants. A final threshold determination or FEIS shall normally precede or accompany the final staff recommendation, if any, in a quasi-judicial proceeding on an application. Agency procedures shall specify the type and timing of environmental documents that shall be submitted to planning commissions and similar advisory bodies (WAC 197-11-906).

(b) For rule making, the DNS or DEIS shall normally accompany the proposed rule. An FEIS, if any, shall be issued at least seven days before adoption of a final rule (WAC 197-11-460(4)).

(4) **Applicant review at conceptual stage.** In general, agencies should adopt procedures for environmental review and for preparation of EISs on private proposals at the conceptual stage rather than the final detailed design stage.

(a) If an agency's only action is a decision on a building permit or other license that requires detailed project plans and specifications, agencies shall provide applicants with the opportunity(ies) for environmental review under SEPA prior to requiring applicants to submit such detailed project plans and specifications.

(b) Agencies may specify the amount of detail needed from applicants for such early environmental review, consistent with WAC 197-11-100 and 197-11-335, in their SEPA or permit procedures.

(c) This subsection does not preclude agencies or applicants from preliminary discussions or exploration of ideas and options prior to commencing formal environmental review.

(5) An overall decision to proceed with a course of action may involve a series of actions or decisions by one or more agencies. If several agencies have jurisdiction over a proposal, they should coordinate their SEPA processes wherever possible. The agencies shall comply with lead agency determination requirements in WAC 197-11-050 and 197-11-922.

(6) To meet the requirement to insure that environmental values and amenities are given appropriate consideration along with economic and technical considerations, environmental documents and analyses shall be circulated and reviewed with other planning documents to the fullest extent possible.

(7) For their own public proposals, lead agencies may extend the time limits prescribed in these rules.

PROPOSED

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-060 Content of environmental review.

(1) Environmental review consists of the range of proposed activities, alternatives, and impacts to be analyzed in an environmental document, in accordance with SEPA's goals and policies. This section specifies the content of environmental review common to *all* environmental documents required under SEPA.

(2) The content of environmental review:

(a) Depends on each particular proposal, on an agency's existing planning and decision-making processes, and on the time when alternatives and impacts can be most meaningfully evaluated;

(b) For the purpose of deciding whether an EIS is required, is specified in the environmental checklist, in WAC 197-11-330 and 197-11-444;

(c) For an environmental impact statement, is considered its "scope" (WAC 197-11-792 and Part Four of these rules);

(d) For any supplemental environmental review, is specified in Part Six.

(3) Proposals.

(a) Agencies shall make certain that the proposal that is the subject of environmental review is properly defined.

(i) Proposals include public projects or proposals by agencies, proposals by applicants, if any, and proposed actions and regulatory decisions of agencies in response to proposals by applicants.

(ii) A proposal by a lead agency or applicant may be put forward as an objective, as several alternative means of accomplishing a goal, or as a particular or preferred course of action.

(iii) Proposals should be described in ways that encourage considering and comparing alternatives. Agencies are encouraged to describe public or nonproject proposals in terms of objectives rather than preferred solutions. A proposal could be described, for example, as "reducing flood damage and achieving better flood control by one or a combination of the following means: Building a new dam; maintenance dredging; use of shoreline and land use controls; purchase of floodprone areas; or relocation assistance."

(b) Proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document. (Phased review is allowed under subsection (5)). Proposals or parts of proposals are closely related, and they shall be discussed in the same environmental document, if they:

(i) Cannot or will not proceed unless the other proposals (or parts of proposals) are implemented simultaneously with them; or

(ii) Are interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation.

(c) **(Optional)** Agencies may wish to analyze "similar actions" in a single environmental document.

(i) Proposals are similar if, when viewed with other reasonably foreseeable actions, they have common aspects that provide a basis for evaluating their environmental consequences together, such as common timing, types of impacts, alternatives, or geography. This section does not

require agencies or applicants to analyze similar actions in a single environmental document or require applicants to prepare environmental documents on proposals other than their own.

(ii) When preparing environmental documents on similar actions, agencies may find it useful to define the proposals in one of the following ways: (A) Geographically, which may include actions occurring in the same general location, such as a body of water, region, or metropolitan area; or (B) generically, which may include actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, environmental media, or subject matter.

(4) Impacts.

(a) SEPA's procedural provisions require the consideration of "environmental" impacts (see definition of "environment" in WAC 197-11-740 and of "impacts" in WAC 197-11-752), with attention to impacts that are likely, not merely speculative. (See definition of "probable" in WAC 197-11-782 and 197-11-080 on incomplete or unavailable information.)

(b) In assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal's impacts only to those aspects within its jurisdiction, including local or state boundaries (see WAC 197-11-330(3) also).

(c) Agencies shall carefully consider the range of probable impacts, including short-term and long-term effects. Impacts shall include those that are likely to arise or exist over the lifetime of a proposal or, depending on the particular proposal, longer.

(d) A proposal's effects include direct and indirect impacts caused by a proposal. Impacts include those effects resulting from growth caused by a proposal, as well as the likelihood that the present proposal will serve as a precedent for future actions. For example, adoption of a zoning ordinance will encourage or tend to cause particular types of projects or extension of sewer lines would tend to encourage development in previously unsewered areas.

(e) The range of impacts to be analyzed in an EIS (direct, indirect, and cumulative impacts, WAC 197-11-792) may be wider than the impacts for which mitigation measures are required of applicants (WAC 197-11-660). This will depend upon the specific impacts, the extent to which the adverse impacts are attributable to the applicant's proposal, and the capability of applicants or agencies to control the impacts in each situation.

(5) Phased review.

(a) Lead agencies shall determine the appropriate scope and level of detail of environmental review to coincide with meaningful points in their planning and decision-making processes. (See WAC 197-11-055 on timing of environmental review.)

(b) Environmental review may be phased. If used, phased review assists agencies and the public to focus on issues that are ready for decision and exclude from consideration issues already decided or not yet ready. Broader environmental documents may be followed by narrower documents, for example, that incorporate prior general discussion by reference and concentrate solely on the issues specific to that phase of the proposal.

(c) Phased review is appropriate when:

(i) The sequence is from a nonproject document to a document of narrower scope such as a site specific analysis (see, for example, WAC 197-11-443); or

(ii) The sequence is from an environmental document on a specific proposal at an early stage (such as need and site selection) to a subsequent environmental document at a later stage (such as sensitive design impacts).

(d) Phased review is not appropriate when:

(i) The sequence is from a narrow project document to a broad policy document;

(ii) It would merely divide a larger system into exempted fragments or avoid discussion of cumulative impacts; or

(iii) It would segment and avoid present consideration of proposals and their impacts that are required to be evaluated in a single environmental document under WAC 197-11-060 ((4)) (3)(b) or 197-11-305(1); however, the level of detail and type of environmental review may vary with the nature and timing of proposals and their component parts.

(e) When a lead agency knows it is using phased review, it shall so state in its environmental document.

(f) Agencies shall use the environmental checklist, scoping process, nonproject EISs, incorporation by reference, adoption, and supplemental EIS(ES), and addenda, as appropriate, to avoid duplication and excess paperwork.

(g) Where proposals are related to a large existing or planned network, such as highways, streets, pipelines, or utility lines or systems, the lead agency may analyze in detail the overall network as the present proposal or may select some of the future elements for present detailed consideration. Any phased review shall be logical in relation to the design of the overall system or network, and shall be consistent with this section and WAC 197-11-070.

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-070 Limitations on actions during SEPA process. (1) Until the responsible official issues a final determination of nonsignificance or final environmental impact statement, no action concerning the proposal shall be taken by a governmental agency that would:

(a) Have an adverse environmental impact; or

(b) Limit the choice of reasonable alternatives.

(2) In addition, certain DNSs require a (~~fifteen~~) fourteen-day period prior to agency action (WAC 197-11-340(2)), and FEISs require a seven-day period prior to agency action (WAC 197-11-460(4)).

(3) In preparing environmental documents, there may be a need to conduct studies that may cause nonsignificant environmental impacts. If such activity is not exempt under WAC 197-11-800(18), the activity may nonetheless proceed if a checklist is prepared and appropriate mitigation measures taken.

(4) This section does not preclude developing plans or designs, issuing requests for proposals (RFPs), securing options, or performing other work necessary to develop an application for a proposal, as long as such activities are consistent with subsection (1).

NEW SECTION

WAC 197-11-158 GMA project review—Reliance on existing plans, laws, and regulations. (1) In reviewing the environmental impacts of a project and making a threshold determination, a GMA county/city may, at its option, determine that the requirements for environmental analysis, protection, and mitigation measures in the GMA county/city's development regulations and comprehensive plan adopted under chapter 36.70A RCW, and in other applicable local, state, or federal laws or rules, provide adequate analysis of and mitigation for the specific adverse environmental impacts of the project action.

(2) In making the determination under subsection (1) of this section, the GMA county/city shall:

(a) Review the environmental checklist and other information about the project;

(b) Identify the specific probable adverse environmental impacts of the project and determine whether the impacts have been:

(i) Identified in the comprehensive plan, subarea plan, or applicable development regulations through the planning and environmental review process under chapter 36.70A RCW or this chapter, or in other local, state, or federal rules or laws; and

(ii) Adequately addressed in the comprehensive plan, subarea plan, applicable development regulations, or other local, state, or federal rules or laws by:

(A) Avoiding or otherwise mitigating the impacts; or

(B) The legislative body of the GMA county/city designating as acceptable the impacts associated with certain levels of service, land use designations, development standards, or other land use planning required or allowed by chapter 36.70A RCW; and

(c) Base or condition approval of the project on compliance with the requirements or mitigation measures in the comprehensive plan, subarea plan, applicable development regulations, or other local, state, or federal rules or laws.

(3) Project specific impacts that have not been adequately addressed as described in subsection (2) of this section may be probable significant adverse environmental impacts requiring additional environmental review. Examples of project specific impacts that may not have been adequately addressed include, but are not limited to, impacts resulting from changed conditions, impacts indicated by new information, impacts not reasonably foreseeable in the GMA planning process, or impacts specifically reserved in a plan EIS for project review.

(4) In deciding whether a project specific adverse environmental impact has been adequately addressed by an existing rule or law of another agency with jurisdiction, the GMA county/city shall consult orally or in writing with that agency and may expressly defer to that agency. In making this deferral, the GMA county/city shall base or condition its project approval on compliance with these other existing rules or laws.

(5) If a GMA county/city's comprehensive plan, subarea plan, or development regulations adequately address a project's probable specific adverse environmental impacts, as determined under subsections (1) and (2) of this section, the GMA county/city shall not impose additional mitigation under this chapter.

(6) In making the determination in subsection (1) of this section, nothing in this section requires review of the adequacy of the environmental analysis associated with the comprehensive plans and development regulations that are being relied upon to make that determination.

NEW SECTION

WAC 197-11-164 Planned actions—Definition and criteria. (1) Pursuant to RCW 43.21C.031, GMA counties/cities may designate a planned action. A planned action means one or more types of project action that:

(a) Are designated planned actions by an ordinance or resolution adopted by a GMA county/city;

(b) Have had the significant environmental impacts adequately addressed in an EIS prepared in conjunction with:

(i) A comprehensive plan or subarea plan adopted under chapter 36.70A RCW; or

(ii) A fully contained community, a master planned resort, a master planned development, or a phased project;

(c) Are subsequent or implementing projects for the proposals listed in (b) of this subsection;

(d) Are located within an urban growth area, as defined in RCW 36.70A.030, or are located within a master planned resort;

(e) Are not essential public facilities, as defined in RCW 36.70A.200; and

(f) Are consistent with a comprehensive plan adopted under chapter 36.70A RCW.

(2) A GMA county/city shall limit planned actions to certain types of development or to specific geographical areas that are less extensive than the jurisdictional boundaries of the GMA county/city.

(3) A GMA county/city may limit a planned action to a time period identified in the EIS or the designating ordinance or resolution adopted under WAC 197-11-168.

NEW SECTION

WAC 197-11-168 Ordinances or resolutions designating planned actions—Procedures for adoption. (1) If a GMA county/city chooses to designate a planned action, the planned action must be designated by ordinance or resolution. Public notice and opportunity for public comment shall be provided as part of the agency's process for adopting the ordinance or resolution.

(2) The ordinance or resolution:

(a) Shall describe the type(s) of project action being designated as a planned action;

(b) Shall describe how the planned action meets the criteria in WAC 197-11-164 (including specific reference to the EIS that addresses any significant environmental impacts of the planned action);

(c) Shall include a finding that the environmental impacts of the planned action have been identified and adequately addressed in the EIS, subject to project review under WAC 197-11-172; and

(d) Should identify any specific mitigation measures other than applicable development regulations that must be applied to a project for it to qualify as the planned action.

(3) If the GMA county/city has not limited the planned action to a specific time period identified in the EIS, it may

do so in the ordinance or resolution designating the planned action.

(4) The GMA county/city is encouraged to provide a periodic review and update procedure for the planned action to monitor implementation and consider changes as warranted.

NEW SECTION

WAC 197-11-172 Planned actions—Project review.

(1) Review of a project proposed as a planned action is intended to be simpler and more focused than for other projects. A project proposed as a planned action must qualify as the planned action designated in the planned action ordinance or resolution, and must meet the statutory criteria for a planned action in RCW 43.21C.031. Planned action project review shall include:

(a) Verification that the project meets the description in, and will implement any applicable conditions or mitigation measures identified in, the designating ordinance or resolution; and

(b) Verification that the probable significant adverse environmental impacts of the project have been adequately addressed in the EIS prepared pursuant to WAC 197-11-164 (1)(b) through review of an environmental checklist or other project review form as specified in WAC 197-11-315, filed with the project application.

(2)(a) If the project meets the requirements of subsection (1) of this section, the project shall qualify as the planned action designated by the GMA county/city, and a project threshold determination or EIS is not required. Nothing in this section limits a GMA county/city from using this chapter or other applicable law to place conditions on the project in order to mitigate nonsignificant impacts through the normal local project review and permitting process.

(b) If the project does not meet the requirements of subsection (1) of this section, the project is not a planned action and a threshold determination is required. In conducting the additional environmental review under this chapter, the lead agency may use information in existing environmental documents, including the EIS used to designate the planned action (refer to WAC 197-11-330 (2)(a) and 197-11-600 through 197-11-635). If an EIS or SEIS is prepared on the proposed project, its scope is limited to those probable significant adverse environmental impacts that were not adequately addressed in the EIS used to designate the planned action.

(3) Public notice for projects that qualify as planned actions shall be tied to the underlying permit. If notice is otherwise required for the underlying permit, the notice shall state that the project has qualified as a planned action. If notice is not otherwise required for the underlying permit, no special notice is required. However, the GMA county/city is encouraged to provide some form of public notice as deemed appropriate.

AMENDATORY SECTION (Amending Order 94-22, filed 3/6/95, effective 4/6/95)

WAC 197-11-210 SEPA/GMA integration. (1) The purpose of WAC 197-11-210 through 197-11-235 is to(

(4)) authorize GMA counties/cities ((and counties)) to integrate the requirements of SEPA and the Growth Management Act (GMA) to ensure that environmental analyses under SEPA can occur concurrently with and as an integral part of the planning and decision making under GMA. Nothing in these sections is intended to jeopardize the adequacy or require the revision of any SEPA or GMA processes, analyses or document deadlines specified in GMA.

(2) GMA counties/cities ((and counties)) may use the procedures of these rules to satisfy the requirements of SEPA for GMA actions. Other jurisdictions planning under GMA may also use these integration procedures.

(3) Environmental analysis at each stage of the GMA planning process should, at a minimum, address the environmental impacts associated with planning decisions at that stage of the planning process. Impacts associated with later planning stages may also be addressed. Environmental analysis that analyzes environmental impacts in the GMA planning process can:

- (a) Result in better-informed GMA planning decisions;
- (b) Avoid delays, duplication and paperwork in project-level environmental analysis; and
- (c) Narrow the scope of environmental review and mitigation under SEPA at the project level.

NEW SECTION

WAC 197-11-238 Monitoring. Monitoring information is important to maintain the usefulness of the environmental analysis in plans and development regulations for project-level review and to update plans under chapter 36.70A RCW. GMA counties/cities are encouraged to establish a process for monitoring the cumulative impacts of permit decisions and conditions, and to use that data to update the information about existing conditions for the built and natural environment. If a monitoring process is developed, it should be established at the time information on existing conditions is developed. Annual or periodic reports summarizing the data and documenting trends are encouraged.

AMENDATORY SECTION (Amending Order 94-22, filed 3/31/95, effective 5/1/95)

WAC 197-11-259 Determination of nonsignificance for MTCA remedial action. (1) If the remedial action will not have a probable significant adverse environmental impact, a DNS shall be issued no earlier than the RI/FS and no later than the draft cleanup action plan. If the lead agency made a preliminary decision under WAC 197-11-256 (1)(a) that a DS was unlikely, prior to issuing a DNS the responsible official shall consider any additional information about adverse environmental impacts generated during the RI/FS process.

(2) The public comment period on the DNS shall be the same as the comment period on the MTCA document, provided that for proposals listed in WAC 197-11-340 (2)(a) the comment period is no less than ~~((fifteen))~~ fourteen days prior to the effective date of the MTCA document. One public notice shall be used to announce the availability of both the DNS and MTCA document, consistent with the requirements of WAC 173-340-600 and 197-11-340.

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-300 Purpose of this part. This part provides rules for:

- (1) Administering categorical exemptions for proposals that would not have probable significant adverse impacts;
- (2) Deciding whether a proposal has a probable significant adverse impact and thus requires an EIS (the threshold determination);
- (3) Providing a way to review and mitigate nonexempt proposals through the threshold determination; ~~((and))~~
- (4) Integrating SEPA into early planning to ensure appropriate consideration of SEPA's policies and to eliminate duplication and delay; and
- (5) Integrating the environmental analysis required by SEPA into the project review process.

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-310 Threshold determination required.

(1) A threshold determination is required for any proposal which meets the definition of action and is not categorically exempt, subject to the limitations in WAC 197-11-600(3) concerning proposals for which a threshold determination has already been issued. A threshold determination is not required for a planned action (refer to WAC 197-11-164 through 197-11-172).

(2) The responsible official of the lead agency shall make the threshold determination, which shall be made as close as possible to the time an agency has developed or is presented with a proposal (WAC 197-11-784). If the lead agency is a GMA county/city, that agency must meet the timing requirements in subsection (6) of this section.

~~(3) ((In most cases, the time to complete a threshold determination should not exceed fifteen days. Complex proposals, those where additional information is needed, and/or those accompanied by an inaccurate checklist may require additional time. Upon request by an applicant, the responsible official shall select a date for making the threshold determination and notify the applicant of such date in writing.~~

(4)) The responsible official shall make a threshold determination no later than ninety days after the application and supporting documentation are determined to be complete. The applicant may request an additional thirty days for the threshold determination (RCW 43.21C.033).

(4) The time limit in subsection (3) of this section shall not apply to a county/city that:

(a) By ordinance adopted prior to April 1, 1992, has adopted procedures to integrate permit and land use decisions with SEPA requirements; or

(b) Is planning under RCW 36.70A.040 (GMA) and is subject to the requirements of RCW 36.70B.090.

(5) All threshold determinations shall be documented in:

- (a) A determination of nonsignificance (DNS) (WAC 197-11-340); or
- (b) A determination of significance (DS) (WAC 197-11-360).

(6) When a GMA county/city with an integrated project review process under RCW 36.70B.060 is lead agency for a project, the following timing requirements apply:

(a) If a DS is made concurrent with the notice of application, the DS and scoping notice shall be combined with the notice of application (RCW 36.70B.110). Nothing in this subsection prevents the DS/scoping notice from being issued before the notice of application. If sufficient information is not available to make a threshold determination when the notice of application is issued, the DS may be issued later in the review process.

(b) A DNS shall not be issued before the expiration of the public comment period on the notice of application (RCW 36.70B.110 (6)(a)).

(c) If an open record predecision hearing is required and the lead agency issues a DNS requiring a comment period under WAC 197-11-340 (2)(a), the DNS shall be issued at least fifteen days before the open record predecision hearing (RCW 36.70B.110 (6)(b)).

(d) The optional DNS process in WAC 197-11-355 may be used to indicate on the notice of application that the lead agency is likely to issue a DNS. If this optional process is used, a separate comment period on the DNS may not be required (refer to WAC 197-11-355(4)).

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-315 Environmental checklist. (1) Agencies(~~(=~~

~~(=)) shall use the environmental checklist substantially in the form found in WAC 197-11-960 to assist in making threshold determinations for proposals, except for:~~

(a) Public proposals on which the lead agency has decided to prepare its own EIS(~~(=)~~); or

(b) Proposals on which the lead agency and applicant agree an EIS will be prepared; or

(c) Proposals which are proposed as planned actions (see subsection (2) of this section).

~~((b))~~ (2) For proposals submitted as planned actions pursuant to WAC 197-11-164, a GMA county/city shall use the existing environmental checklist or modify the environmental checklist form to fulfill the purposes outlined in WAC 197-11-172(1), notwithstanding the requirements of WAC 197-11-906(4).

If the GMA county/city chooses to modify the existing environmental checklist, the modified form shall be submitted to the department of ecology to allow at least a thirty-day review prior to use. The department shall notify the GMA county/city within thirty days of receipt if it has any objections to the modified form and the general nature of the objections. If the department objects, the modified form shall not be used until the GMA county/city and the department have reached agreement.

(3) Agencies may use an environmental checklist whenever it would assist in their planning and decision making, but shall ~~((not))~~ only require an applicant to prepare a checklist under SEPA(~~(= unless))~~ if a checklist is required by subsection (1)((~~(=)~~) of this section.

~~((2))~~ (4) The lead agency shall prepare the checklist or require an applicant to prepare the checklist.

~~((3))~~ (5) The items in the environmental checklist are not weighted. The mention of one or many adverse environmental impacts does not necessarily mean that the impacts are significant. Conversely, a probable significant adverse

impact on the environment may result in the need for an EIS.

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-330 Threshold determination process.

An EIS is required for proposals for legislation and other major actions significantly affecting the quality of the environment. The lead agency decides whether an EIS is required in the threshold determination process, as described below.

(1) In making a threshold determination, the responsible official shall:

(a) Review the environmental checklist, if used:

(i) Independently evaluating the responses of any applicant and indicating the result of its evaluation in the DS, in the DNS, or on the checklist; and

(ii) Conducting its initial review of the environmental checklist and any supporting documents without requiring additional information from the applicant.

(b) Determine if the proposal is likely to have a probable significant adverse environmental impact, based on the proposed action, the information in the checklist (WAC 197-11-960), and any additional information furnished under WAC 197-11-335 and 197-11-350; and

(c) Consider mitigation measures which an agency or the applicant will implement as part of the proposal, including any mitigation measures required by development regulations, comprehensive plans, or other existing environmental rules or laws.

(2) In making a threshold determination, the responsible official should determine whether:

(a) All or part of the proposal, alternatives, or impacts have been analyzed in a previously prepared environmental document, which can be adopted or incorporated by reference (see Part Six).

(b) Environmental analysis would be more useful or appropriate in the future in which case, the agency shall commit to timely, subsequent environmental review, consistent with WAC 197-11-055 through 197-11-070 and Part Six.

(3) In determining an impact's significance (WAC 197-11-794), the responsible official shall take into account the following, that:

(a) The same proposal may have a significant adverse impact in one location but not in another location;

(b) The absolute quantitative effects of a proposal are also important, and may result in a significant adverse impact regardless of the nature of the existing environment;

(c) Several marginal impacts when considered together may result in a significant adverse impact;

(d) For some proposals, it may be impossible to forecast the environmental impacts with precision, often because some variables cannot be predicted or values cannot be quantified.

(e) A proposal may to a significant degree:

(i) Adversely affect environmentally sensitive or special areas, such as loss or destruction of historic, scientific, and cultural resources, parks, prime farmlands, wetlands, wild and scenic rivers, or wilderness;

- (ii) Adversely affect endangered or threatened species or their habitat;
- (iii) Conflict with local, state, or federal laws or requirements for the protection of the environment; and
- (iv) Establish a precedent for future actions with significant effects, involves unique and unknown risks to the environment, or may affect public health or safety.

(4) If after following WAC 197-11-080 and 197-11-335 the lead agency reasonably believes that a proposal may have a significant adverse impact, an EIS is required.

(5) A threshold determination shall not balance whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather, shall consider whether a proposal has any probable significant adverse environmental impacts under the rules stated in this section. For example, proposals designed to improve the environment, such as sewage treatment plants or pollution control requirements, may also have significant adverse environmental impacts.

AMENDATORY SECTION (Amending Order 94-22, filed 3/6/95, effective 4/6/95)

WAC 197-11-340 Determination of nonsignificance (DNS). (1) If the responsible official determines there will be no probable significant adverse environmental impacts from a proposal, the lead agency shall prepare and issue a determination of nonsignificance (DNS) substantially in the form provided in WAC 197-11-970. If an agency adopts another environmental document in support of a threshold determination (Part Six), the notice of adoption (WAC 197-11-965) and the DNS shall be combined or attached to each other.

(2) When a DNS is issued for any of the proposals listed in (2)(a), the requirements in this subsection shall be met. The requirements of this subsection do not apply to a DNS issued when the optional DNS process in WAC 197-11-355 is used, unless a mitigated DNS is issued as provided in WAC 197-11-350 (refer to WAC 197-11-355(4)).

(a) An agency shall not act upon a proposal for (~~fifteen~~) fourteen days after the date of issuance of a DNS if the proposal involves:

- (i) Another agency with jurisdiction;
- (ii) Demolition of any structure or facility not exempted by WAC 197-11-800 (2)(f) or 197-11-880;
- (iii) Issuance of clearing or grading permits not exempted in Part Nine of these rules;
- (iv) A DNS under WAC 197-11-350 (2), (3) or 197-11-360(4); or
- (v) A GMA action.

(b) The responsible official shall send the DNS and environmental checklist to agencies with jurisdiction, the department of ecology, and affected tribes, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal, and shall give notice under WAC 197-11-510.

(c) Any person, affected tribe, or agency may submit comments to the lead agency within (~~fifteen~~) fourteen days of the date of issuance of the DNS.

(d) The date of issue for the DNS is the date the DNS is sent to the department of ecology and agencies with jurisdiction and is made publicly available.

(e) An agency with jurisdiction may assume lead agency status only within this (~~fifteen~~) fourteen-day period (WAC 197-11-948).

(f) The responsible official shall reconsider the DNS based on timely comments and may retain or modify the DNS or, if the responsible official determines that significant adverse impacts are likely, withdraw the DNS or supporting documents. When a DNS is modified, the lead agency shall send the modified DNS to agencies with jurisdiction.

(3)(a) The lead agency shall withdraw a DNS if:

(i) There are substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts;

(ii) There is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; or

(iii) The DNS was procured by misrepresentation or lack of material disclosure; if such DNS resulted from the actions of an applicant, any subsequent environmental checklist on the proposal shall be prepared directly by the lead agency or its consultant at the expense of the applicant.

(b) Subsection (3)(a)(ii) shall not apply when a non-exempt license has been issued on a private project.

(c) If the lead agency withdraws a DNS, the agency shall make a new threshold determination and notify other agencies with jurisdiction of the withdrawal and new threshold determination. If a DS is issued, each agency with jurisdiction shall commence action to suspend, modify, or revoke any approvals until the necessary environmental review has occurred (see also WAC 197-11-070).

NEW SECTION

WAC 197-11-355 Optional DNS process.

* Amendments to SEPA are being considered by the 1997 legislature that would eliminate the need for the optional DNS process. If this or similar legislation is adopted, this proposed section will be removed.

(1) If a GMA county/city with an integrated project review process (RCW 36.70B.060) is lead agency for a proposal and has a reasonable basis for determining significant adverse environmental impacts are unlikely, it may use the comment period on the notice of application to obtain comments on the likely threshold determination for the proposal. If this process is used, a second comment period will typically not be required when the DNS is issued (refer to subsection (4) of this section).

(2) If the lead agencies use the optional process specified in subsection (1) of this section, the lead agency shall:

(a) State on the first page of the notice of application that it expects to issue a DNS for the proposal;

(b) Clearly state that the optional DNS process is being used, and that this may be the only opportunity to comment on the environmental impacts of the proposal;

(c) Comply with the requirements for a notice of application and public notice in RCW 36.70B.110; and

(d) Send the notice of application and environmental checklist to:

(i) Agencies with jurisdiction, the department of ecology, affected tribes, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal; and

(ii) Anyone requesting a copy of the environmental checklist for the specific proposal (the lead agency may choose to maintain a general mailing list for checklist distribution).

(3) If the lead agency indicates on the notice of application that a DNS is likely, an agency with jurisdiction may assume lead agency status during the comment period on the notice of application (WAC 197-11-948).

(4) The responsible official shall consider timely comments on the notice of application and either:

(a) Issue a DNS with no comment period using the procedures in subsection (5) of this section;

(b) Issue a DNS with a comment period if the lead agency determines a comment period is necessary;

(c) Issue a mitigated DNS under WAC 197-11-350, following the procedures in WAC 197-11-340(2);

(d) Issue a DS; or

(e) Require additional information or studies prior to making a threshold determination.

(5) If a DNS is issued under subsection (4)(a) of this section, the lead agency shall send a copy of the DNS to the department of ecology, agencies with jurisdiction, those who commented, and anyone requesting a copy. A copy of the environmental checklist need not be recirculated.

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-390 Effect of threshold determination.

(1) When the responsible official makes a threshold determination, it is final and binding on all agencies, subject to the provisions of this section and WAC 197-11-340, 197-11-360, and Part Six.

(2) The responsible official's threshold determination:

(a) For proposals listed in WAC 197-11-340(2), shall not be final until (~~fifteen~~) fourteen days after issuance.

(b) Shall not apply if another agency with jurisdiction assumes lead agency status under WAC 197-11-948.

(c) Shall not apply when withdrawn by the responsible official under WAC 197-11-340 or 197-11-360.

(d) Shall not apply when reversed on appeal.

(3) Regardless of any appeals, a DS or DNS issued by the responsible official may be considered final for purposes of other agencies' planning and decision making unless subsequently changed, reversed, or withdrawn.

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-408 Scoping. (1) The lead agency shall narrow the scope of every EIS to the probable significant adverse impacts and reasonable alternatives, including mitigation measures. For example, if there are only two or three significant impacts or alternatives, the EIS shall be focused on those.

(2) To ensure that every EIS is concise and addresses the significant environmental issues, the lead agency shall:

(a) Invite agency, affected tribes, and public comment on the DS (WAC 197-11-360).

(i) If the agency requires written comments, agencies, affected tribes and the public shall be allowed twenty-one days from the date of issuance of the DS in which to comment, unless expanded scoping is used.

(ii) If a GMA county/city issues the scoping notice with the notice of application under RCW 36.70B.110, the comment period shall be no less than fourteen days.

(iii) The date of issuance for a DS is the date it is sent to the department of ecology and other agencies with jurisdiction, and is publicly available.

(b) Identify reasonable alternatives and probable significant adverse environmental impacts.

(c) Eliminate from detailed study those impacts that are not significant.

(d) Work with other agencies to identify and integrate environmental studies required for other government approvals with the EIS, where feasible.

(3) Agencies, affected tribes, and the public should comment promptly and as specifically as permitted by the details available on the proposal.

(4) Meetings or scoping documents, including notices that the scope has been revised, may be used but are *not* required. The lead agency shall integrate the scoping process with its existing planning and decision-making process in order to avoid duplication and delay.

(5) The lead agency shall revise the scope of an EIS if substantial changes are made later in the proposal, or if significant new circumstances or information arise that bear on the proposal and its significant impacts.

(6) DEISs shall be prepared according to the scope decided upon by the lead agency in its scoping process.

(7) EIS preparation may begin during scoping.

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-502 Inviting comment. (1) Agency efforts to involve other agencies and the public in the SEPA process should be commensurate with the type and scope of the environmental document.

(2) Consulted agencies have a responsibility to respond in a timely and specific manner to requests for comments (WAC 197-11-545, 197-11-550, and 197-11-724).

(3) **Threshold determinations.**

(a) Agencies shall send DNSs to other agencies with jurisdiction, if any, as required by WAC 197-11-340(2) and 197-11-355.

(b) For DNSs issued under WAC 197-11-340(2), agencies shall provide public notice under WAC 197-11-510 and receive comments on the DNS for (~~fifteen~~) fourteen days.

(4) **Scoping.**

(a) Agencies shall circulate the DS and invite comments on the scope of an EIS, as required by WAC 197-11-360, 197-11-408, and 197-11-510.

(b) Agencies may use other reasonable methods to inform agencies and the public, such as those indicated in WAC 197-11-410.

(c) The lead agency determines the method for commenting (WAC 197-11-408 and 197-11-410).

(5) **DEIS.**

(a) Agencies shall invite comments on and circulate DEISs as required by WAC 197-11-455.

(b) The commenting period shall be thirty days unless extended by the lead agency under WAC 197-11-455.

(c) Agencies shall comment and respond as stated in this part. This meets the act's formal consultation and comment requirement in RCW 43.21C.030 (2)(d).

(6) Public hearings and meetings.

(a) Public hearings or meetings may be held (WAC 197-11-535). Notice of such public hearings shall be given under WAC 197-11-510 and may be combined with other agency notice.

(b) In conjunction with the requirements of WAC 197-11-510, notice of public hearings shall be published no later than ten days before the hearing. For nonproject proposals, notice of the public hearing shall be published in a newspaper of general circulation in the general area where the lead agency has its principal offices. For nonproject proposals having a regional or state-wide applicability, copies of the notice shall be given to the Olympia bureaus of the Associated Press and United Press International.

(7) **FEIS.** Agencies shall circulate FEISs as required by WAC 197-11-460.

(8) Supplements.

(a) Notice for and circulation of draft and final SEISs shall be done in the same manner as other draft and final EISs.

(b) When a DNS is issued after a DS has been withdrawn (WAC 197-11-360(4)), agencies shall give notice under WAC 197-11-510 and receive comments for ~~((fifteen))~~ fourteen days.

(c) An addendum need not be circulated unless required under WAC 197-11-625.

(9) **Appeals.** Notice provisions for appeals are in WAC 197-11-680.

(10) Agencies may circulate any other environmental documents for the purpose of providing information or seeking comment, as an agency deems appropriate.

(11) In addition to any required notice or circulation, agencies may use any other reasonable methods, to inform agencies and the public that environmental documents are available or that hearings will occur.

(12) Agencies may combine SEPA notices with other agency notices. However, the SEPA information must be identifiable.

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-508 SEPA register. (1) The department of ecology shall ~~((publish and mail each week a))~~ prepare a weekly SEPA register, giving notice of all environmental documents required to be sent to the department of ecology under these rules, specifically:

(a) DNSs under WAC 197-11-340(2);

(b) DSs (scoping notices) under WAC 197-11-408;

(c) EISs under WAC 197-11-455, 197-11-460, 197-11-620, and 197-11-630; ~~((and))~~

(d) Notices of action under RCW 43.21C.080 and 43.21C.087; and

(e) Notices in the optional DNS process under WAC 197-11-355 (2)(c) and (5).

(2) All agencies shall submit the environmental documents listed in subsection (1) of this section to the department promptly and in accordance with procedures established by the department.

(3) Agencies are encouraged to ~~((subscribe))~~ refer to the SEPA register for notice of SEPA documents which may affect them.

(4) The department:

(a) Shall establish the method for distributing the SEPA register, which may include listing on Internet, publishing and mailing to interested persons, or any other method deemed appropriate by the department.

(b) May establish a reasonable format for ~~((publishing the required notices in))~~ the SEPA register;

~~((b))~~ (c) May charge a reasonable fee for the SEPA register as allowed by law, in at least the amount allowed by chapter 42.17 RCW, from agencies, members of the public, and interested organizations.

(5) Members of the public, citizen and community groups, and educational institutions are encouraged to ~~((subscribe and))~~ refer to the SEPA register for notice of SEPA actions which may affect them.

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-535 Public hearings and meetings. (1)

If a public hearing on the proposal is held under some other requirement of law, such hearing shall be open to consideration of the environmental impact of the proposal, together with any environmental document that is available. This does not require extension of the comment periods for environmental documents.

(2) In all other cases a public hearing on the environmental impact of a proposal shall be held whenever one or more of the following situations occur:

(a) The lead agency determines, in its sole discretion, that a public hearing would assist it in meeting its responsibility to implement the purposes and policies of SEPA and these rules; or

(b) When fifty or more persons residing within the jurisdiction of the lead agency, or who would be adversely affected by the environmental impact of the proposal, make written request to the lead agency within thirty days of issuance of the draft EIS; or

(c) When two or more agencies with jurisdiction over a proposal make written request to the lead agency within thirty days of the issuance of the draft EIS.

(3) Whenever a public hearing is held under subsection (2) of this section, it shall occur no earlier than fifteen days from the date the draft EIS is issued, nor later than fifty days from its issuance. Notice shall be given under WAC 197-11-502(6) and 197-11-510 and may be combined with other agency notice.

(4) If a public hearing is required under this chapter, it shall be open to discussion of all environmental documents and any written comments that have been received by the lead agency prior to the hearing. A copy of the environmental document shall be available at the public hearing.

(5) Comments at public hearings should be as specific as possible (see WAC 197-11-550).

(6) Agencies and their designees may hold informal public meetings or workshops. Such gatherings may be more flexible than public hearings and are not subject to the above notice and similar requirements for public hearings.

(7) Public meetings held by local governments under chapter 36.70B RCW may be used to meet SEPA public hearing requirements as long as the requirements for public hearing in this section are met. A public hearing under this section need not be an open record hearing as defined in RCW 36.70B.020(3).

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-600 When to use existing environmental documents. (1) This section contains criteria for determining whether an environmental document must be used unchanged and describes when existing documents may be used to meet all or part of an agency's responsibilities under SEPA.

(2) An agency may use environmental documents that have previously been prepared in order to evaluate proposed actions, alternatives, or environmental impacts. The proposals may be the same as, or different than, those analyzed in the existing documents.

(3) ~~((Other agencies))~~ Any agency acting on the same proposal shall use an environmental document unchanged, except in the following cases:

(a) For DNSs, an agency with jurisdiction is dissatisfied with the DNS, in which case it may assume lead agency status (WAC 197-11-340 (2)(e) and 197-11-948).

(b) For DNSs and EISs, preparation of a new threshold determination or supplemental EIS is required if there are:

(i) Substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts (or lack of significant adverse impacts, if a DS is being withdrawn); or

(ii) New information indicating a proposal's probable significant adverse environmental impacts. (This includes discovery of misrepresentation or lack of material disclosure.) A new threshold determination or SEIS is not required if probable significant adverse environmental impacts are covered by the range of alternatives and impacts analyzed in the existing environmental documents.

(c) For EISs, the agency concludes that its written comments on the DEIS warrant additional discussion for purposes of its action than that found in the lead agency's FEIS (in which case the agency may prepare a supplemental EIS at its own expense).

(4) Existing documents may be used for a proposal by employing one or more of the following methods:

(a) "Adoption," where an agency may use all or part of an existing environmental document to meet its responsibilities under SEPA. Agencies acting on the same proposal for which an environmental document was prepared are not required to adopt the document; or

(b) "Incorporation by reference," where an agency preparing an environmental document includes all or part of an existing document by reference.

(c) An addendum, that adds analyses or information about a proposal but does not substantially change the analysis of significant impacts and alternatives in the existing environmental document.

(d) Preparation of a SEIS if there are:

(i) Substantial changes so that the proposal is likely to have significant adverse environmental impacts; or

(ii) New information indicating a proposal's probable significant adverse environmental impacts.

(e) If a proposal is substantially similar to one covered in an existing EIS, that EIS may be adopted; additional information may be provided in an addendum or SEIS (see (c) and (d) of this subsection).

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-660 Substantive authority and mitigation. (1) Any governmental action on public or private proposals that are not exempt may be conditioned or denied under SEPA to mitigate the environmental impact subject to the following limitations:

(a) Mitigation measures or denials shall be based on policies, plans, rules, or regulations formally designated by the agency (or appropriate legislative body, in the case of local government) as a basis for the exercise of substantive authority and in effect when the DNS or DEIS is issued.

(b) Mitigation measures shall be related to specific, adverse environmental impacts clearly identified in an environmental document on the proposal and shall be stated in writing by the decision maker. The decision maker shall cite the agency SEPA policy that is the basis of any condition or denial under this chapter (for proposals of applicants). After its decision, each agency shall make available to the public a document that states the decision. The document shall state the mitigation measures, if any, that will be implemented as part of the decision, including any monitoring of environmental impacts. Such a document may be the license itself, or may be combined with other agency documents, or may reference relevant portions of environmental documents.

(c) Mitigation measures shall be reasonable and capable of being accomplished.

(d) Responsibility for implementing mitigation measures may be imposed upon an applicant only to the extent attributable to the identified adverse impacts of its proposal. Voluntary additional mitigation may occur.

(e) Before requiring mitigation measures, agencies shall consider whether local, state, or federal requirements and enforcement would mitigate an identified significant impact.

(f) To deny a proposal under SEPA, an agency must find that:

(i) The proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental environmental impact statement prepared under this chapter; and

(ii) Reasonable mitigation measures are insufficient to mitigate the identified impact.

(g) If, during project review, a GMA county/city determines that the requirements for environmental analysis, protection, and mitigation measures in the GMA county/city's development regulations and comprehensive plan adopted under chapter 36.70A RCW, and in other applicable local, state or federal laws or rules, provide adequate analysis of and mitigation for the specific adverse environmental impacts of the project action pursuant to RCW 43.21C.240, the GMA county/city shall not impose additional mitigation under this chapter.

(2) Decision makers should judge whether possible mitigation measures are likely to protect or enhance environmental quality. EISs should briefly indicate the intended environmental benefits of mitigation measures for significant impacts (WAC 197-11-440(6)). EISs are not required to analyze in detail the environmental impacts of mitigation measures, unless the mitigation measures:

(a) Represent substantial changes in the proposal so that the proposal is likely to have significant adverse environmental impacts, or involve significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; and

(b) Will not be analyzed in a subsequent environmental document prior to their implementation.

(3) Agencies shall prepare a document that contains agency SEPA policies (WAC 197-11-902), so that applicants and members of the public know what these policies are. This document shall include, or reference by citation, the regulations, plans, or codes formally designated under this section and RCW 43.21C.060 as possible bases for conditioning or denying proposals. If only a portion of a regulation, plan, or code is designated, the document shall identify that portion. This document (and any documents referenced in it) shall be readily available to the public and shall be available to applicants prior to preparing a draft EIS.

AMENDATORY SECTION (Amending Order 94-22, filed 3/6/95, effective 4/6/95)

WAC 197-11-680 Appeals. (1) **Introduction.** Appeals provisions in SEPA are found in RCW 43.21C.060, 43.21C.075 and 43.21C.080. These rules attempt to construe and interpret the statutory provisions. In the event a court determines that these rules are inconsistent with statutory provisions, or with the framework and policy of SEPA, the statute will control. Persons considering either administrative or judicial appeal of any decision which involves SEPA at all are advised to read the statutory sections cited above.

(2) **Appeal to local legislative body.** RCW 43.21C.060 allows an appeal to a local legislative body of any decision by a local nonelected official conditioning or denying a proposal under authority of SEPA. Agencies may establish procedures for such an appeal, or may eliminate such appeals altogether, by rule, ordinance or resolution. Such appeals are subject to the restrictions in RCW 36.70B.050 and 36.70B.060 that local governments provide no more than one open record hearing and one closed record appeal for permit decisions.

(3) **Agency administrative appeal procedures.**

(a) Agencies may provide for an administrative appeal of determinations relating to SEPA in their agency SEPA procedures. If so, the procedures must comply with the following:

(i) The agency must specify by rule, ordinance, or resolution that the appeals procedure is available.

(ii) Appeal of the intermediate steps under SEPA (e.g., lead agency determination, scoping, draft EIS adequacy) shall not be allowed.

(iii) Appeals on SEPA procedures shall be limited to review of a final threshold determination and final EIS. ~~((The appeal of a final threshold determination))~~ These appeals may occur prior to an agency's final decision on a

proposed action. Any appeal of a DNS held before an agency's final decision must be heard at a proceeding where the hearing body or officer will render a final recommendation or decision on the proposed underlying governmental action.

(iv) An agency shall provide for only one administrative appeal of a threshold determination or of the adequacy of an EIS; successive administrative appeals on these issues within the same agency are not allowed. This limitation does not apply to ~~((appeals to a local legislative body under RCW 43.21C.060 (or another state statute) or to))~~ administrative appeals before another agency.

(v) ~~((If the agency has made a decision on a proposed action;))~~ The appeal shall consolidate any allowed appeals of procedural and substantive determinations under SEPA with a hearing or appeal on the underlying governmental action in a single simultaneous hearing before one hearing officer or body. For example, an appeal of the adequacy of an EIS must be consolidated with ~~((an))~~ a hearing or appeal ~~((of))~~ on the agency's decision on the proposed action, if both ~~((appeals))~~ proceedings are allowed in agency procedures. An agency may not allow more than one hearing on a SEPA procedural or substantive determination. The two exceptions to this consolidation requirement are appeals of a DS that occurs prior to the agency's final decision, and an appeal to the local legislative authority under RCW 43.21C.060 or other applicable state statutes.

(vi) Agencies shall provide that procedural determinations made by the responsible official shall be entitled to substantial weight.

(b) Agencies providing for administrative appeals shall provide for a record as required by RCW 43.21C.075 (3)(c).

(c) If an agency provides an administrative appeal procedure, that procedure must be used before anyone may initiate judicial review of any SEPA issue that could have been reviewed under the agency procedures.

(4) **Judicial appeals.**

(a) SEPA authorizes judicial appeals of both procedural and substantive compliance with SEPA.

(b) When SEPA applies to a decision, any judicial appeal of that decision potentially involves both those issues pertaining to SEPA (SEPA issues) and those which do not (non-SEPA issues). RCW 43.21C.075 establishes time limits for raising SEPA issues, but says that existing statutes of limitations control the appeal of non-SEPA issues. The statute contemplates a single lawsuit ~~((, but allows for the SEPA and non-SEPA portions of that lawsuit to be filed at different times)).~~

(c) If there is a time limit established by statute or ordinance for appealing the underlying governmental action, then appeals (or portions thereof) raising SEPA issues must be filed within ~~((thirty days after the agency gives official notice (see subsection (5) of this section for content of official notice)))~~ such time period.

(d) ~~((In any instance where subsection (c) of this subsection allows the SEPA portion of an appeal to be filed after the time limit established by statute or ordinance for appealing the underlying governmental action, some judicial action must be filed within the time set by statute or ordinance. That action may be later amended to raise SEPA issues within thirty days after the agency gives official notice (see subsection (5) of this section). In addition, where SEPA~~

~~issues were first raised during an administrative appeal, any person desiring to raise SEPA issues by judicial appeal must submit a notice of intent to do so with the responsible official of the acting agency within the time limit set by statute or ordinance for appealing the underlying governmental action.~~

~~(e))~~ The notice of action procedures of RCW 43.21C.080 may still be used. If this procedure is used, then the time limits for judicial appeal specified in RCW 43.21C.080 shall apply, unless there is a time limit established by statute or ordinance for appealing the underlying governmental action. If so, the time limit for appeal of SEPA issues shall be ~~((within thirty days after the agency gives official notice (see subsection (5) of this section)))~~ the time limit in the statute or ordinance for the underlying governmental action. If the proposal requires more than one governmental decision that will be supported by the same SEPA documents, then RCW 43.21C.080 still only allows one judicial appeal of procedural compliance with SEPA, which must be commenced within the applicable time to appeal the first governmental decision.

~~((f))~~ (e) If the time limit established by statute or ordinance for appealing the underlying governmental action is less than fifteen days, then the notice of action in RCW 43.21C.080(1) may be given by publishing once within that shorter time period, in a newspaper of general circulation in the area where the property that is the subject of the action is located, and meeting the other requirements of RCW 43.21C.080.

~~((g))~~ (f) If there is no time limit established by statute or ordinance for appeal, and the notice of action provisions are not used, then SEPA provides no time limit for judicial appeals. Appeal times may still be limited, however, by general statutes of limitation or the common law.

~~((h))~~ (g) For the purposes of this subsection, "a time limit established by statute or ordinance" does not include time limits established by the general statutes of limitation in chapter 4.16 RCW.

(5) **Official notice of the date and place for commencing ~~((a))~~ a judicial appeal.**

(a) Official notice of the date and place for commencing an appeal must be given if there is a time limit established by statute or ordinance for commencing an appeal of the underlying governmental action. The notice shall include:

(i) The time limit for commencing appeal of the underlying governmental action and SEPA issues, and the statute or ordinance establishing the time limit; and

~~((ii))~~ ~~((The time for appealing SEPA issues (thirty days after notice); and~~

~~((iii))~~ ~~A statement that a notice of intent is required, if a notice is required under subsection (4)(d) of this section, and instructions on where to send the notice and by what date; and~~

~~((iv))~~ Where an appeal may be filed.

(b) Notice is given by:

(i) Delivery of written notice to the applicant, all parties to any administrative appeal, and all persons who have requested notice of decisions with respect to the particular proposal in question; and

(ii) Following the agency's normal methods of notice for the type of governmental action taken.

(c) Written notice containing the information required by subsection (5)(a) of this section may be appended to the permit, decision documents, or SEPA compliance documents or may be printed separately.

(d) Official notices required by this subparagraph shall not be given prior to final agency action.

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-702 Act. "Act" means the State Environmental Policy Act ~~((of 1974))~~, chapter 43.21C RCW, as amended, which is also referred to as "SEPA."

NEW SECTION

WAC 197-11-721 Closed record appeal. "Closed record appeal" means an administrative appeal held under chapter 36.70B RCW that is on the record to a local governmental body or officer, including the legislative body, following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal arguments allowed. (RCW 36.70B.020(1).)

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-728 County/city. (1) "County/city" means a county, city, or town. In this chapter, duties and powers are assigned to a county, city, or town as a unit. The delegation of responsibilities among the various departments of a county, city, or town is left to the legislative or charter authority of the individual counties, cities, or towns.

(2) A "GMA county/city" means a county, city, or town planning under the Growth Management Act.

NEW SECTION

WAC 197-11-775 Open record hearing. "Open record hearing" means a hearing held under chapter 36.70B RCW and conducted by a single hearing body or officer authorized by the local government to conduct such hearings, that creates the local government's record through testimony and submission of evidence and information, under procedures prescribed by the local government by ordinance or resolution. An open record hearing may be held prior to a local government's decision on a project permit to be known as an "open record predecision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record predecision hearing has been held on the project permit. (RCW 36.70B.020(3).)

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-790 SEPA. "SEPA" means the State Environmental Policy Act ~~((of 1974))~~ (chapter 43.21C RCW), which is also referred to as the act. The "SEPA process" means all measures necessary for compliance with the act's requirements.

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-800 Categorical exemptions. The proposed actions contained in Part Nine are categorically exempt from threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC 197-11-305.

(1) Minor new construction—Flexible thresholds.

(a) The exemptions in this subsection apply to all licenses required to undertake the construction in question, except when a rezone or any license governing emissions to the air or discharges to water is required. To be exempt under this subsection, the project must be equal to or smaller than the exempt level. For a specific proposal, the exempt level in (b) of this subsection shall control, unless the city/county in which the project is located establishes an exempt level under (c) of this subsection. If the proposal is located in more than one city/county, the lower of the agencies' adopted levels shall control, regardless of which agency is the lead agency.

(b) The following types of construction shall be exempt, except when undertaken wholly or partly on lands covered by water:

(i) The construction or location of any residential structures of four dwelling units.

(ii) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots.

(iii) The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for twenty automobiles.

(iv) The construction of a parking lot designed for twenty automobiles.

(v) Any landfill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.

(c) Cities, towns or counties may raise the exempt levels to the maximum specified below by implementing ordinance or resolution. Such levels shall be specified in the agency's SEPA procedures (WAC 197-11-904) and sent to the department of ecology. A newly established exempt level shall be supported by local conditions, including zoning or other land use plans or regulations. An agency may adopt a system of several exempt levels (such as different levels for different geographic areas). The maximum exempt level for the exemptions in (1)(b) of this section shall be, respectively:

(i) 20 dwelling units.

(ii) 30,000 square feet.

(iii) 12,000 square feet; 40 automobiles.

(iv) 40 automobiles.

(v) 500 cubic yards.

(2) Other minor new construction. The following types of construction shall be exempt except where undertaken wholly or in part on lands covered by water (unless specifically exempted in this subsection); the exemptions

provided by this section shall apply to all licenses required to undertake the construction in question, except where a rezone or any license governing emissions to the air or discharges to water is required:

(a) The construction or designation of bus stops, loading zones, shelters, access facilities and pull-out lanes for taxicabs, transit and school vehicles.

(b) The construction and/or installation of commercial on-premise signs, and public signs and signals.

(c) The construction or installation of minor road and street improvements such as pavement marking, freeway surveillance and control systems, railroad protective devices (not including grade-separated crossings), grooving, glare screen, safety barriers, energy attenuators, transportation corridor landscaping (including the application of Washington state department of agriculture approved herbicides by licensed personnel for right of way weed control as long as this is not within watersheds controlled for the purpose of drinking water quality in accordance with WAC 248-54-660), temporary traffic controls and detours, correction of substandard curves and intersections within existing rights of way, widening of a highway by less than a single lane width where capacity is not significantly increased and no new right of way is required, adding auxiliary lanes for localized purposes, (weaving, climbing, speed change, etc.), where capacity is not significantly increased and no new right of way is required, channelization and elimination of sight restrictions at intersections, street lighting, guard rails and barricade installation, installation of catch basins and culverts, and reconstruction of existing roadbed (existing curb-to-curb in urban locations), including adding or widening of shoulders, addition of bicycle lanes, paths and facilities, and pedestrian walks and paths, but not including additional automobile lanes.

(d) Grading, excavating, filling, septic tank installations, and landscaping necessary for any building or facility exempted by subsections (1) and (2) of this section, as well as fencing and the construction of small structures and minor facilities accessory thereto.

(e) Additions or modifications to or replacement of any building or facility exempted by subsections (1) and (2) of this section when such addition, modification or replacement will not change the character of the building or facility in a way that would remove it from an exempt class.

(f) The demolition of any structure or facility, the construction of which would be exempted by subsections (1) and (2) of this section, except for structures or facilities with recognized historical significance.

(g) The installation of impervious underground tanks, having a capacity of 10,000 gallons or less.

(h) The vacation of streets or roads.

(i) The installation of hydrological measuring devices, regardless of whether or not on lands covered by water.

(j) The installation of any property, boundary or survey marker, other than fences, regardless of whether or not on lands covered by water.

(3) Repair, remodeling and maintenance activities. The following activities shall be categorically exempt (~~except~~): The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, involving no material expansions or changes in use beyond that previously existing;

except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration, or maintenance of docks). The following maintenance activities shall not be considered exempt under this subsection:

(a) Dredging;

(b) Reconstruction/maintenance of groins and similar shoreline protection structures; or

(c) Replacement of utility cables that must be buried under the surface of the bedlands. Repair/rebuilding of major dams, dikes, and reservoirs shall also not be considered exempt under this subsection.

(4) **Water rights.** The following appropriations of water shall be exempt, the exemption covering not only the permit to appropriate water, but also any hydraulics permit, shoreline permit or building permit required for a normal diversion or intake structure, well and pumphouse reasonably necessary to accomplish the exempted appropriation, and including any activities relating to construction of a distribution system solely for any exempted appropriation:

(a) Appropriations of fifty cubic feet per second or less of surface water for irrigation purposes, when done without a government subsidy.

(b) Appropriations of one cubic foot per second or less of surface water, or of 2,250 gallons per minute or less of ground water, for any purpose.

(5) **Purchase or sale of real property.** The following real property transactions by an agency shall be exempt:

(a) The purchase or acquisition of any right to real property.

(b) The sale, transfer or exchange of any publicly owned real property, but only if the property is not subject to an authorized public use.

(c) The lease of real property when the use of the property for the term of the lease will remain essentially the same as the existing use, or when the use under the lease is otherwise exempted by this chapter.

(6) **Minor land use decisions.** The following land use decisions shall be exempt:

(a) Except upon lands covered by water, the approval of short plats or short subdivisions pursuant to the procedures required by RCW 58.17.060, but not including further short subdivisions or short platting within a plat or subdivision previously exempted under this subsection.

(b) Granting of variances based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density.

(c) Classifications of land for current use taxation under chapter 84.34 RCW, and classification and grading of forest land under chapter 84.33 RCW.

(d) Annexation of territory by a city or town.

(7) **School closures.** The adoption and implementation of a plan, program, or decision for the closure of a school or schools shall be exempt. Demolition, physical modification or change of a facility from a school use shall not be exempt under this subsection.

(8) **Open burning.** Opening burning and the issuance of any license for open burning shall be exempt. The

adoption of plans, programs, objectives or regulations by any agency incorporating general standards respecting open burning shall not be exempt.

(9) ~~(Variances under)~~ **Clean Air Act.** The following actions under the Clean Air Act shall be exempt:

(a) The granting of variances under RCW 70.94.181 extending applicable air pollution control requirements for one year or less shall be exempt.

(b) The issuance, renewal, reopening, or revision of an air operating permit under RCW 70.94.161.

(10) **Water quality certifications.** The granting or denial of water quality certifications under the Federal Clean Water Act (Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1341) shall be exempt.

(11) **Activities of the state legislature.** All actions of the state legislature are exempted. This subsection does not exempt the proposing of legislation by an agency (WAC 197-11-704).

(12) **Judicial activity.** The following shall be exempt:

(a) All adjudicatory actions of the judicial branch.

(b) Any quasi-judicial action of any agency if such action consists of the review of a prior administrative or legislative decision. Decisions resulting from contested cases or other hearing processes conducted prior to the first decision on a proposal or upon any application for a rezoning, conditional use permit or other similar permit not otherwise exempted by this chapter, are not exempted by this subsection.

(13) **Enforcement and inspections.** The following enforcement and inspection activities shall be exempt:

(a) All actions, including administrative orders and penalties, undertaken to enforce a statute, regulation, ordinance, resolution or prior decision. No license shall be considered exempt by virtue of this subsection; nor shall the adoption of any ordinance, regulation or resolution be considered exempt by virtue of this subsection.

(b) All inspections conducted by an agency of either private or public property for any purpose.

(c) All activities of fire departments and law enforcement agencies except physical construction activity.

(d) Any action undertaken by an agency to abate a nuisance or to abate, remove or otherwise cure any hazard to public health or safety. The application of pesticides and chemicals is not exempted by this subsection but may be exempted elsewhere in these guidelines. No license or adoption of any ordinance, regulation or resolution shall be considered exempt by virtue of this subsection.

(e) Any suspension or revocation of a license for any purpose.

(14) **Business and other regulatory licenses.** The following business and other regulatory licenses are exempt:

(a) All licenses to undertake an occupation, trade or profession.

(b) All licenses required under electrical, fire, plumbing, heating, mechanical, and safety codes and regulations, but not including building permits.

(c) All licenses to operate or engage in amusement devices and rides and entertainment activities, including but not limited to cabarets, carnivals, circuses and other traveling shows, dances, music machines, golf courses, and theaters, including approval of the use of public facilities for tempo-

rary civic celebrations, but not including licenses or permits required for permanent construction of any of the above.

(d) All licenses to operate or engage in charitable or retail sales and service activities, including but not limited to peddlers, solicitors, second hand shops, pawnbrokers, vehicle and housing rental agencies, tobacco sellers, close out and special sales, fireworks, massage parlors, public garages and parking lots, and used automobile dealers.

(e) All licenses for private security services, including but not limited to detective agencies, merchant and/or residential patrol agencies, burglar and/or fire alarm dealers, guard dogs, locksmiths, and bail bond services.

(f) All licenses for vehicles for-hire and other vehicle related activities, including but not limited to taxicabs, ambulances, and tow trucks: *Provided*, That regulation of common carriers by the utilities and transportation commission shall not be considered exempt under this subsection.

(g) All licenses for food or drink services, sales, and distribution, including but not limited to restaurants, liquor, and meat.

(h) All animal control licenses, including but not limited to pets, kennels, and pet shops. Establishment or construction of such a facility shall not be considered exempt by this subsection.

(i) The renewal or reissuance of a license regulating any present activity or structure so long as no material changes are involved.

(15) **Activities of agencies.** The following administrative, fiscal and personnel activities of agencies shall be exempt:

(a) The procurement and distribution of general supplies, equipment and services authorized or necessitated by previously approved functions or programs.

(b) The assessment and collection of taxes.

(c) The adoption of all budgets and agency requests for appropriation: *Provided*, That if such adoption includes a final agency decision to undertake a major action, that portion of the budget is not exempted by this subsection.

(d) The borrowing of funds, issuance of bonds, or applying for a grant and related financing agreements and approvals.

(e) The review and payment of vouchers and claims.

(f) The establishment and collection of liens and service billings.

(g) All personnel actions, including hiring, terminations, appointments, promotions, allocations of positions, and expansions or reductions in force.

(h) All agency organization, reorganization, internal operational planning or coordination of plans or functions.

(i) Adoptions or approvals of utility, transportation and solid waste disposal rates.

(j) The activities of school districts pursuant to desegregation plans or programs; however, construction of real property transactions or the adoption of any policy, plan or program for such construction of real property transaction shall not be considered exempt under this subsection (see also WAC 197-11-800(7)).

(16) **Financial assistance grants.** The approval of grants or loans by one agency to another shall be exempt, although an agency may at its option require compliance with SEPA prior to making a grant or loan for design or construction of a project. This exemption includes agencies

taking nonproject actions that are necessary to apply for federal or other financial assistance.

(17) **Local improvement districts.** The formation of local improvement districts, unless such formation constitutes a final agency decision to undertake construction of a structure or facility not exempted under WAC 197-11-800 and 197-11-880.

(18) **Information collection and research.** Basic data collection, research, resource evaluation, requests for proposals (RFPs), and the conceptual planning of proposals shall be exempt. These may be strictly for information-gathering, or as part of a study leading to a proposal that has not yet been approved, adopted or funded; this exemption does not include any agency action that commits the agency to proceed with such a proposal. (Also see WAC 197-11-070.)

(19) **Acceptance of filings.** The acceptance by an agency of any document or thing required or authorized by law to be filed with the agency and for which the agency has no discretionary power to refuse acceptance shall be exempt. No license shall be considered exempt by virtue of this subsection.

(20) **Procedural actions.** The proposal or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment shall be exempt. Agency SEPA procedures shall be exempt.

(21) **Building codes.** The adoption by ordinance of all codes as required by the state Building Code Act (chapter 19.27 RCW).

(22) **Adoption of noise ordinances.** The adoption by counties/cities of resolutions, ordinances, rules or regulations concerned with the control of noise which do not differ from regulations adopted by the department of ecology under chapter 70.107 RCW. When a county/city proposes a noise resolution, ordinance, rule or regulation, a portion of which differs from the applicable state regulations (and thus requires approval of the department of ecology under RCW 70.107.060(4)), SEPA compliance may be limited to those items which differ from state regulations.

(23) **Review and comment actions.** Any activity where one agency reviews or comments upon the actions of another agency or another department within an agency shall be exempt.

(24) **Utilities.** The utility-related actions listed below shall be exempt, except for installation, construction, or alteration on lands covered by water. The exemption includes installation and construction, relocation when required by other governmental bodies, repair, replacement, maintenance, operation or alteration that does not change the action from an exempt class.

(a) All communications lines, including cable TV, but not including communication towers or relay stations.

(b) All storm water, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines eight inches or less in diameter.

(c) All electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less; and the overbuilding of existing distribution lines (55,000 volts or less) with transmission

lines (more than 55,000 volts); and the undergrounding of all electric facilities, lines, equipment or appurtenances.

(d) All natural gas distribution (as opposed to transmission) lines and necessary appurtenant facilities and hookups.

(e) All developments within the confines of any existing electric substation, reservoir, pump station or well: *Provided*, That additional appropriations of water are not exempted by this subsection.

(f) Periodic use of chemical or mechanical means to maintain a utility or transportation right of way in its design condition: *Provided*, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.

(g) All grants of rights of way by agencies to utilities for use for distribution (as opposed to transmission) purposes.

(h) All grants of franchises by agencies to utilities.

(i) All disposals of rights of way by utilities.

(25) **Natural resources management.** In addition to the other exemptions contained in this section, the following natural resources management activities shall be exempt:

(a) All Class I, II, III forest practices as defined by RCW 76.09.050 or regulations thereunder.

(b) Issuance of new grazing leases covering a section of land or less; and issuance of all grazing leases for land that has been subject to a grazing lease within the previous ten years.

(c) Licenses or approvals to remove firewood.

(d) Issuance of agricultural leases covering one hundred sixty contiguous acres or less.

(e) Issuance of leases for Christmas tree harvesting or brush picking.

(f) Issuance of leases for school sites.

(g) Issuance of leases for, and placement of, mooring buoys designed to serve pleasure craft.

(h) Development of recreational sites not specifically designed for all-terrain vehicles and not including more than twelve campsites.

(i) Periodic use of chemical or mechanical means to maintain public park and recreational land: *Provided*, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.

(j) Issuance of rights of way, easements and use permits to use existing roads in nonresidential areas.

(k) Establishment of natural area preserves to be used for scientific research and education and for the protection of rare flora and fauna, under the procedures of chapter 79.70 RCW.

(26) Watershed restoration projects. Actions pertaining to watershed restoration projects as defined in RCW 89.08.460(2) are exempt, provided, they implement a watershed restoration plan which has been reviewed under SEPA (RCW 89.08.460(1)).

(27) Personal wireless service facilities.

(a) The siting of personal wireless service facilities are exempt if the facility:

(i) Is a microcell and is to be attached to an existing structure that is not a residence or school and does not contain a residence or a school;

(ii) Includes personal wireless service antennas, other than a microcell, and is to be attached to an existing structure (that may be an existing tower) that is not a residence or school, and is located in a commercial, industrial, manufacturing, forest, or agriculture zone; or

(iii) Involves constructing a personal wireless service tower less than sixty feet in height that is located in a commercial, industrial, manufacturing, forest, or agricultural zone.

(b) For the purposes of this subsection:

(i) "Personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

(ii) "Personal wireless service facilities" means facilities for the provision of personal wireless services.

(iii) "Microcell" means a wireless communication facility consisting of an antenna that is either:

(A) Four feet in height and with an area of not more than five hundred eighty square inches; or

(B) If a tubular antenna, no more than four inches in diameter and no more than six feet in length.

(c) This exemption does not apply to projects within a critical area designated under GMA (RCW 36.70A.060).

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-912 Procedures ~~((on))~~ of consulted agencies. Each agency shall develop internal procedures, manuals, or guidance for providing responses to consultation requests from other agencies pertaining to threshold investigations, the scoping process, or EISs. Such procedures shall ensure that the agency will comply with the requirements of Part ~~((Four))~~ Five of these rules. It is recommended that these procedures be integrated within existing procedures of investigating license applications when the consulted agency is also an acting agency.

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-914 SEPA fees and costs. (1) Except for the costs allowed by this chapter (see, for example, sections WAC 197-11-080, 197-11-100, 197-11-340 (3)(a), 197-11-420(4), 197-11-440 (2)~~((tm))~~ (1), 197-11-504, 197-11-508, 197-11-570, 197-11-600 (3)~~((tb))~~ (c) pertaining to the cost of preparing environmental documents), these rules neither authorize nor prohibit the imposition of fees to cover the costs of SEPA compliance.

(2) A person required to pay an impact fee for system improvements pursuant to RCW 82.02.050 through 82.02.090 shall not be required to pay a fee under SEPA for the same system improvements.

AMENDATORY SECTION (Amending Order 94-22, filed 3/6/95, effective 4/6/95)

WAC 197-11-938 Lead agencies for specific proposals. Notwithstanding the lead agency designation criteria contained in WAC 197-11-926 through 197-11-936, the lead agency for proposals within the areas listed below shall be as follows:

(1) For all governmental actions relating to energy facilities for which certification is required under chapter 80.50 RCW, the lead agency shall be the energy facility site evaluation council (EFSEC); however, for any public project requiring such certification and for which the study under RCW 80.50.175 will not be made, the lead agency shall be the agency initiating the project.

(2) For all private projects relating to the use of geothermal resources under chapter 79.76 RCW, the lead agency shall be the department of natural resources.

(3) For all private projects requiring a license or other approval from the oil and gas conservation committee under chapter 78.52 RCW, the lead agency shall be the department of natural resources; however, for projects under RCW 78.52.125, the EIS shall be prepared in accordance with that section.

(4) For private activity requiring a license or approval under the Forest Practices Act of 1974, chapter 76.09 RCW, the lead agency shall be either the department of natural resources or the city/county where the project is located, as set forth below:

(a) The interagency agreements authorized by WAC 222-50-030 between the department of natural resources and other governmental agencies may be used to identify SEPA lead agency status for forest practice applications. If used, this agreement shall meet the requirements for a lead agency agreement in WAC 197-11-942.

(b) If no interagency agreement exists, the SEPA lead agency determination shall be based on information in the environmental checklist required as part of the forest practice application requiring SEPA review. The applicant shall, as part of the checklist, submit all information on future plans for conversion, and shall identify any known future license requirements.

(c) For any proposal involving forest practices (i) on lands platted after January 1, 1960, (ii) on lands being converted to another use, or (iii) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, the applicable county or city is the lead agency if the county or city will require a license for the proposal. Upon receipt of a forest practice application and environmental checklist, natural resources shall determine lead agency for the proposal. If insufficient information is available to identify necessary permits, natural resources shall ask the applicant for additional information. If a permit is not required from the city/county, natural resources shall be lead agency. If a city/county permit is required, natural resources shall send copies of the environmental checklist and forest practice application together with the determination of the lead agency to the city/county.

(d) Upon receipt and review of the environmental checklist and forest practice application, the city/county shall within ten business days:

(i) Agree that a city/county license is required, either now or at a future point, and proceed with environmental review as lead agency.

(ii) Determine that a license is not required from the city/county, and notify natural resources that the city/county is not lead agency; or

(iii) Determine there is insufficient information in the environmental checklist to identify the need for a license, and either:

(A) Assume lead agency status and conduct appropriate environmental analysis for the total proposal;

(B) Request additional information from the applicant; or

(C) Notify natural resources of the specific additional information needed to determine permit requirements, who shall request the information from the applicant.

(5) For all private projects requiring a license or lease to use or affect state lands, the lead agency shall be the state agency managing the lands in question; however, this subsection shall not apply to the sale or lease of state-owned tidelands, harbor areas or beds of navigable waters, when such sale or lease is incidental to a larger project for which one or more licenses from other state or local agencies is required.

~~(6) ((For all proposals which are being processed under the Environmental Coordination Procedures Act of 1973 (ECPA), chapter 90.62 RCW, the lead agency shall be determined under the standards of these rules.~~

(7)) For a pulp or paper mill or oil refinery not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology, when a National Pollutant Discharge Elimination System (NPDES) permit is required under section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342).

~~((8))~~ (7) For proposals to construct a pipeline greater than six inches in diameter and fifty miles in length, used for the transportation of crude petroleum or petroleum fuels or oil or derivatives thereof, or for the transportation of synthetic or natural gas under pressure not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology.

~~((9))~~ (8) For proposals that will result in an impoundment of water with a water surface in excess of forty acres, the lead agency shall be the department of ecology.

~~((10))~~ (9) For proposals to construct facilities on a single site designed for, or capable of, storing a total of one million or more gallons of any liquid fuel not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology.

~~((11))~~ (10) For proposals to construct any new oil refinery, or an expansion of an existing refinery that shall increase capacity by ten thousand barrels per day or more not under the jurisdiction of EFSEC, the lead agency shall be the department of ecology.

~~((12))~~ (11) For proposed metal mining and milling operations regulated by chapter 78.56 RCW, except for uranium and thorium operations regulated under Title 70 RCW, the lead agency shall be the department of ecology.

~~((13))~~ (12) For proposals to construct, operate, or expand any uranium or thorium mill, any tailings areas generated by uranium or thorium milling or any low-level

radioactive waste burial facilities, the lead agency shall be the department of social and health services.

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-940 Transfer of lead agency status to a state agency. For any proposal for a private project where a city or town with a population of under five thousand or a county ~~((of fifth through ninth class))~~ with a population under eighteen thousand would be the lead agency under WAC 197-11-928 through 197-11-938, and when one or more state agencies are agencies with jurisdiction over the proposal, such local agency may at its option transfer the lead agency duties to that state agency with jurisdiction appearing first on the priority listing in WAC 197-11-936. In such event, the state agency so determined shall be the lead agency and the agency making the transfer shall be an agency with jurisdiction. Transfer is accomplished by the county, city or town transmitting a notice of the transfer together with any relevant information it may have on the proposal to the appropriate state agency with jurisdiction. The local agency making the transfer shall also give notice of the transfer to any private applicant and other agencies with jurisdiction involved in the proposal.

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-948 Assumption of lead agency status.

(1) An agency with jurisdiction over a proposal, upon review of a DNS (WAC 197-11-340) may transmit to the initial lead agency a completed "Notice of assumption of lead agency status." This notice shall be substantially similar to the form in WAC 197-11-985. Assumption of lead agency status shall occur only within ~~((fifteen days of issuance of a DNS))~~ the fourteen-day comment period on a DNS issued under WAC 197-11-340 (2)(a), or during the comment period on a notice of application when the optional DNS process in WAC 197-11-355 is used.

(2) The DS by the new lead agency shall be based only upon information contained in the environmental checklist attached to the DNS transmitted by the first lead agency or the notice of application if the optional DNS process is used, and any other information the new lead agency has on the matters contained in the environmental checklist.

(3) Upon transmitting the DS and notice of assumption of lead agency status, the consulted agency with jurisdiction shall become the "new" lead agency and shall expeditiously prepare an EIS. In addition, all other responsibilities and authority of a lead agency under this chapter shall be transferred to the new lead agency.

AMENDATORY SECTION (Amending Order DE 83-39, filed 2/10/84, effective 4/4/84)

WAC 197-11-970 Determination of nonsignificance (DNS).

DETERMINATION OF NONSIGNIFICANCE

Description of proposal
.....
.....

Proponent

Location of proposal, including street address, if any
.....
.....

Lead agency

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

There is no comment period for this DNS.

This DNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the DNS.

This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for ~~((15))~~ 14 days from the date below. Comments must be submitted by

Responsible official

Position/title Phone.

Address

Date. Signature

(OPTIONAL)

You may appeal this determination to (name)
at (location)
no later than (date)
by (method)

You should be prepared to make specific factual objections.

Contact. to read or ask about the procedures for SEPA appeals.

There is no agency appeal.

WSR 97-08-086
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed April 2, 1997, 11:24 a.m.]

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

PROPOSED

Title of Rule: Department of Agriculture procedural rules.

Purpose: Amend the agency's procedural rules for adjudicative proceedings to allow twenty-five days for a person to request a hearing for an adjudicative proceeding.

Statutory Authority for Adoption: Chapter 34.05 RCW.

Statute Being Implemented: Chapter 34.05 RCW.

Summary: See Purpose above.

Reasons Supporting Proposal: Under the proposal, a person would receive an additional five days to submit a request for hearing for an adjudicative proceeding.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dannie McQueen, P.O. Box 42560, Olympia, WA 98504-2560, (360) 902-1809.

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

Proposal Changes the Following Existing Rules: Extends the timeframe for a person to request an adjudicative proceeding under chapter 34.05 RCW.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no fiscal impact.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Washington State Department of Agriculture is not a listed agency in section 201.

Hearing Location: Department of Agriculture, 2nd Floor, Natural Resources Building, Room 205, P.O. Box 42560, 1111 Washington Street S.E., Olympia, WA 98504-2560, on May 7, 1997, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Cathy Jensen by May 28, 1997, TDD (360) 902-1996, or (360) 902-1976.

Submit Written Comments to: Dannie McQueen, Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, FAX (360) 902-2092, by May 7, 1997.

Date of Intended Adoption: May 27, 1997.

April 2, 1997

William E. Brookreson
Assistant Director

AMENDATORY SECTION (Amending WSR 91-23-051, filed 11/15/91, effective 12/16/91)

WAC 16-08-031 Application for adjudicative proceeding. An application for an adjudicative proceeding shall be made on a form provided by the department. Written application for an adjudicative proceeding shall be received at the address designated on the application form within twenty-five days of (~~notice~~) service of the proposed department action giving rise to the application unless provided for otherwise by statute or rule.

AMENDATORY SECTION (Amending WSR 93-10-059, filed 4/30/93, effective 5/31/93)

WAC 16-08-141 Brief adjudicative proceedings. (1) Pursuant to RCW 34.05.482, the department will use brief adjudicative proceedings where not violative of law and where protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties. Those circumstances may include:

(a) Actions taken by the agency based on the failure:

- (i) To maintain, supply, or display records; and/or
- (ii) To display evidence of a license; and/or
- (iii) To display or post information required by law; and/or
- (iv) To possess required insurance, bonding or other security.
- (b) Actions taken with respect to late application renewal fees.
- (c) Actions taken with respect to certificate of compliance agreements under WAC 16-461-010.
- (d) Actions taken with respect to sale permits pursuant to RCW 15.13.270.
- (e) Actions taken to revoke certification of plant material as foundation or breeder planting stock pursuant to RCW 15.14.110.
- (f) Penalty actions taken with respect to cattle breed name use.
- (g) Penalty actions taken against milk producers pursuant to RCW 15.36.115 or 15.36.595.
- (h) Dairy degrade or permit suspension actions taken pursuant to chapter 15.36 RCW.
- (i) Actions taken with respect to licenses for sale of milk for animal food pursuant to RCW 15.37.030 et seq.
- (j) Actions taken with respect to registration of commercial feed pursuant to RCW 15.53.9036.
- (k) Actions taken with respect to pesticide registration under RCW 15.58.110.
- (l) Actions taken with respect to organic certification pursuant to RCW 15.86.060 and/or 15.86.070.
- (m) Actions taken with respect to mushroom buyer or dealer licenses pursuant to RCW 15.90.020.
- (n) Actions taken with respect to animal health certificates pursuant to RCW 16.36.050.
- (o) Actions taken with respect to destruction or treatment of quarantined animals pursuant to RCW 16.36.090.
- (p) Actions taken with respect to licenses for garbage feeding to swine pursuant to RCW 16.36.108.
- (q) Actions taken with respect to licenses related to custom farm slaughter pursuant to chapter 16.49 RCW.
- (r) Actions taken with respect to licenses related to custom meat facilities pursuant to chapter 16.49 RCW.
- (s) Actions taken with respect to approval of livestock pens within feedlots pursuant to RCW 16.58.080.
- (t) Actions taken with respect to certified feed lot licenses pursuant to RCW 16.58.130.
- (u) Actions taken with respect to seizure and destruction of incorrect weights and measures pursuant to RCW 19.24.250.
- (v) Actions taken with respect to licenses of grain dealers or warehousemen pursuant to RCW 22.09.471.
- (w) Revocation of compliance agreements for the completion of state phytosanitary, sanitation, or brown garden snail certificates pursuant to chapters 15.13 and 17.24 RCW.
- (x) Revocation of compliance agreements for preprinting or use of rubber stamps for nursery stock inspection certificates pursuant to chapter 15.13 RCW.
- (y) Revocation of compliance agreements for root sampling of nursery stock pursuant to chapter 15.13 RCW.
- (aa) Agency refusal to certify seed stocks because of misleading or confusing labeling pursuant to chapter 15.60 RCW and WAC 16-316-345.

(bb) Rescinding of permit for seed conditioning pursuant to chapter 15.60 RCW and WAC 16-316-185(8).

(cc) Expulsion from or refusal to allow entry into a seed or plant certification program pursuant to chapters 15.60 and 15.13 RCW.

(2) A party to a brief adjudicative hearing has twenty days to file an application or request from the date of service of the department's notice of intent to take action. The application or request for a brief adjudicative hearing shall be filed at the address listed on the form provided by the department. The party filing the application or request for a brief adjudicative proceeding shall submit a written explanation of their view of the matter along with the application or request. Other parties may file a written response within ten days after service of the application for a brief adjudicative proceeding. Copies of the response shall be served on all parties. Oral statements may be submitted and considered as follows:

(a) If a party to a brief adjudicative proceeding desires an opportunity to make an oral statement, it should be requested in the application or request.

(b) A request to make an oral statement may be granted if the presiding officer believes such a statement would benefit him or her in reaching a decision. The presiding officer shall notify the parties within a reasonable time of the decision to grant or deny the request to hear oral comments, and if the request is granted, shall notify the parties of the time and place for hearing comments.

~~(3) (If the party is present at the time any unfavorable action is taken, the presiding officer shall make a brief statement of the reasons for the decision. The decision on an application shall be expressed in a written order which shall be served upon all parties within ten days after entry.)~~
At the time any unfavorable action is taken, the presiding officer shall serve upon each party a brief statement of the reasons for the decision. Within ten days of the decision, the presiding officer shall give the parties a brief written statement of the reasons for the decision and information about any internal administrative review available.

(4) The presiding officer's written decision is an initial order. If no review is taken of the initial order, it shall be the final order.

(5) The reviewing officer shall conduct a review of an initial order resulting from a brief adjudicative proceeding upon the written or oral request of a party if the director receives the request within twenty-one days from the service of the initial order. If no request is filed in a timely manner, the reviewing officer may review, on his or her own motion, an order resulting from a brief adjudicative proceeding and adopt, modify, or reject the initial order; but the reviewing officer shall not take any action on review less favorable to any party without giving that party notice and opportunity to explain his or her view of the matter.

(6) A request for review of an initial order shall contain an explanation of the party's view of the matter and a statement of reasons why the initial order is incorrect. The request for review shall be filed with the director and copies shall be served on all parties, and evidence of such service filed. Responses to a request for review of an initial order shall be filed with the director and served on all parties within ten days after service of the request for review.

(7) The order on review shall be in writing, shall include a brief statement of the reasons for the decision, and shall be entered within twenty days after the date of the initial order or of the request for review, whichever is later. The order shall include a description of any further available administrative review or, if none is available, a notice that judicial review may be available.

(8) The record in a brief adjudicative proceeding shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding and/or by the reviewing officer for any review.

AMENDATORY SECTION (Amending WSR 91-23-051, filed 11/15/91, effective 12/16/91)

WAC 16-08-171 Documents—Filing. Any documents filed with the director under provisions of the Administrative Procedure Act, chapter 34.05 RCW, Model rules of procedure, chapter 10-08 WAC, and this chapter, shall be filed with the ~~((Deputy Director's Office, 406 General Administration Bldg., AX 41, Olympia, WA 98504))~~ Administrative Regulations Program, P.O. Box 42560, 1111 Washington St., S.E., Olympia, WA 98504-2560.

Unless otherwise required by law, filing of a document with the director shall be made personally, by first class mail, by certified or registered mail, by commercial parcel delivery company, or by electronic telefacsimile transmission and same-day mailing of original showing same-day postmark. Filing shall occur within the period of time specified for filing by statute, rule, or order.

WSR 97-08-089

PROPOSED RULES

PERSONNEL RESOURCES BOARD

[Filed April 2, 1997, 11:35 a.m.]

Original Notice.

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

Title of Rule: WAC 356-05-055 Board, 356-06-020 Exemptions—Exceptions, 356-06-060 Personnel board—Composition—Appointment, 356-06-070 Personnel board—Procedure—Quorum, 356-06-080 Personnel board—Powers—Duties, 356-06-090 Director—Appointment—Removal, and 356-10-030 Positions—Allocations—Reallocation.

Purpose: These rules pertain to the definition of the board, exemptions from Title 356 WAC, Personnel Resources Board, director, and the allocation/reallocation of positions.

Statutory Authority for Adoption: Chapter 41.06 RCW. Statute Being Implemented: RCW 41.06.150.

Summary: The revisions are for clarification and the repealers remove duplicative language. All are housekeeping in nature.

Name of Agency Personnel Responsible for Drafting: Sharon Peck, 521 Capitol Way South, Olympia, WA, (360) 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: These rules pertain to the definition, procedure, powers and duties of the Personnel Resources Board; exemptions from Title 356 WAC; the appointment and removal of the director of the Department of Personnel; and the allocation/reallocation of positions. These revisions and repealers are necessary in order to clarify and reflect the current title of the board; remove duplicative language pertaining to exemptions, personnel board and the director; and clarify language pertaining to the allocation/reallocation process. These revisions and repealers will clarify existing language and remove duplicative language.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. Pursuant to RCW 34.05.328(5) the Department of Personnel is not an agency subject to the provisions of RCW 34.05.328 (1)-(4). In addition, under RCW 34.05.328 (5)(b)(ii), these rules relate to internal governmental operations that are not subject to violation by a nongovernmental party.

Hearing Location: Department of Personnel, 521 Capitol Way South, Olympia, WA, on May 8, 1997, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Department of Personnel by May 1, 1997, TDD (360) 753-4107, or (360) 586-0509.

Submit Written Comments to: Sharon Peck, Department of Personnel, P.O. Box 47500, FAX (360) 586-4694, by May 6, 1997.

Date of Intended Adoption: May 8, 1997.

April 2, 1997

Dennis Karras

Secretary

AMENDATORY SECTION (Amending WSR 84-17-042 (Order 209), filed 8/10/84)

WAC 356-05-055 Board. The ((state)) Washington personnel resources board.

AMENDATORY SECTION (Amending WSR 95-19-054, filed 9/15/95, effective 10/16/95)

WAC 356-06-020 Exemptions—Exceptions. ((With the exceptions noted in subsection (19) of this section the provisions of these rules do not apply to:)) Exemptions from WAC 356 are outlined in RCW 41.06.070 and/or in each agency's enabling statute.

~~((1) Members of the legislature or to any employee of, or position in, the legislative branch of the state government including members, officers and employees of the legislative council, legislative budget committee, statute law committee, and any interim committee of the legislature.~~

~~(2) Judges of the supreme court, of the superior courts or of the inferior courts or to any employee of, or position in the judicial branch of, state government.~~

~~(3) Officers, academic personnel and employees of state institutions of higher education, the state board for community college education, and the higher education personnel board.~~

~~(4) Employees of the state printing office.~~

~~(5) The officers of the Washington state patrol.~~

~~(6) Elective officers of the state.~~

~~(7) The chief executive officer of each agency.~~

~~(8) In the departments of employment security and fisheries, the director and the director's confidential secretary.~~

~~(9) In the department of social and health services, the secretary, the secretary's executive assistant, if any; not to exceed six assistant secretaries, thirteen division directors, six regional directors and one confidential secretary for each of the above named officers; not to exceed six bureau directors and all superintendents of institutions of which the average daily population equals or exceeds one hundred residents: *Provided*, That each such confidential secretary must meet the minimum qualifications for the class of secretary 2 as determined by the state personnel board.~~

~~(10) In all departments except those mentioned in subsection (8) above, the executive head of which is appointed by the governor, the director, the director's confidential secretary, and the statutory assistant directors.~~

~~(11) In the case of a multimember board, commission or committee, whether the members thereof are elected, appointed by the governor or other authority, serve ex officio, or otherwise chosen.~~

~~(a) All members of such boards, commissions or committees.~~

~~(b) If the members of the board, commission or committee serve on a part-time basis and there is a statutory executive officer:~~

~~(i) The secretary of the board, commission or committee.~~

~~(ii) The chief executive officer of the board, commission or committee.~~

~~(iii) The confidential secretary of the chief executive officer of the board, commission or committee.~~

~~(c) If the members of the board, commission or committee serve on a full-time basis:~~

~~(i) The chief executive officer or administrative officer as designated by the board, commission or committee.~~

~~(ii) The confidential secretary to the chairman of the board, commission or committee.~~

~~(d) If all members of the board, commission or committee serve ex officio:~~

~~(i) The chief executive officer.~~

~~(ii) The confidential secretary of such chief executive officer.~~

~~(12) The confidential secretaries and administrative assistants in the immediate offices of the elective officers of the state.~~

~~(13) Assistant attorneys general.~~

~~(14) Commissioned and enlisted personnel in the military service of the state.~~

~~(15) Resident, student, part-time or temporary employees, and part-time professional consultants as defined by the state personnel board to include:~~

PROPOSED

(a) State and local officials serving ex officio and performing incidental administrative duties in the programs of the agency.

(b) Part time local health officers.

(c) Persons employed on a part time, or temporary basis for medical, nursing or other professional service and who are not engaged in the performance of administrative duties.

(d) Part time or temporary employees who are enrolled as full time students in recognized educational institutions and whose employment is largely to provide training opportunity, and all temporary employees not in federal grant in aid programs.

(e) Patient and resident help in the covered institutions.

(f) Skilled and unskilled labor employed temporarily on force account; construction and maintenance projects; or employed on temporary seasonal single phases of agricultural production or harvesting; or as determined by the director of personnel to be equivalent.

(g) Washington state patrol trooper cadets in training for commissioning as troopers in the Washington state patrol.

(16) All officers and employees in those commissions made exempt by legislative action, namely:

(a) Washington state fruit commission.

(b) Washington state apple commission.

(c) Washington state dairy products commission.

(d) Washington state wheat commission.

(e) Officers and employees of any commission formed under the provisions of chapter 15.66 RCW.

(f) Agricultural commissions formed under the provisions of chapter 15.65 RCW.

(17) Up to a total of five senior staff positions of the Western library network under chapter 27.26 RCW responsible for formulating policy or for directing program management of a major administrative unit.

(18) In the department of information services, up to twelve positions in the planning component involved in policy development and/or senior professionals.

(19) Up to five employees of the Washington basic health plan.

(20) Executive assistants, for personnel administration and labor relations in all state agencies employing such executive assistants including but not limited to all departments, offices, commissions, committees, boards, or other bodies subject to the provisions of this chapter and this subsection shall prevail over any provision of law inconsistent herewith unless specific exception is made in such law.

(21) In each agency with fifty or more employees: Deputy agency heads, assistant directors or division directors, and not more than three principal policy assistants who report directly to the agency head or deputy agency head.

(22) In addition to the exemptions specifically provided by this chapter, the state personnel board may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the personnel board stating the reasons for requesting such exemptions. The personnel board shall hold a public hearing after proper notice, on requests submitted pursuant to this subsection. If the personnel board determines that the position for which exempting is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program opera-

tions of an agency or a major administrative division thereof, the personnel board shall grant the request and such determination shall be final. The total number of additional exemptions permitted under this subsection shall not exceed one hundred eighty seven for those agencies not directly under the authority of any elected public official other than the governor, and shall not exceed a total of twenty five for all agencies under the authority of elected public officials other than the governor. The state personnel board shall report to each regular session of the legislature all exemptions granted under this subsection and subsections (20) and (21) of this section, together with the reasons for such exemptions.

(23) While other provisions of these rules do not apply, the personnel board shall determine salaries and fringe benefits of incumbents in all exempt positions in agencies with positions under the jurisdiction of the personnel board, other than positions listed under subsections (5) through (8), (11)(a) and (b), and (12) through (16) of this section.)

AMENDATORY SECTION (Amending WSR 78-05-025 (Order 119), filed 4/14/78)

WAC 356-06-060 Personnel board (~~—Composition—Appointment~~). (~~((1) The personnel board shall consist of three members appointed by the governor and confirmed by the senate. Each member must: Have clearly demonstrated an interest and belief in the merit principle; shall not hold any other employment with the state; shall not have been an officer of a political party within one year prior to appointment; shall not become a candidate for partisan political office during his/her term on the board.))~~ Wherever state personnel board, personnel board, and/or board is mentioned in these rules, it shall mean the Washington personnel resources board.

~~((2) Members of the board shall serve overlapping terms of six years. A member appointed to fill a vacancy occurring prior to the expiration of the term shall be appointed for the remainder of such term.~~

~~(3) The board shall annually elect a chairman and vice chairman from among its members to serve one year.)~~

REPEALER

WAC 356-06-070 Personnel board—Procedure—Quorum.

REPEALER

WAC 356-06-080 Personnel board—Powers—Duties.

REPEALER

WAC 356-06-090 Director—Appointment—Removal.

AMENDATORY SECTION (Amending WSR 88-15-060 (Order 303), filed 7/18/88, effective 9/1/88)

WAC 356-10-030 Positions—Allocation—Reallocation. (1) Position allocations or reallocations shall be based upon an investigation of duties and responsibilities assigned and/or performed and other information and

recommendations. Every position shall be allocated to an established class.

(2) Allocations may be made by:

(a) The director or designated staff of the department of personnel; or,

(b) By agency directors or other designees authorized under subsection (3) of this section.

(3) Agency directors may request and the director of personnel may approve, the authorization of the agency director or designee to approve or disapprove the allocation or reallocation of positions for which the agency has been delegated allocation authority under the merit system rules and procedures approved by the director of personnel.

~~(4) (It shall be the duty of the appointing authority and/or the personnel representative to report to the director of personnel any changes in duties, responsibilities or organization in a position which may affect position allocation.)~~
The appointing authority or designee is responsible for the work assignment for each position. The agency shall maintain position documentation.

(5) Agencies shall establish procedures for processing and reporting new positions, changes in position duties, and requests for position review to provide proper maintenance of the classification plan. The procedure shall provide for individual employee requests for position review, based on duties and responsibilities, through the agency personnel office and, for agencies not having decentralized allocation authority, to the director of personnel. This procedure will not cause undue delay in the director of personnel or designee reviewing the requested reclassification. Such procedures shall be ~~(reviewed and approved)~~ available for review by the director of personnel or designee. Notice of changes in this procedure initiated by agencies, will be provided to exclusive bargaining representatives and a copy to the director of personnel.

(6) Questions concerning the previous classification of employees due to the retitling, reallocating or reclassification of positions will be determined by the director of personnel or designee.

(7)(a) Employees affected by agency initiated reallocations shall be notified in writing by the agency not less than twenty calendar days in advance of the intended date of the action, provided that this notice requirement shall not preclude the establishment of effective dates for other than competitive reallocations as provided in WAC 356-10-050.

(b) Any official authorized in subsection (2) of this section to make allocation or reallocation determinations shall immediately transmit a written notice of the determination to the employee in the position affected by that determination.

WSR 97-08-090

PROPOSED RULES

PERSONNEL RESOURCES BOARD

[Filed April 2, 1997, 11:37 a.m.]

Original Notice.

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

Title of Rule: WAC 251-01-045 Board, 251-01-110 Director, 251-04-040 Exemptions, 251-04-050 Higher Education Personnel Board, 251-10-030 Layoff, 251-12-270 Superior court appeals—Grounds—Notice requirements, 251-12-600 Remedial action, and 251-20-020 Employee performance evaluation—Forms.

Purpose: These rules pertain to the definition of board and director, exemptions from Title 251 WAC, Higher Education Board, layoff, notice requirements to superior court, remedial action and employee performance evaluation forms.

Statutory Authority for Adoption: Chapter 41.06 RCW.
Statute Being Implemented: RCW 41.06.150.

Summary: The revisions are for clarification and the repealers remove duplicative language. All are housekeeping in nature.

Name of Agency Personnel Responsible for Drafting: Sharon Peck, 521 Capitol Way South, Olympia, WA, (360) 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: These rules pertain to the definition of the director and the board; exemptions from Title 251 WAC; layoff, notice requirements for superior court; remedial action and employee performance evaluation forms. These revisions and repealers are necessary in order to clarify and reflect the current title of the board and director; remove duplicative language pertaining to exemptions; and remove duplicative language of the statute of the former Higher Education Personnel Board, which was repealed. These revisions and repealers will clarify existing language and remove duplicative language.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. Pursuant to RCW 34.05.328(5) the Department of Personnel is not an agency subject to the provisions of RCW 34.05.328 (1)-(4). In addition, under RCW 34.05.328 (5)(b)(ii), these rules relate to internal governmental operations that are not subject to violation by a nongovernmental party.

Hearing Location: Department of Personnel, 521 Capitol Way South, Olympia, WA, on May 8, 1997, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Department of Personnel by May 1, 1997, TDD (360) 753-4107, or (360) 586-0509.

Submit Written Comments to: Sharon Peck, Department of Personnel, P.O. Box 47500, FAX (360) 586-4694, by May 6, 1997.

Date of Intended Adoption: May 8, 1997.

April 2, 1997
Dennis Karras
Secretary

PROPOSED

AMENDATORY SECTION (Amending WSR 86-09-078 (Order 147), filed 4/22/86)

WAC 251-01-045 Board. ~~((The higher education personnel board established under the provisions of the higher education personnel law.))~~ The Washington personnel resources board.

AMENDATORY SECTION (Amending WSR 87-21-089 (Order 163), filed 10/21/87)

WAC 251-01-110 Director. ~~((The director of the higher education personnel board. The director may delegate in writing his/her authority to a higher education personnel board staff member.))~~ The director of the department of personnel.

AMENDATORY SECTION (Amending WSR 94-16-049, filed 7/27/94, effective 9/1/94)

WAC 251-04-040 Exemptions. The following classifications, positions, and employees of higher education institutions/related boards are hereby exempted from coverage of this chapter.

(1) Members of the governing board of each institution/related board; all presidents, vice-presidents and their confidential secretaries, administrative and personal assistants; deans, directors, and chairs; academic personnel; executive heads of major administrative or academic divisions employed by institutions of higher education; principal assistants to executive heads of major administrative or academic divisions; other managerial or professional employees in an institution or related board having substantial responsibility for directing or controlling program operations and accountable for allocation of resources and program results, or for the formulation of institutional policy, or for carrying out personnel administration or labor relations functions, legislative relations, public information, development, senior computer systems and network programming, or internal audits and investigations; and any employee of a community college district whose place of work is one which is physically located outside the state of Washington and who is employed pursuant to RCW 28B.50.092 and assigned to an educational program operating outside of the state of Washington.

(2) Students employed by the institution at which they are enrolled (or related board) and who either:

(a) Work five hundred sixteen hours or less in any six consecutive months, exclusive of hours worked in a temporary position(s) during the summer and other breaks in the academic year, provided such employment does not:

(i) Take the place of a classified employee laid off ~~((due to lack of funds or lack of work))~~; or

(ii) Fill a position currently or formerly occupied by a classified employee during the current or prior calendar or fiscal year, whichever is longer;

(b) Are employed in a position directly related to their major field of study to provide training opportunity; or

(c) Are elected or appointed to a student body office or student organization position such as student officers or student news staff members.

(3) Students participating in a documented and approved programmed internship which consists of an academic component and work experience.

(4) Students employed through the state or federal work/study programs.

(5) Persons employed to work one thousand fifty hours or less in any twelve consecutive month period from the original date of hire or October 1, 1989, whichever is later. Such an appointment may be subject to remedial action in accordance with WAC 251-12-600, if the number of hours worked exceeds one thousand fifty hours in any twelve consecutive month period from the original date of hire or October 1, 1989, whichever is later, exclusive of overtime or work time as described in subsection (2) of this section.

(6) Part-time professional consultants retained on an independent part-time or temporary basis such as physicians, architects, or other professional consultants employed on an independent contractual relationship for advisory purposes and who do not perform administrative or supervisory duties.

(7) The director, his confidential secretary, assistant directors, and professional education employees of the state board for community college education.

(8) The personnel director of the higher education personnel board and his confidential secretary.

(9) The governing board of each institution/related board may also exempt from this chapter, subject to the employee's right of appeal to the higher education personnel board, classifications involving research activities, counseling of students, extension or continuing education activities, graphic arts or publications activities requiring prescribed academic preparation or special training, as determined by the higher education personnel board: *Provided*, That no nonacademic employee engaged in office, clerical, maintenance, or food and trades services may be exempted by the higher education personnel board under this provision.

(10) Any employee who believes that any classification should or should not be exempt, or any employee because of academic qualifications which would enable such employee to teach and thus be exempt, may appeal to the board in the same manner as provided in WAC 251-12-080, et seq.

(11) Any classified employee having civil service status in a classified position who accepts an appointment in an exempt position shall have the right of reversion to the highest class of position previously held, or to a position of similar nature and salary. Application for return to classified service must be made not later than thirty calendar days following the conclusion of the exempt appointment. A person occupying an exempt position who is terminated from the position for gross misconduct or malfeasance does not have the right of reversion to a classified position as provided for in this section.

(12) When action is taken to convert an exempt position to classified status, the effect upon the incumbent of such position shall be as provided in WAC 251-19-160.

AMENDATORY SECTION (Amending WSR 96-11-063, filed 5/10/96, effective 6/6/96)

WAC 251-04-050 Higher education personnel board. (1) ~~((The higher education personnel board is composed of three members appointed by the governor, subject to confirmation by the senate. Each odd-numbered year the~~

governor shall appoint a member for a six year term. Persons so appointed shall have clearly demonstrated an interest and belief in the merit principle, shall not hold any other employment with the state, shall not have been an officer of a political party for a period of one year immediately prior to such appointment, and shall not be or become a candidate for partisan elective public office during the term to which they are appointed.) Wherever higher education personnel board, personnel board, and/or board is mentioned in these rules, it shall mean the Washington personnel resources board.

(2) ~~((Each member of the board is eligible to receive compensation in an amount not to exceed one hundred dollars for each day during which the member attends an official meeting of the board or performs statutorily prescribed duties approved by the chairperson of the board. The members of the board may receive any number of daily payments for official meetings of the board actually attended. Members of the board shall also be reimbursed for necessary travel and other expenses incurred in the discharge of their official duties on the same basis as is provided for state officers and employees generally, in accordance with RCW 43.03.050 and 43.03.060.))~~ Wherever Chapter 28B.16 RCW is mentioned in these rules, it shall mean Chapter 41.06 RCW.

~~((3) At its first meeting following the appointment of all its members, and annually thereafter, the board shall elect a chairman and vice chairman from among its members to serve one year. The presence of at least two members of the board shall constitute a quorum to transact business. A written public record shall be kept by the board of all actions of the board.~~

(4) ~~In the necessary conduct of its work, the board shall meet monthly unless there is no pending business requiring board action. Meetings shall be held on campuses of the various state institutions of higher education. Meetings may be called by the chairman of the board, or a majority of the members of the board. Hearings may be conducted by a hearing officer duly appointed by the board. An official notice of the calling of a hearing shall be filed with the director and all members of the board shall be notified.~~

~~(5) No release of material, or statement of findings shall be made except with the approval of a majority of the board.~~

~~(6) In the conduct of hearings or investigations, a member of the board, or the director, or the hearing officer appointed to conduct the hearing, may administer oaths.~~

~~(7) It shall be the duty of the board to promulgate rules and regulations providing for employee participation in the development and administration of personnel policies. To assure this right, personnel policies, rules, classification and pay plans, and amendments thereto, shall be acted on only after the board has given twenty calendar days' notice to, and considered proposals from employee representatives and institutions/related boards affected. In matters involving the various state community colleges, notice shall also be given to the state board for community college education. Complete and current compilations of all rules and regulations of the board in printed, mimeographed, or multigraphed form shall be available from the board without charge.~~

~~(8) The higher education personnel board shall adopt rules, consistent with the purposes and provisions of this~~

~~chapter and with the best standards of personnel administration, regarding the basis and procedures to be followed for:~~

~~(a) The dismissal, suspension, or demotion of an employee, and appeals therefrom;~~

~~(b) Certification of names for vacancies, including promotions, with the number of names equal to six more names than there are vacancies to be filled, such names representing applicants rated highest on eligibility lists;~~

~~(c) Examination for all positions in the competitive and noncompetitive service;~~

~~(d) Appointments;~~

~~(e) Probationary periods of six to twelve months and rejections therein depending on the job requirements of the class;~~

~~(f) Transfers;~~

~~(g) Sick leaves and vacations;~~

~~(h) Hours of work;~~

~~(i) Layoffs when necessary and subsequent reemployment according to seniority;~~

~~(j) Determination of appropriate bargaining units within any institution or related board. *Provided*, That in making such determination the board shall consider the duties, skills, and working conditions of the employees, the history of collective bargaining by the employees and their bargaining representatives, the extent of organization among the employees and the desires of the employees;~~

~~(k) Certification and decertification of exclusive bargaining representatives;~~

~~(l) Agreements between institutions or related boards and certified exclusive bargaining representatives providing for grievance procedures and collective negotiations on all personnel matters over which the institution/related board may lawfully exercise discretion; written agreements may contain provisions for payroll deductions of employee organization dues upon authorization by the employee member and for the cancellation of such payroll deduction by the filing of a proper prior notice by the employee with the appointing authority and the employee organization. *Provided*, That nothing contained herein permits or grants to any employee the right to strike or refuse to perform his/her official duties;~~

~~(m) Adoption and revision of comprehensive classification plans for all positions in the classified service, based on investigation and analysis of the duties and responsibilities of each such position. In adopting these revisions the board shall comply with Senate Bill S 6767 of 1996, RCW 41.06.150(15), and chapter 43.88 RCW;~~

~~(n) Allocation and reallocation of positions within the classification plans;~~

~~(o) Adoption and revision of salary schedules and compensation plans as provided in chapter 251-08 WAC;~~

~~(p) Training programs including in-service, promotional, and supervisory;~~

~~(q) Increment increases within the series of steps for each pay grade; and~~

~~(r) Veteran's preference as provided by existing statutes.~~

~~(9) After consultation with institution heads, employee organizations, and other interested parties, the board shall develop standardized employee performance evaluation procedures and forms which shall be used by institutions of higher education for the appraisal of employee job performance at least annually. These procedures shall include~~

~~means whereby individual institutions may supplement the standardized evaluation process with special performance factors peculiar to specific organizational needs. This evaluation procedure shall place primary emphasis on recording how well the employee has contributed to efficiency, effectiveness, and economy in fulfilling institution and job objectives.)~~

AMENDATORY SECTION (Amending WSR 96-13-078, filed 6/18/96, effective 8/1/96)

WAC 251-10-030 Layoff. (1) An appointing authority may layoff or reduce the number of working hours or the work year of an employee without prejudice because of lack of funds or lack of work and/or for good faith reorganization for efficiency purposes.

(2) Each institution shall develop for approval by the director a layoff procedure based upon layoff seniority as defined in WAC 251-01-245, to include as a minimum:

(a) Clearly defined layoff unit(s), in order to minimize the disruption of an institution's total operation, and

(b) Provision for veterans preference for eligible veterans and their unmarried widows/widowers as defined in WAC 251-10-045.

(3) A permanent status employee scheduled for layoff shall receive written notice of any available options in lieu of layoff as provided in subsections (5) and (6) of this section. The employee shall be given no less than three working days to select an option, if available, or to elect to be laid off and/or be placed on the appropriate institution-wide layoff list(s).

(4) Written notice of at least fifteen calendar days must be given to the employee after he/she has selected one of the options or upon completion of the option period.

(5) Within the layoff unit, a permanent status employee scheduled for layoff shall be offered employment options to position(s):

(a) For which he/she meets any specific position requirements;

(b) Which are comparable, as determined by the personnel officer; and

(c) Which are in:

(i) Class(es) in which the employee has held permanent status which have the same or lower salary range maximum as the current class;

(ii) Lower class(es) in those same class series for which the employee is qualified.

The employee may exercise either option subsection (5)(c)(i) or (ii) of this section provided that the employee being replaced is the least senior in a comparable position in the class and has less layoff seniority than the employee replacing him/her. A vacant position, if available, should be considered to be the position in the class held by the least senior person. The employee may elect to have access to less-than-comparable positions by so notifying the personnel officer in writing.

(6) Except as provided in WAC 251-10-035, a permanent employee scheduled for layoff who has no options available under subsection (5) of this section shall be offered position(s) as follows:

(a) The personnel officer will offer in writing not less than three positions from among the highest available classes

(unless the total available is less than three); provided that any position(s) offered must be:

(i) At the same level or lower than the class from which the employee is being laid off; and

(ii) Vacant or held by a provisional, temporary, or probationary employee; and

(iii) In a class for which the employee being laid off meets the minimum qualifications and can pass the appropriate qualifying examination.

(b) The employee will be required to indicate within three working days his/her interest in a specific class(es) so that the personnel officer may schedule the appropriate examination(s).

(c) Upon satisfactory completion of the examination(s) the employee will be offered option(s) to specific position(s), including salary information.

(d) Employees appointed to positions through provisions of this subsection will be required to serve a trial service period.

(7) In order to be offered a layoff option or return from layoff to a position for which specific position requirements have been documented in accordance with WAC 251-18-255(1), the employee must demonstrate a satisfactory level of knowledge, skill, or ability on the specific position requirements.

(8) In a layoff action involving a position for which a particular sex is a bona fide occupational requirement, as approved by the Washington state human rights commission, the most senior employee meeting the occupational requirements may be retained in the position over more senior employees in such class who do not meet the occupational requirement.

(9) When it is determined that layoffs will occur within a unit, the personnel officer will:

(a) Provide a copy of the institution's reduction in force procedure to all employees subject to layoff;

(b) Advise each employee in writing of available options in lieu of layoff;

(c) Advise each employee in writing of the specific layoff list(s) upon which he/she may be placed as required per WAC 251-10-055 and 251-10-035;

(d) Provide information about the process by which the employee may make application for state-wide layoff lists, as required per WAC 251-10-060(7);

(e) Advise each employee in writing of the right to appeal his/her layoff to the personnel appeals board per WAC 251-12-080.

(10) Layoff actions for employees of special employment programs as identified in WAC 251-19-150 shall be administered as provided in WAC 251-10-035.

REPEALER

WAC 251-12-270 Superior court appeals—
Grounds—Notice requirements.

AMENDATORY SECTION (Amending WSR 90-01-007, filed 12/7/89, effective 1/7/90)

WAC 251-12-600 Remedial action. (1) The director may take remedial action when it is determined that the following conditions exist.

(a) The hiring institution has made an appointment that does not comply with higher education personnel board rules.

(b) The employee has worked in one or more positions for more than one thousand fifty hours in any twelve consecutive month period since the original hire date or October 1, 1989, whichever is later. (These hours do not include overtime or work time as described in WAC 251-04-040(2).)

(c) The position or positions are subject to civil service.

(d) The employee has not taken part in any willful failure to comply with these rules.

(2) Remedial action includes the power to confer permanent status, set salary, establish seniority, and determine benefits accrued from the seniority date. Remedial action also includes other actions the director may require to meet the highest personnel standards.

(3) If the institution has complied with WAC 251-19-122, the employee must:

(a) Submit any request for remedial action in writing; and

(b) File the request within thirty calendar days after the effective date of the alleged violation of the conditions of employment which are to be specified in the written notification of temporary appointment.

(4) The director's order for remedial action shall be final and binding unless exceptions are filed with the personnel appeals board within thirty calendar days of the date of service of the order. Exceptions must state the specific items of the order to which exception is taken. The personnel appeals board will review the exceptions and may hold a hearing prior to modifying or affirming the director's order.

AMENDATORY SECTION (Amending WSR 84-16-067 (Order 119), filed 7/31/84)

WAC 251-20-020 Employee performance evaluation—Forms. (1) Standardized performance evaluation forms approved by the (~~board~~) director shall be used to record employee evaluations. The forms shall contain standard "rating factors" and shall provide for one or more "optional factors" developed by the institution, which reflect organizational requirements and specific job-related aspects of performance.

(2) The approved forms shall accommodate the provisions of WAC 251-20-040.

(3) The approved forms may be supplemented with other forms and/or information used by an institution to support the ratings recorded on the approved forms.

WSR 97-08-091

PROPOSED RULES

INSURANCE COMMISSIONER'S OFFICE

[Filed April 2, 1997, 11:52 a.m.]

Continuance of WSR 97-03-023.

Preproposal statement of inquiry was filed as WSR 96-17-085.

Title of Rule: Rules of practice and procedure for contested matters heard before the commissioner.

Summary: Continuance of adoption date.

Date of Intended Adoption: May 5, 1997.

April 2, 1997

Greg J. Scully

Chief Deputy Commissioner

WSR 97-08-092

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed April 2, 1997, 11:55 a.m.]

Original Notice.

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

Title of Rule: Chapters 246-10 and 246-11 WAC.

Purpose: Housekeeping changes to rules to change location of where documents are to be filed, change name of office that serves orders and most references from "Office of Professional Standards" to "Adjudicative Clerk Office."

Other Identifying Information: The Adjudicative Clerk Office will consolidate administrative tasks for service of orders and filing of orders and motions relating to adjudicative proceedings. This consolidation will cause the procedures to be done in a uniform fashion which will benefit all licensees, programs, boards/commissions and defense attorneys.

Statutory Authority for Adoption: RCW 18.155.040 Secretary—Authority.

Statute Being Implemented: RCW 43.70.040.

Summary: The Department of Health is forming the Adjudicative Clerk Office. These rule amendments will clarify to the public the correct location to file legal documents and the correct office that will be serving final orders when the adjudicative process has begun.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Terry West and Pat Collins, Clerk Workgroup, P.O. Box 47879, Olympia, WA 98504, (360) 664-8881.

Name of Proponent: Department of Health, Clerk Workgroup, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: There were no negative comments received.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These amendments change all references from the "Office of Professional Standards" to "Adjudicative Clerk Office." These changes include all references for where to file legal documents, which office serves legal documents and where to file notice of appearances. These amendments will clarify for the public (licensees, defense and prosecution attorneys) of the appropriate office for these activities. The anticipated effect is that the public will be informed of the correct office for filing legal documents.

Proposal Changes the Following Existing Rules: Changes all references from "Office of Professional Standards" to "Adjudicative Clerk Office"; establishes the office address for the Adjudicative Clerk Office, defines "docket"; allows "or other designee of the secretary" to prepare

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scheduling orders; changes references to "presiding officer" to "Adjudicative Clerk Office" for purposes of motions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These amendments fall within the provisions for exceptions rules and do not require a small business economic impact statement.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This rule does not subject a person to a penalty or sanction; does not establish, alter or revoke a qualification or standard for licensure; and does not make significant amendment to a policy or regulatory program. This rule provides the name change from Office of Professional Standards to Adjudicative Clerk Office within existing administrative rules which provide administrative direction on the filing of orders and motions related to adjudicative proceedings.

Hearing Location: Department of Health, 2413 Pacific Avenue, Olympia, WA 98504, on May 20, 1997, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Terry J. West or Pat Collins by May 13, 1997, TDD 1-800-833-6388, or FAX (360) 664-0114.

Submit Written Comments to: Pat Collins or Terry J. West, FAX (360) 664-0114, by May 13, 1997.

Date of Intended Adoption: May 22, 1997.

April 2, 1997
Kris VanGorkom
for Bruce Miyahara
Secretary

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-102 Definitions. As used in these rules of practice and procedure, the following terms shall have the meaning set forth in this section unless the context clearly indicates otherwise. Other terms shall have their ordinary meaning unless defined elsewhere in this chapter.

"Adjudicative clerk office" shall mean the unit with responsibility for: Docketing; service of orders; and maintaining custody of the adjudicative proceeding record, whose address is:

Department of Health
Adjudicative Clerk Office
2413 Pacific Avenue
PO Box 47879
Olympia, WA 98504-7879

"Adjudicative proceeding" or "hearing" shall mean a proceeding required by statute or constitutional right and conducted under the rules of this chapter, which provides an opportunity to be heard by the department prior to the entry of a final order under this chapter.

"Brief adjudicative proceeding" shall mean an adjudicative proceeding or hearing, the scope or conduct of which is limited as provided in this chapter.

"Department" shall mean the Washington state department of health and, where appropriate, the secretary of the Washington state department of health or the secretary's designee.

"Docket" or "docketing" shall mean the list or calendar of causes set to be heard at a specified time, prepared by the adjudicative clerk office for the use of the department.

"Filing" shall mean receipt by the adjudicative clerk office ((of professional standards)).

"Initiating document" shall mean a written agency document which initiates action against a license holder or applicant for license or recipient of benefits and which creates the right to an adjudicative proceeding. It may be entitled a statement of charges, notice of intent to deny, order, or by any other designation indicating the action or proposed action to be taken.

"License" shall have the meaning set forth in RCW 34.05.010, and includes any license, certification, registration, permit, approval, or any similar form of authorization required by law to be obtained from the department.

"Office of professional standards" shall mean the unit responsible for conducting adjudicative proceedings((whose address is:)).

((Department of Health
Office of Professional Standards
2413 Pacific Avenue
PO Box 47872
Olympia, WA 98504-7872))

"Presiding officer" shall mean the person who is assigned to conduct an adjudicative proceeding. The presiding officer may be an employee of the department who is authorized to issue a final decision as designee of the secretary, or an administrative law judge employed by the office of administrative hearings.

"Presiding officer for brief adjudicative proceedings" shall mean an employee of the department who is authorized to conduct brief adjudicative proceedings.

"Program" shall mean the administrative unit within the department responsible for implementation of a particular statute or rule.

"Prompt adjudicative proceeding" or "prompt hearing" shall mean a hearing conducted at the request of the license holder or applicant for license following summary action taken in accord with this chapter against that license holder or applicant.

"Protective order" shall mean an order issued under this chapter which limits the use of, access to, or disclosure of information or evidence.

"Recipient of benefits" shall mean an individual who has qualified for benefits administered by the department.

"Respondent" shall mean a person eligible to request an adjudicative proceeding in a program under the jurisdiction of the department who is named in an initiating document.

"Secretary" shall mean the secretary of the department of health or his/her designee.

"Summary action" shall mean an agency action to address an immediate danger to the public health, safety, or welfare and shall include, but not be limited to, a cease and desist order, an order of summary suspension, and an order of summary restriction of a license.

AMENDATORY SECTION (Amending Order 369, filed 6/3/93, effective 7/4/93)

WAC 246-10-108 Representation. (1) Persons requesting an adjudicative proceeding may be represented subject to the following conditions:

(a) A person requesting an adjudicative proceeding may represent himself/herself or may be represented by an attorney who has complied with the admission to practice rules of the supreme court of the state of Washington;

(b) Every attorney representing a person requesting an adjudicative proceeding shall file a notice of appearance with the adjudicative clerk office (~~(of professional standards)~~) upon commencing representation, and shall file a notice of withdrawal of counsel with the adjudicative clerk office (~~(of professional standards)~~) upon terminating representation.

(c) No person requesting an adjudicative proceeding may be represented in an adjudicative proceeding by an employee of the department.

(2) No current or former employee of the department may appear as an expert, character witness, or representative of any party other than the state of Washington if he/she took an active part in investigating or evaluating the case or represented the agency in the matter, unless written permission of the secretary is granted. No current or former member of the attorney general's office staff who participated personally and substantially in investigating or evaluating the matter at issue while so employed may represent a party or otherwise participate in a related proceeding without first having obtained the written consent of the attorney general's office.

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-109 Service and filing. (1) A party filing a pleading, brief, or paper other than an initiating document or application for an adjudicative proceeding as required or permitted by these rules, shall serve a copy of the paper upon the opposing party or any designated representative of the opposing party prior to or simultaneous with filing.

(2) Unless otherwise provided by law, filing and service shall be made by personal service; by first class, registered, or certified mail; or by electronic telefacsimile transmission (FAX) where copies are mailed simultaneously.

(3) Filing shall be complete upon actual receipt during normal business hours at the adjudicative clerk office (~~(of professional standards)~~).

(4) Service shall be complete when personal service is made; or mail is properly stamped, addressed, and deposited in the United States mail; or FAX transmission is completed and copies are deposited in the United States mail properly stamped and addressed.

(5) Proof of service shall consist of filing as required by these rules, together with one of the following:

(a) An acknowledgement of service;

(b) A certificate of service including the date the papers were served, the parties upon whom served, the signature of the serving party, and a statement that service was completed by:

(i) Personal service; or

(ii) Mailing in the United States mail a copy properly addressed with postage and fees prepaid to each party and each designated representative.

(6) For the purpose of service on a licensee or a person requesting an adjudicative proceeding, service shall be made at the last known address provided to the department in accordance with WAC 246-01-100, unless the program has actual knowledge of a different correct address for the person being served.

AMENDATORY SECTION (Amending Order 369, filed 6/3/93, effective 7/4/93)

WAC 246-10-121 Notice to limited-English-speaking parties. When the program or the adjudicative clerk office (~~(of professional standards)~~) is notified or otherwise made aware that a limited-English-speaking person is a party in an adjudicative proceeding, all notices concerning the hearing, including notices of hearing, continuance, and dismissal, shall either be in the primary language of the party or shall include a notice in the primary language of the party which describes the significance of the notice and how the party may receive assistance in understanding and, if necessary, responding to the notice.

AMENDATORY SECTION (Amending Order 369, filed 6/3/93, effective 7/4/93)

WAC 246-10-122 Interpreters. (1) A "hearing impaired person" means a person who, because of a hearing impairment or speech defect, cannot readily understand or communicate in spoken language. A "hearing impaired person" includes a person who is deaf, deaf and blind, or hard of hearing.

(2) A "limited-English-speaking person" means a person who because of a non-English-speaking cultural background cannot readily speak or understand the English language.

(3) If a hearing impaired person or a limited-English-speaking person is involved in an adjudicative proceeding and a need for an interpreter is made known to the adjudicative clerk office (~~(of professional standards)~~), the presiding officer shall appoint an interpreter who is acceptable to the parties or, if the parties are unable to agree on an interpreter, the presiding officer shall select and appoint an interpreter.

(4) Before beginning to interpret, an interpreter shall take an oath or make affirmation that:

(a) A true interpretation shall be made to the impaired person of all the proceedings in a language or in a manner the impaired person understands; and

(b) The interpreter shall repeat the statements of the impaired person to the presiding officer, in the English language, to the best of the interpreter's skill and judgment.

(5) When an interpreter is used in a proceeding:

(a) The interpreter shall translate all statements made by other participants in the proceeding;

(b) The presiding officer shall ensure sufficient extra time is provided to permit translation; and

(c) The presiding officer shall ensure that the interpreter translates the entire proceeding to the hearing impaired person or limited-English-speaking person to the extent that the person has the same opportunity to understand the statements made as would a person not requiring an interpreter.

(6) An interpreter appointed under this section shall be entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses. The program shall pay the interpreter fee and expenses incurred for interpreters for license holders, applicants, or recipients of benefits. The party on whose behalf a witness requiring an interpreter appears shall pay for interpreter services for that witness.

(7) All proceedings shall be conducted consistent with chapters 2.42 and 2.43 RCW.

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-203 Request for adjudicative proceeding. A respondent may respond to an initiating document by filing an application for an adjudicative proceeding or by waiving the opportunity for adjudicative proceeding.

(1) If the respondent wishes to file an application for an adjudicative proceeding:

(a) An application for adjudicative proceeding must be filed in accordance with the following time periods:

(i) For matters under chapter 18.130 RCW, the Uniform Disciplinary Act, within twenty days of service of the initiating documents unless an extension has been granted as provided in subsection (3) of this section; and

(ii) For all other matters in which the program proposes to deny, suspend, revoke or modify a license or proposes to impose a civil fine, within twenty-eight days of receipt of the initiating documents, unless otherwise provided by statute; and

(iii) For all other matters, within twenty days of service of the initiating documents, unless otherwise provided by statute.

(b) The application for adjudicative proceeding shall be made either on the Request for Adjudicative Proceeding Form accompanying the initiating documents or by a written document containing at least the following information:

(i) Name and address of the party requesting an adjudicative proceeding;

(ii) Name and address of the attorney representing the party, if any;

(iii) Identification of the portion or portions of the initiating documents contested;

(iv) Summary of the party's position on the portion or portions contested;

(v) Statement of the party's standing to request an adjudicative proceeding under WAC 246-10-107; and

(vi) For matters not under chapter 18.130 RCW and in which the department proposes to deny, suspend, revoke or modify a license or proposes to impose a civil fine, the application shall include a copy of the initiating document containing the adverse notice.

(c) By filing a request for adjudicative proceeding, the responding party agrees to appear personally at the adjudicative proceeding or, if otherwise approved by the presiding officer, by telephone, unless appearance is waived as authorized in WAC 246-10-104(4).

(d) The application for adjudicative proceeding shall contain a response to the initiating documents, indicating whether each charge is admitted, denied, or not contested, and responses shall be subject to the following conditions:

(i) Once admitted or not contested, an allegation may not be denied; and

(ii) An allegation denied or not contested may later be admitted.

(e) When an allegation is admitted or not contested, it shall be conclusively deemed to be true for all further proceedings. No proof of the allegation need be submitted.

(f) The application for adjudicative proceeding shall specify the representative, if any, designated pursuant to WAC 246-10-108 and any request for interpreter. The responding party shall amend the name of the representative and need for interpreter immediately if circumstances change prior to the hearing.

(g) The application for adjudicative proceeding shall be filed at the adjudicative clerk office (~~of professional standards~~) at the address specified in WAC 246-10-102.

(2) A respondent may waive an adjudicative proceeding and submit a written statement and other documents in defense or in mitigation of the charges. Such waiver and documents shall be filed:

(a) In accordance with the timelines in subsection (1)(a) of this section; and

(b) At the address indicated in subsection (1)(g) of this section.

(3) For matters under RCW 18.130.180, if the twenty-day limit for filing an application for adjudicative proceeding results in a hardship to the respondent, the respondent may request an extension of not more than sixty days upon a showing of good cause.

(a) The request for extension shall be filed within the twenty day limit and shall include:

(i) The reason for the request and the number of days for which the extension is requested; and

(ii) Documentation of the circumstances creating the hardship.

(b) The request shall be granted for a period not to exceed sixty days upon showing of:

(i) Illness of the respondent; or

(ii) Absence of the respondent from the county of residence or employment; or

(iii) Emergency in the respondent's family; or

(iv) Other good cause as determined by the presiding officer.

(c) If a request for extension is denied, the respondent shall have ten days from service of the order denying the extension or twenty days from service of the initiating documents, whichever is longer, to file an application for adjudicative proceeding.

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-205 Scheduling orders. (1) Within thirty days after receipt of the application for adjudicative proceeding, the office of professional standards, or other designee of the secretary, shall:

(a) Approve the application for full adjudicative procedure and issue and serve on the parties a scheduling order specifying the course of the proceeding; or

(b) Approve the application for a brief adjudicative procedure and issue and serve a notice of the date by which

any additional written materials are to be submitted for consideration; or

(c) Deny the application according to RCW 34.05.416.

(2) For matters under chapter 18.130 RCW, the scheduling order shall contain:

(a) The date, time, and place of a settlement conference, a prehearing conference, and the hearing;

(b) The deadlines for completion of discovery and submission of prehearing motions; and

(c) The name, address, and telephone number of the assistant attorney general or other department representative who will represent the state in the matter.

(3) The scheduling order may be modified by order of the presiding officer upon his/her own initiative or upon motion of a party. Any request for a change in the scheduling order shall be made by motion as provided in WAC 246-10-403.

(4) The presiding officer may waive establishing dates for the settlement conference, completion of discovery, submission of prehearing motions, and the prehearing conference, if, in the discretion of the presiding officer, those proceedings are not necessary or appropriate in a particular matter or type of case. However, either party may request by motion to the presiding officer that any or all of the dates be set.

(5) Dates contained in the scheduling order may be changed by the adjudicative clerk office (~~(of professional standards)~~) upon written request of either party made within fifteen days of issuance of the first scheduling order. All other changes must be made by motion pursuant to WAC 246-10-403.

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-401 Settlement conference. (1) Following a request for an adjudicative proceeding, (~~the office of professional standards may schedule~~) a settlement conference may be scheduled as provided in WAC 246-10-205. The parties shall be notified of the date, time, and place of the settlement conference.

(2) The purpose of the settlement conference shall be to attempt to reach agreement on the issues and on a proposed order to be entered. Any agreement of the parties is subject to final approval by the presiding officer.

(3) The respondent shall attend the settlement conference as scheduled and may also be represented as provided in WAC 246-10-108. Representatives of the department will also attend. Other persons may attend by agreement of the parties.

(4) Either party may bring documents or other materials to the settlement conference for the purpose of settlement negotiations. No testimony will be taken. No documents or information submitted at the settlement conference will be admitted at the adjudicative proceeding unless stipulated by the parties or otherwise admitted into evidence by the presiding officer.

(5) If a settlement offer has been made in writing to the respondent and it is signed and returned by the respondent to the adjudicative clerk office (~~(of professional standards)~~) prior to the settlement conference, all subsequent dates set in

the scheduling order are continued pending final review of the settlement by the presiding officer.

AMENDATORY SECTION (Amending WSR 96-21-027, filed 10/7/96, effective 11/7/96)

WAC 246-10-403 Motions. (1) The presiding officer shall rule on motions. The presiding officer may rule on motions without oral argument or may request or permit the parties to argue the motion in person or by telephone. Oral argument may be limited in time at the discretion of the presiding officer.

(2) All prehearing motions, including discovery and evidentiary motions, shall be made in writing and filed with the (~~presiding officer~~) adjudicative clerk office prior to the dates set in the scheduling order.

(3) Motions for continuance must be made in writing and filed prior to the dates set in the scheduling order. If the adjudicative proceeding is scheduled to take place fewer than twenty days from service of the scheduling order, motions for continuance must be made within ten days of service of the scheduling order, but in no event fewer than five days prior to the hearing. Continuances may be granted by the presiding officer for good cause.

(4) The presiding officer may grant a continuance when a motion for continuance is not submitted within the time limits contained in subsection (3) of this section for good cause.

(5) The following is the recommended format for motions:

(a) A succinct statement of the facts contended to be material;

(b) A concise statement of the issue, issues or law upon which the presiding officer is requested to rule;

(c) The specific relief requested by the moving party;

(d) If the motion requires the consideration of facts or evidence not appearing on the record, the moving party shall also serve and file copies of all affidavits and photographic or documentary evidence presented in support of the motion;

(e) The legal authority upon which the motion is based; and

(f) A proposed order may accompany the motion, and should contain findings of fact and conclusions of law.

(6) The moving party shall file the motion, and the accompanying affidavits and photographic or documentary evidence when necessary, with the (~~presiding officer~~) adjudicative clerk office and shall serve the motion, and the accompanying affidavits and photographic or documentary evidence when necessary, on all other parties.

(7) The opposing party shall file with the (~~presiding officer~~) adjudicative clerk office, and serve upon the moving party, a responsive memorandum, and accompanying affidavits and photographic or documentary evidence when necessary, no later than eleven days following service of the motion, unless otherwise ordered by the presiding officer.

(8) The moving party may file with the (~~presiding officer~~) adjudicative clerk office, and serve upon the opposing party, a reply memorandum no later than five days following service of the responsive memorandum, unless otherwise ordered by the presiding officer.

(9) Unless otherwise ordered by the presiding officer, all motions shall be decided without oral argument. A party

requesting oral argument on a motion shall so indicate by typing "ORAL ARGUMENT REQUESTED" in the caption of the motion or the responsive memorandum. If a request for oral argument is granted, the presiding officer shall notify the parties of the date and time of the argument and whether the argument will be in person or by telephone conference.

(10) Motions to shorten time or emergency motions shall be exceptions to the rule, and a party may only make such motions in exigent or exceptional circumstances. When making such a motion, the moving party shall:

(a) Suggest a date and time when the moving party seeks to have the presiding officer hear the motion to shorten time, which should be at least forty-eight hours after filing;

(b) Suggest a date and time when the moving party seeks to have the presiding officer consider the merits of the underlying motion;

(c) Describe the exigent or exceptional circumstances justifying shortening of time in an affidavit or a memorandum accompanying the motion;

(d) Certify that the motion to shorten time and the underlying motion have been served on all other parties prior to the filing of the motion with the presiding officer. Any opposition to the motion to shorten time must be served and filed within twenty-four hours of the service of the motion. If the presiding officer grants the motion to shorten time, the presiding officer shall notify the parties of the date by which the responsive memorandum to the underlying motion shall be served and filed.

(11) All motions will be decided as soon as practical, but not more than thirty days following the filing of the motion. If the presiding officer will not decide the motion within this time, the presiding officer shall notify the parties in writing of the date by which the motion will be decided.

(12) If a party serves a motion or responsive memorandum by mail, pursuant to WAC 246-10-109, then three days shall be added to the time within which the opposing party must file and serve the responsive or reply memorandum.

(13) All computations of time shall be calculated pursuant to WAC 246-10-105.

(14) Departmental motions for summary actions are exempted from all requirements of this rule.

AMENDATORY SECTION (Amending Order 369, filed 6/3/93, effective 7/4/93)

WAC 246-10-605 Issuance of final order. If the adjudicative proceeding is conducted by a presiding officer authorized to make the final decision, the presiding officer shall:

(1) Issue a final order containing findings of fact and conclusions of law and an order; and

(2) The adjudicative clerk office shall serve a copy of the order on each party and any designated representative of the party.

AMENDATORY SECTION (Amending Order 369, filed 6/3/93, effective 7/4/93)

WAC 246-10-608 Initial order. If the adjudicative proceeding is conducted by a presiding officer who is not authorized to make the final decision, the presiding officer shall:

(1) Issue an initial order containing proposed findings of fact, conclusions of law, and a proposed order;

(2) Cause the adjudicative clerk office to serve a copy of the initial order on each party and any designated representative of a party; and

(3) Forward the initial order and record of the adjudicative proceeding to the adjudicative clerk office (~~(of professional standards)~~).

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-701 Appeal from initial order. (1) Any party may file a written petition for administrative review of an initial order issued under WAC 246-10-503 or 246-10-608 stating the specific grounds upon which exception is taken and the relief requested.

(2) Petitions for administrative review must be served upon the opposing party and filed with the adjudicative clerk office (~~(of professional standards)~~) within twenty-one days of service of the initial order.

(3) The opposing party may file a response to a petition for administrative review filed as provided in this section. The response shall be filed at the adjudicative clerk office (~~(of professional standards)~~). The party filing the response shall serve a copy of the response upon the party requesting administrative review. If the initial order was entered pursuant to WAC 246-10-503, the response shall be filed within ten days of service of the petition. In all other matters, the response shall be filed within twenty days of service of the petition.

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-704 Reconsideration of final orders.

(1) Within ten days of service of a final order, either party may file a petition for reconsideration, stating the specific grounds upon which reconsideration is requested and the relief requested.

(2) Grounds for reconsideration shall be limited to:

(a) Specific errors of fact or law; or

(b) Implementation of the final order would require department activities inconsistent with current department practice; or

(c) Specific circumstances render the person requesting reconsideration unable to comply with the terms of the order.

(3) Petitions for reconsideration must be served upon the opposing party and filed with the adjudicative clerk office (~~(of professional standards)~~) within ten days of service of the final order.

(4) If reconsideration is requested based on an error of fact, the request for reconsideration shall contain specific reference to the record. If reconsideration is requested based on testimony of record, the request for reconsideration shall contain specific reference to the testimony. The presiding officer may require that the party requesting reconsideration submit a copy of the transcript of the adjudicative proceeding and provide specific reference to the transcript.

(5) The petition for reconsideration is denied if, within twenty days of the date the petition is filed, the presiding officer:

(a) Denies the petition;

(b) Does not act upon the petition; or

(c) Does not serve the parties with notice of the date by which he/she will act on the petition.

(6) If the presiding officer determines to act upon the petition, the opposing party shall be provided at least ten days in which to file a response to the petition.

(7) Disposition of petitions for reconsideration shall be in the form of a written order denying the petition, granting the petition, and dissolving or modifying the final order, or granting the petition and setting the matter for further proceedings.

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-10-707 Vacating an order for reason of default or withdrawal. (1) A party may petition to vacate a default order entered against that party for failing to attend an adjudicative proceeding requested by that party by:

(a) Specifying the grounds relied upon in the petition; and

(b) Filing the petition at the adjudicative clerk office (~~(of professional standards)~~) within seven days of service of the default order.

(2) The presiding officer shall consider the petition and shall:

(a) Grant the motion to vacate and reinstate the application for adjudicative proceeding, and may impose conditions on licensure pending final adjudication; or

(b) Deny the motion to vacate the default order.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-010 Definitions. As used in these rules of practice and procedure, the following terms shall have the meaning set forth in this section unless the context clearly indicates otherwise. Other terms shall have their ordinary meaning unless defined elsewhere in this chapter.

"Adjudicative clerk office" shall mean the unit with responsibility for: Docketing; service of orders; and maintaining custody of the adjudicative proceeding record, whose address is:

Department of Health
Adjudicative Clerk Office
2413 Pacific Avenue
PO Box 47879
Olympia, WA 98504-7879

"Adjudicative proceeding" or "hearing" shall mean a proceeding required by statute or constitutional right and conducted under the rules of this chapter, which provides an opportunity to be heard by the board prior to the entry of a final order under this chapter.

"Board" shall mean a disciplining authority under RCW 18.130.040 (2)(b) and (3).

"Brief adjudicative proceeding" shall mean an adjudicative proceeding or hearing, the scope or conduct of which is limited as provided in this chapter.

"Department" shall mean the Washington state department of health and, where appropriate, the secretary of the Washington state department of health or the secretary's designee.

"Docket" or "docketing" shall mean the list or calendar of causes set to be heard at a specified time, prepared by the adjudicative clerk office for the use of the department.

"Filing" shall mean receipt by the adjudicative clerk office (~~(of the board)~~).

"Initiating document" shall mean a written agency document which initiates action against a license holder or applicant for license and which creates the right to an adjudicative proceeding. It may be entitled a statement of charges, notice of intent to deny, or by any other designation indicating the action or proposed action to be taken.

"License" shall have the meaning set forth in RCW 34.05.010 and includes license to practice the profession for which the board is the disciplining authority and any approval of school or curriculum required by law or rule to be obtained from the board.

~~("Office of professional standards" shall mean the unit whose address is:~~

~~Department of Health~~
~~Office of Professional Standards~~
~~2413 Pacific Avenue~~
~~PO Box 47872~~
~~Olympia, WA 98504-7872)~~

"Presiding officer" shall mean the person who is assigned to conduct an adjudicative proceeding and who may either be a member of the board, an individual appointed pursuant to RCW 18.130.095(3), or an administrative law judge employed by the office of administrative hearings.

"Presiding officer for brief adjudicative proceedings" shall mean an employee of the department authorized by the board to conduct brief adjudicative proceedings.

"Program" shall mean the administrative unit within the department responsible for implementation of that chapter of Title 18 RCW establishing the board or its powers and responsibilities.

"Prompt adjudicative proceeding" or "prompt hearing" shall mean a hearing conducted at the request of the license holder or applicant for license following summary action taken in accord with this chapter against that license holder or applicant.

"Protective order" shall mean an order issued under this chapter which limits the use of, access to, or disclosure of information or evidence.

"Respondent" shall mean a license holder or applicant for license under the jurisdiction of the board who is named in an initiating document.

"Secretary" shall mean the secretary of the department of health or his/her designee.

"Summary action" shall mean an agency action to address an immediate danger to the public health, safety, or welfare and shall include, but not be limited to, a cease and desist order, an order of summary suspension, and an order of summary restriction of a license.

AMENDATORY SECTION (Amending Order 347, filed 3/24/93, effective 4/24/93)

WAC 246-11-070 Representation. (1) License holders, applicants for license, and recipients of benefits may be represented subject to the following conditions:

PROPOSED

(a) A license holder or applicant for license may represent himself/herself or may be represented by an attorney who has complied with the admission to practice rules of the supreme court of the state of Washington;

(b) Every attorney representing a license holder or applicant for license shall file a notice of appearance with the ~~((board))~~ adjudicative clerk office upon commencing representation, and shall file a notice of withdrawal of counsel with the ~~((board))~~ adjudicative clerk office upon terminating representation.

(c) No license holder or applicant may be represented in an adjudicative proceeding by an employee of the department.

(2) No current or former employee of the department may appear as an expert, character witness, or representative of any party other than the state of Washington if he/she took an active part in investigating or evaluating the case or represented the agency in the matter, unless written permission of the secretary is granted. No current or former member of the attorney general's office staff who participated personally and substantially in investigating or evaluating the matter at issue while so employed may represent a party or otherwise participate in a related proceeding without first having obtained the written consent of the attorney general's office.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-080 Service and filing. (1) A party filing a pleading, brief, or paper other than an initiating document or application for an adjudicative proceeding as required or permitted by these rules, shall serve a copy of the paper upon the opposing party or any designated representative of the opposing party prior to or simultaneous with filing.

(2) Unless otherwise provided by law, filing and service shall be made by personal service; first class, registered, or certified mail.

(3) Filing shall be complete upon actual receipt during normal business hours at the ~~((board's))~~ adjudicative clerk office, unless filing is directed in writing to be made to another address.

(4) Service shall be complete when personal service is made; mail is properly stamped, addressed, and deposited in the United States mail.

(5) Proof of service shall consist of filing as required by these rules, together with one of the following:

(a) An acknowledgement of service;

(b) A certificate of service including the date the papers were served, the parties upon whom served, the signature of the serving party, and a statement that service was completed by:

(i) Personal service; or

(ii) Mailing in the United States mail a copy properly addressed with postage and fees prepaid to each party and each designated representative.

AMENDATORY SECTION (Amending Order 347, filed 3/24/93, effective 4/24/93)

WAC 246-11-200 Notice to limited-English-speaking parties. When the program or the adjudicative clerk office ~~((of professional standards))~~ is notified or otherwise made aware that a limited-English-speaking person is a party in an adjudicative proceeding, all notices concerning the hearing, including notices of hearing, continuance, and dismissal, shall either be in the primary language of the party or shall include a notice in the primary language of the party which describes the significance of the notice and how the party may receive assistance in understanding and, if necessary, responding to the notice.

AMENDATORY SECTION (Amending Order 347, filed 3/24/93, effective 4/24/93)

WAC 246-11-210 Interpreters. (1) A "hearing impaired person" means a person who, because of a hearing impairment or speech defect cannot readily understand or communicate in spoken language. A "hearing impaired person" includes a person who is deaf, deaf and blind, or hard of hearing.

(2) A "limited-English-speaking person" means a person who because of a non-English speaking cultural background cannot readily speak or understand the English language.

(3) If a hearing impaired person or a limited-English-speaking person is involved in an adjudicative proceeding and a need for an interpreter is made known to the adjudicative clerk office ~~((of professional standards))~~, the presiding officer shall appoint an interpreter who is acceptable to the parties or, if the parties are unable to agree on an interpreter, the presiding officer shall select and appoint an interpreter.

(4) Before beginning to interpret, an interpreter shall take an oath or make affirmation that:

(a) A true interpretation shall be made to the impaired person of all the proceedings in a language or in a manner the impaired person understands; and

(b) The interpreter shall repeat the statements of the impaired person to the presiding officer, in the English language, to the best of the interpreter's skill and judgment.

(5) When an interpreter is used in a proceeding:

(a) The interpreter shall translate all statements made by other participants in the proceeding;

(b) The presiding officer shall ensure sufficient extra time is provided to permit translation; and

(c) The presiding officer shall ensure that the interpreter translates the entire proceeding to the hearing impaired person or limited-English-speaking person to the extent that the person has the same opportunity to understand the statements made as would a person not requiring an interpreter.

(6) An interpreter appointed under this section shall be entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses. The program shall pay the interpreter fee and expenses incurred for interpreters for license holders, applicants, or recipients of benefits. The party on whose behalf a witness requiring an interpreter appears shall pay for interpreter services for that witness.

(7) All proceedings shall be conducted consistent with chapters 2.42 and 2.43 RCW.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-270 Request for adjudicative proceeding. A respondent may respond to an initiating document by filing an application for an adjudicative proceeding or by waiving the opportunity for adjudicative proceeding.

(1) If the respondent wishes to file an application for an adjudicative proceeding:

(a) An application for adjudicative proceeding must be filed in accordance with the following time periods:

(i) For matters under chapter 18.130 RCW, the Uniform Disciplinary Act, within twenty days of service of the initiating documents unless an extension has been granted as provided in subsection (3) of this section; and

(ii) For all other matters, within twenty days of service of the initiating documents, unless otherwise provided by statute.

(b) The application for adjudicative proceeding shall be made on the Request for Adjudicative Proceeding form accompanying the initiating documents or by a written document including substantially the same information.

(c) By filing a request for adjudicative proceeding, the responding party agrees to appear personally at the adjudicative proceeding or, if otherwise approved by the presiding officer, by telephone, unless appearance is waived as authorized in WAC 246-11-130(4).

(d) The application for adjudicative proceeding shall contain a response to the initiating documents, indicating whether each charge is admitted, denied or not contested, and responses shall be subject to the following conditions:

(i) Once admitted or not contested, an allegation may not be denied; and

(ii) An allegation denied or not contested may later be admitted.

(e) When an allegation is admitted or not contested, it shall be conclusively deemed to be true for all further proceedings. No proof of the allegation need be submitted.

(f) The application for adjudicative proceeding shall specify the representative, if any, designated pursuant to WAC 246-11-070 and any request for interpreter. The responding party shall amend the name of the representative and need for interpreter immediately if circumstances change prior to the hearing.

(g) The application for adjudicative proceeding shall be filed at the ~~((board's))~~ adjudicative clerk office.

(2) A respondent may waive an adjudicative proceeding and submit a written statement and other documents in defense or in mitigation of the charges. Such waiver and documents shall be filed:

(a) In accordance with the timelines in subsection (1)(a) of this section; and

(b) At the address indicated in subsection (1)(g) of this section.

(3) For matters under RCW 18.130.180, if the twenty-day limit for filing an application for adjudicative proceeding results in a hardship to the respondent, the respondent may request an extension of not more than sixty days upon a showing of good cause.

(a) The request for extension shall be filed within the twenty-day limit and shall include:

(i) The reason for the request and the number of days for which the extension is requested; and

(ii) Documentation of the circumstances creating the hardship.

(b) The request shall be granted for a period not to exceed sixty days upon showing of:

(i) Illness of the respondent; or

(ii) Absence of the respondent from the county of residence or employment; or

(iii) Emergency in the respondent's family; or

(iv) Other good cause as determined by the presiding officer.

(c) If a request for extension is denied, the respondent shall have ten days from service of the order denying the extension or twenty days from service of the initiating documents, whichever is longer, to file an application for adjudicative proceeding.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-290 Scheduling orders. (1) Within thirty days after receipt of the application for adjudicative proceeding, the board or designee thereof, shall:

(a) Approve the application for full adjudicative procedure and issue and serve on the parties a scheduling order or other scheduling mechanism establishing timelines for discovery, settlement, and scheduled hearings; or

(b) Approve the application for a brief adjudicative procedure and issue and serve a notice of the date by which any additional written materials are to be submitted for consideration; or

(c) Deny the application according to RCW 34.05.416.

(2) If a scheduling order is issued:

(a) The scheduling order shall specify:

(i) The date, time, and place of a settlement conference, a prehearing conference, and the hearing;

(ii) The deadlines for completion of discovery and submission of prehearing motions; and

(iii) The name, address, and telephone number of the assistant attorney general or other department representative who will represent the state in the matter.

(b) The scheduling order may be modified by order of the presiding officer upon his/her own initiative or upon motion of a party. Any request for change of the scheduling mechanism or order shall be made by motion as provided in WAC 246-11-380.

(c) The presiding officer may waive establishing dates for the settlement conference, completion of discovery, submission of prehearing motions, and the prehearing conference, if, in the discretion of the presiding officer, those proceedings are not necessary or appropriate in a particular matter or type of case. However, either party may request by motion to the presiding officer that any or all of the dates be set.

(d) Dates contained in the scheduling order may be changed by the adjudicative clerk office ~~((of the board))~~ upon written request of either party made within fifteen days of issuance of the first scheduling order. All other changes must be made by motion pursuant to WAC 246-11-380.

AMENDATORY SECTION (Amending WSR 96-21-027, filed 10/7/96, effective 11/7/96)

WAC 246-11-380 Motions. (1) The presiding officer shall rule on motions. The presiding officer may rule on motions without oral argument or may request or permit the parties to argue the motion in person or by telephone. Oral argument may be limited in time at the discretion of the presiding officer.

(2) All prehearing motions, including discovery and evidentiary motions, shall be made in writing and filed prior to the dates set in the scheduling order. Filing shall be at the ~~((board's))~~ adjudicative clerk office, unless filing is directed in writing to be made at another address.

(3) Motions for continuance must be made in writing and filed prior to the dates set in the scheduling order. If the adjudicative proceeding is scheduled to take place fewer than twenty days from service of the scheduling order, motions for continuance must be made within ten days of service of the scheduling order, but in no event fewer than five days prior to the hearing. Continuances may be granted by the presiding officer for good cause.

(4) The presiding officer may grant a continuance when a motion for continuance is not submitted within the time limits contained in subsection (3) of this section for good cause.

(5) The following is the recommended format for motions:

(a) A succinct statement of the facts contended to be material;

(b) A concise statement of the issue, issues or law upon which the presiding officer is requested to rule;

(c) The specific relief requested by the moving party;

(d) If the motion requires the consideration of facts or evidence not appearing on the record, the moving party shall also serve and file copies of all affidavits and photographic or documentary evidence presented in support of the motion;

(e) The legal authority upon which the motion is based; and

(f) A proposed order may accompany the motion, and should contain findings of fact and conclusions of law.

(6) The moving party shall file the motion, and the accompanying affidavits and photographic or documentary evidence when necessary, with the board's office and with the presiding officer, and shall serve the motion, and the accompanying affidavits and photographic or documentary evidence when necessary, on all other parties.

(7) The opposing party shall file with the ~~((board's))~~ adjudicative clerk office ~~((and with the presiding officer))~~, and serve upon the moving party, a responsive memorandum, and accompanying affidavits and photographic or documentary evidence when necessary, no later than eleven days following service of the motion, unless otherwise ordered by the presiding officer.

(8) The moving party may file with the ~~((board's))~~ adjudicative clerk office ~~((and with the presiding officer))~~, and serve upon the opposing party, a reply memorandum no later than five days following service of the responsive memorandum, unless otherwise ordered by the presiding officer.

(9) Unless otherwise ordered by the presiding officer, all motions shall be decided without oral argument. A party

requesting oral argument on a motion shall so indicate by typing "ORAL ARGUMENT REQUESTED" in the caption of the motion or the responsive memorandum. If a request for oral argument is granted, the presiding officer shall notify the parties of the date and time of the argument and whether the argument will be in person or by telephone conference.

(10) Motions to shorten time or emergency motions shall be exceptions to the rule, and a party may only make such motions in exigent or exceptional circumstances. When making such a motion, the moving party shall:

(a) Suggest a date and time when the moving party seeks to have the presiding officer hear the motion to shorten time, which should be at least forty-eight hours after filing;

(b) Suggest a date and time when the moving party seeks to have the presiding officer consider the merits of the underlying motion;

(c) Describe the exigent or exceptional circumstances justifying shortening of time in an affidavit or a memorandum accompanying the motion;

(d) Certify that the motion to shorten time and the underlying motion have been served on all other parties prior to the filing of the motion with the presiding officer. Any opposition to the motion to shorten time must be served and filed within twenty-four hours of the service of the motion. If the presiding officer grants the motion to shorten time, the presiding officer shall notify the parties of the date by which the responsive memorandum to the underlying motion shall be served and filed.

(11) All motions will be decided as soon as practical, but not more than thirty days following the filing of the motion. If the presiding officer will not decide the motion within this time, the presiding officer shall notify the parties in writing of the date by which the motion will be decided.

(12) If a party serves a motion or responsive memorandum by mail, pursuant to WAC 246-11-080, then three days shall be added to the time within which the opposing party must file and serve the responsive or reply memorandum. Service by electronic telefacsimile transmission (FAX) upon each party is permitted upon agreement of the parties, with proof of confirmation of service to be filed with the presiding officer.

(13) All computations of time shall be calculated pursuant to WAC 246-11-040.

(14) Departmental motions for summary actions are exempted from all requirements of this section.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-510 Issuance of final order. If the adjudicative proceeding is heard by the board or a panel of the board the presiding officer and board or panel of the board shall:

(1) Issue a final order containing findings of fact and conclusions of law and an order; and

(2) Cause the adjudicative clerk office to serve a copy of the order on each party and any designated representative of the party.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-540 Initial order. (1) If the adjudicative proceeding is not heard by the board or panel of the board the presiding officer shall:

- (a) Issue an initial order containing proposed findings of fact, conclusions of law, and a proposed order;
- (b) Cause the adjudicative clerk office to serve a copy of the initial order on each party and any designated representative of a party; and
- (c) Forward the initial order and record of the adjudicative proceeding to the adjudicative clerk office (~~(of the board)~~).

(2) Initial orders on brief adjudicative proceedings shall become final orders as provided in WAC 246-11-540.

(3) Following receipt of initial orders in matters other than brief adjudicative proceedings, the board shall review the initial order and the record as provided in RCW 34.05.464, and issue a final order as provided in WAC 246-11-560.

AMENDATORY SECTION (Amending WSR 96-21-027, filed 10/7/96, effective 11/7/96)

WAC 246-11-550 Appeal from initial order. (1) Any party may file a written petition for administrative review of an initial order issued under WAC 246-11-430 or WAC 246-11-540 stating the specific grounds upon which exception is taken and the relief requested.

(2) Petitions for administrative review must be served upon the opposing party and filed with the adjudicative clerk office (~~(of the board)~~) within twenty-one days of service of the initial order.

(3) The opposing party may file a response to a petition for administrative review as provided in this section. The response shall be filed at the place specified in subsection (2) of this section. The party filing the response shall serve a copy of the response upon the party requesting administrative review. If the initial order was entered pursuant to WAC 246-11-430, the response will be filed within ten days of service of the petition. In all other matters, the response will be filed within twenty days of service of the petition.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-580 Reconsideration of final orders. (1) Within ten days of service of a final order, either party may file a petition for reconsideration, stating the specific grounds upon which reconsideration is requested and the relief requested.

- (2) Grounds for reconsideration shall be limited to:
 - (a) Specific errors of fact or law; or
 - (b) Implementation of the final order would require department activities inconsistent with current department practice; or
 - (c) Specific circumstances render the person requesting the reconsideration unable to comply with the terms of the order.

(3) Petitions for reconsideration must be served upon the opposing party and filed with the adjudicative clerk office (~~(of the board)~~) within ten days of service of the final order.

(4) If reconsideration is requested based on an error of fact, the request for reconsideration shall contain specific reference to the record. If reconsideration is requested based on testimony of record, the request for reconsideration shall contain specific reference to the testimony. The presiding officer may require that the party requesting reconsideration submit a copy of the transcript of the adjudicative proceeding and provide specific reference to the transcript.

(5) The petition for reconsideration is denied if, within twenty days of the date the petition is filed, the presiding officer:

- (a) Denies the petition;
- (b) Does not act upon the petition; or
- (c) Does not serve the parties with notice of the date by which he/she will act on the petition.

(6) If the presiding officer determines to act upon the petition, the opposing party shall be provided at least ten days in which to file a response to the petition.

(7) Disposition of petitions for reconsideration shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further proceedings.

AMENDATORY SECTION (Amending WSR 94-04-078, filed 1/31/94, effective 3/3/94)

WAC 246-11-610 Vacating an order for reason of default or withdrawal. (1) A party may petition to vacate a default order entered against that party for failing to attend an adjudicative proceeding requested by that party by:

- (a) Specifying the grounds relied upon in the petition; and
- (b) Filing the petition at the adjudicative clerk office (~~(of professional standards)~~) within seven days of service of the default order.

(2) The presiding officer shall consider the petition and shall:

- (a) Grant the motion to vacate and reinstate the application for adjudicative proceeding, and may impose conditions on licensure pending final adjudication; or
- (b) Deny the motion to vacate the default order.

WSR 97-08-093
PROPOSED RULES
DEPARTMENT OF HEALTH
 [Filed April 2, 1997, 11:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 95-09-058.

Title of Rule: Clinical requirements in nontraditional nursing education programs.

Purpose: We will be combining existing RN/LPN language from chapters 246-838 and 246-839 WAC to WAC 246-840-030. To establish a method for a clinical component in nontraditional nursing education programs, so graduates of these programs may test for registered nurse licensure in Washington state.

Statutory Authority for Adoption: RCW 18.79.160.

Summary: This rule will allow graduates of nontraditional nursing programs without a clinical component a method to meet that requirement.

Reasons Supporting Proposal: Creates a means for graduates of a nontraditional nursing education program to meet the requirements for registered nurse licensure in Washington state. Nontraditional programs allow working adults to continue their education, which might be difficult or impossible in a traditional setting.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Patty Hayes, 1300 S.E. Quince, (360) 664-4100.

Name of Proponent: Washington State Nursing Care Quality Assurance Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule will expand the WAC to include provisions which allow graduates of nontraditional nursing education programs to meet the clinical requirement of the WAC in ways other than through a traditional nursing education program. The Nursing Commission must either enforce the current law and deny the licensing applications as not meeting the clinical requirement or change the law to provide the means for these candidates to meet this requirement. This will allow working adults to continue their education, which might be difficult or impossible in a traditional setting. This will expand opportunities for registered nurse licensure.

Proposal Changes the Following Existing Rules: The rule establishes a method to meet the clinical component requirement for nursing education programs. It states the specific requirements of the exception.

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

Small Business Economic Impact Statement

In Washington state, individuals must pass the National Council Licensure Exam-RN (NCLEX-RN) to work as a registered nurse. Further, prior to sitting for the NCLEX-RN, one must meet certain requirements, including hands-on clinical training. In 1995, it came to the attention of the Nursing Commission that Regents College - part of the New York State University system - does not require clinical training in its nursing degree program. The Nursing Commission discovered that students of Regents College and other nontraditional nursing schools had sat for the NCLEX-RN without meeting this eligibility requirement.

Since that time, the commission has been gathering information from interested groups and individuals about providing Regents students a mechanism to meet the clinical training requirement. Without a rule change the commission must enforce the WACs as they are currently written, preventing students of nontraditional schools from taking the NCLEX-RN and practicing as registered nurses. This would obviously adversely affect place bound individuals who need the alternative to traditional nursing programs that nontraditional schools offer.

Is a Small Business Economic Impact Statement Necessary? This rule does not fall into any of the categories designated as exempt from a small business economic impact statement by the Regulatory Fairness Act. Further-

more, at a potential cost of \$500 per Regents College nursing graduate, the rule exceeds the more than minor cost threshold. Therefore a small business economic impact statement (SBEIS) is necessary.

Determine the Size Distribution of Affected Businesses: The sole affect of this rule is on individuals who desire to become registered nurses in Washington state. Therefore the affected businesses (individuals) are by definition all small (less than fifty employees). Since, in this case, small businesses do not bear a disproportionate proportion of the rule's cost - no large business is affected - mitigation is not required.

Nevertheless, the Department of Health believes that this rule benefits nursing students of Regents College and other nontraditional education programs. The proposed rule change provides an alternate method for individuals without clinical training to qualify to take the NCLEX-RN. Practical nurses interested in pursuing RN licensure by a nontraditional educational program will benefit from this change. The consumer will benefit as well, because [of] the additional clinical experience component required in the proposed revision.

How the Agency Involved Small Businesses in the Development of the Rule: The following groups were asked to provide input to the process. This input was in the form of open forums, letters and written answers to specific questions.

- Students enrolled in the Regents program
- Graduates from the Regents program
- Educators from Washington state nursing programs
- Nursing administrators from health care facilities
- Nursing organizations such as Washington State Nurses Association

List Industries Required to Comply with the Rule: No industries or individuals are required to comply with this rule. Rather this rule provides an alternative mechanism for individuals to meet the clinical training requirement for taking the NCLEX-RN.

A copy of the statement may be obtained by writing to Washington State Nursing Care Quality Assurance Commission, Clinical Rule, P.O. Box 47864, Olympia, WA 98504-7864, phone (360) 586-1355, or FAX (360) 586-5935.

Section 201, chapter 403, Laws of 1995, applies to this rule adoption. These rules are significant under section 201, chapter 403, Laws of 1995, because they establish, alter or revoke qualification or standard for the issuance, suspension or revocation of a license or permit.

Hearing Location: Sea-Tac Airport, GFP Business Center, Board Room Main Terminal, South Mezzanine, on May 7, 1997, at 7:00 p.m.

Assistance for Persons with Disabilities: Contact Nursing Commission by April 30, 1997, TDD (360) 664-0064, or (360) 586-1355.

Submit Written Comments to: Joan Reilly, FAX (360) 586-5935, by April 30, 1997.

Date of Intended Adoption: June 13, 1997.

March 26, 1997
Patty Hayes
Executive Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-839-030 Qualification/eligibility to take the licensing examination.

NEW SECTION

WAC 246-840-030 Examination and licensure. (1) Graduates from Washington state board approved schools of nursing holding a degree/diploma from such a school shall be eligible to write the examination provided all other requirements are met.

(2) Graduates from a nursing school approved by a board of nursing in another U.S. jurisdiction shall be eligible to take the examination provided that:

(a) The nursing school meets the minimum standards approved for state board school of nursing in Washington at the time of the applicant's graduation;

(b) Graduate has completed all institutional requirements for the degree/diploma in nursing education per attestation from the administrator of the approved nursing education program;

(c) All other requirements of the statute and regulations shall be met.

(3) Graduates of a nontraditional school of nursing which meet the requirements of subsection (2)(a), (b) and (c) of this section, are eligible to take the registered nurse examination provided that the following conditions are met: (For purposes of this section, nontraditional schools of nursing are defined as schools that have curricula which do not include a faculty supervised teaching/learning component in clinical settings.)

(a) The candidate is a licensed practical nurse in Washington state; and

(b) There is documentation of at least two hundred hours of supervised clinical experience (preceptorship) in the role of a registered nurse. The required elements of a preceptorship are as follows:

(i) Acceptable clinical sites - Acceptable clinical sites include acute care or subacute care settings or skilled nursing facilities. Other sites must be approved by the commission.

(ii) Qualifications of preceptor (instructor) - The preceptor must be a licensed registered nurse in Washington state with at least two years experience in a practice setting and have no history of disciplinary actions. The candidate must provide documentation that the preceptor meets these requirements when he/she applies for licensure and must also provide a written agreement between the candidate and the preceptor (or facility) that preceptorship supervision will occur.

(iii) Experiences in the preceptorship - Experiences must include delegation and supervision, decision making and critical thinking, patient assessment as part of the nursing process and evaluation of care. A checklist, provided by the commission, must be completed by the preceptor which indicates the candidate's satisfactory completion of the identified skills. This checklist must be submitted with the candidate's application for licensure; and

(c) The candidate receives a satisfactory evaluation from their preceptor meeting commission requirements as previously identified ((b)(iii) of this subsection); and

(d) All other requirements of the nursing statute and regulations are met.

WSR 97-08-094**PROPOSED RULES****DEPARTMENT OF HEALTH**

(Board of Optometry)

[Filed April 2, 1997, 11:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 96-14-068.

Title of Rule: Amends continuing education rules for licensed optometrists for clarity, to include approval of coursework offered electronically and to extend the deadline for submitting coursework to the Board of Optometry.

Purpose: To include, as approved continuing education activities, courses offered electronically through Internet, CD ROM or diskette. Amends existing language of the continuing education regulations for clarity and readability. Extends the deadline for submitting coursework to the Board of Optometry for approval.

Statutory Authority for Adoption: RCW 18.54.070(2).

Statute Being Implemented: RCW 18.54.070(2).

Summary: Amends existing continuing education rules for clarity and to include approval of courses now available electronically.

Reasons Supporting Proposal: Current optometry continuing education rules do not address courses offered electronically through Internet, CD ROM or diskette. References to coursework are unclear and/or are no longer appropriate. Deadlines for submitting coursework to the Board of Optometry do not allow sufficient time for board review.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Judy Haenke, Program Manager, 1300 S.E. Quince, Olympia, WA 98504, (360) 753-4614.

Name of Proponent: Board of Optometry, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: General housekeeping and amendments to update and clarify rules relating to continuing education. These changes will allow licensed optometrists to obtain continuing optometric education credit for approved courses offered electronically through the Internet, CD ROM and diskette. The Board of Optometry will also be permitted more time to review proposed coursework submitted to the board for approval. Through these amendments, licensees will be able to obtain required continuing education in a more convenient and much less costly manner.

Proposal Changes the Following Existing Rules: Amends existing rules for clarity and includes courses offered electronically through the Internet, CD ROM and diskette as approved activities.

PROPOSED

No small business economic impact statement has been prepared under chapter 19.85 RCW. Because the cost per business is less than the minor cost threshold.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This rule does not subject a person to a penalty or sanction; does not establish, alter or revoke a qualification or standard for optometry licensure; and does not make significant amendment to a policy or regulatory program. This rule amends existing rules to make them clearer and to enhance the definition of preprogrammed materials to include coursework offered electronically.

Hearing Location: Seattle Airport Hilton, Columbia West Room, 17620 Pacific Highway South, Seattle, WA 98188, on May 16, 1997, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Judy Haenke by May 2, 1997, TDD (360) 753-2870, or FAX (360) 586-0745.

Submit Written Comments to: Judy Haenke, P.O. Box 47863, Olympia, WA 98504-7863, FAX (360) 586-0745, by May 13, 1997.

Date of Intended Adoption: May 16, 1997.

March 28, 1997
Donald Williams
Executive Director
Health Professions Section Four

AMENDATORY SECTION (Amending Order 248B, filed 2/26/92, effective 3/28/92)

WAC 246-851-090 Continuing education requirement. ~~((A*))~~ (1) All optometrists licensed in ((the state of)) Washington shall complete fifty hours of continuing education ((each)) every two years ((period preceding license renewal)) beginning at the first license renewal following initial licensure, except:

~~((1) An optometrist applying for the first renewal subsequent to initial licensing is exempt from this requirement; and~~

~~((2) An optometrist) In lieu of this requirement, licenses practicing ((only out of the state)) solely outside of Washington may ((, in lieu of this requirement, fulfill the licensing and)) meet the continuing education requirements of the state ((of practice)) or territory in which they practice.~~

(2) Every two years, as part of the license renewal process, a licensee must certify that he or she have met the continuing education requirements and have documentation that will be furnished upon request.

(3) Licensees must maintain documentation of continuing education activities.

(4) When requested by the board, a licensee must submit documentation of completion of continuing education activities.

AMENDATORY SECTION (Amending Order 119B, filed 2/26/91, effective 3/29/91)

WAC 246-851-100 Credit hour defined. A credit hour is defined as one hour actually spent in a course or other ~~((work))~~ activity approved by the ~~((optometry))~~ board as fulfilling continuing education requirements.

AMENDATORY SECTION (Amending WSR 94-04-041, filed 1/27/94, effective 2/27/94)

WAC 246-851-110 Courses presumed to qualify for credit. Courses offered by the following organizations ~~((listed in this section will be))~~ are presumed to qualify as continuing education courses without specific prior approval of the board ~~((, but)).~~ However, the board reserves the ~~((authority))~~ right to ~~((refuse to))~~ not accept credits ~~((in any course))~~ if the board determines that ~~((the))~~ a course did not provide appropriate information or training ~~((sufficient in amount or relevancy. Organizations for the purposes of this section shall include:))~~.

- (1) The American Optometric Association.
- (2) Any college or school of optometry whose scholastic standards are deemed sufficient by the board under RCW 18.53.060(2).
- (3) The Washington Association of Optometric Physicians.
- (4) Any state optometric association which is recognized by the licensing authority of its state as a qualified professional association or educational organization.
- (5) The state optometry board.
- (6) The optometry licensing authority of any other state.
- (7) The American Academy of Optometry.
- (8) The Optometric Extension Program.
- (9) The College of Optometrists in Vision Development.
- (10) The National Eye Research Foundation.
- (11) Regional congresses of any of the organizations listed in subsections (1) through (10) of this section.
- (12) The Council on Post-Graduate Education of the American Optometric Association.
- (13) The Council on Optometric Practitioner Education (C.O.P.E.).

AMENDATORY SECTION (Amending Order 210B, filed 11/1/91, effective 12/2/91)

WAC 246-851-120 ((Credit for classes,)) Approval of courses. ~~((Continuing education credit may be granted for courses sponsored by schools and professional organizations.))~~ (1) The board will individually consider ((granting or denying credit for any course other than those offered by organizations approved in WAC 246-851-110.

~~((1) Requests for credit must be submitted at least thirty days prior to the date of the course. The request must include, as a minimum, an agenda, an outline of each offering, and a brief professional biography of each presenter. Within sixty days the board will notify the sponsor of its approval or denial of continuing education credits and the number of credits approved. If the board does not act on the continuing education credit request within sixty days after receipt, the request shall be approved as submitted.~~

~~((2) Any requests received after the thirty day submission deadline will be considered by the board as soon as possible.~~

~~((3) In determining whether a course will be granted credit, the board may consider, among other factors: The relevancy of the course to the usual and customary practice of optometry, the correlation of the course to subjects taught in accredited colleges or schools of optometry, the speaker(s) being properly credentialed in the subject area, and the relationship to new concepts and techniques. Provided, however, Courses related to a single product or device will~~

~~not normally be granted credit~~) requests for approval of continuing education courses. The board will consider the following course components:

(a) Whether the course contributes to the advancement and enhancement of skills in the practice of optometry.

(b) Whether the course is taught in a manner appropriate to the subject matter.

(c) Whether the instructor has the necessary qualifications, training and/or experience to present the course.

(2) Courses related to a single product or device will not normally be granted credit.

(3) Requests must be submitted at least sixty days prior to the date of the course and must include at least:

(a) Name of the course being offered.

(b) Location and date of course.

(c) Course outline.

(d) Format of activity (e.g., lecture, videotape, clinical participation, individual study).

(e) Total number of hours of continuing education being offered.

(f) Name and qualifications of the instructor or speaker.

AMENDATORY SECTION (Amending Order 119B, filed 2/26/91, effective 3/29/91)

WAC 246-851-140 Continuing education credit for admission to optometric organizations and participation in patient care reviews. (1) ~~((Continuing education))~~ Credit ~~((will))~~ may be granted for preparation and admission to optometric scientific groups (for example, the Academy of Optometry). ~~((The licensee must petition the board for credit thirty days prior to the end of the reporting period and no more than five credit hours will be approved for any licensee in any reporting period.))~~

(2) ~~((Continuing education))~~ Credit ~~((will))~~ may be granted for participation ~~((in formal reviews and evaluations of patient care such as peer review and case conference. Also, participation))~~ in a local, county, state or federal professional standard review ~~((organization, regional health planning council, health planning board, state health coordinating council and state health))~~ or planning ~~((department, and local/county councils of state health planning council))~~ organization ~~((s, as authorized by the state and the United States government, and other official representation (and not mere attendance as an observer)))~~ relating to health care agencies ~~((may be granted continuing education credit by submitting an outline of the particular activity thirty))~~ or institutions.

(3) Requests for credit must be submitted to the board at least sixty days prior to the end of the reporting period.

(4) No more than five credit hours will be ~~((approved))~~ granted under this section for any licensee in any two-year reporting period.

AMENDATORY SECTION (Amending Order 119B, filed 2/26/91, effective 3/29/91)

WAC 246-851-150 Credit for individual ~~((study))~~ research, publications, and small ~~((-))~~ group study. ~~((The granting of continuing education credit for individual study, publication of scholarly papers and articles, and small group study will be considered by the board on a case-by-case basis. Such credit may be granted if the board determines~~

~~that such study or publication entails at least the same amount of work, information, or training as a regular course for which the same number of credit hours are awarded.))~~

(1) Subject to approval by the board, continuing education credit may be granted for:

(a) Participation in formal reviews and evaluations of patient care such as peer review and case conferences;

(b) Participation in small group study or individual research;

(c) Scholarly papers and articles whether or not the articles or papers are published.

Requests for credit for papers or articles should include a copy of the article, date of acceptance or publication, and the number of hours requested.

(2) Requests for credit must be submitted to the board at least sixty days prior to the end of the reporting period.

(3) No more than ten credit hours will be granted under this section to any licensee in any two-year reporting period.

AMENDATORY SECTION (Amending Order 210B, filed 11/1/91, effective 12/2/91)

WAC 246-851-160 Credit for reports. (1) Continuing education credit will be ~~((given))~~ granted for reports on professional optometric literature. Requests for credit must be submitted ~~((to the department of health, professional licensing services in Olympia,))~~ at least ~~((thirty))~~ sixty days prior to the end of the reporting period. The request should include a copy of the article ~~((being reported on and the typewritten report)),~~ including publication source, date and author. ~~((Such))~~ The report ~~((shall list))~~ should be typewritten and include at least ten descriptive ~~((basic))~~ statements from ~~((an))~~ the article ~~((or sequence of articles)).~~

(2) Professional literature approved for such reports are:

(a) American Journal of Optometry and Physiological Optics~~((;))~~;

(b) American Optometric Association News~~((;))~~;

(c) Contact Lens Forum~~((;))~~;

(d) Contacto~~((;))~~;

(e) Insight~~((;))~~;

(f) International Contact Lens Clinic~~((;))~~;

(g) Journal of American Optometric Association~~((;))~~;

(h) Journal on Optometric Education~~((;))~~;

(i) Journal of Optometric Vision Development~~((;))~~;

(j) OEP Monthly~~((;))~~;

(k) Optometric Management~~((;))~~;

(l) Optometric Monthly~~((;))~~;

(m) Optometric World~~((;))~~;

(n) Review of Optometry~~((-and))~~;

(o) 20/20 Magazine~~((;))~~; and

(p) Other ~~((professional))~~ literature ~~((may be submitted in advance for the board's consideration and approval. Reports shall list the title of the article(s), literature that the article(s) was taken from, the date of issuance/publication of the literature, page(s) utilized, and author(s)))~~ as approved by the board.

(3) Each report qualifies for one credit hour ~~((and may only be used for credit once)).~~ ~~((The maximum continuing education credit that))~~ No more than ten credit hours will be granted under this section ~~((is ten credit hours for each))~~ to any licensee in any two-year reporting period.

AMENDATORY SECTION (Amending Order 210B, filed 11/1/91, effective 12/2/91)

WAC 246-851-170 Credit for preprogrammed educational materials. Subject to approval by the board, continuing education credit ~~((will))~~ may be granted for ~~((observation))~~ viewing and participation in the use of formal preprogrammed optometric educational materials~~((including the use of cassettes, videodiscs, videotapes, teaching machines, etc. Requests for credit must be submitted to the department of health, professional licensing services in Olympia, at least thirty days prior to the end of the reporting period. The request should include the title of the preprogrammed educational material, its date of issuance, its author/provider, and the length of time spent viewing/listening to the preprogrammed educational material. A synopsis of the preprogrammed educational material shall be submitted.~~

The maximum continuing education credit that will be granted under this section is ten credit hours for each two-year reporting period). Preprogrammed educational materials include, but are not limited to:

(1) Correspondence courses taken through magazines or other publications, cassettes, videodiscs, videotapes, teaching machines, computer software, CD Rom, diskettes or internet, other than those that qualify under subsection (2) of this section. No more than ten credit hours will be granted under this subsection to any licensee in any two-year reporting period. Requests for credit must be submitted to the board at least sixty days prior to the end of the reporting period and should include the title, date issued or released, author or source and the length of time spent viewing, listening or responding to the material.

(2) Cassettes, videodiscs, videotapes, teaching machines, computer software, CD Rom, diskettes or internet, which are offered by a board-approved school or college of optometry or other entity or organization approved by the board for credit under this section and require successful completion of an examination for certification of completion. No more than twenty-five credit hours will be granted under this subsection to any licensee in any two-year reporting period.

AMENDATORY SECTION (Amending Order 210B, filed 11/1/91, effective 12/2/91)

WAC 246-851-180 Credit for lecturing. Subject to approval by the board, continuing education credit ~~((will))~~ may be given for the preparation and presentation of courses and lectures in optometric education~~((, if attendance at such a course or lecture would also qualify for such credit. For each hour of credit for the initial presentation of such a course or lecture, two additional hours of credit will be granted)).~~ Three hours of credit will be granted for each course hour. Requests for credit must be submitted to the ~~((department of health, professional licensing services in Olympia,))~~ board at least ~~((thirty))~~ sixty days prior to the end of the reporting period. ~~((The request should include a brief outline of the lecture and the length of the presentation.))~~ Credit for subsequent presentations will be ~~((individually))~~ considered ~~((upon a showing))~~ if the applicant can demonstrate that ~~((significant))~~ substantial additional ~~((work has been))~~ preparation was required. No more than ten hours

will be ~~((approved))~~ granted under this section for any licensee in any two-year reporting period.

AMENDATORY SECTION (Amending Order 119B, filed 2/26/91, effective 3/29/91)

WAC 246-851-190 Credit for CPR training. Continuing education credit~~((, up to five credit hours yearly, may))~~ will be granted for certified training ~~((obtained))~~ in ~~((a))~~ cardio-pulmonary resuscitation (CPR) ~~((course where such training is provided by a currently certified CPR instructor. A request for credit must include the name of the instructor, the organization certifying the instructor, the date the instructor's certification expires, and the date, length, and location of the course)).~~ No more than ten credit hours will be granted under this section to any licensee in any two-year reporting period.

AMENDATORY SECTION (Amending Order 119B, filed 2/26/91, effective 3/29/91)

WAC 246-851-200 Dual acceptance of continuing education credits. A course ~~((otherwise acceptable for continuing education credit under the rules of this chapter))~~ will not be denied ~~((continuing education credit))~~ approval solely because it has been used to satisfy the continuing education requirement of ~~((another))~~ other states in which the licensee ~~((is concurrently licensed))~~ holds a license to practice optometry.

AMENDATORY SECTION (Amending Order 119B, filed 2/26/91, effective 3/29/91)

WAC 246-851-220 Surplus credit hours. Excess continuing education credits ~~((in excess of the required hours earned in any reporting period))~~ may not be carried forward to a subsequent reporting period.

AMENDATORY SECTION (Amending Order 210B, filed 11/1/91, effective 12/2/91)

WAC 246-851-230 Credits for practice management. Continuing education credit will be granted for courses or materials involving practice management~~((, however,))~~ under WAC 246-851-110 through 246-851-180. No more than ten credit hours ~~((total))~~ will be granted under this section to any licensee ~~((for practice management courses under WAC 246-851-110 through 246-851-180))~~ in any two-year reporting period.

AMENDATORY SECTION (Amending Order 119B, filed 2/26/91, effective 3/29/91)

WAC 246-851-240 Discretionary exception for emergency situation. In emergency situations, ~~((such as))~~ or personal or family sickness, the board may waive~~((, for good cause shown,))~~ all or part of the continuing education requirement for a ~~((particular))~~ two-year reporting period ~~((for an individual licensee)).~~ The board ~~((will))~~ may require ~~((such verification of the emergency as is necessary to prove its existence))~~ additional information to determine if a waiver should be granted.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-851-210 Certification for continuing education courses.

PROPOSED



WSR 97-07-055
PERMANENT RULES
NORTHWEST AIR
POLLUTION AUTHORITY

[Filed March 18, 1997, 9:50 a.m.]

Date of Adoption: March 13, 1997.

Purpose: To amend, add, and delete sections of the NWAPA regulation to reflect changes in state and federal rules and to clarify requirements that will promote effective air pollution control.

Summary of Proposed Northwest Air Pollution Authority Regulation Changes—March 13, 1997: Subsections:

104.2 Referenced recently adopted federal rules in 40 CFR 60, 61, and 63.

114 Revised wording in confidential information subsection to be consistent with chapter 70.94 RCW.

131.21 Insert the word "business" after the word "ten" to allow ten business days for a response to a violation.

131.4 Change from two to five years after which any suspended portion of a penalty becomes null and void.

132.6 Add words "per day per violation" for consistency with federal law and other parts of subsection 132. This is necessary to receive full delegation from EPA of the Title 5 Air Operating Permit Program.

200 Add a definition for solid waste consistent with chapter 173-434 WAC, revise definition of Best Available Control Technology (BACT) to identify BACT as a technology not an emission limit, redefine standard conditions to be consistent with traditional air pollution engineering assumptions (20 degrees C. and 760 mm mercury), change correction factor in definition of standard cubic foot of gas to 68 degrees F from 60 degrees F, add a definition for solid waste consistent with the Washington state definition.

321.3 Improve language referring to sources that lose their registration status if they cease operation for more than one year in the Northwest Air Pollution Authority jurisdiction and do not pay registration fees.

342.3 Add the words "if requested by the Control Officer" after "submit a report."

360 Include air operating permit sources.

365 Include air operating permit sources.

462.1 and 2 Add word averaged before "for a sixty consecutive minute period" to make rule consistent with state requirement.

530.1 Revised wording of nuisance section for clarity.

535.3 Revised wording of nuisance odor subsection for clarity.

580.6 Modify subsection on gasoline stations to be consistent with chapter 173-491 WAC.

580.8 Revise subsection to be consistent with federal rules on leak detection and repair at petroleum refineries.

580.11 Add CARB (California Air Resources Board) as a resource for reference testing methods.

580.12 Remove all compliance dates for Section 580 because they are after the fact or Stage II requirements have changed.

Citation of Existing Rules Affected by this Order: Amending Sections 104, 114, 131, 132, 200, 321, 342, 360, 365, 462, 530, 535, and 580.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 97-03-112 on January 21, 1997.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 17, 1997

James B. Randles
 Assistant Control Officer

AMENDATORY SECTION

SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES

104.1 All provisions of State Law as it now exists or may be hereafter amended, which is pertinent to the operation the Authority is hereby adopted by reference and made part of the Regulation of the Authority as of May 9, 1996. Specifically, there is adopted by reference the Washington State Clean Air Act (RCW 70.94), the Administrative Procedures Act (RCW 34.04) and RCW 43.21A and 43.21B and the following state rules: WAC 173-400, WAC 173-401, WAC-405, WAC 173-410, WAC 173-415, WAC-420, WAC-421, WAC-422, WAC 173-425, WAC 173-430, WAC 173-433, WAC 173-434, WAC-435, WAC-450, WAC 173-460, WAC 173-470, WAC 173-474, WAC 173-475, WAC 173-480, WAC 173-481, WAC 173-490, WAC 173-491, WAC-492, WAC-495, and WAC 173-802.

104.2 All provisions of the following federal rules are hereby adopted by reference and made part of the Regulation of the Authority as of May 9, 1996: 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, B, C, Ca, Cb, Cc, Cd, D, Da, Db, Dc, E, Ea, Eb, F, G, H, I, J, K, Ka, Kb, L, M, N, Na, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AAa, BB, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, WW, XX, AAA, BBB, DDD, FFF, GGG, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW; and 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, B, C, D, E, F, H, I, J, K, L, M, N, O, P, Q, R, T, V, W, Y, BB, FF and 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O, Q, R,

PERMANENT

T, U, W, X, Y, CC, DD, EE, GG, II, (~~and~~) JJ, KK, OO, PP, QQ, RR, VV, and JJJ.

Amended: October 1, 1969, January 8, 1970, February 14, 1973, July 11, 1973, April 14, 1993, March 13, 1997

Amended: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997

AMENDATORY SECTION

SECTION 114 - CONFIDENTIAL INFORMATION

114.1 Whenever any records or other information other than ambient air quality data or emission data furnished to or obtained by the Authority (~~pursuant to any sections in the State Act as now or hereafter amended~~), relates to processes or production unique to the owner or operator, or are likely to affect adversely the competitive position of such owner or operator (~~of such processes or production may so certify and request that such records or information be made available only for the confidential use of the Board, the Advisory Council, and Authority staff~~) if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the Authority. Nothing herein shall be construed to prevent the use of records or information by the Authority in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: PROVIDED, that such analyses or summaries do not reveal any information otherwise confidential under the provisions of this section: PROVIDED FURTHER, that emission data furnished to or obtained by the Board shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at offices of the Board.

~~((The Board shall give consideration to the request and if such action would not be detrimental to the public interest and is otherwise within accord with the policies and purposes of the Regulation of this Authority and with State Laws, may grant the same. Nothing herein shall be construed to prevent the use of records or information by the Board, the Advisory Council, or staff in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere; PROVIDED, that such analyses or summaries do not reveal any information otherwise confidential under the provisions of this Section. No member of the Board, Advisory Council, or staff of the Authority shall have access to any confidential information in which they may, in the opinion of the Board, have a conflict of interest; PROVIDED FURTHER, that emission data furnished to or obtained by the Board shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at the office of the Authority.))~~

Passed: January 8, 1969

Permanent

AMENDATORY SECTION

SECTION 131 - VIOLATION - NOTICES

- 131.1 If the Board or Control Officer has reason to believe that a violation of this Regulation has occurred or is occurring, the Board or Control Officer may, with or without notice as specified in Section 130, cause written notice of violation to be served upon the alleged violator and the facts alleged to constitute a violation thereof. Written notice shall be served at least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431.
- 131.2 The Board or Control Officer upon issuance of notice of violation may do any or all of the following:
- 131.21 Require that the alleged violator respond in writing or in person within ten (10) business days of the notice and specify the corrective Action being taken.
 - 131.22 Issue an order pursuant to Section 121 of this Regulation.
 - 131.23 Initiate action pursuant to Sections 132, 133, 134 and 135 of this Regulation.
 - 131.24 Hold a hearing pursuant to Section 120 of this Regulation.
 - 131.25 Require the alleged violator or violators appear before the Board.
 - 131.26 Avail itself of any other remedy provided by law.
- 131.3 Failure to respond as required in Section 131.21 shall constitute a prima face violation of this Regulation and the Board or Control Officer may initiate action pursuant to Section 132, 133, 134, 135 of this Regulation.
- 131.4 Any suspended civil penalty, issued under Section 133 of this Regulation, which is issued as part of a violation shall be applicable in future penalties against the same person for not more than ~~((two))~~ five years from the date of the same suspension. After ~~((two))~~ five years the suspended portion of the Penalty shall be considered void and of no force or effect, appeals notwithstanding.

Amended: April 14, 1993, March 13, 1997

SECTION 132 - CRIMINAL PENALTY

- 132.6 Any person who knowingly makes any false material statement, representation, or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11 (a)(3)(iii) shall be guilty of a crime and upon conviction thereof shall be punished by a maximum fine of

not less than ten thousand dollars (\$10,000) per day per violation.

Amended: April 14, 1993, October 13, 1994, March 13, 1997

AMENDATORY SECTION

SECTION 200 - DEFINITIONS

AGRICULTURAL OPERATION - The growth of crops, the raising of fowl, animals or bees as a gainful occupation.

AIR CONTAMINANT - Means dust, fumes, mist, smoke, other particulate matter, vapor gas, odorous substance, or any combination thereof.

AIR CONTAMINANT SOURCE - Is a point or points from which one or more air contaminants originate.

AIR POLLUTION - Is present 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 interfere with enjoyment of life and property.

AIR QUALITY OBJECTIVE - The concentration and exposure time of one or more air contaminants in the ambient air below which, according to available knowledge, undesirable effects will not occur.

AIR QUALITY STANDARD - An established concentration, exposure time and frequency of occurrence of one or more air contaminants in the ambient air which shall not be exceeded.

AMBIENT AIR - The surrounding outside air.

AMBIENT AIR MONITORING STATION - A station so designated by the Control Officer for the purpose of measuring air contaminant concentrations in the ambient air. The station location and sampling probe locations shall be designated by the Control Officer utilizing as a guide CFR Title 40, Part 58, Appendix "D" Network Design and Appendix "E" Probe Siting Criteria.

AUTHORITY - Northwest Air Pollution Authority (NWAPA).

~~((BEST AVAILABLE CONTROL TECHNOLOGY (BACT) - An emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter 70.94 RCW emitted from or which results from any new or modified stationary source, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of the "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR Part 60 and Part 61, as they exist on February 8, 1996, or their later enactments as adopted by reference by the Control Officer by rule. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in~~

~~the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.))~~

BEST AVAILABLE CONTROL TECHNOLOGY (BACT) - means technology that will result in an emission standard, including a visible emission standard, based on the maximum degree of reduction which the Authority, 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, 61, and 63. The Authority 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.

REFUSE - Putrescible and non-putrescible solid waste including garbage, rubbish, ashes, dead animals, abandoned automobiles, solid market wastes, street cleanings and industrial wastes including waste disposal in industrial salvage.

REFUSE BURNING EQUIPMENT - Equipment designed to burn (refuse) waste material, scrap or combustion remains.

REGISTRATION - Registration shall mean the process of identifying, delineating and itemizing all air contaminant sources within the jurisdiction of the Authority including the making of periodic reports, as required, by the persons operating or responsible for such sources and may contain information concerning location, size, height of contaminant outlets, processes employed, nature of the contaminant emissions and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

RESIDENTIAL BURNING - Means small outdoor fires, at a one or two family residence, consisting of leaves, clippings, pruning and other yard and gardening refuse originating on lands immediately adjacent and in close proximity to a human dwelling resulting from activities connected with said dwelling and burned on such lands by the property owner or his designee.

SMALL OUTDOOR FIRE - Means a fire in a pile no more than four (4) feet in diameter and three (3) feet in height.

SMOKE - Gas borne particulate matter in a sufficient amount to be observable.

SOLID WASTE - means all putrescible and nonputrescible solid and semisolid wastes, including but not limited to garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities. This includes all liquid, solid and semisolid materials, which are not primary products of public, private, industrial, commercial, mining, and agricultural operations. Solid waste includes but is not limited to septage from septic tanks, dangerous waste, and problem wastes. Solid waste does not include wood waste or sludge from waste water treatment plants.

SOURCE - All of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement.

STACK - Duct, chimney, flue, conduit, or opening arranged for the emission into the outdoor atmosphere of air contaminants.

STANDARD CONDITIONS - Standard Conditions ((A)) is a temperature of ~~((60 degrees F))~~ 20 degrees C (68 degrees F) and a pressure of 760 mm (29.92 inches) of mercury. ~~((29.92 inches of mercury. Standard Conditions (B) is a temperature of 0 degrees C and 760 mm of mercury. Standard Conditions (C) is a temperature of 25 degrees C and 760 mm of mercury.))~~

STANDARD CUBIC FOOT OF GAS - That amount of gas which would occupy a cube having dimensions of one foot on each side, if the gas were free of water vapor at a pressure of 14.7 psia and a temperature of ~~((60))~~ 68 degrees F.

STATE ACT - Washington Clean Air Act (RCW 70.94) and RCW 43.21A and 43.21B.

STRAW - All vegetative material of agricultural origin other than seed removed by swathing, combining or cutting.

TON - Short ton or 2000 pounds.

TOTAL SUSPENDED PARTICULATE - Particulate matter as measured by the method described in 40 CFR Part 50 Appendix B as in effect on July 1, 1988.

TRUE VAPOR PRESSURE - The equilibrium pressure exerted by a hydrocarbon at storage conditions.

TURF GRASSES - All blue grasses, fescues, and bentgrass planted for seed production.

UNAVOIDABLE EXCESS EMISSIONS - Air contaminants emitted in excess of a standard that are excused and not subject to penalty by reason that the event(s) meet the criteria in WAC 173-400-107 (4), (5), or (6).

U.S. ENVIRONMENTAL PROTECTION AGENCY - Shall be known as EPA in this Regulation.

WOOD WASTE BURNER - A sheet metal or other type of enclosure to form a truncated cone or a single chamber cylindrically shaped incinerator line or constructed of suitable refractory material which employs controlled fuel feed, tangential overfire and underfire air supply system, and is designed and used for the disposal of wood and bark wastes by incineration.

AMENDED: October 13, 1982, November 14, 1984, April 14, 1993, October 13, 1994, February 8, 1996, May 9, 1996, March 13, 1997

AMENDATORY SECTION

SECTION 321 - GENERAL REQUIREMENTS FOR REGISTRATION

321.1 Registration shall include the following procedures. Any person operating or responsible for the opera-

tion of an air contaminant source that requires registration shall make reports containing information as may be required concerning location, size and height of contaminant outlets, processes employed, nature of contaminant emission and such other information as is relevant to air pollution and available or reasonably capable or being assembled. The owner or agent of the source shall, upon request, submit the required information.

321.2 A separate registration shall be required for each source of contaminant; provided that, an owner need not have a separate registration for identical units of equipment or control facility installed, altered or operated in an identical manner on the same process.

321.3 Any registered source which ceases to operate any air contaminant source for one (1) year or more or said source leaves the jurisdiction of the Authority and does not pay the annual registration fees, the source shall be considered a new source and shall submit a Notice of Construction and Application for Approval and receive approval from the Board prior to resumption of operation or re-entry into the jurisdiction of the Authority. ~~((Provided, however, that those registered sources specifically designed and approved by the Control Officer as part of their original "Notice of Construction and Application for Approval" shall be exempt from this subsection.))~~

Passed: January 8, 1969

Amended: February 14, 1973, August 8, 1978, April 14, 1993, March 13, 1997

SECTION 342 - OPERATION AND MAINTENANCE

342.1 All air contaminant sources are required to keep any process and/or air pollution control equipment in good operating condition and repair. If a breakdown or upset condition occurs and it is determined by the Control Officer to be due to poor operating and maintenance procedures, the Control Officer may take any legal steps necessary to prevent a recurrence of the breakdown or upset condition.

342.2 Operating instructions and maintenance schedules for process and/or control equipment must be available and may be required to be posted on the site. This section is specifically applicable to the operation of equipment where untrained personnel may operate or otherwise have access to or use the equipment.

342.3 If a breakdown or violation occurs and is due to the improper operation or maintenance of equipment, the owner or operator of the source will, in addition to filing a report of breakdown under Section 340, submit a report if requested by the Control Officer on what measures will be taken in training or re-orienting personnel to prevent a recurrence of the breakdown.

PERMANENT

342.4 Excess emissions due to shutdown or startup shall be considered unavoidable provided the source adequately demonstrates that the excess emissions could not have been prevented through careful planning and design, the emissions did not result in a violation of an ambient air quality standard and if a bypass of control equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage.

Amended: April 14, 1993, September 8, 1993, May 11, 1995, February 8, 1996, March 13, 1997

SECTION 360 - TESTING AND SAMPLING

360.1 Any person operating or using any article, machine, equipment or other contrivance (~~for which this Regulation requires registration~~) shall provide and maintain such sampling and testing facilities as specified in the approval to construct or (~~the registration to operate~~) an air operating permit.

360.2 Before an approval to construct or a registration or certificate to operate is granted, the Control Officer may require the owner or applicant to provide and maintain such facilities as are necessary for sampling and testing purposes and perform such tests as are necessary in order to secure information that will disclose the nature, extent, quality or degree of air contaminants discharged into the atmosphere from the article, machine, equipment or other contrivance described in the notice of construction, or application for registration or certificate to operate. In the event of such a requirement, the Control Officer shall notify the applicant in writing of the required size, number and location of sampling ports; the size and location of the sampling platform, and the utilities for operating the sampling and testing equipment and the tests to be performed. The platform, access and utilities shall be constructed and maintained in accordance with the rules and Regulations of the State Department of Labor and Industries and other applicable State and Local Regulations, rules and ordinances.

Passed: October 1, 1969

Amended: February 14, 1973, March 13, 1997

SECTION 365 - MONITORING

365.1 Any person operating a registered air contaminant source or (~~under a certificate to operate~~) an air operating permit source may, at any time, be required to monitor the ambient air, process emissions or conduct emission tests as deemed necessary by the Control Officer under the following provisions:

365.11 The Board or Control Officer may require any person operating any source to conduct a monitoring program on site or adjacent off site for emissions, ambient air concentrations or any other pertinent special studies deemed necessary.

365.12 All monitoring data shall be submitted in a form which the Board or Control Officer may require. Averaging time and collection periods will be determined by the Control Officer. Failure to record and/or report data as specified in the "Guidelines for Industrial Monitoring Equipment and Data Handling" may be cause for a Notice of Violation to be issued.

365.13 All data and records shall be kept for a period of at least one year and made available to the Control Officer upon request.

365.14 All instruments used to monitor compliance or for special studies must meet appropriate EPA performance specifications (40 CFR 60, Appendix B) and shall be calibrated and maintained in accordance with the "Guidelines for Industrial Monitoring Equipment and Data Handling" procedures approved by the Control Officer.

365.15 The Control Officer may take such samples and make any tests and investigations deemed necessary to determine the accuracy of the monitoring reports and tests submitted to the Authority, and evaluate the validity of the data. The owner or operator may also be required by the Control Officer to take a sample using an approved procedure and submit the results thereof within a reasonable period of time.

365.16 The Board or the Control Officer may require additional reasonable monitoring be undertaken at any appropriate time to insure compliance with this Regulation.

Passed: August 4, 1971

Amended: February 14, 1973, February 8, 1989, March 13, 1997

SECTION 462 - EMISSION OF SULFUR COMPOUNDS

462.1 It shall be unlawful for any person to cause or permit the emission of air contaminants from any equipment if the air contaminants emitted as measured in the stack contain sulfur compounds calculated as sulfur dioxide, of more than one thousand (1,000) parts per million (2.62 mg/m³), averaged for a sixty consecutive minute period, except as otherwise provided by a specific emission restriction adopted by this Authority and/or the DOE. For the purpose of this section, all sulfur present in gaseous compounds containing oxygen shall be deemed present as sulfur dioxide.

462.2 Emissions of sulfur compounds calculated to be in excess of 1,000 parts per million (2.62 mg/m³) at any emission point, averaged for a sixty consecutive minute period, shall not constitute a violation of Section 462.1 of this Regulation, provided such person responsible for the emission provides reasonable evidence that such emissions will not cause ground level concentrations on adjacent

property to exceed the values indicated in Section 410 of this Regulation, and can demonstrate to the Control Officer there is no practical method of reducing the concentration to the above levels or less.

462.3 All concentrations of sulfur dioxide referred to in this Section are on a volumetric dry basis. For combustion emissions, the exhaust gas volume shall be corrected to 7% oxygen.

Passed: July 8, 1969

Amended: August 4, 1971, January 9, 1974, August 9, 1978, July 1, 1987, October 14, 1987, April 14, 1992, October 13, 1994, March 13, 1997

AMENDATORY SECTION

SECTION 530 - GENERAL NUISANCE

530.1 ~~((A))~~ No person shall discharge from any source ~~((whatsoever))~~ quantities of air contaminants in sufficient amounts and of such characteristics and duration as is likely to be injurious or cause damage to human health, plant or animal life, or property; or which unreasonably interferes with enjoyment of life and property ~~((of a significant number of persons)).~~

PASSED: December 4, 1970

Amended: April 14, 1993, March 13, 1997

SECTION 535 - ODOR CONTROL MEASURES

535.1 Best available control technology shall be installed and operated to reduce odor-bearing gases or particulate matter emitted into the atmosphere to a reasonable minimum.

535.2 The Board or Control Officer may establish reasonable requirements that the building or equipment be closed and ventilated in such a way that all the air, gases and particulate matter are effectively treated for removal or destruction of odorous matter or other air contaminants before emission to the atmosphere.

535.3 ~~((The ambient air shall not contain odorous substances, such as (but not limited to) hydrogen sulfide, mercaptans, organic sulfides and other aromatic and aliphatic compounds in such concentrations or of such duration as will threaten health or safety or prevent the enjoyment and use of property.))~~

No person shall discharge or permit the discharge into the ambient air odorous substances, such as (but not limited to) hydrogen sulfide, mercaptans, organic sulfides and other aromatic and aliphatic compounds in such concentrations or of such duration as will threaten health or safety of any person or unreasonably interfere with the use and enjoyment of property.

Passed: January 8, 1969

Amended: April 14, 1993, March 13, 1997

SECTION 580.6 - Gasoline Stations

580.61 Section 580.62 shall apply to:

580.611 All gasoline stations in existence on January 1, 1990 with a total annual gasoline output greater than one million three hundred sixty-four thousand liters (360,000 gallons) and total gasoline storage capacity greater than thirty-eight thousand liters (10,000 gallons) and

580.612 All gasoline stations installed or reconstructed after January 1, 1990.

580.62 It shall be unlawful for any person to cause or allow the transfer of gasoline from any transport tank into any stationary storage tank except as provided in 580.63 of this section unless the following conditions are met:

580.621 Such stationary storage tank is equipped with a permanent submerged fill pipe and approved vapor recovery system, and

580.622 Such transport tank is equipped to balance vapors and is maintained in a vapor-tight condition in accordance with Section 580.10 and

580.623 All vapor return line are connected between the transport tank and the stationary storage tank and the vapor recovery system is operating.

580.63 Notwithstanding the requirements of 580.61 of this regulation, the following stationary gasoline storage tanks are exempt from the requirements of 580.62:

580.631 All tanks with a capacity less than seven thousand five hundred liters (2,000 gallons) installed before January 1, 1990.

580.632 All tanks with offset fill lines installed before January 1, 1990.

580.633 All tanks with a capacity less than one thousand liters (260 gallons).

580.64 It shall be unlawful for any person to cause or allow the transfer of gasoline from a stationary tank into a motor vehicle fuel tank except as provided in WAC 173-491. ~~((580.65 of this section unless the following conditions are met:~~

~~580.641 The gasoline station shall be equipped with a certified Stage II vapor recovery system.~~

~~580.642 The owner or operator of the gasoline station shall not allow the transfer of gasoline from stationary tanks into motor vehicle fuel tanks unless a certified Stage II vapor recovery system is used.~~

~~580.643 All Stage II vapor recovery equipment shall be maintained in accordance with~~

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~~the systems certification requirements and shall be maintained to be leak free, vapor tight, and in good working order.~~

~~580.644 Whenever a Stage II vapor recovery system is determined to be defective, the owner or operator shall take the system out of service until it has been repaired, replaced, or adjusted, as necessary.~~

~~580.645 The owner or operator of each gasoline station utilizing Stage II vapor controls shall post operating instructions for the system as referenced in WAC 173-491-40 (5),(f).~~

~~580.65 The following gasoline stations are exempt from the requirements of 580.64:~~

~~580.651 All gasoline stations in existence August 2, 1991 having an annual gasoline throughput less than three million, one hundred and eighty two thousand liters (840,000 gallons).~~

~~580.652 All gasoline stations built after August 2, 1991 with a nominal gasoline storage capacity of thirty seven thousand nine hundred liters (10,000 gallons) or less.)~~

PASSED: February 14, 1990

Amended: April 14, 1993, March 13, 1997

SECTION 580.11 Scope, Registration, Reporting and Notice of Construction

580.111 The owner or operator of a stationary emission source of VOC shall notify the Authority and register the source in compliance with Sections 300, 320, 321, 322, 323, 324.

580.112 The owner or operator of a registered stationary emission source of VOC shall furnish, upon request of the Control Officer, such data as the Agency may require to calculate the emission of the source and evaluate the emission control program; and such other data at times as may be required by the Control Officer. The data shall be supplied not later than (60) sixty days following the request, in a form and according to instructions received from the Control Officer.

580.113 Owners or operators of stationary emission sources of VOC, as defined in Section 580, shall demonstrate compliance with these regulations, using procedures approved by the Control Officer. These procedures shall comply with established EPA/DOE/CARB Reference Testing Methods. Where source sampling is required, procedures shall be used as specified in Section 180 of the NWAPA Regulation.

580.114 The owner or operator of any source of VOC emissions subject to the provisions of Section 580 shall:

580.1141 Install, operate, and maintain, process and/or control equipment, monitoring instruments or procedures as necessary to comply with paragraph 580.113 of this section; provided that use of Monitoring instruments or procedures is required only as specified in EPA/DOE/CARB Documents cited in subsection 580.113.

580.1142 Maintain, in writing, records and/or reports relating to monitoring instruments or procedures which will, upon review, document the compliance status of the VOC emission source or control equipment to the satisfaction of the Control Officer. Reports shall be forwarded to the Control Officer as required by procedures cited in 580.113. For sources subject to 580.6 and 580.7, no records or reports are required.

580.1143 The provisions of the NWAPA Regulation regarding Notices of Construction shall apply to new or altered VOC emission source, and no person shall construct, install, or establish a new or altered VOC emission source except in compliance therewith.

PASSED: December 13, 1989

Amended: March 13, 1997

580.8 - Petroleum Refinery Equipment Leaks

580.81 This section shall apply to all components (pump seals, compressor seals, pipeline valves and relief valves) handling volatile organic compounds at petroleum refinery process units and loading sites which utilize butane or lighter hydrocarbons as a primary feedstock. The process units shall include alkylation, polymerization, ~~((and light ends units))~~ and LPG loading. This section does not apply to systems or facilities in which or to which natural gas or refinery fuel gas are supplied.

580.~~((83))~~82 It shall be unlawful to install or operate a sample point at the end of a pipe or line containing VOC unless the pipe or line is sealed with a second suitable closure. Exceptions to this requirement are the ends of a pipe or line connected to pressure relief valves, aspirator vents or other devices specifically required to be open for safety protection. The sealing device shall be removed only when a sample is being taken or during maintenance operations.

580.~~((82))~~83 It shall be unlawful for any person to cause or allow the operation of a petroleum refinery unless such person(~~(+)~~)

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conducts a fugitive leak detection and repair program for process units specified in 580.81 and 580.82 consistent with the provisions of 40 CFR 60.591-60.593. Where compliance with 40 CFR 60.591-60.593 results in any expansion of a facilities current LDAR program or modification of an existing facility, the date of applicability for the new portion of the program shall be August 31, 1998.

~~((580.821 — Develops and conducts a monitoring program consistent with the provisions of 580.84 of this Section;~~

~~580.822 Records all leaking components which have a VOC concentration greater than 10,000 ppm and places a weatherproof tag bearing an identification number and the date the leak was located on each leaking component;~~

~~580.823 Corrects and retests the leaking component, as soon as practicable, but not later than fifteen days after the leak is recorded. If a leak continues after all reasonable corrective actions have been taken, then the component shall be repaired or replaced on the next scheduled turnaround;~~

~~580.824 Identifies all leaking components that cannot be corrected until the refinery unit is shut down for turnaround.))~~

~~((580.84 — The owner or operator of a petroleum refinery shall conduct a monitoring program according to EPA reference method 21 and consistent with the following provisions:~~

~~580.841 Monitor all pump seals, pipeline valves in liquid service and process drains yearly;~~

~~580.842 Monitor all compressor seals, pipeline valves in gaseous service and pressure relief valves in gaseous service quarterly;~~

~~580.843 The source may petition the Control Officer to relax the frequency of monitoring from quarterly to annually. The source must show three consecutive quarterly results showing a leak rate of less than two percent for individual process units. If annual monitoring results indicate a leak rate greater than two percent, the source will be required to comply with 580.842.~~

~~580.844 Visually monitor all pump seals weekly;~~

~~580.845 Monitor any dripping pump seal immediately;~~

~~580.846 Visually inspect any relief valve within twenty four hours after it has vented to the atmosphere; and~~

~~580.847 Monitor immediately after repair any component that was found leaking.))~~

~~580.((85))84 Pressure relief devices that are connected to an operating flare header, vapor recovery device, inaccessible valves, storage tank valves and valves that are not externally regulated are exempt from the monitoring requirements of this Section.~~

~~((580.86 — The owner or operator of a petroleum refinery shall maintain a leaking component monitoring log that shall contain, at a minimum, the following:~~

~~580.861 The name of the process unit where the component is located;~~

~~580.862 The type of component;~~

~~580.863 The tag number of the component;~~

~~580.864 The date on which a leaking component is discovered;~~

~~580.865 The date on which a leaking component is repaired;~~

~~580.866 The date and instrument reading of the recheck procedure after a leaking component is repaired;~~

~~580.867 A record of the calibration of the monitoring instrument;~~

~~580.868 A record of those leaks that cannot be repaired until turnaround;~~

~~580.869 The total number of components checked and the total number of components found leaking. Copies of the monitoring log shall be retained for a minimum of two years after the date on which the record was made or the report prepared.))~~

PASSED: December 13, 1989

Amended: March 13, 1997

~~((SECTION 580.12 — Schedule of Compliance Dates~~

~~580.121 Section 580 shall become effective throughout the Authority's jurisdictional area upon adoption of this section. All VOC sources shall be in compliance within a reasonable time but no later than the following schedule unless otherwise stated:~~

~~Petroleum Refineries ————— December 31, 1993~~

~~Gasoline Terminals ————— December 31, 1993~~

~~Bulk Gasoline Plants ————— December 31, 1993~~

~~Gasoline Stations — Stage I ————— December 31, 1993~~

~~Gasoline Stations — Stage II~~

~~New or upgraded stations constructed after August 2, 1991 shall comply upon completion of construction.~~

~~Stations with an annual gasoline throughput greater than 1.2 million gallons shall comply by no later than May 1, 1994.~~

~~Stations with an annual gasoline throughput greater than 840,000 gallons, not previously required to comply shall comply by no later than December 31, 1998.~~

~~PASSED: December 13, 1989~~

~~Amended: April 14, 1993)~~

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

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

WSR 97-08-003
PERMANENT RULES
INTERAGENCY COMMITTEE
FOR OUTDOOR RECREATION

[Filed March 20, 1997, 1:35 p.m.]

Date of Adoption: March 13, 1997.

Purpose: (1) To conform WAC to firearm and archery range recreation (FARR) program matching fund law for all sponsors, (2) to help explain waivers of retroactivity, (3) in accordance with law, to except the FARR program from certain fee rules, (4) to update and standardize planning requirements for the following programs - Nonhighway and off-road vehicle activities, Washington wildlife and recreation, boating facilities, land and water conservation fund.

Citation of Existing Rules Affected by this Order: Repealing WAC 286-27-050 and 286-35-040; and amending WAC 286-13-045, 286-13-085, 286-13-110, 286-26-080, 286-27-040, 286-35-030 and 286-40-020.

Statutory Authority for Adoption: RCW 43.98A.060(1), 43.98A.070(5), 43.99.080(2), 46.09.240(1), 77.12.720.

Adopted under notice filed as WSR 97-04-006 on January 24, 1997.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 7, repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 7, repealed 2.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 7, repealed 2.

Effective Date of Rule: Thirty-one days after filing.

March 18, 1997

Greg Lovelady
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 96-08-044, filed 3/29/96, effective 4/29/96)

WAC 286-13-045 Eligible matching resources. (1) Applicant resources used to match committee funds may include: Cash, local impact/mitigation fees, certain federal funds, the value of privately owned donated real estate, equipment, equipment use, materials, labor, or any combination thereof.

(2) Local agencies may match with state funds so long as the state funds are not administered by the committee.

(3) Private donated real property, or the value of that property, must consist of real property (land and facilities) that would normally qualify for committee grant funding.

(4) State agency projects may be assisted by one hundred percent funding from committee sources except where prohibited by law.

(5) The eligibility of federal funds to be used as a match is governed by federal requirements and thus may vary with individual program policies.

AMENDATORY SECTION (Amending WSR 96-15-082, filed 7/18/96, effective 8/18/96)

WAC 286-13-085 Retroactive and increased costs. See WAC 286-04-010 for definition of terms for the following section.

Under most conditions, eligible expenses may only be reimbursed for activities that occur within the period cited in the project agreement. This is known as the committee's prohibition on retroactivity. To avoid this prohibition, a waiver may be issued.

(1) Retroactive land acquisition costs.

The director may grant a waiver of retroactivity whenever an applicant asserts, in writing, that a condition exists which may jeopardize the project. When evidence warrants, the director may grant the applicant permission to proceed by issuing the written waiver. This waiver of retroactivity will not be construed as an approval of the proposed project. If the project is subsequently approved, however, the costs incurred will be eligible for assistance. If the project is to remain eligible for grant support from federal funds, the director shall not authorize a waiver of retroactivity to the applicant until the federal agency administering the federal funds has issued its own waiver of retroactivity as provided under its rules and regulations.

(2) Retroactive development costs. The only retroactive development costs eligible for reimbursement consideration are preliminary expenses (e.g., engineering costs).

However, solely in respect to WWRP projects on LEAP Capital Document 5, the director is authorized to grant a waiver of retroactivity which establishes eligibility for future reimbursement of all appropriate development costs. Such applicants' retroactivity requests must be in writing, and provide sufficient justification. Reimbursement of expenditures is subject to the provisions of WAC 286-13-070. This authority shall be effective until the execution of a project agreement or June 30, 1997, whichever occurs first.

(3) Cost increases.

(a) Cost increases for approved projects may be granted by the committee if financial resources are available.

(b) Each cost increase request will be considered on its merits.

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(c) If an approved project recommended for federal funding is denied by the appropriate federal agency, the sponsor may request that the committee increase assistance by an equivalent amount; such requests shall be considered on their merits.

(d) The director may approve a sponsor's development project cost increase request so long as the total request does not exceed ten percent of the project's approved initial cost. The director may also approve land acquisition cost increase requests so long as the total request for each parcel does not exceed ten percent of both the committee approved initial cost and the appraised and reviewed value of each parcel for which a cost increase is requested.

AMENDATORY SECTION (Amending WSR 96-08-044, filed 3/29/96, effective 4/29/96)

WAC 286-13-110 Income. (1) Fees ~~((and charges))~~. User or other types of fees may be charged in connection with land acquired or ~~((areas and))~~ facilities developed with committee grants if the fees ~~((and charges))~~ are ~~((commensurate))~~ consistent with the value of services or opportunities furnished and are within the prevailing range of public fees ~~((and charges within))~~ in the state for the ~~((particular))~~ activity ~~((involved))~~. Excepted are firearms and archery range recreation program safety classes (firearm and/or hunter) for which a facility/range fee must not be charged (RCW 77.12.720). Unless precluded by state law, the revenue from such fees ~~((and charges))~~ may only be used to offset the expense of operation and maintenance of the facility funded in whole or in part by committee grants or for accrual of capital for similar acquisition and/or development.

(2) Other income. Income that accrues to an area described in a project agreement from sources other than the intended use, including income from land management practices, must derive from use which is consistent with, and complementary to, the intended use of the area as described in the project agreement.

(a) Gross nonintended income that accrues during the contracted reimbursement period established in the project agreement will be used to reduce the total cost of the project.

(b) Gross nonintended income that accrues subsequent to the ending reimbursement date identified in the project agreement must be used to offset operation and maintenance expenses of the facility funded in whole or in part by committee grants or for capital acquisition and/or development of a similar type unless precluded by state law.

(3) Commercial income. Commercial activity performed by a project sponsor on a committee assisted site or facility must be directly related to the recreational service provided. After paying any necessary costs associated with this activity, any net income must be used to assist in maintaining, renovating, operating, and/or developing the site as described in WAC 286-13-110 (1) and (2).

AMENDATORY SECTION (Amending WSR 96-08-044, filed 3/29/96, effective 4/29/96)

WAC 286-26-080 Planning requirements. ~~((Plans completed))~~ To be eligible for grant consideration under this chapter, applicants must complete a plan in accordance with

WAC 286-13-040(2)((7)). At minimum((7)) the plan must include:

(1) A statement of the applicant's long-range goals and objectives;

(2) ~~((A))~~ An inventory, or description of the planning area~~((, or existing areas and facilities, or current conditions, as appropriate));~~

(3) An analysis of demand and need, that is, why actions are required;

(4) A description of ~~((the extent to which the public has been))~~ how the planning process gave the public ample opportunity to be involved in development of the plan;

(5) A current capital improvement program of at least five years ~~((and/or a schedule which identifies those entities responsible for the actions needed to achieve the plan's goals and objectives));~~

(6) Evidence that this plan has been approved by the applicant's governing ~~((body (e.g., ranger district, city/county department, or regional manager/supervisor, etc., as appropriate)))~~ entity most appropriate to the plan's scope. For example, a city or county-wide plan must be approved at the council or commission level. Plans with a different scope will be approved by department heads, district rangers, regional managers/supervisors, etc.

AMENDATORY SECTION (Amending WSR 96-08-044, filed 3/29/96, effective 4/29/96)

WAC 286-27-040 Planning requirements~~((, outdoor recreation account)).~~ ~~((At minimum, outdoor recreation plans completed in accordance with WAC 286-13-040(2) must be approved by the applicant's governing body (e.g., city/county department, regional manager/supervisor, etc., as appropriate) and must include:~~

~~((1) Local agencies.~~

~~((a) A plan for the agency's jurisdiction which includes park, recreation, trails, and open space elements;~~

~~((b) A long range plan for development of facilities (capital improvement program); and~~

~~((c) An inventory of public trails, open space, and outdoor recreation lands and facilities managed by the applicant agency.~~

~~((2) State agencies.~~

~~((a) A capital improvement program, based on the office of financial management's prescribed planning period, that includes a statement of agency long term acquisition, development and management goals, and~~

~~((b) An inventory of public trails, open space, and outdoor recreation lands and facilities managed by the applicant agency.))~~ To be eligible for grant consideration under this chapter, applicants must complete a plan in accordance with WAC 286-13-040(2). At minimum the plan must include:

(1) A statement of the applicant's long-range goals and objectives;

(2) An inventory, or description of the planning area;

(3) An analysis of demand and need, that is, why actions are required;

(4) A description of how the planning process gave the public ample opportunity to be involved in development of the plan;

(5) A current capital improvement program of at least five years;

(6) Evidence that this plan has been approved by the applicant's governing entity most appropriate to the plan's scope. For example, a city or county-wide plan must be approved at the council or commission level. Plans with a different scope will be approved by department heads, district rangers, regional managers/supervisors, etc.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 286-27-050 Planning requirements, habitat conservation account.

AMENDATORY SECTION (Amending WSR 96-08-044, filed 3/29/96, effective 4/29/96)

WAC 286-35-030 Planning requirements~~((—Local agencies)). ((Plans completed in accordance with WAC 286-13-040, at minimum, must include:~~

~~(1) A statement of the applicant's long range goals and objectives;~~

~~(2) A description of the planning area, or existing areas and facilities, or current conditions, as appropriate;~~

~~(3) An analysis of need, that is, why actions are required;~~

~~(4) A description of the extent to which the public has been involved in development of the plan;~~

~~(5) A current capital improvement program of at least five years, and a schedule which identifies those entities responsible for the actions needed to achieve the plan's goals and objectives;~~

~~(6) Evidence that this plan has been approved by the applicant's governing body (e.g., city/county department, regional manager/supervisor, etc., as appropriate:)) To be eligible for grant consideration under this chapter, applicants must complete a plan in accordance with WAC 286-13-040(2). At minimum the plan must include:~~

~~(1) A statement of the applicant's long-range goals and objectives;~~

~~(2) An inventory, or description of the planning area;~~

~~(3) An analysis of demand and need, that is, why actions are required;~~

~~(4) A description of how the planning process gave the public ample opportunity to be involved in development of the plan;~~

~~(5) A current capital improvement program of at least five years;~~

~~(6) Evidence that this plan has been approved by the applicant's governing entity most appropriate to the plan's scope. For example, a city or county-wide plan must be approved at the council or commission level. Plans with a different scope will be approved by department heads, district rangers, regional managers/supervisors, etc.~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 286-35-040 Planning requirements—State agencies.

AMENDATORY SECTION (Amending WSR 96-08-044, filed 3/29/96, effective 4/29/96)

WAC 286-40-020 Funding and candidate selection. Funding for projects approved under this chapter is from the recreation resource account. Candidate project(s) are selected by the director, and approved by the committee, from among those submitted to the Washington wildlife and recreation program (chapter 286-27 WAC). Selection criteria includes:

(1) Adherence to the outdoor recreation account planning requirements of WAC 286-27-040((-);

(2) How well the project(s) has ranked in the evaluation;

(3) How well the project(s) meets needs identified in the state-wide comprehensive outdoor recreation planning program and the general goals identified in WAC 286-04-030;

(4) How well the project(s) meets the criteria in the Land and Water Conservation Fund Grants Manual;

(5) An assessment of how quickly the project(s) will progress through planning and implementation stages.

**WSR 97-08-017
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE
(Fisheries)**

[Order 97-53—Filed March 25, 1997, 10:04 a.m., effective May 1, 1997]

Date of Adoption: February 1, 1997.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-240.

Statutory Authority for Adoption: RCW 75.08.080.

Adopted under notice filed as WSR 96-21-151 on October 23, 1996.

Changes Other than Editing from Proposed to Adopted Version: Boat fishing closure below Bonneville Dam. Size limit change on sturgeon. Possession limit changes for sturgeon, smelt, and herring.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 1, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making:

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New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: May 1, 1997.

Bern Shanks
for Lisa Pelly, Chairperson
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 96-13, filed 2/9/96, effective 5/1/96)

WAC 220-56-240 Daily limits sturgeon, smelt, herring and other food fish not otherwise provided for. It is unlawful for any person to retain in any day more than the following quantities and sizes of food fish taken for personal use. Unless otherwise provided, other food fish fishing is open the entire year:

(1) Sturgeon:

(a) ~~((Catch and release only in the Columbia River and all tributaries upstream from Priest Rapids Dam.))~~ Unlawful to fish from a floating device May 1 through June 30 downstream from the boating deadline below Bonneville Dam to markers on the Oregon and Washington shores of the Columbia River at Beacon Rock.

(b) ~~((2))~~ 1 fish with the following size restrictions in all other state waters:

(i) Minimum size is 42 inches in length except minimum size 48 inches in length in waters of the Columbia River and tributaries upstream from Dalles Dam; and

(ii) Maximum size is ~~((66))~~ 60 inches in length;

~~((iii) Not more than one of the two fish may be less than 48 inches in length; and~~

~~((iv) Not more than one of the two fish may equal or exceed 48 inches in length)).~~

(c) ~~The possession limit is two daily limits of fresh ((sturgeon. Additional sturgeon may be possessed in a frozen or processed form)), frozen or processed sturgeon.~~

(d) There is an annual personal use limit of ~~((15))~~ 10 sturgeon.

(2) Smelt: 20 pounds. ~~The ((daily limit and the)) possession limit ((are the same. It is unlawful for any person to possess more than 20 pounds of smelt at any time))~~ is one daily limit in fresh form. Additional smelt may be possessed in frozen or processed form.

(3) Herring: 20 pounds ~~((fresh)).~~ The possession limit is one daily limit in fresh form. Additional herring may be possessed in a frozen or processed form.

(4) All other food fish not otherwise provided for in this chapter: No limit.

WSR 97-08-018
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE
(Fisheries)

[Order 97-54—Filed March 25, 1997, 10:06 a.m.]

Date of Adoption: February 1, 1997.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-305.

Statutory Authority for Adoption: RCW 75.08.080.

Adopted under notice filed as WSR 97-01-126 on December 19, 1996.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 1, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 14, 1997

Bern Shanks, Ph.D.
Director

AMENDATORY SECTION (Amending Order 95-46, filed 5/31/95, effective 7/1/95)

WAC 220-56-305 Sturgeon—Catch and release. It is unlawful to retain sturgeon taken from:

(1) Those waters of the Snake River or tributaries upstream from Lower Granite Dam;

(2) Those waters of the Columbia River and tributaries upstream from ~~((Grand Coulee))~~ Priest Rapids Dam;

(3) Those waters of the Columbia River between the upstream line of Bonneville Dam and a line 400 feet below McNary Dam during the period July 1 through December 31. Sturgeon that are hooked must be immediately released and returned to the water.

WSR 97-08-019
PERMANENT RULES
STATE BOARD OF EDUCATION
[Filed March 25, 1997, 10:38 a.m.]

Date of Adoption: March 21, 1997.

Purpose: To make clarification and technical changes to WAC 180-40-260 and 180-40-310.

Citation of Existing Rules Affected by this Order:
Amending WAC 180-40-260 and 180-40-310.

Statutory Authority for Adoption: RCW 28A.305.160.

Adopted under notice filed as WSR 97-04-067 on February 4, 1997.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 2, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 2, repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 25, 1997

Larry Davis

Executive Director

AMENDATORY SECTION (Amending WSR 97-01-047, filed 12/12/96, effective 1/12/97)

WAC 180-40-260 Long-term suspension—Conditions and limitations. A long-term suspension may be imposed upon a student for violation of school district rules adopted pursuant to WAC 180-40-225, subject to the following limitations or conditions and the notice requirements set forth in WAC 180-40-265 and the hearing requirements set forth in WAC 180-40-270:

(1) The nature and circumstances of the violation must be considered and must reasonably warrant a long-term suspension and the length of the suspension imposed. This requirement does not preclude school districts (that is, the boards of directors of school districts) from establishing the nature and extent of the corrective actions and/or punishments which, as a general rule, must be imposed as a consequence of proscribed misconduct. Such advance notice to students is advisable, and the imposition of such preestablished corrective action and/or punishment is permissible as long as (a) disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating and/or exceptional circumstances, and (b) long-term suspension is not established as the corrective action or punishment for a student's first time offense other than for offenses involving exceptional misconduct as defined in subsection (2) of this section.

(2) As a general rule, no student shall be suspended for a long term unless another form of corrective action or punishment reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature. A school district may, however, elect to adopt rules providing for the immediate resort to long-term suspension in cases involving exceptional misconduct as long as disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating and/or exceptional circumstances, notwithstanding the fact prior alternative corrective action or punishment has not been imposed upon the student(s) involved. For the purpose of this rule, "exceptional misconduct" means misconduct other than absenteeism which a school district has judged following consultation with an ad hoc citizens committee to (a) be of such frequent occurrence, notwithstanding past attempts of district personnel to control such misconduct through the use of other forms of corrective action and/or punishment, as to warrant an immediate resort to long-term suspension, and/or (b) be so serious in nature and/or so serious in terms of the disruptive effect upon the operation of the school(s) as to warrant an immediate resort to long-term suspension (for example, misconduct judged by

a school district to be the same or of the same nature as a violation of the state's drug or controlled substances laws). The ad hoc citizens committee required by this section shall be composed of three or more persons chosen by the school district or the administrative designee(s) of the district, and shall be constituted with the intent and purpose of representing various socio economic, minority and majority populations of the school district to the extent deemed practical.

(3) No student subject to compulsory attendance pursuant to chapter 28A.225 RCW, as now or hereafter amended, shall be suspended by reason, in whole or part, of one or more unexcused absences unless the school district has first imposed an alternative corrective action or punishment reasonably calculated to modify his or her conduct and, in addition:

(a) Provided notice to the student's parent(s) or guardian(s) or custodial parent(s) in writing in English or, if different, the primary language of the parent(s), guardian(s) or custodial parent(s) that the student has failed to attend school without valid justification, and by other means reasonably necessary to achieve notice of such fact;

(b) Scheduled a conference or conferences with the parent(s) or guardian(s) or custodial parent(s) and the student at a time and place reasonably convenient to all persons included to analyze the causes for the student's absence, the analysis to determine by appropriate means whether the student should be made a focus of concern for placement in a special education or other special program designed for his/her educational success; and

(c) Taken steps to reduce the student's absence which include, where appropriate in the judgment of local school officials and, where possible, discussed with the student, parent(s), guardian(s) or custodial parent(s), adjustments of the student's school program or school or course assignment or assisting the student or parent to obtain supplementary services that might ameliorate the cause(s) for the student's absence from school.

(4) Kindergarten through grade four—No student in grades kindergarten through four shall be subject to long-term suspension during any single semester or trimester, as the case may be, and no loss of academic grades or credit shall be imposed by reason of the suspension of such a student.

(5) Grade five and above program—No single long-term suspension shall be imposed upon a student in the grade five and above program in a manner which causes the student to lose academic grades or credit for in excess of one semester or trimester, as the case may be, during the same school year.

(6) Any student who has been suspended shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

(7) All long-term suspensions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the suspension.

AMENDATORY SECTION (Amending WSR 96-15-098, filed 7/22/96, effective 8/22/96)

WAC 180-40-310 Appeals—Long-term suspension and expulsion. Appeals from decisions rendered pursuant to WAC 180-40-270, 180-40-285 and 180-40-305 which impose either a long-term suspension or an expulsion upon a student shall be governed as follows:

(1) Any school district board of directors may delegate its authority to hear and decide long-term suspension and expulsion appeals to a school district disciplinary appeal council established by the board. School district disciplinary appeal councils shall be appointed by the school district board of directors for fixed terms and shall consist of not less than three persons.

(2) If the case was not heard and decided by the school district board of directors or school district disciplinary appeal council, the student and his or her parent(s) or guardian(s) shall have the right to appeal the decision to the board of directors or the disciplinary appeal council. Notice indicating that the student or his or her parent(s) or guardian(s) desire to appeal the decision shall be provided to either the office of the school district superintendent or to the office of the person who rendered the decision within three school business days after the date of receipt of the decision. The notice of appeal shall be accepted if in writing and may be accepted orally if expressly provided for and allowed by rule or policy of the district.

(3) If an appeal is not taken to the board of directors or disciplinary appeal council within the required three school business day period, the suspension or expulsion decided upon may be imposed as of the calendar day following expiration of the three school business day period.

(4) If a timely appeal is taken to the board of directors or disciplinary appeal council, the suspension or expulsion may be imposed during the appeal period subject to the following conditions and limitations:

(a) A long-term suspension or nonemergency expulsion may be imposed during the appeal period for no more than ten consecutive school days or until the appeal is decided, whichever is the shortest period;

(b) An emergency expulsion may be continued during the appeal period for so long as the student continues to pose an immediate and continuing danger to the student, other students, or school personnel or an immediate and continuing threat of substantial disruption of the educational process of the student's school; ~~(and)~~

(c) Any days that a student is temporarily suspended or expelled before the appeal is decided shall be applied to the term of the student's suspension or expulsion and shall not limit or extend the term of the student's suspension or expulsion; and

(d) Any student subjected to a temporary suspension who returns to school before the appeal is decided shall be provided the opportunity upon his or her return to make up assignments and tests missed by reason of the suspension if:

(i) Such assignments or tests have a substantial effect upon the student's semester or trimester grade or grades; or

(ii) Failure to complete such assignments or tests would preclude the student from receiving credit for the course or courses.

(5) An appeal from any decision of a school board or disciplinary appeal council to impose or to affirm the imposition of a long-term suspension or an expulsion shall be to the courts. Whether or not the decision of a school board or disciplinary appeal council shall be postponed pending an appeal to superior court shall be discretionary with the school board or disciplinary appeal council except as ordered otherwise by a court.

**WSR 97-08-020
PERMANENT RULES
STATE BOARD OF EDUCATION**

[Filed March 25, 1997, 10:41 a.m.]

Date of Adoption: March 21, 1997.

Purpose: To make permanent the current credit equivalency definition that one high school credit shall equal five quarter or three semester hours of college or university level course work.

Citation of Existing Rules Affected by this Order: Amending WAC 180-51-050.

Statutory Authority for Adoption: RCW 28A.230.090.

Other Authority: RCW 28A.305.130.

Adopted under notice filed as WSR 97-04-066 on February 4, 1997.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 1, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 1, repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 25, 1997

Larry Davis

Executive Director

AMENDATORY SECTION (Amending WSR 96-09-027, filed 4/9/96, effective 5/10/96)

WAC 180-51-050 High school credit—Definition. As used in this chapter the term "high school credit" shall mean:

(1) Grades nine through twelve high school programs.

One hundred fifty hours of planned in-school instruction;

(2) College and university course work. At the college or university level, except for community college adult high school completion programs, five quarter or three semester hours shall equal ~~((.75))~~ 1.0 high school credit ~~((: Provided, That five quarter or three semester hours shall continue to equal one high school credit until September 1, 1997)); and~~

(3) Community college adult high school completion program. Five quarter or three semester hours of community

college work shall equal 1.0 high school credit for students in the community college high school completion program.

WSR 97-08-021
PERMANENT RULES
WASHINGTON STATE PATROL

[Filed March 25, 1997, 1:16 p.m.]

Date of Adoption: March 24, 1997.

Purpose: Amend requirements regarding letters of appointment to provide towing services for the Washington State Patrol. Amend the standard length of vehicles used to calculate basic storage fees for tow businesses.

Citation of Existing Rules Affected by this Order: Amending WAC 204-91A-060 and 204-91A-140.

Statutory Authority for Adoption: RCW 46.37.005 and 46.55.050.

Adopted under notice filed as WSR 97-04-053 on February 3, 1997.

Changes Other than Editing from Proposed to Adopted Version: Changes will ensure that only persons of good moral character may apply to provide towing service for the state patrol, thereby safeguarding the general public. The amendments will allow the towing industry to store more vehicles in their present impound yards and bring the rule into line with standard vehicle lengths.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 2, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 2, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 2, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 25, 1997
 Annette M. Sandberg
 Chief

AMENDATORY SECTION (Amending WSR 94-18-083, filed 9/2/94, effective 10/3/94)

WAC 204-91A-060 Application for letter of appointment. (1) An application for a letter of appointment will not be considered or approved until the applicant is qualified as a licensed and registered tow truck operator with at least one approved "A" or "B" class tow truck. Additional trucks are optional.

Note: An exception may be made if an operator desires a letter of appointment for class "C" tows only. In such situations, only a class "C" truck is required.

Upon request, the section shall advise the applicant of the contents of the department's regulations and of the standards established for the issuance of a letter of appointment.

(2) An application for a letter of appointment to provide towing service for the patrol shall be filed by the applicant with the local state patrol district office on a form prescribed by the patrol. The state patrol may refuse to approve or may revoke a letter of appointment/contract if the applicant, partner, or employee has been convicted of any class "A" felony, or has within the last ten years been convicted of any lesser felony involving assault, sexual abuse, or theft as defined in RCW 9A.56.030. In the case of a partnership, each partner shall apply on the form prescribed. In the case of a corporation, the patrol may require that each of the present and any subsequent officers, managers, and stockholders holding ten percent or more of the total issued and outstanding stock of the applicant corporation complete an application form. A signed "letter of contractual agreement" listing the maximum tow rates to be charged for services resulting from state patrol originated calls will be attached to the application.

(3) The district commander or designee shall complete tow zone portion of the form. He/she will enter "approved" or "disapproved" and will sign the form next to the zone designation. The application and "letter of contractual agreement" will be forwarded to the section.

(4) The application form will be assigned a docket number, by the section, which shall be its permanent identification number for all matters relating to appointments, granted or denied, and any other correspondence with the section thereafter.

(5) The filing of an application for a letter of appointment does not in itself authorize the operator to provide towing services pursuant to this chapter until a letter of appointment has been issued by the section. However, nothing herein shall prohibit the patrol from calling the towing business upon the specific request of a person responsible for a vehicle or his agent.

AMENDATORY SECTION (Amending WSR 89-21-044, filed 10/13/89, effective 11/13/89)

WAC 204-91A-140 Fees. (1) All towing fees shall be based on a flat, hourly rate only and shall apply without regard for the hour of day, day of the week or whether the service was performed on a Saturday, Sunday, or holiday. The hourly rate for each class of truck shall be the only charge for services performed for initial tows and secondary tows performed during business hours. Charges for secondary tows performed during nonbusiness hours, on weekends or holidays, if different from the hourly rate, shall be negotiated and agreed upon with the vehicle owner/agent before the tow is made.

(2) The chief of the state patrol shall, prior to October 15 of each year, establish maximum hourly towing rates for each class of tow truck and maximum daily storage rates that tow operators may charge for services performed as a result of state patrol calls. The maximum rates shall be determined after consulting with members of the towing industry, review of current private towing rates, and such other economic factors as the chief may deem appropriate.

When signed by the chief (or his/her designee) and the tow operator, a contractual agreement to charge no more than the maximum rates shall become part of the operator's letter of appointment. The tow operator may, however, adopt a rate schedule charging less than the maximum rates established by the chief.

The hourly rate shall:

(a) Be the only basis used to compute total charges for towing services.

(b) Apply when the call is made by the state patrol, for whatever reason, including but not limited to accidents, incidents, disableds, and impound requests.

(c) Include all ancillary activities such as, but not limited to, removal of glass and debris from the roadway and any other area referred to as the "scene or incident," necessary winching, dolly service, drive line removal, installing chains on the tow truck, installation of portable lights, vehicle hookup for towing or transporting, tire replacement (on vehicle to be towed) and standby time.

(d) Be considered to include one person (the driver) per truck. Any charges for additional labor and/or ancillary vehicles (trailers, pickups, etc.), for removing debris, cargo, etc., must have prior authorization from the legal or registered owner/agent, or a member of the patrol at the scene.

(e) Be computed from the actual time the truck departs in response to a call until it returns to the starting location or it begins responding to another call minus any down time.* The hourly rate shall be applied to the resulting net time and, after the first hour, shall be rounded to the nearest fifteen minutes. The operator may charge the hourly rate for the first hour or any portion thereof. After the first hour, no more than one-quarter of the hourly rate may be charged for each fifteen minutes of tow or service work performed.

*Down time includes coffee or meal breaks, personal errands by the operator, and/or any mechanical failure on the truck or equipment.

(3) The basic storage fee:

(a) Shall be calculated on a twenty-four-hour basis and shall be charged to the nearest half day from the time the vehicle arrived at the secure storage area; and

(b) Shall be the same for all three and four-wheel vehicles less than (~~twenty-five~~) twenty feet in length; and

(c) For vehicles or combinations exceeding (~~twenty-five~~) twenty feet shall be computed by multiplying each (~~twenty-five~~) twenty feet of vehicle length, or any portion thereof, by the basic storage fee;

(d) For two-wheel motorcycles shall be one-half the basic storage fee for three and four-wheel vehicles.

(4) After hours release fee. If an operator or employee is already present, for other reasons, at the storage facility after business hours when a customer arrives, the vehicle and/or property shall be released as if it were during business hours. No "after hours fee" may be assessed. If the operator or employee is called to the place of business specifically for the purpose of releasing the vehicle and/or property, an "after hours fee," equivalent to one-half of the maximum Class "A" hourly rate, may be assessed.

(5) Any tow operator who charges the general public (i.e., private citizens) rates lower than those identified in the contractual agreement for services listed below shall charge the same lower rate for similar services performed as a result of state patrol originated calls.

- (a) Roadside mechanical service, including fuel transfer, tire and belt changes, etc.;
- (b) Disabled vehicle tow/transportation;
- (c) Storage;
- (d) After hours release fees.

Any such price requirement shall not be imposed for unoccupied vehicle situations in which the owner/operator has had no prior contact with either the state patrol or the tow operator.

WSR 97-08-032
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Public Assistance)

[Filed March 27, 1997, 11:01 a.m., effective May 1, 1997]

Date of Adoption: March 26, 1997.

Purpose: To comply with the federal requirement in Public Law 104-193 that temporary assistance for needy families (TANF) be denied to a parent or other caretaker relative who fails to notify the Department of Social and Health Services within five days of the date it becomes clear the child will be absent for more than ninety days.

Citation of Existing Rules Affected by this Order: Amending WAC 388-215-1115 Living in the home of a relative of specified degree—Temporary absence—Denial of assistance to a caretaker relative who fails to report a child's absence.

Statutory Authority for Adoption: RCW 74.04.050 and 74.04.055.

Other Authority: Public Law 104-193, Section 103 (a)(1) (1996).

Adopted under notice filed as WSR 97-05-068 on February 19, 1997.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 1, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: May 1, 1997.

March 26, 1997
Merry A. Kogut, Manager
Rules and Policies Assistance Unit

PERMANENT

NEW SECTION

WAC 388-215-1115 Living in the home of a relative of specified degree—Temporary absence—Denial of assistance to a caretaker relative who fails to report a child's absence. (1) When a minor child is temporarily absent from the home, the department shall deny assistance for one month to a parent or other caretaker relative who fails to notify the department within five days of the date it becomes reasonably clear to the parent or other caretaker relative that the absence of the child will exceed ninety days.

(2) In denying assistance to a parent or other caretaker relative for the reason described in subsection (1) of this section, the needs of that individual shall be excluded in determining the need and payment amount of the assistance unit.

(3) The income of a parent or other caretaker relative who is disqualified under this section shall be allocated under WAC 388-218-1640 as if the individual were ineligible due to sanction or noncooperation.

WSR 97-08-033
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Public Assistance)

[Filed March 27, 1997, 11:05 a.m., effective May 1, 1997]

Date of Adoption: March 26, 1997.

Purpose: To comply with the federal requirements in Public Law 104-193 that for the purposes of the temporary assistance for needy families (TANF) program the IV-D agency (Division of Child Support) is responsible for determining if TANF clients are cooperating in paternity establishment and child support collection; a family's grant is to be reduced by 25% if the caretaker relative fails to cooperate with the IV-D agency; and a family shall be denied TANF assistance if a family member fails to assign certain support rights to the state.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-265-1350 Protective payment—AFDC clients sanctioned for failure or refusal to cooperate with the Office of Support Enforcement; and amending WAC 388-215-1400 Support enforcement—Assignment of support rights cooperation with Division of Child Support.

Statutory Authority for Adoption: RCW 74.04.050 and 74.04.055.

Other Authority: Public Law 104-193, Section 103 (a)(1) (1996).

Adopted under notice filed as WSR 97-05-071 on February 19, 1997.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 1, repealed 1; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: May 1, 1997.

March 26, 1997

Merry A. Kogut, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending Order 3732, filed 5/3/94, effective 6/3/94)

WAC 388-215-1400 Support enforcement—Assignment of support rights—Cooperation with ((office)) division of child support ((enforcement)). (1) As a condition of eligibility, each client of ((AFDC)) TANF shall assign to the ((office)) division of child support ((enforcement)) any rights to support in his or her own behalf or in behalf of the other assistance unit members, and any rights to support which has accrued prior to the time assignment is made.

(a) The department shall require the client to promptly remit to the ((office)) division of child support ((enforcement)) any support received directly after assignment is made.

(b) The department shall consider the client's signed application as an assignment of support rights. The client's acceptance of ((an AFDC)) a TANF payment shall constitute an agreement to the assignment of support rights.

(c) If a family member with whom the child lives fails to assign support rights as required in this section, the department shall deny assistance to the entire assistance unit.

(2) As a condition of eligibility, the department shall require each ((AFDC)) (TANF) client to cooperate with the ((office)) division of child support ((enforcement)) as specified under WAC 388-14-200 unless the department has established good cause as specified under WAC ((388-215-1440. Department IV A staff shall base the determination of client cooperation on all evidence in its possession)) 388-215-1400 through 388-215-1490. The IV-D agency, division of child support, shall determine client cooperation.

(3) If the caretaker relative with whom the child lives fails to ((comply)) cooperate with the ((requirements in this section)) division of child support, the department shall ((deny eligibility to that relative and provide any)) reduce the assistance ((payment)) paid to the ((child is eligible for by protective payment as described under WAC 388-265-1350)) child's assistance unit by twenty-five percent of what the assistance unit would otherwise be eligible to receive.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-265-1350 Protective payment—AFDC clients sanctioned for failure or refusal to cooperate with the office of support enforcement.

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WSR 97-08-034
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Public Assistance)

[Filed March 27, 1997, 11:09 a.m., effective May 1, 1997]

Date of Adoption: March 26, 1997.

Purpose: To comply with the federal requirement in Public Law 104-193 that temporary assistance for needy families (TANF) be denied to persons convicted of drug-related felonies.

Citation of Existing Rules Affected by this Order: Amending WAC 388-215-1570 Denial of assistance to persons convicted of drug-related felonies.

Statutory Authority for Adoption: RCW 74.04.050 and 74.04.055.

Other Authority: Public Law 104-193, Section 115 (1996).

Adopted under notice filed as WSR 97-05-069 on February 19, 1997.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 1, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: May 1, 1997.

March 26, 1997
Merry A. Kogut, Manager
Rules and Policies Assistance Unit

NEW SECTION

WAC 388-215-1570 Denial of assistance to persons convicted of drug-related felonies. (1) The department shall deny TANF benefits to an individual convicted after August 22, 1996, under federal or state law, of any felony involving the possession, use or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act by excluding the needs of that individual in determining the need and payment amount of the assistance unit.

(2) Each applicant shall attest in writing whether the applicant or a person for whom the applicant is applying has been convicted of a felony as described in subsection (1) of this section.

WSR 97-08-037
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket No. TC 961102, General Order No. R-440—Filed March 27, 1997, 11:20 a.m.]

In the matter of adopting WAC 480-31-010, 480-31-020, 480-31-030, 480-31-040, 480-31-050, 480-31-060, 480-31-070, 480-31-080, 480-31-090, 480-31-100, 480-31-110, 480-31-120, 480-31-130 and 480-31-140, relating to private nonprofit transportation providers.

The Washington Utilities and Transportation Commission takes this action under Notice No. WSR 96-23-071, filed with the code reviser on November 20, 1996. The commission brings this proceeding pursuant to RCW 80.01.040.

This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 34.21C [43.21C] RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

The commission undertook this proceeding as a result of chapter 244, Laws of 1996, to establish rules for providing regulated transportation services to persons with special transportation needs by private, not-for-profit corporations (PNTPs). PNTPs are nonprofit corporations providing transportation services to persons with special transportation needs, including persons, and their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves. Chapter 244, Laws of 1996, expanded the definition of elderly and handicapped for commission regulatory purposes to include persons with special transportation needs.

The commission filed a Preproposal Statement of Inquiry (CR-101) on October 1, 1996, at WSR 96-20-090. The notice advised interested persons that the commission was considering entering a rule making on private nonprofit transportation providers to discover amendments that may be needed for consistency with chapter 244, Laws of 1996. Commission staff had also met with representatives of affected entities prior to filing the preproposal statement of inquiry to secure information and to discuss possible rules. Commission staff considered the result of those meetings in developing and recommending rule provisions and language.

The commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending the notice to all nonprofit companies known to the commission to be subject to the potential rules. Pursuant to the notice, the commission did receive inquiries and consider comments.

Written comments or inquiries were received from five entities subject to the rule making.

The following persons met with commission staff before or after the filing of the preproposal notice regarding the subject of the rule making: Representatives of state government agencies including the Council on Aging and Human Services, the state Department of Transportation, and the state Department of Licensing; and local governmental and nongovernmental agencies operating qualifying bus service,

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such as People for People, Yakima; transportation providers from Longview and Colville, Washington; Chicken Soup Brigade, Seattle; Mason County Transit, Shelton; Paratransit Services, Bremerton; and entities from Bellevue and Burlington, Washington. The meetings led to acceptance of draft language by participants.

The commission filed a notice of Proposed Rule Making (CR-102) on November 20, 1997, at WSR 96-23-071. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 96-23-071 at 9:00 a.m., Monday, December 30, 1996, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

The rule change proposal was considered for adoption, pursuant to the notice, at the commission's regularly scheduled open public meeting on Monday, December 30, 1996, before Commissioner Richard Hemstad and Commissioner William R. Gillis. Pat Dutton of commission staff appeared at the meeting in support of the proposal and presented a written recommendation that the commission adopt the proposal, with changes. No other person commented on the rules at the meeting. No person offered suggested changes to the proposal that were not adopted. The proposal appears to represent a consensus between commission staff and the regulated industry.

The proposed changes, which the commission adopted, would add specific reference to sections that cite material adopted by reference, stating the location of the referenced material. This change does not affect the substance of the proposal in any way, but does assure procedural compliance with chapter 34.05 RCW.

After considering all of the information regarding this proposal, the commission adopted the proposed rule adoption, with the changes noted from the text noticed at WSR 96-23-071. The change made was the addition of language in sections WAC 480-31-100, 480-31-110, 480-31-130, and 480-31-140.

In reviewing the entire record, the commission determines that WAC 480-31-010, 480-31-020, 480-31-030, 480-31-040, 480-31-050, 480-31-060, 480-31-070, 480-31-080, 480-31-090, 480-31-100, 480-31-110, 480-31-120, 480-31-130, and 480-31-140 should be adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 14, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making:

New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

ORDER

THE COMMISSION ORDERS:

1. WAC 480-31-010, 480-31-020, 480-31-030, 480-31-040, 480-31-050, 480-31-060, 480-31-070, 480-31-080, 480-31-090, 480-31-100, 480-31-110, 480-31-120, 480-31-130, and 480-31-140 are adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of its filing with the code reviser pursuant to RCW 34.05.380(2).

2. This order and the rule set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 35.05 [34.05] RCW and chapter 1-21 WAC.

3. The commission adopts the commission staff memorandum, presented when the commission considered filing a preproposal statement of inquiry, when it considered filing the formal notice of proposed rule making, and when it considered adoption of this proposal, as its brief explanatory statement of the reasons for adoption, under RCW 34.05.025.

DATED at Olympia, Washington, and effective this 25th day of March, 1997.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Sharon L. Nelson, Chairman
Richard Hemstad, Commissioner
William R. Gillis, Commissioner

APPENDIX "A"

Chapter 480-31 WAC PRIVATE, NONPROFIT TRANSPORTATION PROVIDERS

NEW SECTION

WAC 480-31-010 Purpose. The purpose of this section is to ensure that private, nonprofit transportation providers, who primarily operate by using revenues received from governmental grants and/or charitable organizations, do so in a manner that is safe and reasonable for persons with special transportation needs.

NEW SECTION

WAC 480-31-020 Application of rules. These rules will apply to any private, nonprofit transportation provider so defined by the laws of the state of Washington, engaged in the business of providing transportation subject to the jurisdiction of this commission for persons with special transportation needs.

Any tariff filed by a provider will conform to these rules. In the event of acceptance of a tariff which is in conflict with these rules, such acceptance will not be deemed a waiver of these rules. Tariffs which are in conflict with these rules are hereby superseded unless the commission authorizes the deviation in writing.

Cases of erroneous or doubtful interpretation of these rules by a provider or any other person or corporation are

subject to appeal to the commission by any interested and proper party affected.

Upon proper showing of any provider, the commission may waive or modify, as to that provider, the provisions of any rule herein, except when such provisions are fixed by statute. No deviation from these rules will be permitted without written authorization by the commission. Violations will be subject to the penalty provisions of chapter 81.04 RCW.

The adoption of these rules will in no way preclude the commission from altering or amending the same, in whole or in part, or from requiring any other or additional service, equipment or standard, not otherwise herein provided for either upon complaint or upon its own motion, or upon the application of any party, and further, these rules will in no way relieve any provider from any of its duties under the laws of the state of Washington.

Whenever the designation "director, office of motor carrier safety," "director, regional motor carrier safety office," "regional highway administrator," and "federal highway administration" are used in the respective parts of Title 49, Code of Federal Regulations, as described in this section, such designations for the purpose of this rule will mean the "Washington utilities and transportation commission."

NEW SECTION

WAC 480-31-030 Definitions. Unless the language or context indicates that a different meaning is intended, the following words, terms, and phrases will, for the purpose of this chapter, mean the following:

- (1) State - The state of Washington.
- (2) Commission - The Washington utilities and transportation commission.
- (3) Certificate - A grant of authority issued by the commission to a private, nonprofit transportation provider for the transportation of persons with special transportation needs as provided in chapter 81.66 RCW.
- (4) Corporation - A corporation, company, association, or joint stock association.
- (5) Public highway - Every street, road or highway in this state.
- (6) Motor vehicle - Every self-propelled vehicle with seating capacity of seven or more persons, including the driver.
- (7) Commercial motor vehicle - A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle is designed to transport sixteen or more passengers, including the driver.
- (8) Person - An individual, firm, or copartnership.
- (9) Private, nonprofit transportation provider - A private, nonprofit corporation providing transportation services for compensation to persons with special transportation needs.
- (10) Provider - Private, nonprofit transportation provider.
- (11) Persons with special transportation needs - Those persons, including their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase appropriate transportation.

(12) Tariff - A public document setting forth services being offered, rates and charges with respect to services and governing rules, regulations and practices relating to those services.

(13) Donation - A gift without compulsion or consideration, that is, resting solely on the generosity of the donor.

NEW SECTION

WAC 480-31-040 Licenses, and rules and regulations. No provider may operate a motor vehicle upon the public highways of this state until the owner of the vehicle or person lawfully responsible for the vehicle has complied with the laws of this state pertaining to licenses, obtained a certificate from the commission, and complied with all rules and regulations of the commission governing the operation of private, nonprofit transportation providers.

NEW SECTION

WAC 480-31-050 Certificates. (1) The commission will issue a certificate to any corporation which files a completed application, as provided by the commission, which provides:

(a) Satisfactory proof of its status as a private, nonprofit corporation;

(b) Information sufficient to determine the particular service to be provided;

(c) Satisfactory proof of insurance or surety bond, in accordance with WAC 480-31-070;

(d) The number and type of vehicles to be operated, together with satisfactory proof that the vehicles are adequate for the proposed service, that the vehicles are or will be licensed in compliance with the laws of the state, and that drivers of such vehicles will be adequately trained and qualified;

(e) Any proposed rates, fares, or charges.

(2) Applications for certificates must be on forms to be furnished by the commission, giving all information requested and accompanied by a fifty dollar application fee.

(3) Remittances will be made by money order, bank draft, personal check or certified check, made payable to the Washington utilities and transportation commission.

(4) No provider may operate, establish, or begin operation of any business for the purpose of transporting persons with special transportation needs on the public highways of this state, without first having obtained from the commission a certificate.

(5) No certificate will be issued to persons operating under a trade name, unless a certificate of said trade name is filed in accordance with the provisions of RCW 19.80.010, and a copy thereof filed with the commission.

(6) Each vehicle operated by a provider must carry a copy of the company's certificate, and will be subject at all times to inspection by an authorized representative of the commission.

(7) Any certificate to operate as a private, nonprofit transportation provider obtained by any false affidavit or representation will be subject to cancellation by the commission.

(8) No certificate will be sold, assigned, leased, acquired, or transferred except upon authorization of the commission.

NEW SECTION

WAC 480-31-060 Tariff. (1) Each provider that assesses to or collects charges, rates, or fares from passengers must file with the commission a tariff setting forth its rates on forms provided by the commission. However, it is not required that a tariff be filed to cover collection of donations when the donations are entirely voluntary and a specific amount is not required to ride in the motor vehicle.

(2) In the event that a provider proposes a new tariff or amendment which will effect an increase in fares, rates or charges, or will in any respect restrict the service offered under the currently effective tariff, a notice must be given to the public at least thirty days before the effective date thereof, unless the commission has granted authority for a lesser period. A copy of the notice must be placed in a conspicuous place on each vehicle. The notice must plainly indicate that the notice has been posted "in compliance with regulations of the Washington utilities and transportation commission," and state the commission's mailing address. A waiver of the thirty-day notice provision may be applied for on forms provided by the commission.

(3) Any provider that receives compensation solely from private, governmental or charitable grants or contracts and donations is not required to file tariffs with the commission concerning these contracts or donations.

NEW SECTION

WAC 480-31-070 Insurance. (1) Evidence of liability and property damage insurance or a surety bond must be on file before a certificate will be issued. The insurance or surety bond must have been written by a company authorized to write such insurance in the state of Washington. The combined bodily injury and property damage liability insurance or surety bond must not be less than:

Five hundred thousand dollars combined single limit for vehicles with a passenger capacity of less than sixteen passengers, including the driver;

One million dollars combined single limit for vehicles with a passenger capacity of sixteen or more passengers, including the driver.

Failure to file and keep such insurance or surety bond in full force and effect will be cause for dismissal of an application or cancellation of a certificate.

(2) Evidence of insurance must be submitted on a "uniform motor carrier bodily injury and property damage liability certificate of insurance (form E).

(3) All liability and property damage insurance policies issued to providers must carry a "uniform motor carrier bodily injury and property damage liability endorsement."

(4) Insurance termination. All insurance policies issued must provide that the same will continue in full force and effect until canceled by at least thirty days written notice served on the insured and the commission by the insurance company. The thirty-day notice will commence to run from the date notice is actually received by the commission, except for binders which may be canceled on ten days' written notice.

Notice of cancellation or expiration must be submitted in duplicate on forms prescribed by the commission and must not be submitted more than sixty days before the desired termination date, except binders which may be

canceled by ten days' written notice from the insurance agency or company.

(5) No provider may operate upon the public highways of this state without insurance as required by this section. The permit of any provider who fails to maintain evidence on file that its insurance is in current effect will be suspended by operation of law beginning with the time of the failure, until the permit is canceled or the cause of the suspension is cured and the permit is reinstated. The commission will make a good faith effort to notify providers of impending suspension for failure to maintain evidence of insurance and enter a timely order of suspension, but failure to do so will not invalidate the suspension.

NEW SECTION

WAC 480-31-080 Fees and annual report. (1) A provider must pay to the commission the sum of ten dollars annually for each vehicle operated. The annual fee must be paid with the filing of the annual report of the provider.

(2) At the close of each calendar year, every provider must secure from the commission the proper forms and file with the commission its annual report as soon as possible after the close of the calendar year, but no later than May 1st of the succeeding year. Failure to file such report will be sufficient cause for the commission, in its discretion to revoke a certificate.

NEW SECTION

WAC 480-31-090 Passenger complaints and disputes. Any complaint or dispute involving a passenger and a provider for which the commission has jurisdiction must be treated in the following manner:

(1) Each complaint or dispute received by a provider from a passenger must be investigated promptly as required by the particular case, and the results reported to the passenger. When the circumstances indicate the need for corrective action, such action must be taken as soon as possible.

(2) Each provider must ensure that personnel engaged in initial contact with a dissatisfied or complaining passenger will inform the passenger that if dissatisfied with the decision or explanation provided, the passenger has the right to have the problem considered and acted upon by supervisory personnel. The passenger must be provided with the name or department of such supervisory personnel and a telephone number by which they can be reached.

(3) Each provider must ensure that supervisory personnel contacted by a dissatisfied passenger will inform a still-dissatisfied passenger of the availability of the commission for further review of any complaint or dispute. The telephone number and address of the commission must also be provided.

(4) All parties to a dispute between a passenger and the provider have the right to bring before the commission an informal complaint pursuant to the provisions of WAC 480-09-150 and/or a formal complaint pursuant to the provisions of WAC 480-09-420.

(5) When a complaint is referred to a provider by the commission, the provider must, within two business days, report the results of any investigation made regarding the complaint to the commission and must keep the commission

currently informed as to progress made with respect to the solution of, and final disposition of, the complaint. If warranted in a particular case, the provider may request an extension of time.

(6) Records - each provider must keep a record of all complaints concerning its service or rates. The record must show at least the name and address of the complainant, the nature and date of the complaint, action taken, and the final disposition of the complaint. Such records must be maintained in a suitable place readily available for commission review and will be provided to the commission upon request.

All written complaints made to a provider must be acknowledged within five business days. Correspondence and records of complaints must be retained by the provider for a minimum period of one year.

NEW SECTION

WAC 480-31-100 Equipment—Safety. In addition to other laws and regulations of this state, all providers must comply with the following:

The rules and regulations governing motor carrier safety prescribed by the United States Department of Transportation in Title 49, Code of Federal Regulations, part 392 (Driving of Motor Vehicles), part 393 (Parts and Accessories Necessary for Safe Operation), part 396 (Inspection, Repair and Maintenance), and part 397 (Transportation of Hazardous Materials; Driving and Parking rules).

The commission adopts by reference the provisions of federal rules cited in this section. The material incorporated by reference in this section is available for public examination in the Washington utilities and transportation commission branch of the Washington state library associated with the commission's headquarters office in Olympia and is available for purchase at the Seattle office of the government printing office.

NEW SECTION

WAC 480-31-110 Identification of motor vehicle equipment. Providers must display identification markings on the driver and passenger side of the vehicles.

The markings must include the name of the provider as registered with the commission and the certificate number. Provided however, providers holding both intrastate and interstate authority may display either the U.S. Department of Transportation certificate number, commission certificate number, or both.

The markings must be clearly legible, with letters no less than three inches high, in a color that contrasts with the surrounding body panel. Leased vehicles may display either permanent markings or placards on the driver and passenger sides of the vehicle.

Vehicles operated by or under lease must display the name and permit number of either the business operating the vehicle or the registered owner. The markings may be permanent or placards on the driver and passenger sides of the vehicle.

When identification of the provider would create an embarrassment to the persons with special transportation needs, the name of the provider may be omitted when authorized by letter from the secretary of the commission.

The commission adopts by reference the provisions of federal rules cited in this section. The material incorporated by reference in this section is available for public examination in the Washington utilities and transportation commission branch of the Washington state library associated with the commission's headquarters office in Olympia and is available for purchase at the Seattle office of the government printing office.

NEW SECTION

WAC 480-31-120 Equipment—Inspection—Ordered for repairs. (1) All motor vehicles operated by providers must be maintained in a safe and sanitary condition. They must at all times be subject to inspection by the commission and its duly authorized representatives who will have power to order out-of-service any vehicle failing to meet the standards set forth in this section, or if not being operated in compliance with state laws in regard to equipment or method.

(2) Every provider must ensure that all its vehicles are regularly inspected, repaired and maintained, as required by the United States Department of Transportation in Title 49, Code of Federal Regulations, part 396 (Inspection, Repair and Maintenance).

(3) All vehicle parts and accessories must be in safe and proper working condition at all times.

(4) Equipment standards. The purpose of this subsection is to identify critical vehicle inspection items and provide criteria for placing a vehicle(s) in an out-of-service category. The criteria for out-of-service condition are those defined in the current North American Uniform Out-Of-Service Criteria.

Out-of-service condition. When any motor vehicle(s) is in out-of-service condition, no provider will require nor will any person operate such motor vehicle until all required repairs have been satisfactorily completed.

NEW SECTION

WAC 480-31-130 Operation of motor vehicles. (1) All motor vehicles must be operated in accordance with the requirements of existing state laws and no driver or operator will operate the same in any other than a careful and prudent manner, nor at any greater speed than is reasonable or proper, having due regard to the traffic and use of the highways by others, or so as to endanger the life and limb of any person.

(2) Qualification of drivers. The rules and regulations governing qualifications of drivers prescribed by the United States Department of Transportation in Title 49, Code of Federal Regulations, part 391 (Qualifications of Drivers), are adopted and prescribed by the commission to be observed by all providers. Vehicles meeting the definition of a commercial motor vehicle must also comply with part 382 (Controlled Substances and Alcohol Use and Testing), and part 383 (Commercial Driver's License Standards; Requirements and Penalties).

(3) The rules and regulations relating to drivers' logs and drivers' hours of service adopted by the United States Department of Transportation in Title 49, Code of Federal Regulations, part 39 (Hours of Service of Drivers), are adopted and prescribed by the commission.

(4) No driver or operator of a motor vehicle carrying passengers may smoke any cigar, cigarette, tobacco or other substance in such vehicle while driving the vehicle.

(5) No driver or operator of any motor vehicle will permit smoking on said vehicle by passengers or other persons.

Suitable signs, of sufficient size and number to adequately inform passengers, must be placed in buses to inform passengers that smoking is not permitted in the motor vehicle.

(6) No driver or operator of a motor vehicle will create any disturbance or unnecessary noise to attract persons to the vehicle.

(7) The driver or operator of any motor vehicle may refuse to carry any person who is in an intoxicated condition or conducting themselves in an unreasonably boisterous or disorderly manner or is using profane language, or whose condition is such as to be obnoxious to other passengers. A driver is responsible for the comfort and safety of passengers and should be constantly on the alert for and immediately correct any act of misconduct on the part of occupants of the vehicle.

(8) The commission adopts by reference the provisions of federal rules cited in this section. The material incorporated by reference in this section is available for public examination in the Washington utilities and transportation commission branch of the Washington state library associated with the commission's headquarters office in Olympia and is available for purchase at the Seattle office of the government printing office.

NEW SECTION

WAC 480-31-140 Safety inspections. All providers must keep on file in their main office, subject to inspection by an authorized representative of the commission, or subject to provision to the commission upon request:

(1) Description of each vehicle used, including make, serial number, and year. If the provider does not own the vehicle, the records must show the name of the person providing the vehicle;

(2) Driver's hours of service (duty status);

(3) Each driver's license number;

(4) Records of complaints, as required by WAC 480-31-090;

(5) Records of repair, inspection and maintenance, to include their date and type, as required by the United States Department of Transportation in Title 49, Code of Federal Regulations, part 396;

(6) The commission adopts by reference the provisions of federal rules cited in this section. The material incorporated by reference in this section is available for public examination in the Washington utilities and transportation commission branch of the Washington state library associated with the commission's headquarters office in Olympia and is available for purchase at the Seattle office of the government printing office.

WSR 97-08-050 PERMANENT RULES DEPARTMENT OF REVENUE

[Filed March 31, 1997, 11:00 a.m.]

Date of Adoption: March 31, 1997.

Purpose: WAC 458-20-101 explains the tax registration and tax reporting requirements for persons engaging in business activities in Washington. WAC 458-20-104 explains Washington's gross receipts tax relief for small business, which is composed of a B&O tax credit system and a maximum income exemption for income subject to the public utility tax. These rules are being amended to implement the statutory changes included in chapter 111, Laws of 1996 (HB 2789).

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-101 Tax registration and tax reporting and 458-20-104 Small business tax relief based on volume of business.

Statutory Authority for Adoption: RCW 82.32.300.

Adopted under notice filed as WSR 96-22-092 on November 6, 1996.

Changes Other than Editing from Proposed to Adopted Version: WAC 458-20-101 only, subsection (5) has been revised to clarify the tax registration requirements of businesses that do business within and without Washington. We have added language to clarify that persons with out-of-state locations should not include income that is not associated with their in-state activities in their computations for determining whether they are required to register with the department.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 2, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 2, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 2, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 31, 1997

Russell W. Brubaker
Assistant Director

AMENDATORY SECTION (Amending WSR 95-07-089, filed 3/17/95, effective 4/17/95)

WAC 458-20-101 Tax registration and tax reporting.
(1) **Introduction.** This section explains tax registration and tax reporting requirements for the Washington state department of revenue as established in RCW 82.32.030 and 82.32.045. These statutes were amended by chapter 111, Laws of 1996, effective July 1, 1996. ((#)) This section discusses who is required to be registered, and who must file excise tax returns. This section also discusses changes in

ownership requiring a new registration, the administrative closure of taxpayer accounts, and the revocation and reinstatement of a tax ~~((registration))~~ reporting account with the department of revenue. Persons required to file tax returns should also refer to WAC 458-20-104 (Small business tax relief based on volume of business).

(2) Persons required to obtain tax registration endorsements. Except as provided in (a) of this subsection, every person who is engaged in any business activity for which the department of revenue is responsible for ~~((administering))~~ administering and/or collecting a tax or fee, shall apply for and obtain a tax registration endorsement with the department of revenue. (See RCW 82.32.030.) This endorsement shall be reflected on the face of the business person's registrations and licenses document. The tax registration endorsement is nontransferable, and valid for as long as that person continues in business.

(a) Registration under this section is not required if all of the following conditions are met:

(i) ~~((A))~~ The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW (business and occupation tax), is less than twelve thousand dollars per year;

(ii) A person's gross income from all business activities taxable under chapter 82.16 RCW (public utility tax), is less than twelve thousand dollars per year;

(iii) The person is not required to collect or pay to the department of revenue retail sales tax or any other tax or fee which the department is authorized to administer and/or collect; and

~~((iii))~~ (iv) The person is not otherwise required to obtain a license or registration subject to the master application procedure provided in chapter 19.02 RCW. For the purposes of this section, the term "license or registration" means any agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, including agency rule, to engage in any activity.

~~(b) ((Persons subject to the public utility tax (chapter 82.16 RCW) may be required to obtain a tax registration endorsement even if their gross income from business activities is less than twelve thousand dollars per year. RCW 82.16.040 provides a minimum tax reporting threshold of six thousand dollars per year for the public utility tax. (See also WAC 458-20-104 on minimum tax reporting thresholds.) Persons receiving taxable income in excess of this minimum threshold must pay public utility tax to the department. They do not satisfy (a)(ii) of this subsection, and therefore must obtain a tax registration endorsement.~~

~~((e))~~ The term "tax registration endorsement," as used in this section, has the same meaning as the term "tax registration" or "certificate of registration" used in Title 82 RCW and other sections of chapter 458-20 WAC.

~~((d))~~ (c) The term "person" has the meaning given in RCW 82.04.030.

(d) The term "tax reporting account number" as used in this section, is the number used to identify persons registered with the department of revenue.

(3) Requirement to file tax returns. Persons registered with the department must file tax returns and remit the appropriate taxes to the department, unless they are placed on an "active nonreporting" status by the department.

(a) The department may relieve any person of the requirement to file returns by placing the person in an active nonreporting status if all of the following conditions are met:

(i) The person's value of products (RCW 82.04.450), gross proceeds of sales (RCW 82.04.070), or gross income of the business (RCW 82.04.080), from all business activities taxable under chapter 82.04 RCW (business and occupation tax), is less than twenty-four thousand dollars per year;

(ii) The person's gross income (RCW 82.16.010) from all business activities taxable under chapter 82.16 RCW (public utility tax), is less than twenty-four thousand dollars per year; and

(iii) The person is not required to collect or pay to the department retail sales tax or any other tax or fee the department is authorized to collect.

(b) The department will notify those persons it places on an active nonreporting status. (A person may request to be placed on an active nonreporting status if the conditions of (a) of this subsection are met.)

(c) Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities do not meet any of the conditions explained in (a) of this subsection. These persons will be removed from an active nonreporting status, and must file tax returns and remit appropriate taxes to the department, beginning with the first period in which they do not qualify for an active nonreporting status.

(d) Persons that have not been placed on an active nonreporting status by the department must continue to file tax returns and remit the appropriate taxes.

(4) Examples. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

~~((i))~~ (a) Bob Brown is starting a bookkeeping service. The gross income of the business is expected to be less than twelve thousand dollars per year. Due to the nature of the business activities, Bob is not required to pay or collect any other tax which the department is authorized to collect.

Bob Brown is not required to apply for and obtain a tax registration endorsement with the department of revenue. The conditions under which a business person may engage in business activities without obtaining the tax registration endorsement have been met. However, if Bob Brown in some future period has gross income which exceeds twelve thousand dollars per year, he will be required to obtain a tax registration endorsement. If Bob's gross income exceeds twenty-four thousand dollars per year, he will be required to file tax returns and remit the appropriate taxes.

~~((ii))~~ (b) Cindy Smith is opening a business to sell books written for children to local customers at retail. The gross proceeds of sales are expected to be less than twelve thousand dollars per year.

Cindy Smith must apply for and obtain a tax registration endorsement with the department of revenue. While gross income is expected to be less than twelve thousand dollars per year, Cindy Smith is required to collect and remit retail sales tax.

~~((iii))~~ Jane Doe is starting a management consulting business. The gross income of the business is expected to exceed twelve thousand dollars per year. However, Jane is

starting her business effective October 1, and expects to earn only ten thousand dollars prior to January 1 of the following year. Jane is not required to pay or collect any other tax which the department is authorized to collect.

Jane Doe must apply for and obtain a tax registration endorsement with the department of revenue. Jane Doe expects to earn more than twelve thousand dollars per year. Jane may not delay obtaining a tax registration endorsement merely because she does not anticipate earning more than twelve thousand dollars for the balance (October through December) of the calendar year.

~~(3))~~ (c) Alice Smith operates a taxi-cab service with an average gross income of eighteen thousand dollars per year. She also owns a management consulting service with an average gross income of fifteen thousand dollars per year. Assume that Alice is not required to collect or pay to the department any other tax or fee the department is authorized to collect. Alice qualifies for an active nonreporting status because her taxi-cab income is less than the twenty-four thousand dollar threshold for the public utility tax, and her consulting income is less than the twenty-four thousand dollar threshold for the business and occupation (B&O) tax. If the department of revenue does not first place her on an active nonreporting status, she may request the department to do so.

(5) Out-of-state businesses. The B&O and public utility taxes are imposed on the act or privilege of engaging in business activity within Washington. RCW 82.04.220 and 82.16.020. Out-of-state persons ((not satisfying the conditions expressed in subsection (2)(a) of this section must)) who have established sufficient nexus in Washington to be subject to Washington's B&O or public utility taxes must obtain a tax registration endorsement with this department if ((any of the following circumstances prevail:

(a) The person maintains a place of business in this state;

(b) The person has established sufficient nexus in Washington to incur a business and occupation or retail sales tax liability in this state. (Refer to WAC 458-20-193 and 458-20-194.)

(c) The seller has established sufficient nexus in Washington to be required to collect the use tax on sales made into this state. (See also WAC 458-20-193 and 458-20-221.)

(d) The out-of-state seller, while not statutorily required to do so, elects to collect the use tax from its retail customers in this state)) they do not satisfy the conditions expressed in subsection (2)(a) of this section. Out-of-state persons required to collect Washington's retail sales or use tax, or who have elected to collect Washington's use tax, even though not statutorily required to do so, must obtain a tax registration endorsement.

(a) Persons with out-of-state business locations should not include income that is disassociated from their in-state activities in their computations for determining whether the gross income thresholds provided in subsection (2)(a)(i) and (ii) are satisfied.

(b) Out-of-state persons making sales into or doing business within Washington should also refer to the following sections of chapter 458-20 WAC for a discussion of their tax reporting responsibilities:

(i) WAC 458-20-103 (Time and place of sale);

(ii) WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property);

(iii) WAC 458-20-193D (Transportation, communication, public utility activities, or other services in interstate or foreign commerce);

(iv) WAC 458-20-194 (Doing business inside and outside the state); and

(v) WAC 458-20-221 (Collection of use tax by retailers and selling agents).

~~((4))~~ (6) Registration procedure. The state of Washington initiated the unified business identifier (UBI) program to simplify the registration and licensing requirements imposed on the state's business community. Completion of the master ~~((business))~~ application enables ~~((the business))~~ a person to register or license with several state agencies, including the department of revenue, using a single form. The ~~((business))~~ person will be assigned one unified business ~~((identification))~~ identifier number, which will be used for all state agencies participating in the UBI program. The department may assign the unified business identifier number as the taxpayer's revenue tax reporting account number, or it may assign a different or additional number as the revenue tax reporting account number.

(a) ((Business)) Persons completing the master ((business)) application will be issued a registrations and licenses document. The face of this document will list the registrations and licenses (endorsements) which have been obtained.

(b) The department of revenue does not charge a registration fee for issuing a tax registration endorsement. Persons required to complete a master ((business)) application may, however, be subject to other fees.

(c) While the UBI program is administered by the department of licensing, master ((business)) applications are available at any participating UBI ((agency-office)) service provider location. The following agencies of the state of Washington participate in the UBI program (see RCW 19.02.050 for a more complete listing of participating agencies):

- (i) The office of the secretary of state;
- (ii) The department of licensing;
- (iii) The department of employment security;
- (iv) The department of labor and industries;
- (v) The department of revenue.

~~((5))~~ (7) Temporary revenue registration certificate. A temporary revenue registration certificate may be issued to any person who operates a business of a temporary nature.

(a) Temporary businesses, for the purposes of registration, are those with:

(i) Definite, predetermined dates of operation for no more than two events each year with each event lasting no longer than one month; or

(ii) Seasonal dates of operation lasting no longer than three months. However, persons engaging in business activities on a seasonal basis every year should refer to subsection ~~((6))~~ (8) of this section.

(b) Each temporary registration certificate is valid for a single event.

(c) Temporary revenue registration certificates may be obtained by making application at any participating UBI agency office, or by completing a seasonal registration form.

~~((6))~~ (8) Seasonal revenue ((registration)) tax reporting accounts. Persons engaging in seasonal business

activities which do not exceed two quarterly reporting periods each calendar year may be eligible for a tax reporting account with a seasonal ~~(revenue registration account)~~ reporting status. This is a permanent account until closed by the taxpayer. The taxpayer must specify in which quarterly reporting periods he or she will be engaging in taxable business activities. The quarterly reporting periods in which the taxpayer is engaging in taxable business activities may or may not be consecutive, but the same quarterly period or periods must apply each year. The taxpayer is not required to be engaging in taxable business activities during the entire period.

The department will provide and the taxpayer will be required to file tax returns only for the quarterly reporting periods specified by the taxpayer. Examples of persons which may be eligible for the seasonal ~~(revenue registration account)~~ reporting status include persons operating Christmas tree and/or fireworks stands. Persons engaging in taxable business activities in more than two quarterly reporting periods in a calendar year will not qualify for ~~(a)~~ the seasonal ~~(revenue registration account)~~ reporting status.

~~((7))~~ **(9) Display of registrations and licenses document.** The taxpayer is required to display the registrations and licenses document in a conspicuous place at the business location for which it is issued.

~~((8))~~ **(10) Multiple locations.** A registrations and licenses document is required for each place of business at which a taxpayer engages in business activities for which the department of revenue is responsible for ~~(administering)~~ administering and/or collecting a tax or fee, and any main office or principal place of business from which excise tax returns are to be filed. This requirement applies to locations both within and without the state of Washington.

(a) For the purposes of this section, the term "place of business" means:

(i) Any separate establishment, office, stand, cigarette vending machine, or other fixed location; or

(ii) Any vessel, train, or the like, at any of which the taxpayer solicits or makes sales of tangible personal property, or contracts for or renders services in this state or otherwise transacts business with customers.

(b) A taxpayer wishing to report all tax liability on a single excise tax return may request a separate registrations and licenses document for each location. The original registrations and licenses document shall be retained for the main office or principal place of business from which the returns are to be filed, with additional documents obtained for all branch locations. All registrations and licenses documents will reflect the same ~~(registration)~~ tax reporting account number.

(c) A taxpayer desiring to file a separate excise tax return covering a branch location, or a specific construction contract, may apply for and receive a separate revenue ~~(registration)~~ tax reporting account number. A registrations and licenses document will be issued for each ~~(registration)~~ tax reporting account number and will represent a separate account.

(d) A master ~~(business)~~ application must be completed to obtain a separate registrations and licenses document, or revenue ~~(registration)~~ tax reporting account number, for a new location.

~~((9))~~ **(11) Change in ownership.** When a change in ownership of a business occurs, the new owner must apply for and obtain a new registrations and licenses document. The original document must be destroyed, and any further use of the ~~(registration)~~ tax reporting account number for tax purposes is prohibited.

(a) A "change in ownership," for purposes of registration, occurs upon but is not limited to:

(i) The sale of a business by one individual, firm or corporation to another individual, firm or corporation;

(ii) The dissolution of a partnership;

(iii) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the ~~(number)~~ composition of the partners is equal to or greater than fifty percent;

(iv) Incorporation of a business previously operated as a partnership or sole proprietorship; ~~((€))~~

(v) Changing from a corporation to a partnership or sole proprietorship; or

(vi) Changing from a corporation, partnership or sole proprietorship to a limited liability company or a limited liability partnership.

(b) For the purposes of registration, a "change in ownership" does not occur upon:

(i) The sale of all or part of the common stock of a corporation;

(ii) The transfer of assets to an assignee for the benefit of creditors or upon the appointment of a receiver or trustee in bankruptcy;

(iii) The death of a sole proprietor where there will be a continuous operation of the business by the executor, administrator, or trustee of the estate or, where the business was owned by a marital community, by the surviving spouse of the deceased owner;

(iv) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the ~~(number)~~ composition of the partners is less than fifty percent; or

(v) A change in the trade name under which the business is conducted.

(c) While changes in a business entity may not result in a "change in ownership," the completion of a new master ~~(business)~~ application may be required to reflect the changes in the registered account.

~~((10))~~ **(12) Change in location.** Whenever the place of business is moved to a new location, the taxpayer must notify the department of the change. A new registrations and licenses document will be issued to reflect the change in location.

~~((11))~~ **(13) Lost registrations and licenses documents.** If any registrations and licenses document is lost, destroyed or defaced as a result of accident or of natural wear and tear, a new document will be issued upon request.

~~((12))~~ **(14) Administrative closure of taxpayer accounts.** The department may, upon written notification to the taxpayer, close the taxpayer's tax reporting account and rescind its tax registration endorsement whenever the taxpayer has reported no gross income~~((;))~~ and there is no indication of taxable activity for two consecutive years, or the account has been in an active nonreporting status for five years or more.

The taxpayer may request, within thirty days of notification of closure, that the account remain open. ~~((This request must be in writing and state the reasons why the account should remain active.))~~ A taxpayer may also request that the account remain open on an "active nonreporting" status if the requirements of subsection (3)(a) of this section are met. The request shall be reviewed by the department and if found to be warranted, the department will immediately reopen the account. The following are acceptable reasons for continuing as an active account:

(a) The taxpayer is engaging in business activities in Washington which may result in tax liability.

(b) The taxpayer is required to collect or pay to the department of revenue a tax or fee which the department is authorized to administer and/or collect.

(c) The taxpayer has in fact been liable for excise taxes during the previous two years.

~~((13))~~ **(15) Reopening of taxpayer accounts.** A business person choosing to resume business activities for which the department of revenue is responsible for ~~((administering))~~ administering and/or collecting a tax or fee, may request a previously closed account be reopened. The business person must complete a new master ~~((business))~~ application. When an account is reopened a new registration and licenses document, reflecting a current tax registration endorsement, shall be issued. Persons requesting the reopening of an account which had previously been closed due to a revocation action should refer to subsection ~~((14))~~ (16) of this section.

~~((14))~~ **(16) Revocation and reinstatement of tax registration endorsements.** Actions to revoke tax registration endorsements must be conducted by the department pursuant to the provisions of chapter 34.05 RCW, the Administrative Procedure Act, and the taxpayers bill of rights of chapter 82.32A RCW. Persons should refer to WAC 458-20-10001, Adjudicative proceedings—Brief adjudicative proceedings—Wholesale and retail cigarette license revocation/suspension—Certificate of registration (tax registration endorsement) revocation, for an explanation of the procedures and processes pertaining to the revocation of tax registration endorsements.

(a) The department of revenue may, by order, revoke a tax registration endorsement if any tax warrant issued under the provisions of RCW 82.32.210 is not paid within thirty days after it has been filed with the clerk of the superior court, or for any other reason expressly provided by law.

(b) The revocation order will be posted in a conspicuous place at the main entrance to the taxpayer's place of business and must remain posted until the tax registration endorsement has been reinstated. A revoked endorsement will not be reinstated until:

(i) The amount due on the warrant has been paid, or satisfactory arrangements for payment have been approved by the department; and

(ii) The taxpayer has posted with the department a bond or other security in an amount not exceeding one-half the estimated average annual liability of the taxpayer.

(c) It is unlawful for any taxpayer to engage in business after its tax registration endorsement has been revoked.

~~((15))~~ **(17) Penalties for noncompliance.** The law provides that any person engaging in any business activity,

for which registration with the department of revenue is required, shall obtain a tax registration endorsement.

(a) The failure to obtain a tax registration endorsement prior to engaging in any taxable business activity constitutes a gross misdemeanor.

(b) Engaging in business after a tax registration endorsement has been revoked by the department constitutes a Class C felony.

(c) Any tax found to have been due, but delinquent, and any tax unreported as a result of fraud or misrepresentation, may be subject to penalty as provided in chapter 82.32 RCW, WAC 458-20-228 and 458-20-230.

AMENDATORY SECTION (Amending WSR 95-07-088, filed 3/17/95, effective 4/17/95)

WAC 458-20-104 Small business tax relief based on volume of business. (1) **Introduction.** ~~((The law provides a business and occupation (B&O) tax credit for small businesses under certain conditions. Chapter 2, Laws of 1994, sp. sess., changed the method for computing the volume of business exemption for B&O taxes from a minimum tax reporting threshold exemption to a B&O tax credit system. This change became effective July 1, 1994. This section explains the tax credit system for B&O tax, and the minimum tax reporting threshold exemption for the public utility tax. All persons required to obtain, or having obtained, a tax registration endorsement with the department of revenue must complete and file an excise tax return with the department to claim either a B&O small business tax credit, or a public utility income exemption.))~~ This section explains the small business B&O tax credit (RCW 82.04.4451), and the public utility tax income exemptions (RCW 82.16.040). Chapter 111, Laws of 1996, amended RCW 82.16.040 to increase the income exemptions for the public utility tax, effective July 1, 1996. (See also WAC 458-20-101 on tax registration and tax reporting requirements.)

(2) **Business and occupation tax.** Persons subject to ~~((the))~~ B&O tax may be eligible to claim a small business tax credit against the amount of B&O tax otherwise due. The B&O tax credit operates completely independent of the volume exemption which applies to the public utility tax. This tax credit should be computed after claiming any other B&O tax credits available under chapter 82.04 RCW, but prior to any credits provided under other chapters of Title 82 RCW. The maximum amount of small business tax credit available to a person is thirty-five dollars multiplied by the number of months in the reporting period assigned by the department of revenue under the provisions of RCW 82.32.045. The small business tax credit applies to the entire reporting period, even though the business may not have been operating during the entire period.

(a) If the amount of B&O tax ~~((due))~~ from all activities engaged in by the taxpayer is equal to or less than the maximum credit, a small business tax credit equal to the amount of the B&O tax ~~((liability))~~ will be allowed. If the amount of B&O tax ~~((due))~~ from all activities is greater than the maximum credit, a reduced credit may be available. This reduced credit will be equal to twice the maximum credit minus the B&O tax otherwise due. The credit cannot be less than zero. RCW 82.04.4451.

(b) Persons having multiple tax reporting accounts are eligible for only one small business tax credit per tax reporting period.

(c) Spouses who operate distinct and separate businesses that have different tax registrations are each eligible for the small business tax credit.

(3) Retail sales tax. Persons making retail sales must collect and remit all applicable retail sales taxes even if B&O tax is not due. There is no small business tax credit or volume of business exemption for retail sales tax ((exemption or tax credit system based upon the volume of sales)).

(4) Public utility tax. Persons subject to ~~((the))~~ public utility tax are exempt from ~~((the))~~ payment of this tax for any reporting period in which the taxable amount reported under the combined total of all public utility tax classifications does not equal or exceed the ~~((minimum tax reporting threshold))~~ maximum exemption for the assigned reporting period. RCW 82.16.040. The ~~((minimum tax reporting thresholds))~~ maximum exemptions for ((the)) public utility tax are:

Monthly reporting basis ~~\$(500))~~ 2,000 per month
 Quarterly reporting basis . . . ~~\$(1,500))~~ 6,000 per quarter
 Annual reporting basis ~~\$(6,000))~~ 24,000 per annum

If the taxable amount for a reporting period equals or exceeds the ~~((minimum tax reporting threshold))~~ maximum exemption, tax must be remitted on the full taxable amount. The public utility tax ~~((reporting thresholds))~~ maximum exemptions apply to the entire reporting period, even though the business may not have operated during the entire period.

(5) Tax reporting frequencies. Persons interested in knowing the thresholds used by the department when assigning tax reporting frequencies should refer to WAC 458-20-22801 (Tax reporting frequency—forms).

(6) Examples. The following examples illustrate how the small business B&O tax credit and public utility income exemption systems apply to typical situations. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(a) JD Inc. has been assigned a quarterly reporting period by the department of revenue. JD Inc.'s B&O tax liability from all business activities for the third quarter is ninety dollars. This B&O tax liability is less than the one hundred five-dollar maximum small business B&O tax credit available for a quarterly reporting period (three times the monthly credit amount of thirty-five dollars). JD Inc. may claim a small business B&O tax credit for the entire ninety-dollar B&O tax liability.

Maximum Credit available for quarterly filers (3 x \$35)	\$105
B&O Tax ((due))	\$ 90
<hr/>	
Credit Available	\$ 90
<u>Net B&O Tax Due</u>	<u>0</u>

(b) HM Corporation has been assigned a quarterly reporting period by the department of revenue. HM's B&O tax liability from all business activities for the fourth quarter is one hundred twenty dollars. This tax liability exceeds the one hundred five-dollar maximum small business B&O tax

credit available for a quarterly period (three times the monthly credit amount of thirty-five dollars). However, a reduced small business tax credit is available. This credit is computed by subtracting HM's B&O tax liability of one hundred twenty dollars from the figure of two hundred ten dollars (twice the maximum credit available for a quarterly reporting period). HM Corporation may claim a small business tax credit of ninety dollars.

Twice the Maximum Credit available for quarterly filers (2 x \$105)	\$210
Less: B&O Tax ((due))	\$120
<hr/>	

Credit Available	\$ 90
<u>Net B&O Tax Due</u>	<u>\$ 30</u>

(c) XY Inc. has been assigned a quarterly reporting period by the department of revenue. XY's B&O tax liability for the first quarter is two hundred fifty dollars. As XY's B&O tax liability exceeds the two hundred ten-dollar figure used to determine any reduced B&O tax credit (twice the maximum credit available for a quarterly reporting period), XY Inc. is not eligible for the small business B&O tax credit.

Twice the Maximum Credit available for quarterly filers (2 x \$105)	\$210
Less: B&O Tax ((due))	\$250
<hr/>	

Credit Available	\$ 0
<u>Net B&O Tax Due</u>	<u>\$250</u>

(d) BG Manufacturing has been assigned a quarterly reporting period. BG has incurred a ninety-dollar tax liability under the wholesaling B&O tax classification, and a seventy-dollar tax liability under the manufacturing B&O tax classification, for a total B&O tax liability of one hundred sixty dollars during the first quarter. As BG manufactures much of what it sells at wholesale, BG qualifies for an internal multiple activities tax credit (MATC) of sixty dollars. (See WAC 458-20-19301 on multiple activities tax credits.) BG Manufacturing would claim its MATC prior to computing its small business B&O tax credit. BG's B&O tax liability net of the MATC is one hundred dollars, which is less than the one hundred five-dollar maximum credit available for the reporting period. BG may claim a one hundred-dollar small business B&O tax credit.

Wholesaling B&O Tax ((due))	\$ 90
Add: Manufacturing B&O Tax ((due))	\$ 70
<hr/>	
Subtotal of B&O Tax ((due))	\$160
Less: MATC	\$ 60
<hr/>	
Total B&O Tax Liability	\$100

Maximum Credit available for quarterly filers (3 x \$35)	\$105
B&O Tax ((due))	\$100
<hr/>	
Credit Available	\$100
<u>Net B&O Tax Due</u>	<u>0</u>

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(e) OK Inc. has two separate tax reporting accounts with the department, both of which have been assigned quarterly reporting periods. OK Inc. is only allowed one small business B&O tax credit for the activity of both accounts. The total B&O tax for both accounts for this quarter is one hundred fifty dollars (one hundred dollars from the first account and fifty dollars from the second account). Its maximum small business tax credit is sixty dollars.

B&O tax account #1	\$100
B&O tax account #2	\$ 50
<hr/>	
Total B&O tax	\$150
<hr/>	
Twice the Maximum Credit available for	
quarterly filers (2 x \$105)	\$210
Less: B&O tax	(\$150)
<hr/>	
Credit Available	\$ 60
Net B&O Tax Due	\$ 90

The credit should be taken from the account that will allow for it to be deducted in full. If one account does not have enough B&O tax to absorb the full credit, it can be applied on the other account until the full credit is used. If the reporting frequency is different between the two accounts, the small business tax credit should not be taken until the filing of the less frequent tax reporting account (the credit computation for the two accounts must cover the same period of time).

(f) BB Corporation has been assigned a quarterly reporting period by the department of revenue. BB's total taxable public utility income for the third quarter is (~~one thousand three~~) five thousand eight hundred dollars. BB Corporation is exempt for the payment of public utility tax because BB's taxable public utility income does not exceed the (~~one thousand five hundred~~) six thousand-dollar (~~minimum taxable amount~~) maximum exemption for this reporting period.

WSR 97-08-051A
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed March 31, 1997, 2:23 p.m.]

Date of Adoption: March 31, 1997.

Purpose: Chapter 296-306 WAC, Safety standards for agriculture, state-initiated adopted amendments to chapter 296-306 WAC were made to repeal WAC 296-306-060 Personal protective equipment, 296-306-330 Decontamination, 296-306-400 Posting requirements, 296-306-40007 Emergency medical care information, and 296-306-40009 Emergency assistance. This action is being taken to correct an error in a previous rules proposal and adoption.

Previously, the Department of Labor and Industries and the Department of Agriculture worked together to jointly adopt the federal Environmental Protection Agency worker protection standard to fulfill the requirements of SHB 2703. This adoption occurred September 30, 1996, with an effective date of November 1, 1996. In that adoption, the new pesticides sections adopted were included in the new

agriculture standard, chapter 296-306A WAC. It was the department's intention to repeal the old pesticide sections in the old chapter, chapter 296-306 WAC, at the same time. However, due to a filing oversight, these sections were not repealed as intended. An emergency adoption on November 1, 1996, repealed the old pesticide sections so two sets of pesticide rules are not in effect at the same time.

Chapter 296-306A WAC, Safety standards for agriculture, state-initiated adopted amendments were made to correct inadvertent housekeeping errors in the October 31, 1996, adoption of the new agriculture standard which became effective on December 1, 1996. The sole purpose of the new agriculture standard's proposal and adoption was to produce a clearly written agriculture standard that was easy to use that did not change existing requirements. After the October 31, 1996, adoption, the department discovered unintended errors in the standard and is currently adopting amendments to correct those errors.

WAC 296-306A-08018 What employee training requirements apply to ROPS used on agricultural tractors? Adopted amendments are made to:

- Insert Exhibit A, Employee Operating Instructions, referred to in subsection (1).

WAC 296-306A-16003 How must camp shelters be constructed? Adopted amendments are made to:

- Insert subsection (11) in between the two sentences of subsection (10).
- Renumber subsection (12) to subsection (11).

WAC 296-306A-16013 What lighting must an employer provide in camp buildings? Adopted amendments are made to:

- Insert the phrase "Where electric service is available," at the beginning of the first sentence in the section. The adopted corrected sentence reads, "Where electric service is available, each habitable room in a camp must have at least one ceiling-type fixture and at least one separate floor-type or wall-type convenience outlet."

WAC 296-306A-32001 What does this section cover? Adopted amendments are made to:

- Insert the word "unexpected" before the words "start up." The adopted corrected sentence reads, "WAC 296-306A-320 covers the servicing and maintenance of machines and equipment in which the unexpected start up of the machine or equipment or release of stored energy could cause injury to employees."

Citation of Existing Rules Affected by this Order: Repealing WAC 296-306-060 Personal protective equipment, 296-306-330 Decontamination, 296-306-400 Posting requirements, 296-306-40007 Emergency medical care information and 296-306-40009 Emergency assistance; and amending WAC 296-306A-08018 What employee training requirements apply to ROPS used on agricultural tractors? WAC 296-306A-16003 How must camp shelters be constructed? WAC 296-306A-16013 What lighting must an employer provide in camp buildings? and WAC 296-306A-32001 What does this section cover?

Statutory Authority for Adoption: RCW 49.17.040, [49.17.]050, [49.17.]060.

Adopted under notice filed as WSR 97-03-131 on January 22, 1997.

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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 4, repealed 5.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 31, 1997

Gary Moore

Director

AMENDATORY SECTION (Amending WSR 96-22-048, filed 10/31/96, effective 12/1/96)

WAC 296-306A-16003 How must camp shelters be constructed? (1) You must ensure that every shelter in the camp is constructed to provide protection against the elements.

(2) Each room used for sleeping purposes must have at least 50 square feet of floor space for each occupant. The room must have at least a 7-foot ceiling.

(3) You must provide beds, cots, or bunks, and suitable storage facilities such as wall lockers for clothing and personal articles in every sleeping room.

(a) Beds must be at least 36 inches apart, both laterally and end to end, and the frame must keep mattresses at least 12 inches off the floor.

(b) Double-deck bunks must be spaced at least 48 inches apart, both laterally and end to end.

(c) The minimum clear space between lower and upper bunks must be at least 27 inches.

(d) Triple-deck bunks are prohibited.

(4) The floors of each shelter must be constructed of wood, asphalt, or concrete. Wooden floors must be smooth and tight. The floors must be kept in good repair.

(5) All wooden floors must be elevated at least 1 foot above ground level at all points to prevent dampness and to permit free air circulation.

(6) You may "bank" around outside walls with earth or other suitable material to guard against extreme low temperatures.

(7) All living quarters must have windows covering a total area equal to at least one-tenth of the floor area. You must ensure that at least one-half of each window can be opened for ventilation.

(8) All exterior openings must be screened with 16-mesh material. All screen doors must have self-closing devices.

(9) You must ensure that each dwelling unit has at least 70 square feet of floor space for the first occupant and at least 50 square feet of floor space for each additional occupant. In a family unit, the husband and wife must have

a separate sleeping area whenever living with one or more children over six years old.

(10) In camps with common cooking facilities, you must provide stoves in an enclosed and screened shelter. You must provide sanitary facilities for storing and preparing food. You must provide one stove for every 10 people or one stove for every two families.

~~(11) ((You must provide sanitary facilities for storing and preparing food.~~

~~(12))~~ If a camp is used during cold weather, you must provide adequate heating equipment.

Note: All heating, cooking, and water heating equipment must be installed according to state and local ordinances, codes, and regulations governing such installations.

AMENDATORY SECTION (Amending WSR 96-22-048, filed 10/31/96, effective 12/1/96)

WAC 296-306A-16013 What lighting must an employer provide in camp buildings? Where electric service is available, each habitable room in a camp must have at least one ceiling-type light fixture and at least one separate floor-type or wall-type convenience outlet. Laundry and toilet rooms and rooms where people congregate must have at least one ceiling-type or wall-type fixture. Light levels in toilet and storage rooms must be at least 20 foot-candles 30 inches from the floor. Other rooms, including kitchens and living quarters, must be at least 30 foot-candles 30 inches from the floor.

AMENDATORY SECTION (Amending WSR 96-22-048, filed 10/31/96, effective 12/1/96)

WAC 296-306A-08018 What employee training requirements apply to ROPS used on agricultural tractors? (1) You must ensure that every employee who operates an agricultural tractor is informed of the operating practices listed below and of any other practices dictated by the work environment. You must provide the information at the time of initial assignment and at least annually thereafter.

EXHIBIT A
EMPLOYEE OPERATING INSTRUCTIONS

1. Securely fasten your seat belt if the tractor has a ROPS.
2. Where possible, avoid operating the tractor near ditches, embankments and holes.
3. Reduce speed when turning, crossing slopes and on rough, slick or muddy surfaces.
4. Stay off slopes too steep for safe operation.
5. Watch where you are going, especially at row ends, on roads and around trees.
6. Passengers, other than persons required for instruction or machine operation, shall not be permitted to ride on equipment unless a passenger seat or other protective device is provided.
7. Operate the tractor smoothly—no jerky turns, starts, or stops.
8. Hitch only to the drawbar and hitch points recommended by tractor manufacturers.
9. When tractor is stopped, set brakes securely and use park lock if available.

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(2) You must ensure that every employee who operates an agriculture tractor is trained specifically in the operation of the tractor to be used. The training must include an orientation of the operator to the topographical features of the land where the tractor will be operated. Training must emphasize safe operating practices to avoid rollover.

(3) The tractor training program must be described in the written accident prevention program required by WAC 296-306A-030.

AMENDATORY SECTION (Amending WSR 96-22-048, filed 10/31/96, effective 12/1/96)

WAC 296-306A-32001 What does this section cover?

(1) WAC 296-306A-320 covers the servicing and maintenance of machines and equipment in which the unexpected start up of the machine or equipment or release of stored energy could cause injury to employees. This standard establishes minimum performance requirements for the control of such hazardous energy.

(2) Normal production operations are not covered by this standard. Servicing and/or maintenance that takes place during normal production operations is covered by this standard only if:

(a) An employee is required to remove or bypass a guard or other safety device; or

(b) An employee is required to place a body part into a point of operation or where an associated danger zone exists during a machine operating cycle.

Exception: Minor servicing activities, that take place during normal production operations, are not covered by this standard if they are routine, repetitive, and integral to the use of the equipment for production, provided that the work is performed using alternative measures that provide effective protection.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-306-060	Personal protective equipment.
WAC 296-306-330	Decontamination.
WAC 296-306-400	Posting requirements.
WAC 296-306-40007	Emergency medical care information.
WAC 296-306-40009	Emergency assistance.

WSR 97-08-052
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE
 (Fisheries)

[Order 97-55—Filed March 31, 1997, 4:15 p.m.]

Date of Adoption: February 1, 1997.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
 Amending WAC 220-52-040, 220-52-046, 220-52-075, 220-69-240, 220-88A-070, and 220-88A-080.

Statutory Authority for Adoption: RCW 75.08.080.

Adopted under notice filed as WSR 97-01-127 on December 19, 1996.

Changes Other than Editing from Proposed to Adopted Version: Chapter 220-52 WAC, crab areas adjusted. Amendments to WAC 220-52-050 not adopted. Vessel position clarified. Obsolete reference updated; WAC 220-69-240, reporting requirements clarified. Obsolete references updated; and WAC 220-88A-070, Lopez Sound closed through July 9 each year and closed all year to shrimp beam trawl. No special beam trawl width restriction for Area 23D.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 6, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 31, 1997

Lisa Pelly, Chairperson
 Fish and wildlife Commission

AMENDATORY SECTION (Amending Order 94-23, filed 5/19/94, effective 6/19/94)

WAC 220-52-040 Crab fishery—Lawful and unlawful. (1) It is unlawful for any vessel geared or equipped with commercial net fishing gear to have aboard any quantity of crab while fishing with said gear or having commercially caught food fish or other species of shellfish aboard.

(2) Unless otherwise provided, it is unlawful to set, maintain, or operate any baited or unbaited shellfish pots or ring nets for taking crabs, for commercial purposes, in any area at any time when it is unlawful to take or fish for crabs for commercial purposes therein.

(3) It is unlawful to have in the water any baited or unbaited shellfish pots or ring nets for taking crabs for commercial purposes, in any area at any time when it is unlawful to take or fish for crabs for commercial purposes therein: *Provided*, That following the close of a commercial crab season, permission may be granted by the director on a case-by-case basis for fishermen to recover shellfish pots that have become irretrievable due to extreme weather conditions. Fishermen must apply to fisheries patrol for such permission within twenty-four hours prior to the close of season.

(4) It is unlawful for any person to take, or possess for commercial purposes female Dungeness crabs, or male Dungeness crabs measuring less than 6-1/4 inches, caliper measurement, across the back immediately in front of the tips.

(5) It is unlawful for any person to take or fish for crabs for commercial purposes in the Puget Sound licensing district with more than 100 shellfish pots or ring nets in the

aggregate, and it shall be unlawful for any group of persons using the same vessel to take or fish for crabs for commercial purposes in Puget Sound with more than 100 shellfish pots or ring nets in the aggregate, provided it shall be unlawful for any person, or group of persons using the same vessel, to take or fish for crabs for commercial purposes with more than 20 shellfish pots or ring nets in the aggregate within the waters of Dungeness Bay lying west of a line projected from the new Dungeness Light southward to the outermost end of the abandoned dock at the Three Crabs Restaurant on the southern shore of Dungeness Bay.

(6) It is unlawful for any person to take or fish for Dungeness crabs for commercial purposes in the Puget Sound licensing district with more than 20 pots per groundline, and it shall be unlawful to use or operate a groundline unless such gear meets the following requirements:

(a) A buoy, staff, flag, and radar reflector must be attached at each end of the groundline;

(b) Flags attached at each end of the groundline must be orange in color;

(c) Buoys attached at each end of the groundline must be marked in a visible and legible manner with the department of fish and wildlife approved and registered buoy brand issued to the license;

(d) Buoys attached at each end of the groundline must be marked with the number of pots attached to the groundline; and

(e) Staffs with attached flags at each end of the groundline must be at least four feet above the water surface.

(7) In coastal waters, Grays Harbor, Willapa Bay and the Columbia River no crab pot gear may be attached or connected to other crab pot gear by a common groundline or any other means.

(8) It is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, Washington coastal or adjacent waters of the Pacific Ocean during the first thirty days following the opening of a coastal crab season from any vessel which has not been issued a Washington crab vessel inspection certificate. The certificate will be issued to vessels made available for inspection in a Washington coastal port and properly licensed for commercial crab fishing if no Dungeness crabs are aboard. Inspections will be performed by authorized department of fisheries personnel not earlier than twelve hours prior to the opening of the coastal crab season and during the following thirty-day period.

((7) It is unlawful for any licensed fisher to fish for or possess Dungeness crab taken for commercial purposes with shellfish pot gear from Puget Sound waters unless the fisher has on his/her person a current Puget Sound crab pot/buoy brand certificate. The certificate shall contain space for: Vessel name; name of vessel operator(s); buoy brand(s) to be used; number of pots to be fished; Puget Sound endorsement number. The certificate may be obtained at a time and place specified by the director prior to the season opening upon inspection of all pots and buoys to be fished. Inspected gear must meet the requirements of legal gear as defined in WAC 220-20-010 and 220-52-043 in order to be certified. It is unlawful for a fisher to have aboard the fishing vessel or in the water more pots than the number shown on the

~~certificate or to have buoys aboard the vessel with numbers other than those shown on the certificate. Upon inspection of gear, the certificate may be amended during the fishing season.))~~

AMENDATORY SECTION (Amending Order 94-23, filed 5/19/94, effective 6/19/94)

WAC 220-52-046 Crab fishery—Seasons and areas.

It is unlawful to fish for or possess Dungeness crabs taken for commercial purposes except during the lawful open seasons and areas as follows:

(1) ((All Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas except 25C, 27A, 27B, 27C, 28A, 28B, 28C, and 28D—open October 1 through April 15, provided that it is unlawful to set any crab gear prior to 9:00 a.m. on the opening day of the season.

(2)) All Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas are open beginning 8:00 a.m. October 1st through the following April 15th and, after October 1, one-half hour before sunrise to one-half hour after sunset, except Areas 25C, 27A, 27B, 27C, 28A, 28B, 28C, and 28D and the closures provided for in this section.

(2) The following areas are closed to non-Indian commercial crab fishing:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point are closed October 1 through November 7 and March 1 through April 15.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A in Lummi Bay east of a line projected from the entrance buoy at Sandy Point to Gooseberry Point.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A in Bellingham Bay west of a line projected from the exposed boulder at Point Francis to the pilings at Stevie's Point.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of lines projected north from the most westerly tip of Skagit Island and south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24B inside a line projected from Priest Point to the five-meter tower between Gedney Island and Priest Point, thence northwesterly on a line between the five-meter tower and Barnum Point to the intersection with a line projected true west from Kayak Point, thence east to shore.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24B north of a line projected true west from Kayak Point and south and west of a line from Kayak Point to Barnum Point.

(g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of a line from the new Dungeness Light to the mouth of Cooper Creek are closed

through November 15th of each year and when open there is a 30 pot per vessel limit in these waters.

(h) Those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 26B, 26C, and 26D.

(i) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25D within a line projected from the Point Hudson Marina entrance to the northern tip of Indian Island, thence to Kala Point, and thence following the shoreline to the point of origin.

(3) The following areas are closed to commercial crab fishing during the periods indicated:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24C inshore of the 400 foot depth contour within an area bounded by parallel lines projected northeasterly from Sandy Point and the entrance to the marina at Langley are closed October 1 through October 31, and March 1 through April 15 of each year.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A in Useless Bay north and east of a line from Indian Point to a point on shore 1.5 miles northeast of Double Bluff are closed October 1 through October 31, and March 1 through April 15 of each year.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21B inside lines from Oyster Creek to the fisheries monument on Samish Island and from Oyster Creek to Point Williams are closed shoreward of the ten fathom contour October 1 through October 31, and March 1 through April 15 of each year.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cap Sante Marina to the northern end of the eastern most oil dock are closed October 1 through October 31, and March 1 through April 15 of each year.

(4) The following areas are closed to commercial crab fishing until further notice:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A within a line projected .4 nautical miles due northwest from Rocky Point, thence to the red number 2 buoy, thence to Brown Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24D south of a line from Dines Point to the point just north of Beverly Beach.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24B and 26A inside lines projected from the five-meter tower between Gedney Island and Priest Point to the north tip of Jetty Island and from the five-meter tower to the Rucker Hill radio tower at Pigeon Creek No. 1.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A within a line from the green number 1 buoy at Scatchet Head to the green number 1 buoy at Possession Point thence following the 200 foot contour to a point due east from the Glendale Dock.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21B in Samish Bay south of a line from Oyster Creek to the fisheries management monument on Samish Island.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Westcott and Garrison Bays east of a line projected due south from Point White to San Juan Island.

(g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A in Birch Bay east of a line projected from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance to the Birch Bay Marina.

(h) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A shoreward of the ten-fathom (MLLW) contour in Chuckanut Bay.

(i) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Blind Bay south of a line projected due west from Point Hudson to Shaw Island.

(j) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(k) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Fisherman Bay south of a line projected east-west through the red number 4 entrance buoy.

(l) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Mud Bay south of a line projected from Lopez Island through Crab and Fortress Islands to Lopez Island.

(m) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Padilla Bay within a line projected from the northern end of the eastern most oil dock to the red number 2 buoy, thence southeasterly to the red number 8 buoy, thence west to shore.

(n) All waters in the San Juan Islands Marine Preserve Area.

(5) Coastal, Pacific Ocean, Grays Harbor, Willapa Harbor and Columbia River waters - open December 1 through September 15 except that it is lawful to set baited crab gear beginning at 8:00 a.m. November 28 unless the coastal crab fishery is delayed, in which case the following provisions apply:

(a) After consultation with the Oregon Department of Fish and Wildlife, the director will, by emergency rule, establish the softshell crab demarcation line.

(b) It is unlawful for a fisher to fish north of the soft-shell crab demarcation line for the first thirty days following the opening of a delayed season unless the fishery license holder or primary operator certifies that the vessel designated for use on that license did not participate in the coastal crab fishery south of the softshell crab demarcation line during the previous forty-five days. This certification is an instrument for purposes of RCW 40.16.030.

(c) Fishers may not set crab gear north of the softshell crab demarcation line more than sixty-four hours in advance of the season opening time.

AMENDATORY SECTION (Amending Order 94-23, filed 5/19/94, effective 6/19/94)

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

sea cucumbers, sea urchins, shrimp other than ocean pink shrimp, squid, octopus, scallops, clams, or sand shrimp aboard. The vessel operator must submit the harvest logs for inspection upon request by authorized department of ~~((fisheries))~~ fish and wildlife representatives. The department's copies of the completed harvest log must be submitted to the department for each calendar month in which fishing activity occurs. State copies must be received within ten days following any calendar month in which fishing activity occurred, except that commercial sea cucumber harvest logs must be received for each month of the season provided for in WAC 220-52-072 regardless of whether harvest activity occurred during the month, and all shellfish harvesters must submit a log that must be received by the tenth day following the termination of commercial fishing activity showing that shellfish harvest has terminated for the year.

(1) Vessel operators engaged in commercial harvest of shrimp or crawfish with shellfish pot or ring net gear must record the vessel Washington department of ~~((fisheries))~~ fish and wildlife boat registration number, number of pots or ring nets pulled, date pulled, soak time, and gear location before leaving the catch area where taken, and weights must be recorded upon landing or sale. In addition, vessel operators engaged in commercial harvest of shrimp in Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas 27A, 27B, or 27C (Hood Canal) must record the total number of pots they have in the water and the total number of buoys attached to those pots, and the department's copy of the completed harvest log must be submitted weekly, postmarked no later than Friday and showing harvest activity for the period Thursday of the week previous to submission through Wednesday of the week the harvest log is submitted.

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

(3) Vessel operators engaged in commercial harvest of sea urchins or sea cucumbers must record the vessel identity, date, location, and the approximate number of sea urchins or sea cucumbers before leaving the catch area where taken and the exact weight must be recorded upon landing or sale.

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

(5) Vessel operators engaged in commercial harvest of scallops must record the vessel identity, date, location, and duration of harvest and estimated weight of scallops caught for each tow or dive hour before leaving the catch area where taken.

(6) Vessel operators engaged in commercial harvest of squid, except when taken incidental to any other lawful fishery, must record before leaving the Marine Fish-Shellfish Management and Catch Reporting Area where taken, the vessel ~~((WDF))~~ department of fish and wildlife boat registra-

tion number, gear type, catch area, starting and ending time of fishing, and numbers of other species caught and returned. Weights of squid must be recorded on landing or sale.

(7) Vessel operators engaged in commercial harvest of octopus, except when taken incidental to any other lawful fishery, must record before leaving the Marine Fish-Shellfish Management and Catch Reporting Area where taken, the vessel ~~((WDF))~~ department of fish and wildlife boat registration number, gear type and amount, catch area and hours fished. Weights of octopus must be recorded on landing or sale.

(8) Vessel operators engaged in commercial harvest of sand shrimp, except when taken incidental to any other lawful fishery, must record the location or identification number of the harvest tract, date of harvest, number of trenches pumped, average length and width of trenches (yards), total number of sand shrimp retained (dozens), total number of sand shrimp sold (dozens), and the name of the sand shrimp buyer.

AMENDATORY SECTION (Amending Order 86-102, filed 9/12/86)

WAC 220-69-240 Duties of commercial purchasers and receivers. (1) Every person originally receiving or purchasing fresh or iced food fish or shellfish or parts thereof, or frozen food fish or shellfish or parts thereof that have not been previously landed in another state, territory, or country from fishermen, firms, or individuals, regardless of whether or not the receiver or purchaser holds a license as required under Title 75 RCW, must immediately, completely, accurately, and legibly prepare the appropriate state of Washington fish receiving ticket regarding each and every purchase or receipt of such commodities. Any employee of a licensed wholesale dealer who has authorization to receive or purchase fish or shellfish for that dealer on the premises of the primary business address or any of its branch plant locations shall be authorized to initiate and sign fish receiving tickets on behalf of his employer. The business or firm shall be responsible for the accuracy and legibility of all such documents initiated in its name. Each delivery must be recorded on a separate state of Washington fish receiving ticket.

(2) State of Washington fish receiving tickets are required for:

(a) Fresh food fish and shellfish landed in the state of Washington.

(b) Fresh food fish and shellfish previously landed in another state, territory, or country and shipped or transported into the state of Washington to an original receiver.

(c) Frozen food fish or shellfish not previously landed in another state, territory, or country and shipped or transported into the state of Washington to an original receiver.

(3) State of Washington fish receiving tickets are not required for:

(a) Purchases or receipts made by individuals or consumers at retail.

(b) Purchases or receipts from any person possessing a valid Washington wholesale dealer's license except that a wholesale dealer purchasing fish from a commercial fisherman or shellfish gatherer shall complete the appropriate fish receiving ticket regardless of whether the commercial

fisherman or shellfish gatherer possesses a wholesale dealer's license. It is the purchaser's responsibility to obtain the name, address, and Washington wholesale dealer's license number, together with such sales receipt documents or information as may be required, to show the deliverer's name, quantity of fish, and date of the transaction and retain these with the food fish or shellfish.

(c) Fresh or frozen food fish or shellfish that are in transit through the state of Washington, if no storage, handling, processing, or repackaging occurs within the state.

(d) Private sector cultured aquatic products.

(4) Fishermen, fishermen-wholesalers, and wholesalers shall determine the weight of baitfish contained in an average and normal brail and multiply the number of such brailers of baitfish by this weight factor and report such baitfish in both dozens and total weight: *Provided*, That it is lawful for such fishermen, fishermen-wholesalers, and wholesalers, when receiving herring, candlefish, anchovy, or pilchards for bait purposes, to delay completing that portion of the fish receiving ticket which indicates number of herring received, only if the herring, candlefish, anchovy, or pilchards are sold individually or counted as dozens. Such counts must be entered on the fish tickets immediately. An estimate of herring, candlefish, anchovy, or pilchards caught but not sold due to mortality must be included on the fish ticket as "loss estimate."

(5) It is lawful for an original receiver, when receiving purse seine-caught herring taken from Areas 20A, 20B, 21A, and 21B during the period April 15 through May 31, to delay completing that portion of the fish receiving ticket which indicates the weight of herring received only until the herring are off-loaded from the original receiver's vessel. The herring must then be weighed and the weight immediately entered in the appropriate space on the ticket. A separate state of Washington fish receiving ticket must be initiated at the time of each individual receipt of herring from the purse seine catching vessel.

(6) The original receiver of herring taken from Puget Sound Marine Fish-Shellfish Catch Areas 20A, 20B, 21A, and 21B, during the period April 16 through May 31 must report each calendar day's receipts by noon of the following day to the Department of ~~((Fisheries))~~ Fish and Wildlife, Olympia, Washington; telephone (360) 753-6637.

(7) It is unlawful for any person receiving or purchasing geoducks from fishermen, firms, or individuals, regardless of whether or not the purchaser or receiver holds a license as required under Title 75 RCW, to fail to accurately and legibly complete the fish receiving ticket initiated on the harvest tract immediately upon the actual landing of geoducks from the harvesting vessel onto the shore. This fish receiving ticket shall accompany the harvested geoducks from the department of natural resources harvest tract to the point of landing.

(8) It is unlawful for the original receiver of Pacific whiting to fail to enter an estimated weight of Pacific whiting on the fish receiving ticket immediately upon completion of the landing. The exact weights of whiting, by grade, and all incidental species in the landing must be entered on the fish receiving ticket within twenty-four hours of the landing.

(9) It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound to fail to

report to the department the previous day's purchases by 10:00 a.m. the following morning. Such report must be by telephone call to the Point Whitney Shellfish Laboratory or by facsimile transmission (FAX) to the Point Whitney Shellfish Laboratory. All reports must specify the total number of pounds caught by gear type, Marine Fish-Shellfish Management and Catch Reporting Area, and species. The fish receiving ticket reporting requirement of WAC 220-69-240 remains in effect.

(10) It is unlawful for the original receiver to fail to initiate the completion of the fish receiving ticket immediately upon receipt of any portion of a commercial catch. Should the unloading of a catch take more than one day, the date that the unloading is completed shall be entered on the fish receiving ticket as the date of landing. If, for any purpose, the vessel leaves the unloading site, the original receiver must immediately enter the current date on the fish receiving ticket.

AMENDATORY SECTION (Amending Order 94-14, filed 3/17/94, effective 4/17/94)

WAC 220-88A-070 Emerging commercial fishery—Puget Sound shrimp pot experimental fishery—Seasons and gear—Spot prawn restriction. It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear except as provided for in this section:

(1) Seasons - All waters of Puget Sound are open to shellfish pot gear April 16 through October 15 except:

(a) Open in Shrimp District ~~((s 1,))~~ 2 ~~((, and 3))~~ from May 16 through September 15 only ~~((, except those waters of Shrimp District 1 within a line from the entrance to the Cape George Marina projected southwesterly to the easternmost tip of Diamond Point thence southeasterly to the westernmost tip of Beckett Point thence following the shore to the point of origin are closed to shrimp fishing)).~~

(b) Closed in Shrimp Districts 1, 3, 4, 5 and 6 unless opened by emergency regulation.

(c) Open in the waters of Lopez Sound south of a line projected east and west from the northern tip of Trump Island from July 10 through October 15 only.

(d) Closed in Marine Fish-Shellfish Management and Catch Reporting Area 24C inshore of the 42 fathom depth contour from Onamac Point, Camano Island, to Sunset Beach, Camano Island.

(e) Closed in Marine Fish-Shellfish Management and Catch Reporting Area 26A within two nautical miles of the number 1 bell buoy at Possession Point.

(2) Gear restrictions -

(a) In all areas, maximum 100 pots per fisher, except:

(i) Maximum 75 pots per fisher in Marine Fish-Shellfish Management and Catch Reporting Area 28B.

(ii) Maximum ~~((25 pots per fisher in Shrimp District 1- (iii) Maximum))~~ 50 pots per fisher in Shrimp District ~~((s))~~ 2 ~~((and 5- (iv) Maximum 10 pots per fisher in Shrimp District 3)).~~

(b) In all shrimp districts:

(i) Buoys must be orange in color and consist of durable material that will remain floating on the surface with five pounds attached; bleach or antifreeze bottles or other containers may not be used as floats.

(ii) The line attaching the pot to the buoy must be weighted sufficiently to prevent the line from floating on the surface.

(c) In Shrimp District((s)) 2 ((and 5)):

(i) The entire top, bottom and sides of the pot, except entrance tunnels, must be constructed of mesh material having a minimum mesh of such size that a 7/8 inch square peg can pass through without changing the shape of the opening.

(ii) All entrance tunnels must open into the pot from the sides.

(iii) The sum of the maximum widths of all entrance tunnels must not exceed one-half of the perimeter of the bottom of the pot.

(3) Spot shrimp size restriction: It is unlawful to possess spot shrimp taken by shellfish pot gear that average more than 20 shrimp per pound as sampled by a minimum of two samples of at least one pound each of whole unbroken shrimp taken at random from throughout the individual load landed or in possession.

AMENDATORY SECTION (Amending Order 94-96, filed 9/7/94, effective 10/8/94)

WAC 220-88A-080 Emerging commercial fishery—Puget Sound shrimp beam trawl experimental fishery—Seasons and gear. It is unlawful to fish for shrimp for commercial purposes in Puget Sound using trawl gear except as provided for in this section:

(1) Seasons - Open April 16 through October 15 in Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, ~~((21A,))~~ 22A, ~~((22B,))~~ 23A, 23B, 23C, 25A, 25B and 29 except ~~((closed in))~~:

(a) ~~((Those waters of Area 20A east of a line projected from Point Whitehorn to Sandy Point the entire year.~~

~~(b) Those waters of Area 20A within an area bounded by lines from Lilly Point to Birch Point and from the southwest corner of Point Roberts to Point Whitehorn to where these two lines are intersected by a line south from Kwomais Point in British Columbia and a line from Lilly Point to the north Alden Bank Buoy from April 16 through May 31.~~

~~(c) Those waters of Area 20A within an area bounded by lines from Lilly Point to Birch Point and Lilly Point to the north Alden Bank buoy to where those lines are intersected by a line projected approximately 230 degrees south from Birch Point to Alden Point on Pates Island from June 1 through June 30.)~~ Open July 10 through October 15 in the waters of Lopez Sound (22A) south of a line projected east and west from the northern tip of Trump Island.

(b) Closed in Marine Fish-Shellfish Management and Catch Reporting Area 20A in waters less than 60 fathoms deep, and no trawling is allowed from April 16 through July 15.

(c) Trawling is prohibited in waters less than 100 feet deep.

(d) Trawling is prohibited in Shrimp Districts 1, 2, 3 ((and)), 4, 5, and 6.

(2) Gear restrictions - Beam trawl gear only. Otter trawl gear may not be used.

(a) Maximum beam width in Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, and 22A is 25 feet.

(b) Maximum beam width in Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23B, 23C, 25A, 25B, and 29 is 60 feet.

WSR 97-08-068

PERMANENT RULES DEPARTMENT OF REVENUE

[Filed April 1, 1997, 1:51 p.m.]

Date of Adoption: April 1, 1997.

Purpose: This new chapter implements recent legislation relating to persons who appraise real property for purposes of taxation. The rules set out the qualifications, experience and knowledge, together with the continuing education requirements of "accredited" appraisers as distinguished from licensed or certified appraisers who value real property for nontax purposes. These rules establish a process for acquiring and maintaining accreditation. The rules apprise these appraisers and the property taxpaying public more precisely of what the qualifications are for appraising property for purposes of taxation. The rules will help ensure that the process for acquiring appraiser accreditation will be uniform and consistent throughout the state.

WAC 458-10-010 Accreditation of real property appraisers—Implementation—Definitions, this rule describes the reasons for this chapter and to whom the rules apply; it also contains the definitions that are used throughout the chapter.

WAC 458-10-020 Application for accreditation, this rule sets out the experience and knowledge requirements that are prerequisites to applying for accreditation and describes the application procedure.

WAC 458-10-030 Accreditation examination—Prerequisites—Waiver or exemption—Reexamination, this rule describes the prerequisites for taking the accreditation examination, the fee, passing score, and when a waiver of the examination is allowed and when a person is exempt from taking the examination.

WAC 458-10-040 Accreditation certificate, this rule explains who is entitled to an accreditation certificate and the duration of the certificate.

WAC 458-10-050 Continuing education requirements—Appraisal practice and ethics, this rule describes the need and explains the process for acquiring and gaining approval of continuing education in both appraisal knowledge and standards of practice and ethics.

WAC 458-10-060 Standards of practice, this rule sets out the standard applied by the department relative to appraisal standards and ethics.

WAC 458-10-070 Denial, suspension, or revocation of accreditation, this rule sets out the reasons for denying, suspending, or revoking the accreditation of an accredited appraiser.

Statutory Authority for Adoption: RCW 36.21.015.

Other Authority: RCW 84.08.010 and 84.08.070.

Adopted under notice filed as WSR 96-21-116 on October 22, 1996.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 7, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 7, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: Thirty-one days after filing.

April 1, 1997

Russell W. Brubaker
Assistant Director

Chapter 458-10 WAC ACCREDITATION OF REAL PROPERTY APPRAISERS

NEW SECTION

WAC 458-10-010 Accreditation of real property appraisers—Implementation—Definitions. (1) **Implementation of accreditation requirements.** The rules in this chapter implement the provisions of chapter 36.21 RCW dealing with the accreditation of persons responsible for valuing real property for purposes of taxation. To the extent practical, these rules coordinate accreditation requirements with the requirements for certified and licensed real estate appraisers under chapter 18.140 RCW. The purpose of these rules is to promote uniformity and consistency throughout the state in the education and experience qualifications and maintain minimum standards of competence and conduct of persons responsible for valuing real property for purposes of taxation.

(2) **Accreditation required for persons valuing real property for purposes of taxation.** Any person responsible for valuing real property for purposes of taxation must be an accredited appraiser. This requirement includes persons acting as assistants or deputies to a county assessor who determine real property values or review appraisals prepared by others. This requirement does not apply to persons working in the county assessor's office who do not exercise appraisal judgment with respect to real property.

(3) **Definitions.** Unless the context clearly requires otherwise, the following definitions apply throughout chapter 458-10 WAC:

(a) "Accreditation" means the act or process by which persons are authorized by the department to assess real property for purposes of taxation and includes the status of being accredited.

(b) "Accredited appraiser" means a person who has successfully completed and fulfilled all requirements imposed by the department for accreditation and who has a currently valid accreditation certificate.

(c) "Appraisal" means the act or process of estimating the value of real property; an estimate of value of real property; or of or pertaining to appraising real property and related functions.

(d) "Assessment" means the act or process of estimating the value of real property for purposes of taxation only; an estimate of value of real property for purposes of taxation only; or of or pertaining to assessing real property and related functions.

(e) "Classroom hour" means a minimum of fifty minutes out of each sixty-minute hour spent attending an approved course.

(f) "Department" means the department of revenue.

(g) "IAAO" means the International Association of Assessing Officers.

(h) "Real property" means an identified parcel or tract of land, including any improvements, and includes one or more defined interests, benefits, or rights inherent in the ownership of real estate.

(i) "Transactions involving real property" means any of the following:

(i) The sale, lease, purchase, investment in, or exchange of real property, including interests in property or the financing thereof;

(ii) The refinancing of real property or interests in real property; or

(iii) The use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

NEW SECTION

WAC 458-10-020 Application for accreditation. (1) **Prerequisite to application—Experience.** Prior to applying for accreditation, applicants must have had at least one year of experience related to the items listed in this subsection. The requisite experience may include hours worked during the preceding two years but must include a minimum of one thousand hours worked in a minimum time period of twelve months. The work experience must be directly connected with the following:

(a) Transactions involving real property;

(b) Appraisal of real property;

(c) Assessment of real property; or

(d) A combination of (a), (b), and (c) of this subsection.

(2) **Prerequisite to application—Knowledge.** Prior to applying for accreditation, applicants must be knowledgeable in:

(a) Repair and remodeling of buildings and improvement of land;

(b) The significance of locality and area to the value of real property; and

(c) The standards for appraising real property established by the department. (See WAC 458-10-060.)

(3) **Application procedure.** Any person desiring to be an accredited appraiser must complete an "Application for Accreditation" form and submit it to the property tax division of the department. The department shall review the application and verify that the applicant meets the qualifications prescribed by chapter 36.21 RCW and chapter 458-10 WAC, including either passing the accreditation examination or qualifying for a waiver of or exemption from the exami-

nation. Upon completion of review and verification, the department shall, as appropriate, issue an accreditation certificate, reject the application and give the reason or reasons for the rejection, or notify the applicant of any further requirements prior to issuing an accreditation certificate. Forms shall be prepared by and are available from the property tax division of the department.

NEW SECTION

WAC 458-10-030 Accreditation examination—Prerequisites—Waiver or exemption—Reexamination.

(1) **Prerequisites to taking examination.** Any person desiring to take the accreditation examination must complete a "Request for Administration of Appraiser Examination" form and submit it to the property tax division of the department. As a prerequisite to taking the examination for accreditation an applicant shall submit evidence to the department that he or she has successfully completed at least thirty classroom hours of courses approved by the department in the basic principles of real property appraising. These courses must have been completed within two years of the date the evidence is submitted to the department. Course content required prior to taking the accreditation examination must include coverage of basic principles of real property appraisal or related topics such as, but not limited to:

- (a) Influences on real property value;
- (b) Legal considerations in appraisal;
- (c) Types of value;
- (d) Economic principles;
- (e) Real estate markets and analysis;
- (f) Valuation process;
- (g) Property description;
- (h) Highest and best use analysis;
- (i) Appraisal math and statistics;
- (j) Sales comparison approach;
- (k) Site value;
- (l) Cost approach;
- (m) Income approach, including:
 - (i) Gross rent multiplier analysis;
 - (ii) Estimation of income and expenses;
 - (iii) Operating expense ratios; and
 - (iv) Direct capitalization;
- (n) Valuation of partial interests; and
- (o) Washington state property tax law.

(2) **Examination required unless waived—Passing score.** No person shall assess real property for purposes of taxation without passing the accreditation examination or without receiving an examination waiver under subsection (4) of this section or without meeting the requirements set out in subsection (6) of this section. A minimum score of seventy is required to pass the accreditation examination.

(3) **Accreditation examination—Fee.** The accreditation examination shall be prepared and administered by the department on subjects related to the valuation of real property. In preparing the examination, the department may request assistance from an advisory committee made up of assessors, assessor's appraisal staff, other qualified appraisers, or persons from the department of personnel. In administering the test, the department may contract with others to supervise the examination of applicants. An

appropriate fee to cover the costs of such supervision must be paid by the applicant at the time of application.

(4) **Waiver of examination requirement.** The department shall waive the accreditation examination requirement for those persons who provide adequate evidence of any one of the following:

(a) The person has either attended a presentation of IAAO Course 1, or its equivalent, and successfully passed the course examination or successfully passed the course examination without having attended the presentation of the course;

(b) The person is currently certified or licensed as a real estate appraiser under chapter 18.140 RCW, the Certified Real Estate Appraiser Act; or

(c) The person has sufficient education and experience that is the equivalent of passing the accreditation examination. For purposes of this section, sufficient education means successfully completing a minimum of seventy-five classroom hours of courses approved by the department in the basic principles of real property appraising, and sufficient experience means a minimum of two years (twenty-four months), and not less than two thousand hours, of experience appraising real property.

(5) **Procedure for requesting a waiver.** An applicant may request a waiver of the accreditation examination requirement by completing an "Application for Accreditation" form and submitting it to the property tax division of the department. The department shall determine if the applicant has shown the necessary qualifications that are the equivalent of passing the examination. The department may require additional documentation or verification from the applicant's employer(s) or others in making this determination.

(6) **Exemption from examination requirement.** Accreditation examination requirements shall not apply to persons who have either:

(a) Been certified as a real property appraiser by the department of personnel prior to July 1, 1992; or

(b) Attended and satisfactorily completed the assessor's school operated jointly by the department and the Washington state assessors association prior to August 9, 1971.

(7) **Reexamination.** An applicant who has failed the accreditation examination, or failed to appear for a scheduled examination, may apply for reexamination or examination by submitting a new "Request for Administration of Appraiser Examination" form not less than sixty days from the date the examination was administered. No additional fee is required for one reexamination or one rescheduled examination.

NEW SECTION

WAC 458-10-040 Accreditation certificate. (1) Requirements for issuance of accreditation certificate. The department shall issue an accreditation certificate to any applicant who meets the requirements of WAC 458-10-020 and who satisfies one of the following:

(a) Successfully passes the accreditation examination;

(b) Has received a waiver of the examination from the department under WAC 458-10-030(4); or

(c) Is exempt from the examination requirement under WAC 458-10-030(6).

(2) **Certificate duration.** An accreditation certificate is valid for two years from the date issued.

NEW SECTION

WAC 458-10-050 Continuing education requirements—Appraisal practice and ethics. (1) **Renewal of accreditation certificate.** An accredited appraiser desiring to renew his or her accreditation certificate must complete a renewal application and submit it to the property tax division of the department at least two weeks prior to the expiration date of the certificate. In order to receive a renewal of the certificate, the applicant must provide proof that he or she has attended a minimum of fifteen classroom hours of approved instruction within the two years preceding the expiration date of the certificate.

(2) **Extensions of time for renewal.** An applicant may request an extension of time to submit the renewal application and complete the continuing education requirements if the request is submitted prior to the expiration date of the certificate. The time extension shall only be approved upon a showing of good cause by the applicant and only for a maximum time period of three months from the original expiration date of the certificate. Good cause may include, but is not limited to, a showing of long-term illness or extended absence from work for valid reasons. Excessive workload, insufficient funds, lack of budget allocation, or other similar reasons are not satisfactory to show good cause.

(3) **Preapproval of courses.** All courses, seminars, or workshops must be preapproved by the department in order to be applied toward the continuing education requirement. The department shall use the following criteria to approve courses, seminars, or workshops:

(a) Any course, seminar, or workshop directly related to real property appraising and offered by qualified personnel shall be approved for the full number of classroom hours involved; and

(b) Any seminar or workshop directly related to a topic or topics of general interest to an assessor's office and offered by qualified personnel shall be approved for a maximum of three classroom hours. No more than three hours out of the fifteen classroom hours required may be on a topic or topics of general interest to an assessor's office.

(4) **Course examination not required.** No examination is required for courses, seminars, or workshops taken to satisfy the requirement for continuing education classroom hours.

(5) **Participation in education other than as a student.** The continuing education requirement may be satisfied by participating other than as a student in educational process and programs approved by the department including teaching, program development, and authorship of textbooks or other written instructional materials. Approval of the number of classroom hours shall be based upon the subject matter and time spent in preparation or development of the training or materials. In order to meet the continuing education requirement in this manner, the following criteria must be met:

(a) Textbook, course, or presentation materials must originate with and be developed by the textbook or course author or the presenter;

(b) The textbook or course author or presenter must provide the department with a description of the work involved in preparing the textbook, course, or presentation, together with the amount of time spent in preparation and amount of time, if any, proposed to be spent in actual training or presenting;

(c) The course author or presenter must provide the department with a copy of the course or presentation outline showing the amount of time allotted to each topic covered in the course or presentation.

(6) **Topics covered.** Courses, seminars, or workshops taken to satisfy the continuing education requirement for accredited appraisers must cover topics related to real property appraisal, such as:

- (a) Ad valorem taxation;
 - (b) Arbitrations;
 - (c) Business courses related to practice of real estate;
 - (d) Construction estimating;
 - (e) Ethics and standards of professional practice;
 - (f) Land use planning, zoning, and taxation;
 - (g) Property development;
 - (h) Real estate law;
 - (i) Real property exchange;
 - (j) Real property computer applications;
 - (k) Mass appraisal;
 - (l) Geographic information systems (GIS);
 - (m) Levy process;
 - (n) Boards of equalization; and
 - (o) Other subjects as are approved by the department.
- (7) **Same or similar content.**

(a) No applicant shall receive approval from the department for courses taken within any five-year time period that have the same or very similar content and are deemed comparable by the department, even if the course providers are different.

(b) Applicants who request approval from the department for continuing education hours for preparation and development of textbook, course, or presentation materials that have previously been approved by the department must provide sufficient information and explanation to indicate how the materials differ from the original approved materials and how much preparation and time was involved in the revision of the original materials.

(8) **Carry-over of classroom hours.** A maximum of five continuing education classroom hours may be carried over and applied to the following two-year period of accreditation.

(9) **Education requirement for standards of appraisal practice and ethics.** Each accredited appraiser is required to successfully complete fifteen classroom hours of a course or courses approved by the department in standards of appraisal practice and ethics. If the course or courses have not been successfully completed at the time an applicant is accredited, the course or courses attended to satisfy this requirement may also be used to satisfy the general continuing education requirement and are not in addition to the fifteen hours of continuing education required to be satisfied every two years. The requirement for successful completion of fifteen classroom hours in standards of appraisal practice and ethics must be satisfied in any one of the following three ways:

(a) An accredited appraiser had successfully completed the fifteen classroom hours of a course or courses at the time he or she was initially accredited, and can provide proof to the department of such successful completion;

(b) An accredited appraiser who has not yet successfully completed the fifteen hours of such course or courses must do so within three years of the effective date of this rule; or

(c) An applicant for accreditation must either:

(i) Have successfully completed fifteen hours of such course or courses within three years prior to the date of application; or

(ii) Successfully complete fifteen hours of such course or courses within three years of the date of accreditation.

(10) **Failure to comply with continuing education requirements.** Any accredited appraiser whose accreditation certificate has expired, and who has not received an extension of time under subsection (2) of this section, is prohibited from appraising real property for purposes of taxation. After the certificate has expired, an applicant must show the following in order to renew the certificate:

(a) For a certificate that expired less than two years prior to the date the renewal application is submitted, an applicant must show that he or she has satisfied the fifteen classroom hours of continuing education requirement within the previous two years. Any application submitted within two years of the certificate expiration that fails to satisfy the continuing education requirement will be denied.

(b) For a certificate that expired more than two years prior to the date the renewal application is submitted, the application will be treated as a new application for accreditation and in addition, the applicant will be required to show that he or she has satisfied thirty classroom hours of continuing education within the previous four years.

NEW SECTION

WAC 458-10-060 Standards of practice. The standards of practice adopted by the department and governing real property appraisal activities by accredited appraisers are the generally accepted appraisal standards as evidenced by the current appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. A complete text of these appraisal standards is available for viewing during normal working hours at the property tax division of the department.

NEW SECTION

WAC 458-10-070 Denial, suspension, or revocation of accreditation. (1) **Reasons for denial, suspension, or revocation.** The department may deny, suspend, or revoke the accreditation of any person for any of the following reasons:

(a) Failure to meet the minimum qualifications established for accreditation by the department;

(b) Failure to pass the accreditation examination or to meet examination waiver or exemption requirements;

(c) Knowingly providing false information on application forms; or

(d) Failure to comply with continuing education requirements, including requirements regarding appraisal standards and ethics.

(2) **Notification of denial, suspension, or revocation—Appeal.** Notification of denial, suspension, or revocation by the department shall be in writing to the applicant at the applicant's last known address and, if the applicant is currently employed in an assessor's office, to the assessor. Any appeal by an applicant or accredited appraiser of the denial, suspension, or revocation of accreditation must be made in writing to the assistant director of the property tax division of the department.

**WSR 97-08-078
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE**

(Fisheries)

[Order 97-56—Filed April 2, 1997, 9:25 a.m.]

Date of Adoption: February 1, 1997.

Purpose: Amend import and aquaculture disease rules.

Citation of Existing Rules Affected by this Order:

Repealing WAC 220-72-013, 220-72-016, 220-72-019, 220-72-022, 220-72-025, 220-72-028, 220-72-031, 220-72-034, 220-72-037, 220-72-040, 220-72-043, 220-72-046, 220-72-049, 220-72-052, 220-72-055, 220-72-058, 220-72-061, 220-72-064, 220-72-067, 220-72-082, 220-72-088, 220-72-091 and 220-72-094; and amending WAC 220-20-038, 220-72-002, 220-72-070, 220-72-073, 220-72-076, 220-72-085, 220-77-020 and 220-77-040; and new section WAC 220-77-065.

Statutory Authority for Adoption: RCW 75.08.080.

Adopted under notice filed as WSR 97-01-098 on December 18, 1996; and WSR 97-01-113 on December 19, 1996.

Changes Other than Editing from Proposed to Adopted Version: WAC 220-20-038, delete references to transfer as transfer is covered in chapter 220-72 WAC; WAC 220-72-011, change Dungeness Spit line. Clarify Oakland Bay is included with Hammersly Inlet. Change DuPont wharf to DuPont dock; WAC 220-72-015, include all of Willapa Bay to prevent oyster drill movement; WAC 220-72-076, include prohibition of transfer of any marine organism that adversely affects shellfish; WAC 220-72-085, expand scope of rule to include all shellfish; and WAC 220-77-020, delete "imported" from disease definition. Remove aquaria plants and phytoplankton distinction.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, amended 9, repealed 23.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: Thirty-one days after filing.

April 1, 1997
Lisa Pelly, Chairperson
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 80-123, filed 9/17/80)

WAC 220-20-038 Shellfish—Import ~~((and transfer))~~. It shall be unlawful to import, ~~((transfer,))~~ ship or otherwise cause live shellfish of any kind or form or associated pest, predators or disease organisms, to be introduced into the ~~((marine))~~ waters of the state of Washington without first obtaining written permission from the director ~~((of fisheries))~~ or ~~((his))~~ the director's authorized agent. The permit shall accompany the shellfish during transit and at the point of introduction. It shall be unlawful for the permit holder to fail to comply with all terms, conditions and provisions of the permit or to perform any act in connection with the permit that is not specifically authorized in the permit. The permit may specify department inspections and transfer conditions for the import.

AMENDATORY SECTION (Amending Order 847, filed 9/24/69)

WAC 220-72-002 Promulgation. In order to suppress and prevent the spread of infectious, contagious, communicable diseases and pests affecting ~~((oysters))~~ shellfish, the following regulations are adopted ~~((WAC 220-72-013 through 220-72-094))~~ (WAC 220-72-011 through 220-72-085).

NEW SECTION

WAC 220-72-011 Restricted shellfish areas—Puget Sound. All waters, tidelands, shellfish handling facilities and equipment (including aquaculture vehicles and vessels) operated in conjunction with said waters and tidelands of Puget Sound within the following areas are designated as restricted shellfish areas:

- (1) Dungeness Bay—inside and westerly of a line projected from the most southerly tip of Dungeness Spit southerly to the mainland.
- (2) Drayton Harbor—inside and southerly of a line projected from the end of Semiahmoo Spit to where the International Boundary line intersects the mainland.
- (3) Lummi Bay—inside the Lummi Dike and easterly and inside of a line projected from 48°46'32" N. Lat., 122°40'00" W. Long. due south to a point 48°45'55" N. Lat., 122°40'00" W. Long. and then due east to the mainland.
- (4) Samish Bay—inside and easterly of a line starting at the most westerly tip of the point at the south entrance of Chuckanut Bay and projected in a southerly direction to William Point on Samish Island.
- (5) Padilla Bay—southerly of a line starting at William Point on Samish Island and projected southerly to March Point on Fidalgo Island.
- (6) Similk and Skagit Bays—northerly of a line projected across Skagit Bay and following latitude 48° 20' N.
- (7) Liberty Bay—inside, westerly and northerly of a line projected true south from Tower Point.

(8) Dyes Inlet—inside and northerly of a line projected true east from the most northern tip of Rocky Point to the mainland in the vicinity of southern Tracyton.

(9) Burley Lagoon—inside and northerly of the Purdy bridge.

(10) Case Inlet—Rocky Bay and North Bay—northerly of a line projected true west from the westerly tip of Windy Bluff across Case Inlet through the northerly tip of Reach Island to the west shore of Case Inlet.

(11) Hammersley Inlet—Oakland Bay—inside, westerly and northerly of a line starting at Munson Point and projected in a southerly direction to Eagle Point.

(12) Totten Inlet—Oyster Bay—Little Skookum Inlet—inside and southerly of a line starting at the most southeasterly point on Windy Point and projected northeasterly to the most southern tip of the Steamboat Island bridge.

(13) Eld Inlet—

(a) Mud Bay—inside, southerly and westerly of a line starting at Flapjack Point and projected true south to the mainland.

(b) Sanderson Harbor—lying inside and westerly of a line starting at the most northern point on Sanderson Spit and projected northeasterly to the mainland.

(14) Nisqually Flats—southerly of a line starting at the end of the DuPont Dock and projected true west to the mainland.

(15) Hood Canal—

(a) Quilcene Bay—northerly and easterly of a line starting at the Port of Port Townsend boat ramp north of Coast Seafoods company shellfish hatchery projected easterly to a point at 48°48'10" N. Lat., 122°51'30" W. Long. and then projected southeasterly to the most southerly tip of Bolton Peninsula.

(b) Tarboo Bay—northerly and easterly of a line starting at the most northern tip of Long Spit and then projected true west to the mainland.

(c) Rendsland Creek—easterly and inside of lines drawn from:

Point No. 1 at 47°23'02.7" N. Lat.

123°06'42.8" Long. thence to

Point No. 2 at 47°23'02.7" N. Lat.

123°06'55" W. Long. thence to

Point No. 3 at 47°23'16.6" N. Lat.

123°06'55" W. Long., then projected true east to the mainland.

(d) Lynch Cove—easterly of a line starting at Cady Creek on the north shore and projected in a southwesterly direction to a point at 47°23'02.4" N. Lat., 122°56'12.4" W. Long.

(e) Hamma Hamma Flats—inside and westerly of lines drawn from:

Point No. 1 at 47°33'15" N. Lat.

123°01'42" W. Long. thence to

Point No. 2 at 47°32'54" N. Lat.

123°01'06" W. Long. thence to

Point No. 3 at 47°32'54" N. Lat.

123°01'48" W. Long. thence to

Point No. 4 at 47°32'21" N. Lat.

123°01'54" W. Long.

(f) Dosewallips Delta—inside and westerly of lines drawn from:

Point No. 1 at 47°41'03" N. Lat.

122°53'45" W. Long. thence to Point No. 2 at 47°41'03" N. Lat.
 122°52'24" W. Long. thence to Point No. 3 at 47°42'20.6" N. Lat.
 122°52'24" W. Long. thence to Point No. 4 at 47°42'20.6" N. Lat.
 122°52'39" W. Long.

(g) Point Whitney—inside and westerly of lines drawn from:

Point No. 1 at 47°45'43.7" N. Lat.
 122°51'02" W. Long. thence to Point No. 2 at 45°45'56" N. Lat.
 122°51'02" W. Long. thence to Point No. 3 at 45°45'56" N. Lat.
 122°51'12" W. Long. thence to Point No. 4 at 47°45'45" N. Lat.
 122°51'12" W. Long.

(16) Henderson Inlet—South Bay—inside and southerly of a line commencing at a point on the west shore of Henderson Inlet where the south line of Section 17, Twp 19 N R 1 WWM intersects the shoreline, thence projected true east across Henderson Inlet to the east shoreline.

NEW SECTION

WAC 220-72-015 Restricted shellfish areas—Willapa. All waters, tidelands, shellfish handling facilities and equipment (including aquaculture vehicles and vessels) operated in conjunction with said waters and tidelands of Willapa Bay inside and easterly of a line projected from the most northern tip of Leadbetter Point true north to Cape Shoalwater.

AMENDATORY SECTION (Amending Order 847, filed 9/24/69)

WAC 220-72-070 Unrestricted shellfish areas. All waters, tidelands and ~~((oyster))~~ shellfish handling facilities operated in conjunction with said waters and tidelands of Puget Sound, Grays Harbor and Willapa Bay lying outside the restricted shellfish areas as defined in chapter 220-72 WAC are hereby designated as unrestricted shellfish areas.

AMENDATORY SECTION (Amending Order 847, filed 9/24/69)

WAC 220-72-073 Unlawful acts—~~((Oyster))~~ Shellfish transfer. It shall be unlawful ~~((without first obtaining written permission from the director of fisheries or his authorized agent))~~ to move or transfer any ~~((oysters,))~~ shellfish, shellfish aquaculture products (including oyster seed, ~~((oyster))~~ cultch, ~~((oyster))~~ and shell), ~~((oystering))~~ aquaculture equipment, ~~((boats, seows, other material))~~ (including aquaculture vehicles and vessels) or any marine organisms adversely affecting ~~((oysters))~~ shellfish between unrestricted shellfish areas, between restricted shellfish areas, ~~((from a restricted shellfish area into an unrestricted area))~~ and from an unrestricted shellfish area into a restricted shellfish area~~((The director of fisheries or his authorized agent may require such written permit be obtained by any person, firm or corporation to move or transfer oysters, oyster seed, oyster cultch, oyster shell, oystering equipment, boats, seows, other material or any marine organisms~~

~~adversely affecting oysters within an unrestricted shellfish area or within a restricted shellfish area-))~~ without first obtaining and having in possession for each shellfish transfer a current copy of the Washington department of fish and wildlife pamphlet "Guidelines and requirements for the import and transfer of shellfish including oysters, clams, and other aquatic invertebrates in Washington state."

AMENDATORY SECTION (Amending Order 847, filed 9/24/69)

WAC 220-72-076 Unlawful acts—Permit ~~((display))~~ required. It shall be unlawful to ~~((execute any))~~ transfer ~~((of oysters, oyster seed, oyster cultch, oyster shell,))~~ shellfish, shellfish aquaculture products (including oyster seed, cultch and shell), aquaculture equipment (including aquaculture vehicles and vessels) or any marine organisms adversely affecting ~~((oysters under a permit required by this Order unless such))~~ shellfish from a restricted area into an unrestricted area without obtaining written permission from the director of fish and wildlife or the director's authorized agent. Such written permit ~~((is))~~ must be affixed to or otherwise ~~((accompanies))~~ accompany the conveyance affecting the physical transfer of such ~~((oysters, oyster shell))~~ shellfish, shellfish aquaculture products (including oyster seed, cultch and shell), aquaculture equipment (including aquaculture vehicles and vessels) oyster drills, or drill-infested or marine organisms harmful to ~~((oysters))~~ shellfish. Areas found to have aquatic diseases or pests (including the oyster drill *Ceratostoma inornatum*) will be immediately considered restricted by the department of fish and wildlife. The department will immediately notify property owners of the restricted status.

AMENDATORY SECTION (Amending Order 1045, filed 3/8/73)

WAC 220-72-085 Imports—Written permission. It shall be unlawful to import into the state of Washington any ~~((oysters, oyster shell or oyster seed))~~ shellfish, shellfish shell or shellfish seed for the purpose of ~~((planting))~~ placing into state waters without written permission from the department of ~~((fisheries. This permission must be applied for at least 30 days prior to the start of any seed oyster packing. The application shall state the maximum quantity to be imported, the general area where they can be inspected, the name of the exporter, and the approximate time the shipment will be made))~~ fish and wildlife.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-72-013 Restricted shellfish areas—Drayton Harbor.
- WAC 220-72-016 Restricted shellfish areas—Samish Bay.
- WAC 220-72-019 Restricted shellfish areas—Padilla Bay.
- WAC 220-72-022 Restricted shellfish areas—Similk Bay.

PERMANENT

WAC 220-72-025	Restricted shellfish areas— Liberty Bay.
WAC 220-72-028	Restricted shellfish areas— Dyes Inlet.
WAC 220-72-031	Restricted shellfish areas— Case Inlet—Rocky Bay and North Bay.
WAC 220-72-034	Restricted shellfish areas— Hammersley Inlet—Oakland Bay.
WAC 220-72-037	Restricted shellfish areas— Totten Inlet—Oyster Bay.
WAC 220-72-040	Restricted shellfish areas—Eld Inlet—Mud Bay.
WAC 220-72-043	Restricted shellfish areas— Nisqually Flats.
WAC 220-72-046	Restricted shellfish areas— Hood Canal—Quilcene Bay.
WAC 220-72-049	Restricted shellfish areas— Hood Canal—Lynch Cove.
WAC 220-72-052	Restricted shellfish areas— Hood Canal—Hamma Hamma Flats.
WAC 220-72-055	Restricted shellfish areas— Henderson Inlet—South Bay.
WAC 220-72-058	Restricted shellfish areas— Willapa Bay—Middle Sands.
WAC 220-72-061	Restricted shellfish areas— Willapa Bay—Nemah.
WAC 220-72-064	Restricted shellfish areas— Willapa Bay—Bay Center.
WAC 220-72-067	Restricted shellfish areas— Willapa Bay—Cedar River.
WAC 220-72-082	Imports—Inspection.
WAC 220-72-088	Imports—Certification.
WAC 220-72-091	Imports—Importation period.
WAC 220-72-094	Imports—Shipping season.

AMENDATORY SECTION (Amending Order 87-20, filed 3/27/87)

WAC 220-77-020 Definitions—Aquaculture disease control. For purposes of this chapter, the following definitions apply:

(1) "Aquaculture products" are defined as private sector cultured aquatic products propagated, farmed, or cultivated on aquatic farms under the supervision and management of an aquatic farmer, or such products naturally set on lands under the active supervision and management of an aquatic farmer.

(2) "Disease" is defined as infection, contagious disease, parasite, or pest, occurring on or within the aquaculture product, or other shellfish or finfish, or on or within the water ~~(and)~~ or substrate associated with the aquaculture product, shellfish, or finfish, or an occurrence of significant mortality suspected of being of an infectious or contagious nature.

(3) "Finfish" is defined as live fish, fish eggs, or fish gametes, but not to include aquaria species commonly sold in the pet store trade when raised in indoor containers, indigenous marine baitfish, or mosquito fish.

(4) "Shellfish" is defined as all ~~((members of the phyla mollusca, arthropoda, and echinodermata))~~ aquatic invertebrates except insects.

(5) "Epizootic" is defined as the occurrence of a specific disease which can be detected in fifty percent of the mortality or moribund individual fish in an affected container or shellfish on an affected bed or within an affected population, and which results in an average daily mortality of at least one-half of one percent of the affected individual fish for five or more days in any thirty-day period.

(6) "Marine plant" is defined as nonvascular plants belonging to the phyla Chlorophyta, Phaeophyta, or Rhodophyta and vascular plants belonging to the family Zosteraceae when growing in marine or estuarine waters, and includes the seeds, spores, or any life-history phase of the plants. ~~((("Marine plants" do not include aquaria plants or phytoplankton.))~~

(7) "Working day" is defined as any day other than Saturday, Sunday, or a Washington state holiday.

(8) "Department" is defined as the department of ~~((fisheries))~~ fish and wildlife.

(9) "Quarantine" is defined as isolation of the organism in a department approved facility.

(10) "Pest" is defined as parasite, parasitoid, predator, or fouling agent.

(11) "Established species" is defined as a species that has been propagated through aquaculture for at least ten years in Washington, or a species naturally reproducing within Washington.

(12) "West coast commerce region" is defined as the states of Alaska, California, Oregon, and Washington and the province of British Columbia.

(13) "Kelp" is defined as any species of brown algae of the order Laminariales.

(14) "Class A shellfish disease" is defined as an infectious disease which can cause significant mortality or loss of condition or quality in affected shellfish.

(15) "Class B shellfish disease" is defined as an infectious disease which is not known to cause significant mortality or loss of condition or quality in affected shellfish.

(16) "Market ready shellfish" are defined as aquatic invertebrate species which are intended for immediate human consumption and will not be placed into or come in contact with state waters.

AMENDATORY SECTION (Amending Order 87-20, filed 3/27/87)

WAC 220-77-040 Shellfish aquaculture disease control. (1) It is unlawful for any person to import into Washington or ~~((transport within the state of Washington shellfish aquaculture products for planting in Washington waters))~~ possess live imported aquatic invertebrates, except market ready shellfish, without first ~~((having obtained a))~~ obtaining an aquatic invertebrate import permit ~~((to do so))~~ issued by the department. A copy of the permit shall accompany the ~~((shellfish aquaculture products))~~ aquatic invertebrates at all times within the state of Washington, and must be presented upon request to department employees. ~~((Possession of an oyster transfer permit issued under RCW 74.24.110 will meet the requirements of this subsection.))~~

(2) ((The director may impose permit conditions as necessary to ensure the protection of aquaculture products and native shellfish from disease when the director concludes that there is a reasonable risk of disease transmission associated with the shellfish aquaculture products)) The director shall appoint a seven-member advisory committee consisting of one representative each from the department, the department of agriculture, the aquatic farmers of Washington, the federally recognized treaty tribes, private displays of aquatic invertebrates, aquatic invertebrate ecologists, and aquatic invertebrate disease control specialists. The committee will advise the department on importation of aquatic invertebrates, make recommendations on classification of shellfish diseases, and review department policy. Recommendations of the committee are not binding on the commission or director.

(3) ((For)) Established species ((and established routes of commerce, the department will issue import and transfer permits if the following criteria are met:

(a) A regular pattern of importation with no more than a one-year time lapse between importations.

(b) Documentation of recent mortality and disease history of the shellfish aquaculture product in the area of origin showing a lack of significant mortality.

(c) Verification that there has been no introduction of diseased stocks into the area of origin.

(d) Documentation that the shellfish aquaculture product proposed for import is from the approved area)) from existing import areas with current disease free tissue certification from areas of origin free of Class A shellfish diseases are eligible for continued importation.

(a) An additional disease free tissue certification must be submitted every three years. The department will waive the certification requirement if there is sufficient information that the source area is free of Class A shellfish diseases.

(b) Additional disease free certification may be required upon discovery or reports of disease at the geographic source.

(4) ((For)) Established species ((not from established routes of commerce, the department will additionally require the following before deciding whether to issue an import or transfer permit:

(a) Documentation of mortality and disease of the shellfish aquaculture product for the past ten years from the area of origin, together with similar information for closely related species, if deemed necessary.

(b) A history of those diseases in the area of origin that may affect aquaculture products or native fauna and flora.

(c) When applicable, documentation of an agreement with the appropriate governmental agency with management responsibility in the area of origin)) from new areas of origin are eligible for import if health history documentation and disease free tissue certification are provided to the department. Import into quarantine is required for imports originating from outside the west coast commerce region.

(a) Conditional importation approval will be initiated by permit application.

(b) Presence of any Class A shellfish disease in the area of origin will result in denial of conditional approval.

(c) At least one additional disease free certification will be required during the first year of importation. In the absence of disease during the first year of importation,

established species will be eligible for continued importation, and the provisions of subsection (3) of this section will apply.

(5) ((For)) Nonestablished species((, the department will additionally consider the following criteria, which will require the importer to provide a detailed life history and comply with the requirements of SEPA:

(a) The capability of the receiving facility to hold the shellfish aquaculture product in)) for which a health history documentation and disease free tissue certification have been initiated by permit application are eligible for importation only into quarantine.

((b) The ability of the shellfish aquaculture product to naturally reproduce or interbreed with endemic species in state waters.

(c) The ability of the shellfish aquaculture product to compete with or prey upon endemic species.)) A SEPA check list is required for any importation of a new species.

(6) ((For purposes of verification of the disease free status of shellfish aquaculture products in subsections (3), (4), and (5) of this section, the department may require sufficient samples for histological evaluation either prior to or after subjecting the shellfish aquaculture products to stress tests to detect latent disease conditions. In the event of failure to obtain permit approval, consideration will be given to introduction after hatchery production of a second generation stock.)) Health history documentation will be based on available documentation over the five years prior to application for an import permit, unless a longer documentation is required for cause, and is required to be provided by the applicant. Disease free tissue certification is required from representative invertebrates proposed for import, and must be certified by a department-approved invertebrate health care professional.

(7) Department employees may inspect quarantine facilities used for permitted shellfish imports at reasonable times without prior notification.

(8) Importers are required to immediately report to the department any epizootic, significant mortality potentially attributable to an infectious disease or discovery of a Class A shellfish disease in an approved source area. The report is required to be made within 24 hours of the event or discovery. Annual reporting of the presence or absence of Class A or Class B shellfish diseases may be a condition of any permit.

(9) Violation of these rules or the conditions of the permit, confirmation of a Class A shellfish disease at the geographic source, or verification of a substantial shellfish mortality at the geographic source may result in the suspension or revocation of the import permit.

((8)) In the event of denial, suspension, or revocation of an ((importation or transfer)) import permit, the affected ((person)) party may appeal ((the decision to the director. Additional appeals may be made)) through the Administrative Procedure Act ((chapter 34.04 RCW)). A suspended or revoked permit will remain suspended or revoked during the ((appellate)) appeal process.

NEW SECTION

WAC 220-77-065 Kelp importation—Permit required. (1) It is unlawful for any person to import kelp into the state of Washington for use in the herring spawn on kelp fishery without first having obtained a permit to do so issued by the department. A copy of the permit must accompany the imported kelp at all times until the kelp is placed into the marine environment and must be presented upon request to department employees.

(2) The director may impose permit conditions as necessary to ensure protection of aquaculture products and native species from disease when the director concludes that there is a risk of disease transmission associated with the imported kelp.

(3) A kelp import permit is not transferrable.

(4) Violation of these rules or the conditions of a permit may result in suspension or revocation of the kelp import permit. In the event of denial, suspension or revocation of a kelp import permit, the affected party may appeal through the Administrative Procedure Act. A suspended or revoked permit will remain suspended or revoked during the appeal process.

WSR 97-08-084**PERMANENT RULES****DEPARTMENT OF ECOLOGY**

[Order 97-01—Filed April 2, 1997, 10:52 a.m.]

Date of Adoption: March 24, 1997.

Purpose: To correct a reference citation.

Citation of Existing Rules Affected by this Order:
Amending WAC 173-401-735.Statutory Authority for Adoption: RCW 70.94.161
(2)(a).Adopted under notice filed as WSR 97-04-061 on
February 4, 1997.Number of Sections Adopted in Order to Comply with
Federal Statute: New 0, amended 0, repealed 0; Federal
Rules or Standards: New 0, amended 0, repealed 0; or
Recently Enacted State Statutes: New 0, amended 0,
repealed 0.Number of Sections Adopted at Request of a Nongov-
ernmental Entity: New 0, amended 0, repealed 0.Number of Sections Adopted on the Agency's own
Initiative: New 0, amended 0, repealed 0.Number of Sections Adopted in Order to Clarify,
Streamline, or Reform Agency Procedures: New 0, amended
1, repealed 0.Number of Sections Adopted using Negotiated Rule
Making: New 0, amended 0, repealed 0; Pilot Rule Making:
New 0, amended 0, repealed 0; or Other Alternative Rule
Making: New 0, amended 0, repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 24, 1997

Tom Fitzsimmons

Director

AMENDATORY SECTION (Amending Order 91-68, filed
10/4/93, effective 11/4/93)

WAC 173-401-735 Permit appeals. (1) A decision to issue or to deny a final permit, or the terms or conditions of such a permit, may be appealed to the pollution control hearings board under chapter 43.21B RCW and RCW 70.94.161(9). Any appealable decision or determination shall be identified as such and shall contain a conspicuous notice to the recipient that it may be appealed by filing an appeal with the pollution control hearings board and serving the appeal on the permitting authority within thirty days of receipt, pursuant to RCW 43.21B.310. The provision for appeal in this section is separate from and additional to any federal rights to petition and review under section 505(b) of the FCAA, including petitions filed pursuant to 40 CFR 70.8(c) and 70.8(d).

(2) **Appealing parties.** Parties that may file the appeal referenced in subsection (1) of this section include any person who participated in the public participation process pursuant to WAC 173-401-800.

(3) As provided in ((chapter 7-16)) RCW 34.05.570, a person may seek a writ of mandamus in the event that a permitting authority fails to take final action on an application for a permit, permit renewal, or permit revision within the deadlines specified by WAC 173-401-700 through 173-401-725.

WSR 97-08-095**PERMANENT RULES****DEPARTMENT OF HEALTH**

[Filed April 2, 1997, 11:58 a.m.]

Date of Adoption: March 6, 1997.

Purpose: The amendments update a radioactive materi-
als licensee's required records, timeliness, and funding
mechanisms to bring state rules into conformity with federal
regulations issued by the Nuclear Regulatory Commission.Citation of Existing Rules Affected by this Order:
Amending WAC 246-232-060 and 246-235-075.Statutory Authority for Adoption: RCW 70.98.050 and
70.98.080.Adopted under notice filed as WSR 97-03-26 [97-03-
126] on January 22, 1997.Changes Other than Editing from Proposed to Adopted
Version: Corrected cross-referencing error in WAC 246-
232-060(8).Number of Sections Adopted in Order to Comply with
Federal Statute: New 0, amended 0, repealed 0; Federal
Rules or Standards: New 0, amended 2, repealed 0; or
Recently Enacted State Statutes: New 0, amended 0,
repealed 0.Number of Sections Adopted at Request of a Nongov-
ernmental Entity: New 0, amended 0, repealed 0.Number of Sections Adopted on the Agency's own
Initiative: New 0, amended 0, repealed 0.Number of Sections Adopted in Order to Clarify,
Streamline, or Reform Agency Procedures: New 0, amended
0, repealed 0.Number of Sections Adopted using Negotiated Rule
Making: New 0, amended 0, repealed 0; Pilot Rule Making:

New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 2, repealed 0.

Effective Date of Rule: Thirty-one days after filing.

April 1, 1997

Bruce Miyahara
Secretary

AMENDATORY SECTION (Amending Order 245, filed 2/21/92, effective 3/23/92)

WAC 246-235-075 Financial assurance and record-keeping for decommissioning. (1) Each applicant for one of the following licenses shall submit a decommissioning funding plan as described in this section:

(a) A specific license authorizing receipt of radioactive waste for the purpose of volume reduction, repackaging or interim storage.

(b) Receipt of contaminated articles, scrap material, equipment, or clothing to be decontaminated at the licensee's facility.

(c) A specific license authorizing the possession and use of radioactive material of half-life greater than one hundred twenty days and in quantities for unsealed material exceeding 10^3 times and for sealed forms exceeding 10^{10} times the applicable quantities set forth in WAC 246-221-300 Appendix B (for a combination of isotopes the unity rule applies. A decommissioning funding plan will be required if R is greater than 1, where R is defined as the sum of the ratios of the quantity for sealed and unsealed forms of each isotope compared to the applicable value derived from WAC 246-221-300).

(d) A specific license authorizing possession and use of source material in readily dispersible form and in quantities greater than 10 millicuries.

(2) Each decommissioning funding plan shall contain:

(a) A cost estimate for decommissioning facilities impacted by the activities authorized in the specific license.

(b) A description of the method of assuring funds for decommissioning.

(c) A schedule for adjusting cost estimates and associated funding levels periodically over the life of the facility or facilities.

(d) A description of methods and general procedures for performing facility decontamination, maintaining security, and performing a final radiation survey.

(e) A commitment to clean up accidental spills promptly and to begin decommissioning of the facility or facilities within twelve months of ceasing operation involving radioactive material.

(3) Each cost estimate for decommissioning shall include:

(a) A description of the facility and areas within the facility likely to require decommissioning as a result of routine operation.

(b) Anticipated labor, equipment and material costs.

(c) Anticipated waste volume.

(d) Anticipated packaging, transportation and waste disposal costs.

(e) An assessment of costs associated with an accident involving licensed material.

(4) Financial assurance for decommissioning shall be provided by one or more of the following methods:

(a) Prepayment. Prepayment is the deposit of sufficient funds to pay decommissioning costs. Funds shall be deposited prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(b) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, or line of credit. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(i) The surety method or insurance shall be open-ended or, if written for a specified term, such as five years, shall be renewed automatically unless ninety days or more prior to the renewal date, the issuer notifies the department, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the department within thirty days after receipt of notification of cancellation.

(ii) The surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the department. Acceptable trustees include an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(iii) The surety method or insurance must remain in effect until the department has terminated the license.

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control. The total amount of funds in the external sinking fund shall be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be as stated in subsection (4)(b) of this section.

(d) In the case of state or local government licensees, a statement of intent containing a cost estimate for decommissioning and indicating that funds for decommissioning will be obtained when necessary.

(e) Other methods of financial assurance as approved by the department. The department may approve other financial mechanisms submitted by the applicant or licensee provided the alternate method meets, at a minimum, the requirements of 10 C.F.R. 30.35 and associated U.S. Nuclear Regulatory Commission guidance.

(5)(a) The department shall review each decommissioning funding plan prior to license issuance and prior to license renewal.

(b) The applicant or licensee shall incorporate department comments into its cost estimate and shall revise its financial surety accordingly.

(c) Applicants shall obtain the appropriate financial assurance as approved by the department prior to receipt of licensed material. The department may issue a new license if the applicant agrees to comply with the decommissioning funding plan as approved. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of this section shall be submitted to the department before receipt of licensed material.

(d) Holders of licenses issued on or before the effective date of this rule shall submit a decommissioning funding plan to the department by April 1, 1993. Licensees shall implement the financial assurance requirements within thirty days of receiving department approval of the decommissioning funding plan. Licensees shall submit copies of the financial surety within thirty days of securing the surety and annually thereafter.

(6) Each person licensed under this chapter shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the department. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the department considers important to decommissioning consists of:

(a) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(b) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(c) Except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after any leak) or depleted uranium used only for shielding or as penetrators in unused munitions, or radioactive materials having only half-lives of less than sixty-five days, a list contained in a single document and updated every two years, of the following:

(i) All areas designated and formerly designated as restricted areas as defined under WAC 246-220-010;

(ii) All areas outside of restricted areas that require documentation under (a) of this subsection;

(iii) All areas outside of restricted areas where current and previous wastes have been buried as documented under WAC 246-221-230 (8)(a); and

(iv) All areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under WAC 246-221-180. Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

AMENDATORY SECTION (Amending Order 184, filed 7/24/91, effective 8/24/91)

WAC 246-232-060 Termination of licenses and decommissioning of sites and separate buildings or outdoor areas. (1) Each specific licensee shall immediately notify the department in writing when the licensee decides to permanently discontinue all activities involving materials authorized under the license and request termination of the license. This notification and request for termination of the license must include the reports and information specified in subsection (3) (c) and (d) of this section. The licensee is subject to the provisions of subsections (3) and (4) of this section, as applicable.

(2) No less than thirty days before the expiration date specified in a specific license, the licensee shall either:

(a) Submit an application for license renewal under WAC 246-235-050; or

(b) Notify the department in writing if the licensee decides not to renew the license.

(3) If a licensee does not submit an application for license renewal under WAC 246-235-050, the licensee shall on or before the expiration date specified in the license:

(a) Terminate use of ~~((byproduct))~~ radioactive material;

(b) Properly dispose of ~~((byproduct))~~ radioactive material;

(c) Submit a completed departmental form "Certificate of disposition of radioactive material" or equivalent; and

(d) Submit a radiation survey report to confirm the absence of radioactive materials or establish the levels of radioactive contamination, unless the department determines a radiation survey report is not necessary.

(i) If no radioactive contamination attributable to activities conducted under the license is detected, the licensee shall submit a certification that no detectable radioactive contamination was found. If the information submitted under this paragraph and subsection (3) (c) and (d) of this section is adequate, the department will notify the licensee in writing that the license is terminated.

(ii) If detectable levels of radioactive contamination attributable to activities conducted under the license are found, the license continues in effect beyond the expiration date, if necessary, with respect to possession of residual radioactive material present as contamination until the department notifies the licensee in writing that the license is terminated. During this time, the licensee is subject to the provisions of subsection (4) of this section. In addition to the information submitted under subsection (3)(c) and (d) of this section, the licensee shall submit a plan for decontamination, if necessary.

(4) Each licensee who possesses residual ~~((byproduct))~~ radioactive material under subsection (3)(d)(ii) of this

section, following the expiration of the facility and/or equipment date specified in the license, shall:

(a) Be limited to actions, involving radioactive material related to decontamination and preparation for release for unrestricted use; and

(b) Continue to control entry to restricted areas until they are suitable for release for unrestricted use and the department notifies the licensee in writing that the license is terminated. The guidance contained in WAC 246-232-140, Schedule D, shall be used in making this determination.

(5) Each general licensee licensed under the provisions of WAC 246-233-020(8), shall immediately notify the department in writing when the licensee decides to discontinue all activities involving radioactive materials authorized under the general license. Such notification shall include a description of how the generally licensed material was disposed and the results of facility surveys, if applicable, to confirm the absence of radioactive materials.

(6) Within sixty days of the occurrence of any of the following, each licensee shall provide notification to the department in writing of such occurrence, and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity so that the building or outdoor area is suitable for release in accordance with department requirements, or submit within twelve months of notification a decommissioning plan, if required by subsection (10)(a) of this section, and begin decommissioning upon approval of that plan if:

(a) The license has expired or has been revoked by the department; or

(b) The licensee has decided to permanently cease principal activities, as defined in this section, at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with department requirements; or

(c) No principal activities under the license have been conducted for a period of twenty-four months; or

(d) No principal activities have been conducted for a period of twenty-four months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with department requirements.

(7) As used in this section, principal activities means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(8) Coincident with the notification required by subsection (6) of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to WAC 246-235-075 or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to subsection (10)(d)(v) of this section. Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the department.

(9) The department may grant a request to extend the time periods established in subsection (6) of this section if the department determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than thirty days before notification pursuant to subsection (6) of this section. The schedule for decommissioning set forth in subsection (6) of this section may not commence until the department has made a determination on the request.

(10)(a) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the department and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(i) Procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(ii) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(iii) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(iv) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(b) The department may approve an alternate schedule for submittal of a decommissioning plan required pursuant to subsection (6) of this section if the department determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(c) Procedures such as those listed in (a) of this subsection with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(d) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(i) A description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(ii) A description of planned decommissioning activities;

(iii) A description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(iv) A description of the planned final radiation survey;

(v) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning;

(vi) A description of the physical security plan and material control and accounting plan provisions in place during decommissioning;

(vii) For decommissioning plans calling for completion of decommissioning later than twenty-four months after plan approval, the plan shall include a justification for the delay based on the criteria in subsection (12) of this section.

(e) The proposed decommissioning plan will be approved by the department if the information therein demonstrates that the decommissioning will be completed as soon

as practicable and that the health and safety of workers and the public will be adequately protected.

(11)(a) Except as provided in subsection (12) of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than twenty-four months following the initiation of decommissioning.

(b) Except as provided in subsection (12) of this section, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than twenty-four months following the initiation of decommissioning.

(12) The department may approve a request for an alternative schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the department determines that the alternative is warranted by consideration of the following:

(a) Whether it is technically feasible to complete decommissioning within the allotted twenty-four-month period;

(b) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted twenty-four-month period;

(c) Whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(d) Whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(e) Other site-specific factors which the department may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground water treatment activities, monitored natural ground water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(13) As the final step in decommissioning, the licensee shall:

(a) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed certificate of disposition of radioactive material or equivalent information; and

(b) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in some other manner. The licensee shall, as appropriate:

(i) Report levels of gamma radiation in units of millisieverts (microrentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per one hundred square centimeters—removable and fixed—for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(ii) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(14) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the department determines that:

(a) Radioactive material has been properly disposed;

(b) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(c)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with department requirements; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with department requirements.

(15) Specific licenses for uranium and thorium milling are exempt from subsections (6)(d), (9) and (10) of this section with respect to reclamation of tailings impoundments and/or waste disposal areas.



WSR 97-08-030
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Public Assistance)

[Filed March 27, 1997, 10:54 a.m.]

Date of Adoption: March 27, 1997.

Purpose: Provide for longer time frames for Medicaid to continue upon termination of SSI for persons impacted by federal revisions to the definition of disability and eligibility requirements of noncitizens.

Citation of Existing Rules Affected by this Order: Amending WAC 388-522-2205 and 388-524-2405.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.530.

Other Authority: 42 CFR 435.1003; 42 CFR Part 435; (MB-105-FC).

Under 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; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The federal regulation was implemented January 13, 1997.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 2, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 2, repealed 0.

Effective Date of Rule: Immediately.

March 27, 1997

Merry A. Kogut, Manager
 Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending Order 3732, filed 5/3/94, effective 6/3/94)

WAC 388-522-2205 Redetermination of medical assistance. (1) Before termination of a client's medical assistance, the department shall redetermine the client's eligibility for other medical assistance programs or the medically indigent program.

(a) When additional information is necessary to redetermine eligibility, the department shall give the client ten days notice and an opportunity to provide such information.

(b) The department shall give the client advance and adequate notice of the redetermination decision before

termination of medical assistance as described under WAC 388-245-1700.

(c) Until the department redetermines a client's eligibility in conformity with the requirements of this section, the client shall remain eligible for categorically needy medical benefits.

(2) ~~((The department shall redetermine the client's eligibility for other financial and medical programs within thirty calendar days))~~ When SSA terminates the client's SSI/SSP financial benefits, refer to WAC 388-524-2405.

AMENDATORY SECTION (Amending Order 3732, filed 5/3/94, effective 6/3/94)

WAC 388-524-2405 SSI/state supplement termination. ~~((When SSA terminates an SSI/state supplemental client because of failure to meet blindness and disability criteria under Title XVI,))~~ (1) The department shall ~~((terminate))~~ provide uninterrupted medical assistance ~~((at the end of the second month following the month in which eligibility based on disability or blindness criteria ceases))~~ for a period of up to one hundred twenty days:

(a) For a person whose SSI/state supplemental is terminated; and

(b) While the department redetermines the person's eligibility for other financial or medical programs.

~~((1) If the client has))~~ (2) The department shall continue medical assistance for a person:

(a) Who has filed a timely request for a hearing under SSA jurisdiction; and ~~((SSA continues benefits, the department shall continue medical assistance concurrently))~~

(b) Until SSA makes a final decision on the hearing request and any subsequent timely appeals.

~~((2))~~ (3) The department shall not ~~((authorize the CSO to re))~~ submit a request for a redetermination of blindness or disability ~~((for consideration of the categorically needy or medically needy program.~~

~~((3) If the client))~~ unless:

(a) The person presents new medical evidence ~~((to the CSO or the client's));~~

(b) The person's medical condition worsens ~~((, the department shall require a referral to SSA));~~ or

(c) The termination of SSI/state supplement or Social Security Disability Insurance was not based on a review of current medical evidence.

WSR 97-08-031
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Public Assistance)

[Filed March 27, 1997, 10:57 a.m., effective April 1, 1997]

Date of Adoption: March 27, 1997.

Purpose: Revise federal poverty levels, effective April 1, 1997.

Citation of Existing Rules Affected by this Order: Amending WAC 388-508-0805, 388-509-0920, 388-509-0960, 388-513-1380, 388-517-1720, 388-517-1740, and 388-517-1760.

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Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.530.

Other Authority: Social Security Act, Federal Regulation, March 10, 1997, pages 10856-10859, 42 USC 1396 (a)(1)(m), and 42 USC 1396 (d)(p).

Under 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; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The federal poverty level is increased effective April 1, 1997.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 7, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 7, repealed 0.

Effective Date of Rule: April 1, 1997.

March 27, 1997

Merry A. Kogut, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 96-15-029, filed 7/10/96, effective 7/10/96)

WAC 388-508-0805 Pregnant woman—Income standards. (1) The department shall find a pregnant woman eligible for Medicaid as categorically needy when the pregnant woman meets the income requirements of this section.

(2) The department shall ensure total family income will not exceed one hundred eighty-five percent of the Federal Poverty Level (FPL). One hundred eighty-five percent of the current FPL is:

Family Size	Monthly Income
(a) One	(\$1,194) <u>\$1,217</u>
(b) Two	(\$1,598) <u>\$1,636</u>
(c) Three	(\$2,002) <u>\$2,056</u>
(d) Four	(\$2,405) <u>\$2,475</u>
(e) Five	(\$2,809) <u>\$2,894</u>
(f) Six	(\$3,213) <u>\$3,314</u>
(g) Seven	(\$3,617) <u>\$3,733</u>
(h) Eight	(\$4,021) <u>\$4,152</u>
(i) Nine	(\$4,425) <u>\$4,572</u>
(j) Ten	(\$4,829) <u>\$4,991</u>

(k) For family units with more than ten members, add ~~(\$404)~~ \$420 to the monthly income for each additional member.

AMENDATORY SECTION (Amending WSR 96-15-029, filed 7/10/96, effective 7/10/96)

WAC 388-509-0920 Children's health program. (1) The department shall consider a child seventeen years of age or younger, eligible for state-funded medical services with the same coverage as categorically needy, when:

(a) The child is not eligible for a federally-funded Medicaid program; and

(b) The child's nonexempt family income does not exceed one hundred percent of the current federal poverty level (FPL). See income guidelines as described under subsection (4) of this section.

(2) The department shall determine nonexempt family income by:

(a) Following AFDC methodology; and

(b) Applying the medical income rules as described under WAC 388-506-0610.

(3) The department shall not require a child to meet the following eligibility factors:

(a) Citizenship;

(b) Social Security number; or

(c) Resources limits.

(4) The department shall find that one hundred percent of the current FPL equals:

Family Size	Monthly Income
(a) One	(\$645) <u>\$658</u>
(b) Two	(\$864) <u>\$885</u>
(c) Three	(\$1,082) <u>\$1,111</u>
(d) Four	(\$1,300) <u>\$1,338</u>
(e) Five	(\$1,519) <u>\$1,565</u>
(f) Six	(\$1,737) <u>\$1,791</u>
(g) Seven	(\$1,955) <u>\$2,018</u>
(h) Eight	(\$2,174) <u>\$2,245</u>
(i) Nine	(\$2,392) <u>\$2,471</u>
(j) Ten	(\$2,610) <u>\$2,698</u>

(k) For family units with more than ten members, add ~~(\$219)~~ \$227 to the monthly income for each additional member.

(5) For a child determined eligible under this section, the department shall not consider a change in family income during the certification period.

AMENDATORY SECTION (Amending WSR 96-15-029, filed 7/10/96, effective 7/10/96)

WAC 388-509-0960 Children's income standards. (1) The department shall determine a child meeting the eligibility requirements under WAC 388-509-0910 eligible as categorically needy when the total family countable income does not exceed two hundred percent of the federal poverty level (FPL). The department shall find that two hundred percent of the current FPL equals:

Family Size	Monthly Income
(a) One	(\$1,290) <u>\$1,315</u>
(b) Two	(\$1,727) <u>\$1,769</u>

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(c) Three	(\$2,164) <u>\$2,222</u>
(d) Four	(\$2,600) <u>\$2,675</u>
(e) Five	(\$3,037) <u>\$3,129</u>
(f) Six	(\$3,474) <u>\$3,582</u>
(g) Seven	(\$3,910) <u>\$4,035</u>
(h) Eight	(\$4,347) <u>\$4,489</u>
(i) Nine	(\$4,784) <u>\$4,942</u>
(j) Ten	(\$5,220) <u>\$5,395</u>

(k) For family units with more than ten members, add ~~(\$437)~~ \$454 to the monthly income for each additional member.

(2) For a child determined eligible under WAC 388-509-0910, the department shall not consider a change in family income during the certification period.

AMENDATORY SECTION (Amending WSR 96-15-029, filed 7/10/96, effective 7/10/96)

WAC 388-517-1720 Qualified Medicare beneficiaries—Income and resources. (1) The department shall provide Medicare cost sharing for a qualified medical beneficiary (QMB) client having:

(a) A total countable income, as determined under chapter 388-511 WAC, except as specified in subsection (2) of this section, not exceeding one hundred percent of the current federal poverty level (FPL). One hundred percent of the current FPL is:

Family Size	Monthly
(i) One	(\$645) <u>\$658</u>
(ii) Two	(\$864) <u>\$885</u>

(b) Resources, as determined under WAC 388-511-1110, not exceeding twice the maximum supplemental security income (SSI) resource limits.

(2) The department shall not consider a person's Social Security cost-of-living increase until April 1 of each year.

AMENDATORY SECTION (Amending WSR 96-15-029, filed 7/10/96, effective 7/10/96)

WAC 388-517-1740 Special low-income Medicare beneficiaries (SLMB)—Income and resources. (1) The department shall provide Medicare cost sharing for a SLMB client having:

(a) A total countable income, as determined under chapter 388-511 WAC, over one hundred percent of the current federal poverty level (FPL), but not exceeding one hundred twenty percent of the FPL. One hundred twenty percent of the current FPL is:

Family Size	Monthly
(i) One	(\$774) <u>\$789</u>
(ii) Two	(\$1,036) <u>\$1,061</u>

(b) Resources, as determined under WAC 388-511-1110, not exceeding twice the maximum supplemental security income (SSI) resource limits.

(2) The department shall not consider a person's Social Security cost-of-living increase until April 1 of each year.

AMENDATORY SECTION (Amending WSR 96-15-029, filed 7/10/96, effective 7/10/96)

WAC 388-517-1760 Qualified disabled working individuals (QDWI) income and resources. The department shall pay premiums for Medicare Part A for a person having:

(1) A total countable family income, as determined under chapter 388-511 WAC, not exceeding two hundred percent of the current FPL. Two hundred percent of the current FPL is:

Family Size	Monthly
(a) One	(\$1,290) <u>\$1,315</u>
(b) Two	(\$1,727) <u>\$1,769</u>

(2) Resources, as determined under WAC 388-511-1110, not exceeding twice the maximum supplemental security income (SSI) resource limits.

AMENDATORY SECTION (Amending Order 3963, filed 4/10/96, effective 5/1/96)

WAC 388-513-1380 Institutional—Participation. (1) In reducing payment to the institution, the department shall consider the institutionalized client's:

- (a) Income under WAC 388-513-1330 (3)(a), (b), (c), and (d); and
- (b) Resources under WAC 388-513-1350, 388-513-1360, and 388-513-1365.

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

- (a) Health insurance and Medicare premiums, deductions, and co-insurance not paid by a third party; and
- (b) Noncovered medical bills which are the liability of the client and not paid by a third party.
- (3) The department shall not use allocations used to reduce excess resources under subsection (2) of this section to reduce income under subsection (4) of this section.
- (4) The department shall deduct the following amounts, in the following order, from the institutionalized client's total income, including amounts disregarded in determining eligibility:

- (a) Specified personal needs allowance as follows:
 - (i) One hundred sixty dollars for a veteran living in a Medicaid-certified state veteran's home nursing facility;
 - (ii) Ninety dollars for a single veteran receiving an improved veteran's pension; or
 - (iii) Forty-one dollars and sixty-two cents for all other clients in medical institutions.
- (b) Federal, state, or local income taxes:
 - (i) Mandatorily withheld from earned or unearned income for income tax purposes before receipt by the client;
 - (ii) Not covered by withholding, but are owed or have been paid by the client; and
 - (iii) Does not exceed the one-person medically needy income level less the client's personal needs allowance.
- (c) Wages not to exceed the one-person medically needy income level (MNIL) less the client's personal needs allowance for a client who:
 - (i) Is SSI-related; and

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(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction, the department shall:

(A) Not allow a deduction for employment expenses; and

(B) Apply the client's wages not deducted under this subsection to the client's cost of care.

(d) The total amounts deducted under subsection (4)(a), (b), and (c) of this section shall not exceed the one-person MNIL.

(e) A monthly needs allowance for the community spouse not to exceed, effective January 1, ~~((1996))~~ 1997, one thousand nine hundred ~~((nineteen))~~ seventy-six dollars, unless specified in subsection (6) of this section. The department shall ensure the monthly needs allowance is:

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

(ii) Excess shelter expenses as specified under subsection (5) of this section; and

(iii) Allowed only to the extent income of the institutionalized spouse is made available to the community spouse.

(f) An amount for the maintenance needs of each dependent family member residing with the community spouse:

(i) Equal to one-third of the amount one thousand ~~((two))~~ three hundred ~~((ninety-five))~~ twenty-seven dollars exceeds the family member's income. Child support received from an absent parent is the child's income.

(ii) "Family member" means a:

(A) Dependent or minor child;

(B) Dependent parent; or

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

(g) When an institutional client does not have a community spouse, an amount for the maintenance needs of family members residing in the client's home equal to the medically needy income level for the number of legal dependents in the home less the income of the dependents.

(h) Amounts for incurred medical expenses not subject to third-party payment which are the current liability of the client including, but not limited to:

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

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

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

(i) Up to one hundred percent of the one-person federal poverty level per month;

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

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social service staff documents initial need for the income exemption and reviews the person's circumstances after ninety days.

(5) For the purposes of this section, the department shall:

(a) Determine shelter expenses to be the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

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

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

(b) Consider the standard shelter allocation to be three hundred ~~((eighty-nine))~~ ninety-nine dollars, effective April 1, ~~((1996))~~ 1997.

(c) Consider as "excess shelter expenses" an amount equal to the actual expenses under subsection (5)(a) of this section less the standard shelter allocation under subsection (5)(b) of this section.

(6) The department shall determine the amount the institutional spouse allocates to the community spouse may only be greater than the amount in subsection (4)(e)(i) of this section when:

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

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

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

(8) SSI-related clients.

(a) SSI-related clients shall continue to receive total payment under 1611 (b)(1) of the Social Security Act for the first three full calendar months of institutionalization in a public or Medicaid-approved medical institution or facility when the:

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

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

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

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

WSR 97-08-040

EMERGENCY RULES

BOARD OF

PILOTAGE COMMISSIONERS

[Filed March 28, 1997, 8:20 a.m.]

Date of Adoption: March 13, 1997.

Purpose: To modify pilot license limitations in order to enable a new pilot, during his/her fifth year, to perform pilotage services on vessels having a higher gross tonnage.

Citation of Existing Rules Affected by this Order: Amending WAC 296-116-082.

Statutory Authority for Adoption: RCW 88.16.105.

Under 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: It is necessary to broaden the pilot work force in the Grays Harbor pilotage district as soon as possible since there is currently only one pilot who holds an unlimited license. By modifying certain license limitations, the emergency rule will provide for an additional qualified pilot to handle larger vessels and alleviate the hardship.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 1, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 1, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 1, repealed 0.

Effective Date of Rule: Immediately.

March 14, 1997

Peggy Larson
Administrator

AMENDATORY SECTION (Amending WSR 93-09-016, filed 4/14/93, effective 5/15/93)

WAC 296-116-082 Limitations on new pilots. (1) The following limitations shall apply to a newly licensed pilot during his/her first five years of active service. Except where otherwise noted, the pilotage assignment may include docking and undocking of vessels within the tonnage limitations. All tonnages referred to are international tonnages.

(2) Progressive lifting of tonnage limitations requires a newly licensed pilot to satisfactorily complete the familiarization/training trips listed under the supervision of a five-year pilot. This veteran pilot shall complete and submit an evaluation form for each trip a new pilot performs. All of these trips must, if practical, be completed during the last ninety days of the license year.

(3) Puget Sound pilotage district - License limitations.

(a) First year:

(i) Not authorized to pilot loaded petroleum tankers.

(ii) Not authorized to pilot any vessels in excess of 25,000 gt or 660' in length or any passenger vessels in excess of 5,000 gt.

(b) Second year:

(i) Not authorized to pilot loaded petroleum tankers in excess of 25,000 gt.

(ii) Not authorized to pilot any vessels in excess of 30,000 gt.

(c) Third year:

(i) Not authorized to pilot loaded petroleum tankers in excess of 32,000 gt.

(ii) Not authorized to pilot any vessels in excess of 45,000 gt.

(d) Fourth year:

(i) Not authorized to pilot loaded petroleum tankers in excess of 32,000 gt.

(ii) Not authorized to pilot any vessels in excess of 60,000 gt.

(e) Fifth year:

(i) Not authorized to pilot loaded petroleum tankers in excess of 45,000 gt.

(ii) Not authorized to pilot any vessels in excess of 75,000 gt.

(4) Puget Sound pilotage district - Familiarization/training trips.

(a) Prior to the expiration of the FIRST license year, a new pilot must make three familiarization/training trips, two of which shall involve docking loaded petroleum tankers of not more than 25,000 gt; and the third trip shall involve a bridge and waterway transit of a vessel between 25,000 and 35,000 gt.

(b) Prior to the expiration of the SECOND license year, a new pilot must make three familiarization/training trips, two of which shall involve docking loaded petroleum tankers between 25,000 and 32,000 gt; and the third trip shall involve the anchoring of a vessel between 30,000 and 45,000 gt.

(c) Prior to the expiration of the THIRD license year, a new pilot must make two familiarization/training trips which shall involve the docking of vessels between 45,000 and 55,000 gt other than loaded petroleum tankers.

(d) Prior to the expiration of the FOURTH license year, a new pilot must make three familiarization/training trips which shall involve docking loaded petroleum tankers of between 32,000 and 45,000 gt.

(e) Prior to the expiration of the FIFTH license year, a new pilot must make three familiarization/training trips which shall involve two trips docking and one trip anchoring loaded petroleum tankers of 55,000 gt or larger.

(5) Grays Harbor pilotage district - License limitations.

(a) First year:

(i) Not authorized to pilot loaded tankers or barges carrying chemical or petroleum products.

(ii) Not authorized to pilot any vessels in excess of 17,500 gt.

(iii) Not authorized to pilot loaded or partially loaded vessels through the Chehalis River bridges.

(b) Second year:

(i) Not authorized to pilot loaded tankers or barges carrying chemical or petroleum products in excess of 10,000 gt.

(ii) Not authorized to pilot any vessels in excess of 20,000 gt.

(c) Third year: Not authorized to pilot any vessels in excess of 22,500 gt.

(d) Fourth Year: Not authorized to pilot any vessels in excess of 25,000 gt.

(e) Fifth year: Not authorized to pilot any vessels in excess of ~~((27,500))~~ 30,000 gt.

(6) Grays Harbor pilotage district - Familiarization/training trips.

(a) Prior to the expiration of the FIRST license year, a new pilot must make ten familiarization/training trips. Eight

of these trips shall be through the Chehalis River bridges on loaded or partially loaded vessels. The other trips may be elsewhere on the waterway but shall be on vessels in excess of 17,500 gt.

(b) Prior to the expiration of the SECOND license year, a new pilot must make three familiarization/training trips on vessels in excess of 20,000 gt. Two of these trips shall involve docking and passage to or from the sea buoy; and one of these trips shall involve turning the vessel in the waterway.

(c) Prior to the expiration of the THIRD license year, a new pilot must make three familiarization/training trips on vessels in excess of 25,000 gt to or from the sea buoy. Two of these trips shall involve docking these vessels.

(d) Prior to the expiration of the FOURTH license year, a new pilot must make three familiarization/training trips on vessels in excess of 27,500 gt or on the nearest larger size vessels available. Two of these trips shall involve docking these vessels; and one of these trips shall involve turning the vessel in the waterway.

(e) Prior to the expiration of the FIFTH license year, a new pilot must make three familiarization/training trips on vessels in excess of ~~((30,000))~~ 32,500 gt or on the nearest larger size vessels available.

(7) The initial license shall contain the limitations contained above and list the date of commencement and expiration of such periods. If a newly licensed pilot is unable to pilot for forty-five days or more in any one of the five years, he shall notify the board and request a revised schedule of limitations.

(8) No pilot shall be dispatched to, or accept an assignment on, any vessel which exceeds the limitations of his/her license. On vessels in which there is more than one pilot assigned, the license limitations shall apply only to the pilot in charge.

(9) All limitations on a new pilot's license shall be lifted at the beginning of the sixth year of piloting provided he/she has submitted to the board a statement attesting to the fact that he/she has completed all the required familiarization/training requirements and the vessel simulator courses required.

WSR 97-08-043
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 28, 1997, 11:28 a.m., effective April 1, 1997]

Date of Adoption: March 28, 1997.

Purpose: Adopt special drywall rules, classifications and base rates to implement changes in how workers' compensation premiums are charged. Industry representatives have asked that changes be implemented on an emergency basis effective April 1, 1997.

Citation of Existing Rules Affected by this Order: Repealing WAC 296-17-52114, 296-17-52115 and 296-17-52117; and amending WAC 296-17-45003, 296-17-45006, and 296-17-89502.

Statutory Authority for Adoption: RCW 51.04.020(1), 51.16.035, and 51.16.100.

Under 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: Businesses have requested these rule changes so that owners are permitted to deduct the amount of material they install. If these changes are not implemented, owners will be required to pay premiums on work they perform, which is excluded by law.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 9, amended 4, repealed 3.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 9, amended 4, repealed 3.

Effective Date of Rule: April 1, 1997.

March 19, 1997

Gary Moore

Director

AMENDATORY SECTION (Amending WSR 97-06-007, filed 2/24/97, effective 4/1/97)

WAC 296-17-45003 Building, construction and erection contractor reporting rules. (1) **Who does this rule apply to?** If you are a building, construction or erection contractor and we have assigned one or more of the following classifications to your business this rule applies to you: 0101, 0102, 0103, 0104, 0105, 0107, 0108, 0201, 0202, 0210, 0212, 0214, 0217, 0219, 0301, 0302, 0303, 0306, 0307, 0403, 0502, 0504, 0506, 0507, 0508, 0509, 0510, 0511, 0512, 0513, 0514, 0516, 0517, 0518, 0519, 0521, 0522, 0523, 0524, 0525, 0526, 0527, 0528, 0529, 0530, 0531, 0532, 0533, 0534, 0601, 0602, 0603, 0607, 0608, and 0701.

(2) **How are classifications assigned to my business?** We will assign a classification or number of separate classifications which describe the business(es) you are involved in. For example, if you are a plumbing contractor we will assign a plumbing classification to your business (classification 0306). The plumbing classification covers all of the various phases of plumbing work such as rough in plumbing work, house to sewer hookup if performed by employees of the plumbing contractor and installation of the fixtures. In some cases we will assign several classifications to your business. For example, if you were building a house (single-family dwelling) and you were going to do the foundation, framing, roofing and finish carpentry we would assign your business classification 0217 for the foundation work; classification 0510 for framing the structure; classifi-

0507 for installing the roofing material; and classification 0513 for finish carpentry work. We will not assign separate classifications to your business for work activities which are included within a classification which we have assigned to your business. For example, if you are a concrete foundation contractor and you employ a carpenter to make and set foundation forms, you would report the carpenter's hours in the concrete foundation classification (0217) and not a carpentry classification (0510).

(3) **What happens if I have several classifications assigned to my business but I did not keep track of the time my employees spent on the different phases of construction.** If we have assigned more than one classification to your business, you must keep track of the actual time your employees spend under each classification which we have assigned to your business. If we audit your business, and we find that you did not keep accurate time records required by WAC 296-17-35201 we will assign all work hours in question to the highest rated classification applicable to the work hours in question.

(4) **Who can I call if questions on how to use the different classification which you have assigned to my business?** We would be happy to assist you with this and other questions you might have. You can call us at (360) 902-4817 Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m. Pacific time and one of our representatives will assist you.

(5) **Can I report all of my construction operations under one classification?** Yes, you can report all construction operations in one classification if we have preapproved it. To obtain this approval you must contact your policy manager. Your policy manager will ask you for a breakdown of the estimated project hours by phase of construction for the construction project. We will send you a letter confirming the classification which will apply to a project when you have requested a single classification.

(6) **If you approve a single classification for one of my projects does this preapproval apply to all of my projects?** No, the single classification approval only applies to a specific project or group of projects which are specified in our letter to you.

(7) **Can I be held liable for unpaid premiums of subcontractors which I use?** Yes, if you want to avoid being held responsible for unpaid premiums on work you subcontract out to others (RCW 51.12.070), you should only use currently licensed or registered contractors (chapter 18.27 or 19.28 RCW).

(8) **How can I be sure that a contractor is licensed or registered with you?** The best way is to ask the contractor for their license or registration number and expiration date and then call us to verify that the information is correct. It's a good idea to write this information down somewhere that you can locate easily, it may come in handy in the future. If we audit you, we will ask you for a list of the subcontractors that you have used during a specific period of time, their license or registration number and the expiration date of the license or registration. You can simplify the audit by making and keeping this list as a part of your regular business records.

(9) **What happens if you audit me and I do not have a list of the contractors described in subsection (8) of this section?** If we audit you, and you are unable to provide us

with this list while we are doing the audit, we will allow you a reasonable amount of time to provide us with this list. In the event that you do not provide us this list, or we cannot verify that a contractor that you used has paid premiums on the work you subcontracted to them and they were either not licensed or registered, or we determine that their license or registration was not current when you used them, we will charge you for the premiums they should have paid.

(10) **Do I need any other information on subcontracted work?** If you purchase materials such as but not limited to roofing material, framing lumber, concrete, or sheet rock, and supply this material to a contractor on a job you are working on, you should keep a record which shows the volume of material you have supplied (square feet) to the contractor; the project name or location; the date when the material was given to the contractor or delivered to the construction site; the approximate completion date of the contracted work; the name of the contractor that performed the work for you; their contractor license or registration number; and the expiration date of their license or registration. We will ask you for this information if we audit your business.

(11) **What classification should I use to report construction site cleanup by my employees?** You should report the cleanup of construction debris in the same classification that applied to the work which generated the debris unless another classification treatment is provided for in other rules. For example, if you are a roofing contractor and you have an employee pick up roofing debris at the construction (project) site, you would report the employee involved in the site cleanup in the roofing classification (0507). If you are the general contractor at a construction site and have either classification 0510 "wood frame building construction" or classification 0518 "nonwood frame building construction" assigned to your business you would report site cleanup in the classification applicable to the type of building you are constructing. For example, if you are a general contractor and you are engaged in building a single-family wood frame dwelling, you would report construction site cleanup by your employees in classification 0510 "wood frame building construction." An example of where construction site cleanup is treated differently is drywall work. Employees of nonbuilding material dealers engaged in wallboard scrapping are reported in either classification 0529 or classification 0534 as applicable.

(12) **I am a construction site clean-up contractor, my employees only pick up construction debris, we do no construction work, what classification do I report site cleanup in?** If your employees are cleaning a construction site where a wood frame building was erected you would report their work time in classification 0510 "wood frame building construction." If your employees are cleaning a construction site where a nonwood frame building was erected you would report their work time in classification 0518 "nonwood frame building construction." If your employees are cleaning other nonbuilding construction sites you would report their work time in the same classification that applied to the construction work that generated the nonbuilding construction debris. For example, if you are doing site cleanup for a concrete contractor that was involved in pouring and finishing sidewalks and drive ways, you would report the work time of your employees involved

in this construction site clean-up project in classification 0217 "concrete flatwork." The classification treatment of nonbuilding material dealers engaged in wallboard cleanup (scrapping) are to be reported in either classification 0529 or classification 0534 as applicable.

(13) **What classification should I use to report the work time of my employees when they are involved in the set up of scaffolding, hoists, cranes, towers or elevators at a construction site?** We use the same classification treatment for this type of work as we do with construction site cleanup. For example, if you are a roofing contractor and you have an employee set up scaffolding at the construction (project) site, you would report the employee involved in the set up of scaffolding in the roofing classification (0507). If you are the general contractor at a construction site and have either classification 0510 "wood frame building construction" or classification 0518 "nonwood frame building construction" assigned to your business you would report the set up of scaffolding at the construction in the classification applicable to the type of building you are constructing. For example, if you are a general contractor and you are engaged in building a single-family wood frame dwelling, you would report scaffolding set up by your employees in classification 0510 "wood frame building construction." Helicopter services that are engaged to assist in lifting beams, air conditioning units, statues and other objects on to buildings or structures are to be reported separately in classification 6803.

(14) **Is preoccupancy cleanup of a building by my employees classified the same as debris cleanup at a construction site?** Since your understanding of what preoccupancy clean-up work is may be different from ours, we need to share with you our understanding before we can answer this question. Our understanding in this area is that preoccupancy cleanup occurs after the building is finished. The clean-up work consists of washing paint and over spray from windows, vacuuming carpets, washing floors and fixtures, and dusting woodwork, doors and cabinets. If you have employees whose duties are limited to this type of cleaning we will allow you to report their work time in classification 6602 "janitors."

(15) **If I have an employee who does some construction work, construction site cleanup and preoccupancy cleanup can I divide their work time between the janitor and a construction classification?** No, we will not permit you to divide the work time of an employee between the janitor classification and a construction classification. If you have an employee who does preoccupancy clean-up work for you, and that employee also performs other nonpreoccupancy clean-up work for you such as construction work, shop work or construction site debris clean-up work, then you must report all of their work time in the applicable construction or nonshop classification. We would be happy to assist you with this and other questions you might have. You can call us at the phone number listed in subsection (4) of this section and one of our representatives will assist you.

(16) **Can I use a shop classification to report the work time of one of my employees who works in my shop or yard?** If you have a shop or yard where you maintain and store construction equipment and machinery, and/or store materials which you use in your construction business, you may qualify for a separate shop classification. There are

several conditions which must be met before we will assign a shop classification to your business. A separate rule (WAC 296-17-675) describes these conditions. If you would like to see if you qualify for a shop classification you can call us at the phone number listed in subsection (4) of this section and one of our representatives will assist you.

(17) **What classification do I use to report my construction superintendent or project manager?** We have a special classification (4900) which may apply to your business but there are several conditions which must be met before we will assign this classification to your business. A separate rule (WAC 296-17-64999) describes these conditions. If you would like to see if you qualify for a special classification you can call us at the phone number listed in subsection (4) of this section and one of our representatives will assist you.

AMENDATORY SECTION (Amending WSR 97-06-007, filed 2/24/97, effective 4/1/97)

WAC 296-17-45006 Special drywall industry rule.

(1) **Why are we changing the way you pay premiums?** Under Washington law (RCW 51.16.035), we are given the authority to establish how workers' compensation insurance rates are computed. For most industries, workers' compensation insurance rates are based on hours worked by employees. While the worker hour system works well for most industries, this method of paying premium is unfair when a large segment of workers within an industry are not paid an hourly wage. The drywall industry is one in which many workers are paid on the basis of material installed (piece work), not the hours they work. As a result, employers have developed a variety of different ways of converting payroll to hours worked to comply with our hourly reporting requirements. In many instances the conversion of payroll to hours worked has resulted in the under reporting of work hours to us. Under reporting results in higher premium rates which you pay. To help remedy the problems caused by using work hours as the basis of how you pay premiums, and to provide greater fairness to employers engaged in drywall work, the premium for classifications 0522, 0523, 0524 (~~and~~), 0525, 0526, 0527, 0528, 0529, 0530, 0531, 0532, 0533, and 0534 is based on material (~~installed~~) (square feet).

(2) **How can I qualify for a discounted rate?** For each drywall industry classification, we will establish a second classification covering the same activity. The second classification will carry a discounted rate. To qualify for a discounted classification and rate you will be required to meet all of the following conditions:

(a) (~~Attend a special claims, risk management and premium reporting workshop which we will offer.~~) Attend two workshops that we will offer. One workshop covers claims and risk management practices. The other workshop will cover premium reporting and recordkeeping. Be sure to sign in so that you receive credit for attending.

(b) Submit complete and accurate premium reports when they are due and be current with all premium reports and payments. If you owe us money (premiums) for any quarter or period prior to December 31, 1996, we will allow you to report in the discounted classifications (~~provided that all current reports and premiums are filed and paid on time and~~

you). To meet this condition you must file all reports required by this section when due; pay the required premiums on time; and if you have not paid premiums which were due for any quarterly report you submitted to us prior to and including the fourth quarter 1996 (December 31, 1996), maintain a current payment agreement with us for any past due premium. You will not be allowed to use a discounted classification if you fail to submit reports ((and)), or make premium payments on time for any period beginning with the first quarter 1997. This requirement applies to any classification assigned to your business and for any exposure (hours, square feet, etc.) which occurs after January 1, 1997.

(c) Provide us with a supplemental quarterly report which shows by employee the employee's name and Social Security number, the wages you paid them during the quarter, the basis for how they are paid, (piece rate, commission, hourly, etc.) their rate of pay per unit/hour, and a notation as to whether they are an installer, finisher, scrapper, painter, etc.

(d) Provide us with a voluntary release of information form that we can give to the material supply dealer that you use. We will use this release form to obtain material and supply/purchase sales records in the event of an audit. This will aid us as we verify the information you supply us on your premium and supplemental reports. If we need to verify the information that you supplied us, we will send you written notice before we contact your material supply dealer.

(e) For any work which you subcontract to others, you must maintain the records described in WAC 296-17-45003.

(f) Keep and retain the payroll and employment records described in WAC 296-17-35201.

If you do not meet all of the above conditions, we will not assign the discounted rates to your business and you will be required to pay premiums in the nondiscounted classification(s).

(3) Can I be disqualified from using the discounted rates? Yes, your business will be disqualified from using the discounted premium rates if you do not file premium reports on time; if you fail to pay premiums on time; ((€)) if you under report or misclassify the work performed by your employees; if you fail to maintain the payments in a payment agreement you have entered into with us; or fail to meet any other condition set forth in this rule.

(4) How long will I be disqualified from using the discounted classifications? If we disqualify your business from using the discounted classifications, the disqualification will be for three years (thirty-six months) from the period of last noncompliance.

(5) I have several businesses, if one of my businesses is disqualified from using the discounted rates will that affect my other businesses? Yes, if you have ownership interest in a business which has been disqualified from using the discounted rates, and you also have ownership interest in other construction businesses which have separate industrial insurance accounts or subaccounts, all businesses in which you have ownership interest will be disqualified from using the discounted rates. This includes a business which you own or owned that is in bankruptcy status and for which you have not entered into a payment agreement, if you owe us any money; or money that you owe us which we wrote off as an uncollectible debt.

(6) What if I make a mistake in how I reported to you, should I correct the error? Yes, you should send in a revised report with an explanation of the error you are trying to correct. If we audit your business, and we determine that you have under reported exposure in any classification assigned to your business, all exposure which you reported in the discounted classifications for the audit period will be reclassified to the nondiscounted classifications.

(7) If I disagree with an audit or other decision can I still use the discounted rates while we are resolving the issue? Yes, if you are involved in a dispute with us over the status of an independent contractor, the issue being whether an individual is a covered worker; the proper classification of work your employees performed((=)); or under reporting((=)); you may qualify for the discounted classifications by paying the disputed amount while the issue is under dispute. ((#)) In the event the issue is resolved in your favor we will refund any moneys which you paid which were disputed. We will not pay interest on the refunded amount. If you do not pay the audit balance or disputed amount when requested or post an equivalent bond, you will not be permitted to use any of the discounted classifications.

(8) I am the owner of the business, and I do some of the work myself, can I deduct the work I do from the total square feet to be reported to you? Yes, as an owner of the business you can deduct the amount of work that you did from the total square feet which you are going to report to us.

(9) How do I calculate and report this deduction to you? To claim this deduction you must send us a report which shows by job, project, site or location the total amount of material that was installed or finished at that job, project, site or location; the amount of material which you as the owner installed and/or finished at the job, project, site or location; the hours that it took you to install and/or finish the material you are claiming deduction for, the total material installed and/or finished by employees at the job, project, site or location; and the hours the employees worked by job, project, site or location. This report must accompany the quarterly report in which you are claiming a deduction. If there are several owners, you must supply this information for each owner you wish to claim a deduction for.

NEW SECTION

WAC 296-17-52118 Classification 0526.

Wallboard taping - discounted rate

This classification excludes wallboard installation, wallboard priming and texturing, wallboard stocking, and wallboard scrapping which is to be reported separately in classification applicable to the work being performed.

Special note: The basis of premium for this classification is material finished (square feet).

NEW SECTION

WAC 296-17-52119 Classification 0527.

Wallboard priming and texturing - discounted rate

This classification includes incidental painting when performed by employees of an employer subject to this classification, but excludes wallboard installation, wallboard taping, wallboard stocking, and wallboard

scrapping which is to be reported separately in classification applicable to the work being performed.

Special note: The basis of premium for this classification is material finished (square feet).

NEW SECTION

WAC 296-17-52120 Classification 0528.

Wallboard stocking by nonmaterial dealer employees - discounted rate

This classification excludes wallboard stocking by building material dealer employees which is to be reported separately in classification 1101, wallboard installation, wallboard taping, wallboard priming and texturing and wallboard scrapping which is to be reported separately in classification applicable to the work being performed.

Special note: The basis of premium for this classification is material stocked (square feet).

NEW SECTION

WAC 296-17-52121 Classification 0529.

Wallboard scrapping by nonmaterial dealer employees - discounted rate

This classification excludes wallboard scrapping by building material dealer employees which is to be reported separately in classification 1101, wallboard installation, wallboard taping, wallboard stocking, and wallboard priming and texturing which is to be reported separately in classification applicable to the work being performed.

Special note: The basis of premium for this classification is material stocked (square feet).

NEW SECTION

WAC 296-17-52122 Classification 0530.

Wallboard installation - nondiscounted rate

This classification excludes wallboard taping, wallboard priming, wallboard texturing work, wallboard stocking and wallboard scrapping which is to be reported separately in the classification applicable to the work being performed. This classification does not apply to employees of a building material dealer engaged in stocking or scrapping which are to be reported separately in classification 1101.

Special note: The basis of premium for this classification is material installed (square feet).

NEW SECTION

WAC 296-17-52123 Classification 0531.

Wallboard taping - nondiscounted rate

This classification excludes wallboard installation, wallboard priming and texturing, wallboard stocking, and wallboard scrapping which is to be reported separately in classification applicable to the work being performed.

Special note: The basis of premium for this classification is material finished (square feet).

NEW SECTION

WAC 296-17-52124 Classification 0532.

Wallboard priming and texturing - nondiscounted rate

This classification includes incidental painting when performed by employees of an employer subject to this classification, but excludes wallboard installation, wallboard taping, wallboard stocking, and wallboard scrapping which is to be reported separately in classification applicable to the work being performed.

Special note: The basis of premium for this classification is material finished (square feet).

NEW SECTION

WAC 296-17-52125 Classification 0533.

Wallboard stocking by nonmaterial dealer employees - nondiscounted rate

This classification excludes wallboard stocking by building material dealer employees which is to be reported separately in classification 1101, wallboard installation, wallboard taping, wallboard priming and texturing and wallboard scrapping which is to be reported separately in classification applicable to the work being performed.

Special note: The basis of premium for this classification is material stocked (square feet).

NEW SECTION

WAC 296-17-52126 Classification 0534.

Wallboard scrapping by nonmaterial dealer employees - nondiscounted rate

This classification excludes wallboard scrapping by building material dealer employees which is to be reported separately in classification 1101, wallboard installation, wallboard taping, wallboard stocking, and wallboard priming and texturing which is to be reported separately in classification applicable to the work being performed.

Special note: The basis of premium for this classification is material stocked (square feet).

AMENDATORY SECTION (Amending WSR 97-06-007, filed 2/24/97, effective 4/1/97)

WAC 296-17-89502 Industrial insurance accident fund, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications. The base rates as set forth below are for classifications whose premium rates are based on units other than hours worked.

Base Rates Effective
(~~January~~) April 1, 1997

Class	Accident Fund	Medical Aid Fund	Supplemental Pension Fund
0522	0.0242	0.0090	0.0003
0523	0.0151	0.0059	0.0003
0524	((0.0160 0.0060))	0.0054	
	<u>0.0145</u>	<u>0.0054</u>	0.0003
0525	0.0100	0.0039	0.0003
0526	0.0093	0.0036	0.0003
<u>0527</u>	<u>0.0007</u>	<u>0.0003</u>	<u>0.0001</u>

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<u>0528</u>	<u>0.0024</u>	<u>0.0009</u>	<u>0.0001</u>
<u>0529</u>	<u>0.0015</u>	<u>0.0006</u>	<u>0.0001</u>
<u>0530</u>	<u>0.0218</u>	<u>0.0081</u>	<u>0.0003</u>
<u>0531</u>	<u>0.0141</u>	<u>0.0055</u>	<u>0.0003</u>
<u>0532</u>	<u>0.0010</u>	<u>0.0004</u>	<u>0.0001</u>
<u>0533</u>	<u>0.0036</u>	<u>0.0014</u>	<u>0.0001</u>
<u>0534</u>	<u>0.0024</u>	<u>0.0009</u>	<u>0.0001</u>

March 28, 1997
Evan Jacoby
for Bern Shanks
Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 296-17-52114 Classification 0522.
- WAC 296-17-52115 Classification 0523.
- WAC 296-17-52117 Classification 0525.

**WSR 97-08-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE
(Wildlife)**

[Order 97-59—Filed March 28, 1997, 3:25 p.m., effective April 1, 1997, 12:01 a.m.]

Date of Adoption: March 28, 1997.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900H; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.040.

Under 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: Game fish rules provide opportunity to harvest surplus hatchery steelhead during open salmon fishery.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, amended 0, repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: April 1, 1997, 12:01 a.m.

NEW SECTION

WAC 232-28-61900H Regional exceptions to permanent game fish rules. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective April 1 through May 31, 1997: Special daily limit of two hatchery steelhead greater than 20 inches in length, or two salmon or one of each, in those waters of the Wind River from boundary line/markers at the mouth upstream to 400 feet below Shipperd Falls. Wild steelhead release. Nonbuoyant lure and night closure restrictions apply to the fishery provided for in this section.

(2) Effective April 1 through May 15, 1997: Special daily limit of two hatchery steelhead greater than 20 inches in length, or two salmon or one of each, in those waters of Drano Lake (Little White Salmon River) from the Highway 14 Bridge upstream to markers on points of land downstream and across from the federal salmon hatchery. Wild steelhead release. Nonbuoyant lure and night closure restrictions apply to the fishery provided for in this section.

(3) Effective April 2 through May 31, 1997: Special daily limit of one hatchery steelhead greater than 20 inches in length, or one salmon in those waters of the Klickitat River from the mouth upstream to the Fisher Hill Bridge. Open on Wednesday and Saturdays only. Wild steelhead release. Nonbuoyant lure and night closure restrictions apply to the fishery provided for in this section.

(4) Effective May 8 through May 31, 1997: Special daily limit of one hatchery steelhead greater than 20 inches in length, or one salmon in those waters of Icicle Creek from boundary makers at the mouth of the Icicle upstream to 400 feet below Leavenworth National Fish Hatchery rack. Wild steelhead release. Nonbuoyant lure and night closure restrictions apply to the fishery provided for in this section.

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 effective 12:01 a.m. June 1, 1997:

- WAC 232-28-61900H Regional exceptions to permanent game fish rules.

**WSR 97-08-048
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE
(Fisheries)**

[Order 97-58—Filed March 28, 1997, 3:26 p.m., effective April 1, 1997, 12:01 a.m.]

Date of Adoption: March 28, 1997.

Purpose: Personal use rules.

EMERGENCY

Citation of Existing Rules Affected by this Order:
Amending WAC 220-57-315, 220-57-321, 220-57-505, and
220-57-515.

Statutory Authority for Adoption: RCW 75.08.080.

Under 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 recreational fishery. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 4, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: April 1, 1997, 12:01 a.m.

March 28, 1997

Evan Jacoby
for Bern Shanks
Director

NEW SECTION

WAC 220-57-31500C Klickitat River. Notwithstanding the provisions of WAC 220-57-315, effective April 2 through May 31, 1997: Special daily limit of two salmon greater than 12 inches in length or two hatchery steelhead, or one of each, in those waters of the Klickitat River from the mouth upstream to the Fisher Hill Bridge. Open on Wednesday and Saturdays only. Nonbuoyant lure and night closure restrictions apply to the fishery provided for in this section.

NEW SECTION

WAC 220-57-32100B Little White Salmon River (Drano Lake) Notwithstanding the provisions of WAC 220-57-321 and WAC 220-56-105, effective April 1 through May 15, 1997: Special daily limit of two salmon greater than 12 inches in length or two hatchery steelhead, or one of each, in those waters of Drano Lake (Little White Salmon River) from the Highway 14 Bridge upstream to markers on points of land downstream and across from the Federal Salmon Hatchery. Nonbuoyant lure and night closure restrictions apply to the fishery provided for in this section.

NEW SECTION

WAC 220-57-50500Z White Salmon River. Notwithstanding the provisions of WAC 220-57-505 and WAC 220-56-105:

(1) Effective April 1, 1997 until further notice, special daily limit of one salmon greater than 12 inches in length in those waters of the White Salmon River from boundary markers at the mouth upstream to the powerhouse.

(2) Effective April 1 through June 15, 1997, special daily limit of one salmon greater than 12 inches in length in those waters of the White Salmon River from the powerhouse upstream to 400 feet below Northwestern (Condit) Dam.

NEW SECTION

WAC 220-57-51500M Wind River. Notwithstanding the provisions of WAC 220-57-515 and WAC 220-56-105:

(1) Effective April 1 through May 31, 1997: Special daily limit of two salmon greater than 12 inches in length or two hatchery steelhead, or one of each, in those waters of the Wind River from boundary line/markers at the mouth upstream to markers 400 feet below Shipperd Falls. Nonbuoyant lure and night closure restrictions apply to the fishery provided for in this section.

(2) Effective June 1 through June 15, 1997: Special daily limit of two salmon greater than 12 inches in length in those waters of the Wind River from boundary line/markers at the mouth upstream to markers 400 feet below Shipperd Falls.

(3) Effective June 1 through June 15, 1997: Special daily limit of two salmon greater than 12 inches in length in those waters of the Wind River from the High Bridge upstream to a lower boundary marker below Carson National Fish Hatchery.

**WSR 97-08-053
EMERGENCY RULES
DEPARTMENT OF
RETIREMENT SYSTEMS**
[Filed March 31, 1997, 4:43 p.m.]

Date of Adoption: March 31, 1997.

Purpose: To provide rules governing the assessment of expenses for teachers' retirement system plan III members who wish to avail themselves of the self-directed investment options authorized by the Employee Retirement Benefits Board.

Statutory Authority for Adoption: RCW 41.50.088, 41.34.060.

Under 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: Teachers' retirement system plan III members have expressed considerable interest at Employee Retirement Benefits Board meetings in being able to self-direct the investment of their TRS III accounts. RCW 41.34.060 requires that individual members pay the

expenses associated with self-directed investment. RCW 41.34.060 also requires the board to adopt rules describing how expenses are determined and how those charges will be assessed against members. Adopting these rules as emergency rules effective immediately is necessary in order to allow the board to offer the self-directed options effective April 1, 1997.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 2, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: Immediately.

March 31, 1997

John Charles, Chair

Employee Retirement Benefits Board

NEW SECTION

WAC 415-200-030 Teachers' retirement system plan III external administrators. The employee retirement benefits board may obtain external investment management services to assist with the provision of self-direct investment options. External administrator and investment management services will be obtained through competitive procurement processes to ensure teachers' retirement system plan III members receive quality services and competitive pricing. The department of retirement systems may select external administrators to assist with the administration of the defined contribution portion of the teachers' retirement system plan III established under chapter 41.34 RCW.

NEW SECTION

WAC 415-200-040 Self-directed investment—Expenses paid by members. RCW 41.34.060 allows members of the teachers' retirement system plan III to elect to self-direct their investments using options approved by the employee retirement benefits board. Members electing to self-direct their investments must pay the expenses caused by the self-directed investment program.

(1) **Assessment of member expenses for self-directed investment.** Each month, the third-party administrator will allocate self-directed investment expenses to each participating member. The expenses allocated to members shall include:

- (a) External third party administrator costs;
- (b) External investment manager and consultant costs;

and

- (c) State investment board investment management operating expenses, in the case of investment options provided through the state investment board.

Each category of expense shall be expressed in terms of basis points. A basis point is equal to one-hundredth of one percent. The administrator will determine the participating member's monthly fee by multiplying the average monthly value of each participating member's self-directed account assets by the basis points for each expense category.

(2) **Adoption of expense charge.** The expense charges used to calculate self-directed investment fees for participating members shall be established in a memorandum of understanding, interagency agreement, and/or contract. Each expense charge shall be reviewed and approved at a regularly scheduled meeting of the employee retirement benefits board, with opportunity for public testimony. No expense charge may be included in a memorandum of understanding, interagency agreement, and/or contract until such charge has been approved by the employee retirement benefits board. No expense charge which has been approved may be changed unless such change has been approved by the board.

WSR 97-08-074

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Public Assistance)

[Filed April 2, 1997, 8:20 a.m.]

Date of Adoption: April 1, 1997.

Purpose: Eliminates organ transplants and related medical coverage for aliens otherwise eligible for emergency medical services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-505-0520.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, and 74.08.090.

Other Authority: 42 CFR 440.255, Section 401 of HR 3734.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Federal requirement.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 1, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 1, repealed 0.

Effective Date of Rule: Immediately.

April 1, 1997

Merry A. Kogut, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending Order 3983, filed 6/6/96, effective 7/7/96)

WAC 388-505-0520 Citizenship and alien status. (1)

The department shall provide Medicaid to an otherwise eligible person who is:

- (a) A citizen of the United States; or
- (b) A North American Indian born in Canada claiming fifty percent:
 - (i) Indian blood; or
 - (ii) Or less Indian blood and who has maintained United States residency since before December 25, 1952.
- (c) An alien lawfully admitted for permanent residence or otherwise permanently residing under color of law (PRUCOL) in the United States; or
- (d) An alien lawfully present in the United States according to sections 203 (a)(7), 207(c), 208, and 212 (d)(5) of the Immigration and Nationality Act (INA); or
- (e) An alien granted lawful temporary residence, or permanent residence according to sections 245(a), 210, 210(f), and 210A of INA and sections 202 and 302 of the Immigration Reform and Control Act (IRCA), unless five years from the date Immigration and Naturalization Service (INS) grants lawful temporary resident status has not passed; or
- (f) An alien approved by the INS under the family unity program, unless five years from the date INS grants lawful temporary resident status for the petitioning relative has not passed.

(2) When an alien as described under subsection (1)(e) or (f) of this section has not passed the five-year disqualification period, the department shall provide Medicaid to an otherwise eligible person when the alien is:

- (a) Aged, blind, or disabled; or
- (b) Seventeen years of age or under; or
- (c) Pregnant; or
- (d) A Cuban/Haitian entrant as defined in sections 501 (e)(1) and (2)(A) of P.L. 96-422.

(3) When an alien as described under subsection (1)(e) or (f) of this section is still under the five-year disqualification period, and is not described under subsection (2) of this section, the department shall provide medical care and services as necessary for treatment of the alien's emergency medical condition as defined under WAC 388-500-0005.

(4) For any other alien, when such alien meets the eligibility requirements of a Medicaid program other than citizenship or alien status requirements, the department shall provide Medicaid as follows:

- (a) Full scope medical services for a pregnant woman; or
- (b) Medical care and services, with the exception of organ transplants and related medical services, as necessary for treatment of the alien's emergency medical condition as defined under WAC 388-500-0005.

(5) Medical care services and children's health programs do not require citizenship/alien status.

OFFICE OF THE CODE REVISER
Quarterly Rule Making Report
Covering Registers 97-01 through 97-06

Type of Activity	New	Amended	Repealed
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AGRICULTURE, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	2	23	1
Number of Rules Adopted as Emergency Rules	16	1	0
Number of Rules Proposed for Permanent Adoption	10	3	0
Number of Rules Withdrawn	5	2	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	7	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	1	22	2
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	6	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	7	0
Number of Sections Adopted on the Agency's own Initiative	1	16	1
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	7	15	1
Number of Sections Adopted using Pilot Rule Making	0	0	0

BELLINGHAM TECHNICAL COLLEGE

Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	1	0	0

BUILDING CODE COUNCIL

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	33	2	0
Number of Rules Adopted as Emergency Rules	4	0	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	0	0
Number of Sections Adopted using Negotiated Rule Making	33	2	0
Number of Sections Adopted using Other Alternative Rule Making	4	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

COMMUNITY AND TECHNICAL COLLEGES, STATE BOARD FOR

Type of Activity	New	Amended	Repealed
Number of Rules Adopted as Emergency Rules	0	5	0
Number of Rules Proposed for Permanent Adoption	0	5	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	5	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	5	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	5	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

MISCELLANEOUS

COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	1	6	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	1	6	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	1	6	0
Number of Sections Adopted using Negotiated Rule Making	1	6	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

CORRECTIONS, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	6	5	0

COUNTY ROAD ADMINISTRATION BOARD

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	0	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	0	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

EASTERN WASHINGTON UNIVERSITY

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	1	13	1
Number of Rules Adopted as Emergency Rules	1	13	1
Number of Rules Proposed for Permanent Adoption	1	13	1
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	1	12	1
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	1	0
Number of Sections Adopted on the Agency's own Initiative	1	12	1
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

ECOLOGY, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	2	8	1
Number of Rules Adopted as Emergency Rules	0	1	0
Number of Rules Proposed for Permanent Adoption	0	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	3	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	2	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	3	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	2	3	0
Number of Sections Adopted on the Agency's own Initiative	3	2	0
Number of Sections Adopted using Negotiated Rule Making	0	3	0

MISCELLANEOUS

Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

EDUCATION, STATE BOARD OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	183	17	111
Number of Rules Proposed for Permanent Adoption	183	19	112
Number of Rules Withdrawn	3	2	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	2	4	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	180	16	116
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	182	16	116
Number of Sections Adopted using Pilot Rule Making	0	0	0

FINANCIAL INSTITUTIONS, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	1	1	4
Number of Rules Proposed for Permanent Adoption	3	1	0
Number of Rules Withdrawn	0	2	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	1	4
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	1	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	1	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

FISH AND WILDLIFE, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	3	21	0
Number of Rules Adopted as Emergency Rules	50	0	37
Number of Rules Proposed for Permanent Adoption	8	33	25
Number of Rules Withdrawn	0	6	0
Number of Sections Adopted at Request of a Nongovernmental Entity	1	0	1
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	1	0	1
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	37	23	25
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

FOREST PRACTICES BOARD

Type of Activity	New	Amended	Repealed
Number of Rules Adopted as Emergency Rules	0	2	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	2	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0

Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

GAMBLING COMMISSION

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	1	3	0
Number of Rules Adopted as Emergency Rules	0	1	0
Number of Rules Proposed for Permanent Adoption	0	11	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	3	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	1	3	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	1	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	1	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	1	0
Number of Sections Adopted on the Agency's own Initiative	1	2	0
Number of Sections Adopted using Negotiated Rule Making	0	1	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

GENERAL ADMINISTRATION, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	3	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	1	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	3	1	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	3	1	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

GROWTH MANAGEMENT HEARINGS BOARDS

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	4	31	6
Number of Rules Proposed for Permanent Adoption	4	34	6
Number of Rules Withdrawn	0	3	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	4	30	6
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	1	11	0
Number of Sections Adopted on the Agency's own Initiative	3	22	6
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

HEALTH CARE AUTHORITY

Type of Activity	New	Amended	Repealed
Number of Rules Adopted as Emergency Rules	0	6	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	5	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	5	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

MISCELLANEOUS

HEALTH, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	15	8	16
Number of Rules Proposed for Permanent Adoption	0	7	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	16
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	4	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	7	1	0
Number of Sections Adopted on the Agency's own Initiative	10	3	16
Number of Sections Adopted using Negotiated Rule Making	4	0	0
Number of Sections Adopted using Other Alternative Rule Making	10	6	0
Number of Sections Adopted using Pilot Rule Making	0	0	16

HORSE RACING COMMISSION

Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	21	0	49

INSURANCE COMMISSIONER'S OFFICE

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	5	6	0
Number of Rules Proposed for Permanent Adoption	5	6	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	5	6	0
Number of Sections Adopted on the Agency's own Initiative	0	0	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

LABOR AND INDUSTRIES, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	51	36	39
Number of Rules Adopted as Emergency Rules	6	3	7
Number of Rules Proposed for Permanent Adoption	34	57	22
Number of Rules Withdrawn	3	0	0
Number of Sections Adopted at Request of a Nongovernmental Entity	6	1	2
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	43	1	34
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	2	25	2
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	1	0
Number of Sections Adopted on the Agency's own Initiative	49	9	35
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	55	11	38
Number of Sections Adopted using Pilot Rule Making	0	0	0

LAND USE STUDY COMMISSION

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	8	0	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	8	0	0
Number of Sections Adopted on the Agency's own Initiative	8	0	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0

MISCELLANEOUS

Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

LICENSING, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	6	79	4
Number of Rules Proposed for Permanent Adoption	2	25	2
Number of Rules Withdrawn	3	0	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	16	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	2	65	3
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	4	1	1
Number of Sections Adopted on the Agency's own Initiative	2	63	3
Number of Sections Adopted using Negotiated Rule Making	0	6	1
Number of Sections Adopted using Other Alternative Rule Making	1	65	1
Number of Sections Adopted using Pilot Rule Making	0	0	0

LOTTERY COMMISSION

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	10	5	0
Number of Rules Proposed for Permanent Adoption	5	4	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	10	5	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

NATURAL RESOURCES, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	0	3	0
Number of Rules Proposed for Permanent Adoption	0	2	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	2	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	1	0
Number of Sections Adopted on the Agency's own Initiative	0	2	0
Number of Sections Adopted using Negotiated Rule Making	0	1	0
Number of Sections Adopted using Other Alternative Rule Making	0	2	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

NOXIOUS WEED CONTROL BOARD

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	0	11	0
Number of Rules Proposed for Permanent Adoption	0	6	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	1	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	3	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	6	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

MISCELLANEOUS

OUTDOOR RECREATION, INTERAGENCY COMMITTEE FOR

Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	0	7	2

PERSONNEL RESOURCES BOARD/PERSONNEL, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	0	11	0
Number of Rules Proposed for Permanent Adoption	0	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	11	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	11	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	11	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

PILOTAGE COMMISSIONERS, BOARD OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	0	2	0
Number of Rules Adopted as Emergency Rules	0	1	0
Number of Rules Proposed for Permanent Adoption	0	3	0
Number of Rules Withdrawn	0	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	2	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	2	0
Number of Sections Adopted on the Agency's own Initiative	0	1	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	3	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

POLLUTION LIABILITY INSURANCE AGENCY

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	0	9	1
Number of Rules Proposed for Permanent Adoption	0	9	1
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	9	1
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

PUBLIC DISCLOSURE COMMISSION

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	0	1	0
Number of Rules Proposed for Permanent Adoption	0	2	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	1	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0

Number of Sections Adopted on the Agency's own Initiative	0	1	0
Number of Sections Adopted using Negotiated Rule Making	0	1	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

PUBLIC INSTRUCTION, SUPERINTENDENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	0	3	0
Number of Rules Proposed for Permanent Adoption	9	8	1
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	3	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	3	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	3	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

RETIREMENT SYSTEMS, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	82	3	3
Number of Rules Proposed for Permanent Adoption	1	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	81	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	1	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	12	2	0
Number of Sections Adopted on the Agency's own Initiative	81	1	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

REVENUE, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	1	5	0
Number of Rules Adopted as Emergency Rules	0	1	0
Number of Rules Proposed for Permanent Adoption	0	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	1	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	1	0	0
Number of Sections Adopted on the Agency's own Initiative	0	3	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	6	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

SKAGIT VALLEY COLLEGE

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	1	0	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	1	0	0
Number of Sections Adopted on the Agency's own Initiative	0	0	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0

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Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

SOCIAL AND HEALTH SERVICES, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	12	39	1
Number of Rules Adopted as Emergency Rules	9	23	1
Number of Rules Proposed for Permanent Adoption	15	40	1
Number of Rules Withdrawn	0	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	10	6	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	8	31	1
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	8	6	0
Number of Sections Adopted in Order to Comply with Federal Statute	10	17	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	1	10	0
Number of Sections Adopted on the Agency's own Initiative	0	32	2
Number of Sections Adopted using Negotiated Rule Making	3	5	0
Number of Sections Adopted using Other Alternative Rule Making	10	22	1
Number of Sections Adopted using Pilot Rule Making	0	0	0

TACOMA COMMUNITY COLLEGE

Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	0	0	124

TRANSPORTATION, COMMISSION AND DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	1	3	0
Number of Rules Proposed for Permanent Adoption	17	11	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	3	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	1	3	0
Number of Sections Adopted using Negotiated Rule Making	1	3	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

VETERANS AFFAIRS, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	0	2	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	2	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	2	0
Number of Sections Adopted on the Agency's own Initiative	0	0	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	2	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

WASHINGTON STATE PATROL

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	3	23	3
Number of Rules Adopted as Emergency Rules	0	2	0
Number of Rules Proposed for Permanent Adoption	0	22	3
Number of Sections Adopted at Request of a Nongovernmental Entity	0	1	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	2	23	3
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0

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Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	1	2	0
Number of Sections Adopted on the Agency's own Initiative	1	21	3
Number of Sections Adopted using Negotiated Rule Making	1	21	3
Number of Sections Adopted using Other Alternative Rule Making	1	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

Type of Activity	New	Amended	Repealed
TOTALS FOR THE QUARTER:			
Number of Permanent Rules Adopted	435	381	191
Number of Rules Adopted as Emergency Rules	86	59	46
Number of Rules Proposed for Permanent Adoption	319	332	349
Number of Rules Withdrawn	14	17	0
Number of Sections Adopted at Request of a Nongovernmental Entity	17	38	3
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	147	236	67
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	11	43	2
Number of Sections Adopted in Order to Comply with Federal Statute	11	22	4
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	43	51	1
Number of Sections Adopted on the Agency's own Initiative	392	286	209
Number of Sections Adopted using Negotiated Rule Making	43	49	4
Number of Sections Adopted using Other Alternative Rule Making	273	169	157
Number of Sections Adopted using Pilot Rule Making	0	0	16

WSR 97-08-001
PROCLAMATION
OFFICE OF THE GOVERNOR
 [March 19, 1997]

WSR 97-08-002
PROCLAMATION
OFFICE OF THE GOVERNOR
 [March 19, 1997]

AMENDING PROCLAMATION OF AN EMERGENCY

The severe storm causing extensive flooding due to high rain fall amounts and mountain snow melt began on March 18, 1997, is continuing to threaten citizens and property in Washington State;

WHEREAS, severe flooding is causing extensive damage to public property, private property, and infrastructure in Clallam, Lewis, and Pacific counties;

NOW THEREFORE, I, GARY LOCKE, Governor of the state of Washington, as a result of the aforementioned situation and under RCW 43.06 and 38.52, do hereby amend the proclamation of March 18, 1997, and further proclaim that a State of Emergency exists in Clallam, Lewis, and Pacific counties and authorize execution of the Washington State Comprehensive Emergency Management Plan.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the state of Washington to be affixed at Olympia, this nineteenth day of March, A.D., nineteen hundred and ninety-seven.

 Gary Locke
 Governor of Washington

BY THE GOVERNOR

 Ralph Munro
 Secretary of State

WHEREAS, a severe storm causing extensive flooding due to high rain fall amounts and mountain snow melt began on March 18, 1997, threatening citizens and property of Washington State;

WHEREAS, severe flooding is causing extensive damage to public property, private property, and infrastructure in Grays Harbor, Jefferson, Kitsap, and Mason counties;

WHEREAS, the Washington State Military Department, following the state's Comprehensive Emergency Management Plan is coordinating resources to support local officials in alleviating the immediate social and economic impacts to people and property. The severity and magnitude of the destruction from flooding are beyond the capabilities of the affected political subdivisions;

NOW THEREFORE, I, GARY LOCKE, Governor of the state of Washington, as a result of the aforementioned situation and under RCW 43.06 and 38.52, do hereby proclaim that a State of Emergency exists in Grays Harbor, Jefferson, Kitsap, and Mason counties and direct implementation of the Washington State Comprehensive Emergency Management Plan. State agencies and departments are directed to utilize state resources and to do everything possible to assist affected political subdivisions in an effort to cope with the emergency. I also hereby order into active service the State of Washington National Guard, or such part thereof as may be necessary in the opinion of the Adjutant General to perform such duties as directed by competent authority. Additionally, the Washington State Military Department, Emergency Management Division is instructed

MISCELLANEOUS

to coordinate all disaster-related assistance to the affected areas.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the state of Washington to be affixed at Olympia, this nineteenth day of March, A.D., nineteen hundred and ninety-seven.

Gary Locke
Governor of Washington

BY THE GOVERNOR

Ralph Munro
Secretary of State

WSR 97-08-006
PROCLAMATION
OFFICE OF THE GOVERNOR
[March 19, 1997]

AMENDING PROCLAMATION OF AN EMERGENCY

The severe storm causing extensive flooding due to high rain fall amounts and mountain snow melt began on March 18, 1997, is continuing to threaten citizens and property in Washington State;

WHEREAS, severe flooding is causing extensive damage to public property, private property, and infrastructure in Skagit, Snohomish and Thurston counties;

NOW THEREFORE, I, GARY LOCKE, Governor of the state of Washington, as a result of the aforementioned situation and under RCW 43.06 and 38.52, do hereby amend the proclamation of March 18, 1997, and further proclaim that a State of Emergency exists in Skagit, Snohomish and Thurston counties and authorize execution of the Washington State Comprehensive Emergency Management Plan.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the state of Washington to be affixed at Olympia, this nineteenth day of March, A.D., nineteen hundred and ninety-seven.

Gary Locke
Governor of Washington

BY THE GOVERNOR

Ralph Munro
Secretary of State

WSR 97-08-008
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
[Filed March 24, 1997, 1:53 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Administrative Policy 13.08.
Subject: Information technology (IT) purchased goods and services.

Effective Date: March 1, 1997.

Document Description: This policy provides department staff with direction on purchasing information technology goods, equipment, and services. Specifically, how to request an IT purchase and who must authorize certain purchases based upon dollar amount.

This issuance will ensure that information technology purchases are made in accordance with law, policy, and the Department of Social and Health Services IT plans, and that purchases are approved by the appropriate authority based upon dollar amount. The policy increases the dollar threshold for Information System Services Division (ISSD) and assistant secretary approvals from \$10,000 to \$50,000.

To receive a copy of the interpretive or policy statement, contact Christy Gullion, Office of Contracts and Asset Management, P.O. Box 45811, Olympia, WA 98504-5811, phone (360) 902-7649, TDD (360) 753-4542, FAX (360) 586-8487, e-mail cgullion@dshs.wa.gov.

March 14, 1997
Philip A. Wozniak
Director

WSR 97-08-009
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
[Filed March 24, 1997, 1:55 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Administrative Policy 14.07.
Subject: Control of fixed assets.
Effective Date: March 1, 1997.

Document Description: Administrative Policy 14.07 was issued in October 1996 in response to concerns raised by the state auditor about asset management operations. This was a full three months prior to the issuance of the asset management (AM) manual. Policy 14.07 is being revised so that it is consistent with policy as set forth in the AM manual.

Section G of this policy clarifies the department's policy on ownership of fixed assets associated with contractors. OCAM did not receive final approval of this policy from the Attorney General's Office until after Policy 14.07 was issued in October. This addition to policy is consistent with policy detailed in the AM manual. Also, we have added reference to forms that were inadvertently omitted when this policy was originally issued.

To receive a copy of the interpretive or policy statement, contact Christy Gullion, Office of Contracts and Asset Management, P.O. Box 45811, Olympia, WA 98504-5811, phone (360) 902-7649, TDD (360) 753-4542, FAX (360) 586-8487, e-mail cgullion@dshs.wa.gov.

March 14, 1997
Philip A. Wozniak
Director

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WSR 97-08-010
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed March 24, 1997, 1:57 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Medical News Bulletin 4/97 #1.
Subject: Billing for drug-induced abortions.
Effective Date: April 1997.

Document Description: This bulletin is being sent in response to provider questions regarding how to bill MAA for methotrexate and misoprostol. These two drugs have been recently approved by the Food and Drug Administration (FDA) for use in inducing abortions. This bulletin gives the two HCPCS codes to use when billing and what to indicate on the HCFA-1500 claim form when billing.

To receive a copy of the interpretive or policy statement, contact Anne DeJarnette, Administrative Regulations Analyst, Department of Social and Health Services, Medical Assistance Administration, Division of Client Services, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 664-2320, TDD 1-800-848-5429, FAX (360) 753-7315, e-mail dejarae@dshs.wa.gov.

March 18, 1997
Steven Wish, Section Head
Division of Client Services

WSR 97-08-011
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed March 24, 1997, 1:59 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Medical News Bulletin 4/97 #2.

Subject: Diagnosis code change for billing maternity case management services.

Effective Date: April 1997.

Document Description: When billing MAA for maternity case management services, please use **diagnosis code V99.1** in field 21 and 24E on the HCFA-1500 claim instead of V61.22. Diagnosis code V99.1 has been specially designated for maternity case management services and maternity support services. A billing instruction replacement page showing the new diagnosis code has also been attached.

To receive a copy of the interpretive or policy statement, contact Anne DeJarnette, Administrative Regulations Analyst, Department of Social and Health Services, Medical Assistance Administration, Division of Client Services, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 664-2320, TDD 1-800-848-5429, FAX (360) 753-7315, e-mail dejarae@dshs.wa.gov.

March 18, 1997
Steven Wish, Section Head
Division of Client Services

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WSR 97-08-012
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed March 24, 1997, 2:00 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Medical News Bulletin 4/97 #3.

Subject: Continuation [continuation] of removal of prior authorization for home health services as well as necessary clarification to facilitate payment of home health claims.

Effective Date: February 28, 1997.

Document Description: **Effective February 28, 1997, until further notice**, MAA will continue to no longer require prior authorization for home health services. A replacement page is attached. Also, home health agencies are experiencing problems regarding payment approval for home health claims since prior authorization was discontinued. In order for them to understand the claim review responses they are receiving from our office, and to facilitate review for payment of home health claims a few reminders have been added to this bulletin to home health agencies when billing MAA for services.

To receive a copy of the interpretive or policy statement, contact Anne DeJarnette, Administrative Regulations Analyst, Department of Social and Health Services, Medical Assistance Administration, Division of Client Services, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 664-2320, TDD 1-800-848-5429, FAX (360) 753-7315, e-mail dejarae@dshs.wa.gov.

March 18, 1997
Steven Wish, Section Head
Division of Client Services

WSR 97-08-013
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed March 24, 1997, 2:03 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Blood Bank Services Billing Instructions.

Subject: Policy, fee schedule, and billing information.
Effective Date: April 1997.

Document Description: This billing instruction gives the current general policy information for blood bank services, the fee schedule for blood bank services, and instructions for billing.

To receive a copy of the interpretive or policy statement, contact Anne DeJarnette, Administrative Regulations Analyst, Department of Social and Health Services, Medical Assistance Administration, Division of Client Services, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 664-2320, TDD 1-800-848-5429, FAX (360) 753-7315, e-mail dejarae@dshs.wa.gov.

March 17, 1997
Steven Wish, Section Head
Division of Client Services

WSR 97-08-014
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed March 24, 1997, 2:04 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memoranda #97-07 MAA.

Subject: Continuation of the temporary removal of prior authorization for selected procedures.

Effective Date: March 1, 1997.

Document Description: This document supersedes numbered memoranda #96-85. Effective for dates of service March 1, 1997, until further notice, MAA will continue to no longer require prior authorization for selected procedure codes and selected diagnosis codes. All services that have prior authorization removed will continue to be subject to postpay review, and all current regulations continue to apply. Areas which continue to no longer require prior authorization are specifically identified within this numbered memorandum. Also, an additional sleep center has been added to the list enclosed and changes have been made to the list of codes on page 5 and 6.

To receive a copy of the interpretive or policy statement, contact Anne DeJarnette, Administrative Regulations Analyst, Department of Social and Health Services, Medical Assistance Administration, Division of Client Services, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 664-2320, TDD 1-800-848-5429, FAX (360) 753-7315, e-mail dejarae@dshs.wa.gov.

March 18, 1997

Steven Wish, Section Head
 Division of Client Services

portions of the state rules as federally enforceable. State law requires that companies who want to stay out of the air operating permits program must have emission limits written in a federally enforceable order. Currently, regulatory orders written under the authority in WAC 173-400-091 are federally enforceable. The agencies responsible for air permits had sought to expand this federally enforceable umbrella to include all regulatory orders written under the new source review program and complementary local regulations. Ecology and several other air agencies believe the existing mechanism is sufficient at this time. The Puget Sound Air Pollution Control Agency and Southwest Air Pollution Control Authority chose to continue to request federal approval of their own regulations under this program.

If you have any questions or would like more information about this Notice of Action, please contact Elena Guilfoil at (360) 407-6855.

Elena Guilfoil
 Air Quality Program

WSR 97-08-015
NOTICE OF PUBLIC MEETINGS
WALLA WALLA
COMMUNITY COLLEGE
 [Memorandum—March 21, 1997]

The following changes are made to Walla Walla Community College's board of trustees meeting schedule:

Changed from:

April 23, 1997, 10:30 a.m., Clarkston Center

Changed to:

April 22, 1997, 1:00 p.m., WWCC Main Campus

Changed from:

May 28, 1997, 10:30 a.m., WWCC Main Campus

Changed to:

May 28, 1997, 10:30 a.m., **Clarkston Center** (location change only)

WSR 97-08-022
DEPARTMENT OF ECOLOGY
 [Filed March 25, 1997, 1:20 p.m.]

NOTICE OF ACTION

The Washington State Department of Ecology's air quality program has withdrawn its request to EPA to establish

WSR 97-08-026
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF HEALTH
 (Chiropractic Quality Assurance Commission)
 [Memorandum—February 7, 1997]

Meeting Dates for 1997

January 6, 1997	Open Forum Meeting in Spokane	
January 7, 1997	Open Forum Meeting in Yakima	
January 9, 1997	Chiropractic Commission Meeting	Tyee Hotel, Olympia
January 15/16, 1997	Chiropractic Examination	West Coast Sea-Tac Hotel, Seattle
February 6, 1997	Open Forum Meeting in Vancouver	
February 11, 1997	Open Forum Meeting in Everett	
March 13, 1997	Chiropractic Commission Meeting	La Quinta Inn, Tacoma
April 16/17, 1997	Chiropractic Examination	West Coast Sea-Tac Hotel, Seattle
May 8, 1997	Chiropractic Commission Meeting	Red Lion at the Quay, Vancouver
June 12, 1997	Chiropractic Commission Meeting	Howard Johnsons, Everett
July 16/17, 1997	Chiropractic Examination	West Coast Sea-Tac Hotel, Seattle
August 20/21, 1997	Chiropractic Commission Meeting	Cavanaugh's Inn at the Park, Spokane
October 15/16, 1997	Chiropractic Examination	West Coast Sea-Tac Hotel, Seattle
November 13, 1997	Chiropractic Commission Meeting	

WSR 97-08-027
EXECUTIVE ORDER
OFFICE OF THE GOVERNOR
 [EO 97-02]

REGULATORY IMPROVEMENT

WHEREAS, administrative rules are necessary to implement laws that protect the public health, safety, welfare, and the environment, and to ensure efficient administration of state government.

WHEREAS, in recent years, there has been a steady growth in the number and complexity of administrative rules and their impact on businesses and the general public without a systematic review of their need, effectiveness, reasonableness, clarity, potential conflicting requirements, and consistency with legislative intent.

WHEREAS, to achieve meaningful regulatory reform, clear goals, timelines, and commitments must be established and adhered to by the Governor's office, the Subcabinet on Management Improvement and Results, and each agency head.

NOW THEREFORE, I, Gary Locke, Governor of the State of Washington, declare my commitment to better serve the people of the state of Washington by taking every step necessary to improve the effectiveness and fairness of our regulatory processes. It is, therefore, the purpose of this executive order to accomplish the following:

- To ensure that state regulations that have significant impact on labor, consumers, businesses, and the environment are reviewed on an open and systematic basis and to ensure that they meet standards of need, reasonableness, effectiveness, clarity, fairness, stakeholder involvement, coordination among regulatory agencies, and consistency with legislative intent and statutory authority.
- To ensure that state regulations are consistent with all requirements of the Administrative Procedure Act and that rule making occurs when required by law.

- To create a Subcabinet on Management Improvement and Results to oversee the regulatory review process and to ensure that state government pursues a fair, effective, and sensible regulatory strategy that emphasizes:
 - **Priorities**, whereby rules focus on issues of greatest need;
 - **Partnership**, whereby rule making involves participation of business, labor, the environmental community, non-profit groups, local government, and other stakeholders;
 - **Plain language**, whereby rules are written and organized so they may be easily understood and used by people who are affected by them; and
 - **Performance**, whereby rules are fair, effective, and achieve maximum public protection with reasonable requirements.

To accomplish these purposes, by virtue of the power vested in me, I hereby order and direct the following actions:

I. Regulatory Review

Upon the effective date of this executive order, each state agency shall begin a review of its rules that have significant effects on businesses, labor, consumers, and the environment. Agencies shall determine if their rules should be (a) retained in their current form, or (b) amended or repealed, if they do not meet the review criteria specified in this executive order. Agencies shall concentrate their regulatory review on rules or portions of a rule that have been the subject of petitions filed under RCW 34.05.330 or have been the source of complaints, concerns, or other difficulties that relate to matters other than the specific mandates of the statute on which the rule is based. Agencies that have already established regulatory review processes shall make them consistent with the requirements of this executive order. Each agency head shall designate a person responsible for regulatory review who shall serve as the agency's contact for

MISCELLANEOUS

regulatory review with the Office of the Governor and the Office of Financial Management.

The following criteria shall be used for the review of each rule identified for review:

1. **Need.** Is the rule necessary to comply with the statutes that authorize it? Is the rule obsolete, duplicative, or ambiguous to a degree that warrants repeal or revision? Have laws or other circumstances changed so that the rule should be amended or repealed? Is the rule necessary to protect or safeguard the health, welfare, or safety of Washington's citizens?
2. **Effectiveness and Efficiency.** Is the rule providing the results that it was originally designed to achieve in a reasonable manner? Are there regulatory alternatives or new technologies that could more effectively or efficiently achieve the same objectives?
3. **Clarity.** Is the rule written and organized in a clear and concise manner so that it can be readily understood by those to whom it applies?
4. **Intent and Statutory Authority.** Is the rule consistent with the legislative intent of the statutes that authorize it? Is the rule based upon sufficient statutory authority? Is there a need to develop a more specific legislative authorization in order to protect the health, safety, and welfare of Washington's citizens?
5. **Coordination.** Could additional consultation and coordination with other governmental jurisdictions and state agencies with similar regulatory authority eliminate or reduce duplication and inconsistency? Agencies should consult with and coordinate with other jurisdictions that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.
6. **Cost.** Have qualitative and quantitative benefits of the rule been considered in relation to its cost?
7. **Fairness.** Does the rule result in equitable treatment of those required to comply with it? Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community? Should it be strengthened to provide additional protection?

Each state agency shall develop a plan for the review of its rules and submit the plan to the Governor no later than September 1, 1997. Agencies shall consult with their major stakeholders and constituent groups in the development of the plan. The plan shall: (a) Contain a schedule that identifies which rules will be reviewed and when the review will occur; (b) state the method by which the agency will determine if the rules meet the criteria listed above; (c) provide a means of public participation in the review process and specify how interested persons may participate in the review; (d) take into account the need and resources required, if any, to amend significant legislative rules; (e) identify instances where the agency may require an exception to regulatory review requirements; and (f) provide a process for on-going review of rules after the initial four-year review period provided for in this executive order has expired. Any new rules or significant amendments for

which a notice of intent to adopt is filed after the effective date of this executive order shall be consistent with its principles and objectives and must also be adopted in accordance with applicable laws. Agencies shall provide the plan to any person who has requested notification of agency rule making and shall submit the plan for publication in the Washington State Register.

By October 15, 1997, and on that date each year thereafter until the year 2000, each agency shall report to the Governor on the progress made toward completing its regulatory review and other measures taken to improve its regulatory program. The reports shall include, but not be limited to: (a) a summary of the number of rule sections amended or repealed and the number of pages eliminated in the Washington Administrative Code; (b) a summary of rules amended or repealed based on the review criteria in this executive order; (c) a summary of agency actions in response to petitions under RCW 34.05.330; (d) a summary of the results of the agency's review of policy and interpretive statements and similar documents; (e) a summary of the agency's review of reporting requirements imposed on businesses; (f) recommendations for statutory or administrative changes resulting from the regulatory reviews; and (g) other information the agency deems necessary or that may be required by the Governor. More frequent reports may be requested, as necessary. Agencies shall make the reports available to persons who have requested notification of agency rule making and shall submit them for publication in the Washington State Register.

As part of its regulatory review, each agency shall review its existing policy and interpretive statements or similar documents to determine whether or not they must, by law, be adopted as rules. The review shall include consultation with the Attorney General. Agencies shall concentrate their review on those statements and documents that have been the source of complaints, concerns, or other difficulties.

Each agency shall also review its reporting requirements that are applied generally to all businesses or classes of businesses to ensure that they are necessary and consistent with the principles and objectives of this executive order. The goals of the review shall be to achieve reporting requirements that, to the extent possible, are coordinated with other state agencies with similar requirements, are economical and easy to understand, and rely on electronic transfer of information.

The Office of Financial Management shall develop procedures to ensure that agencies notify and consult with the Governor or the Governor's staff on the substance of any significant legislative rules upon notice of proposed rule making by the agency.

The Governor may grant exceptions to regulatory review requirements in those instances where the substance of rules is mandated by federal law or where an agency can demonstrate an unreasonable conflict with established priorities.

II. Creation of the Governor's Subcabinet on Management Improvement and Results

There is created the Governor's Subcabinet on Management Improvement and Results to consist of the heads of the following agencies: Office of Financial Management, Department of Labor and Industries, Department of Ecology,

Department of Social and Health Services, Department of Revenue, Department of Employment Security, and Department of Health. The chair of the Subcabinet shall be the Governor's Deputy Chief of Staff. Staffing for the Subcabinet shall be provided by the Office of Financial Management, with assistance from the member agencies. All state agencies shall provide the Subcabinet with periodic reports and other information and assistance as may be requested.

The responsibilities of the Subcabinet are:

- To study and make recommendations to the Governor for statutory, administrative, and organizational changes and for special pilot projects that result in regulatory improvements in state government. Recommendations shall be designed to improve service to citizens, provide effective and fair public protection, reduce the complexity of compliance, ensure reasonableness and effectiveness, simplify administrative processes, eliminate unnecessary procedures and paperwork, and reduce costs. The Subcabinet shall report to the Governor on these items no later than December 1, 1997. Subsequent reports shall be submitted in each future year no later than December 1.
- To oversee the regulatory review process established by this executive order and report to the Governor on the progress of state agencies in complying with these requirements. The first such report shall be submitted to the Governor no later than December 1, 1997. Subsequent reports shall be submitted in each future year no later than December 1.
- To assist the Office of Financial Management in the preparation of reports to the Legislature required by RCW 34.05.328(6) and RCW 43.05.900.
- To convene work groups and other special committees for the purpose of assisting the Subcabinet in the development of recommendations and reports required by this executive order and in the design and implementation of special pilot projects for regulatory improvement. Depending on their purpose, membership of such groups may include representatives from business, labor, environmental organizations, state agencies, local government, nonprofit organizations, citizens, and other interests.

III. Effective Date. This executive order shall take effect immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the State of Washington to be Affixed at Olympia this 25th day of March A.D., Nineteen hundred and ninety-seven.

Gary Locke
Governor of Washington

BY THE GOVERNOR:

Ralph Munro
Secretary of State

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

WSR 97-08-028
PROCLAMATION
OFFICE OF THE GOVERNOR
[March 19, 1997]

AMENDING PROCLAMATION OF AN EMERGENCY

The severe storm causing extensive flooding due to high rain fall amounts and mountain snow melt began on March 18, 1997, is continuing to threaten citizens and property in Washington State;

WHEREAS, severe flooding is causing extensive damage to public property, private property and infrastructure in Cowlitz, Ferry, King, Lincoln, Pend Oreille, Spokane, Stevens, Whatcom, and Whitman counties;

NOW THEREFORE, I, GARY LOCKE, Governor of the state of Washington, as a result of the aforementioned situation and under RCW 43.06 and 38.52, do hereby amend the proclamation of March 18, 1997, and further proclaim that a State of Emergency exists in Cowlitz, Ferry, King, Lincoln, Pend Oreille, Spokane, Stevens, Whatcom, and Whitman counties and authorize execution of the Washington State Comprehensive Emergency Management Plan.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the state of Washington to be affixed at Olympia, this nineteenth day of March, A.D., nineteen hundred and ninety-seven.

Gary Locke
Governor of Washington

BY THE GOVERNOR

Ralph Munro
Secretary of State

WSR 97-08-029
NOTICE OF PUBLIC MEETINGS
WASHINGTON CITIZENS COMMISSION
ON SALARIES FOR ELECTED OFFICIALS
 [Memorandum—March 27, 1997]

1997 Meeting Schedule

DATE	CITY	PLACE	TIME
Wednesday, 1/15/97	Seattle	1000 Second Avenue Building WSHFC Board Room, 28th Floor	1:00 p.m. - 3:00 p.m. Work Session Only
Thursday, 2/6/97	Olympia	Work Session 1: Elected Officials Work Session 2: PUBLIC HEARING: Washington State General Administration Building Auditorium, Capitol Campus, 11th and Columbia Streets	2:00 p.m. - 4:30 p.m. 4:45 p.m. - 6:30 p.m. 7:00 p.m. - 8:30 p.m.
Tuesday, 2/25/97	Spokane	Work Session: PUBLIC HEARING: Cavanaugh's River Inn Shoreline A Room North 700 Division	4:30 p.m. - 6:30 p.m. 7:00 p.m. - 8:30 p.m.
Tuesday, 3/11/97	Seattle	Work Session: PUBLIC HEARING: Washington State Housing Finance Commission Board Room; 28th Floor 1000 Second Avenue Building (Between Spring and Madison)	4:30 p.m. - 6:30 p.m. 7:00 p.m. - 8:30 p.m.
Tuesday, 3/25/97	Pasco	Work Session: Red Lion Inn 2525 North 20th, Vineyard Room PUBLIC HEARING: Columbia Basin College Library Building, Lecture Hall, Room #L102; 2600 North 20th	4:30 p.m. - 6:30 p.m. 7:00 p.m. - 8:30 p.m.
Tuesday, 4/8/97	Bellingham	Work Session: PUBLIC HEARING: Breakwater Restaurant Ward Room 2625 Harbor Loop	4:30 p.m. - 6:30 p.m. 7:00 p.m. - 8:30 p.m.
Thursday, 4/24/97	Yakima	Work Session: Veranda Room PUBLIC HEARING: Cavanaugh's at Yakima Center, Upper Terrace Room, 607 East Yakima Avenue	4:30 p.m. - 6:30 p.m. 7:00 p.m. - 8:30 p.m.
Friday, 5/9/97	Seattle	PUBLIC HEARING followed by Work Session Washington State Housing Finance Commission Board Room, 28th Floor 1000 Second Avenue Building (Between Spring and Madison)	10:30 a.m.

WSR 97-08-039
NOTICE OF PUBLIC MEETINGS
WASHINGTON STATE LIBRARY

[Memorandum—March 27, 1997]

The Washington State Library Commission will hold a one-half hour telephone conference call meeting on:

Date: Friday, March 28, 1997
 Time: 8:00 to 8:30
 Location: Washington State Library

WSR 97-08-042
BOARD OF
PILOTAGE COMMISSIONERS

[Filed March 28, 1997, 8:27 a.m.]

Pursuant to Governor Locke's Executive Order 97-02 effective March 25, 1997, the Board of Pilotage Commissioners is recodifying all sections of the two below referenced chapters of the Washington Administrative Code as follows:

OLD

Chapter 296-116 WAC
 Chapter 296-11 WAC

NEW

Chapter 363-116 WAC
 Chapter 363-11 WAC

Recodification of these two chapters moves them from Title 296 WAC, Department of Labor and Industries, to a new Title 363 WAC, Board of Pilotage Commissioners, and is effective immediately.

Peggy Larson
 Administrator

WSR 97-08-049
NOTICE OF PUBLIC MEETINGS
CONVENTION AND TRADE
CENTER

[Memorandum—March 27, 1997]

The Washington State Convention and Trade Center Design Committee will meet on Wednesday, April 2, 1997, from 10:30 a.m. - 12:00 p.m. at Loschky Marquardt and Nesholm, Norton Building, 801 Second Avenue, Level 4 Conference Room, Seattle.

If you have any questions regarding this meeting, please call 447-5000.

WSR 97-08-054
POLICY STATEMENT
DEPARTMENT OF
FINANCIAL INSTITUTIONS

(Securities Division)

[Filed April 1, 1997, 8:35 a.m.]

Subjects: (1) Securities Act Policy Statement - 18; Washington Municipal Security Notice Filing and Fee Requirements Pursuant to the National Securities Markets Improvement Act of 1996 (new).

(2) Securities Act Policy Statement - 19; Washington Investment Adverser [Advisor] and Representative Notice Filing and Fee Requirements Pursuant to the National Securities Markets Improvement Act of 1996 (new).

(3) Securities Act Interpretive Statement - 08; Isolated Transactions/Nonpublic Offerings - RCW 21.20.320(1) (amended).

(4) Securities Act Interpretive Statement - 15; WAC 460-44A-506 (2)(B)—Indeterminate Underwriters Compensation in private placements (repealed).

(5) Securities Act Policy Statement - 17; Washington Investment Company Notice Filing and Fee Requirements Pursuant to the National Securities Markets Improvement Act of 1996 (amended).

To receive a copy of any of the interpretive and policy statements contact Kelli Skeels, Department of Financial Institutions, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, phone (360) 902-8760, FAX (360) 586-5068, e-mail kskeels@dfi.wa.gov.

William M. Beatty
 Senior Securities Examiner

WSR 97-08-063
POLICY STATEMENT
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed April 1, 1997, 1:23 p.m.]

POLICY STATEMENT

Date: March 24, 1997.

Agency: Board of Registration for Professional Engineers and Land Surveyors, Department of Licensing, Business and Professions Division.

Title of Statement: Policy No. 38 - Policy for Changing Exam Branch.

Subject Matter: Describes the procedure the Board of Registration for Professional Engineers and Land Surveyors will use to accommodate approved exam applicants when their original exam branch is no longer being offered.

Effective Date: March 21, 1997.

Contact Person: Shanan Gillespie, Program Coordinator, Board of Registration for Professional Engineers and Land Surveyors, Department of Licensing, Business and Professions Division, P.O. Box 9649, Olympia, WA 98507-9649, (360) 753-6966.

Shanan Gillespie
 Program Coordinator

WSR 97-08-064
POLICY STATEMENT
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed April 1, 1997, 1:24 a.m.]

POLICY STATEMENT

Date: March 24, 1997.

Agency: Board of Registration for Professional Engineers and Land Surveyors, Department of Licensing, Business and Professions Division.

Title of Statement: Policy No. 26 - Refunding Money to an Applicant/Licensee/Customer.

Subject Matter: Describes the procedure the Board of Registration for Professional Engineers and Land Surveyors will use when money submitted for services may be returned to the applicant/licensee/customer.

Effective Date: March 21, 1997.

Contact Person: Shanan Gillespie, Program Coordinator, Board of Registration for Professional Engineers and Land Surveyors, Department of Licensing, Business and Professions Division, P.O. Box 9649, Olympia, WA 98507-9649, (360) 753-6966.

Shanan Gillespie
Program Coordinator

Location: Attorney General Conference Room at RoweSix 4224 Sixth Avenue S.E., Building 1 Lacey, WA 98504
Time: 1:00 p.m.
Dates: May 13, 1997
July 16, 1997
July 24, 1997
September 23, 1997
October 14, 1997 (planning session)
November 4, 1997
December 9, 1997

In the event additional meeting are needed, we are tentatively holding the following dates for special meetings: June 10, 1997, June 24, 1997, and August 19, 1997.

WSR 97-08-065
POLICY STATEMENT
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
[Filed April 1, 1997, 1:25 p.m.]

POLICY STATEMENT

Date: March 24, 1997.

Agency: Board of Registration for Professional Engineers and Land Surveyors, Department of Licensing, Business and Professions Division.

Title of Statement: Policy No. 3 - Policy of Issuing New Number for Revoked Certificates.

Subject Matter: Describes the procedure the Board of Registration for Professional Engineers and Land Surveyors will use to issue a new number for certificates of registrants who have had their original certificate revoked. (This policy was adopted on April 13, 1984, but was never signed. The board directed that the policy be signed by the current board chair.)

Effective Date: March 21, 1997.

Contact Person: Shanan Gillespie, Program Coordinator, Board of Registration for Professional Engineers and Land Surveyors, Department of Licensing, Business and Professions Division, P.O. Box 9649, Olympia, WA 98507-9649, (360) 753-6966.

Shanan Gillespie
Program Coordinator

WSR 97-08-066
NOTICE OF PUBLIC MEETINGS
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)
[Memorandum—March 31, 1997]

The following is a revised list of the scheduled meetings for the 1997 Public Employees Benefits Board (PEBB) to be published in the Washington State Register.

Name of Meeting: Public Employees Benefits Board (PEBB)

WSR 97-08-070
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF
GENERAL ADMINISTRATION
(Capitol Campus Design Advisory Committee)
[Memorandum—March 31, 1997]

Please record the following Capitol Campus Design Advisory Committee special meeting date in the Washington State Register: Thursday, April 3.

The meeting begins at 6:00 p.m. in Rooms B and C, located in the John A. Cherberg Building.

WSR 97-08-082
NOTICE OF PUBLIC MEETINGS
PUBLIC EMPLOYEES BENEFITS BOARD
[Memorandum—April 2, 1997]

Public Employees Benefits Board
Attorney General Conference Center
Lacey, Washington
1:00 p.m., April 8, 1997

If you are a person with a disability and need a special accommodation, please contact Judy Lamm at (360) 923-2828.

Next Meeting Date: May 13, 1997.

WSR 97-08-087
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF
GENERAL ADMINISTRATION
(Capitol Campus Design Advisory Committee)
[Memorandum—April 2, 1997]

The agenda for the Capitol Campus Design Advisory Committee special meeting has been revised. Please record the following change in the Washington State Register: Thursday, April 3.

MISCELLANEOUS

The meeting begins at 6:00 p.m. in Rooms B and C, located in the John A. Cherberg Building.

April 3, 1997
Conference Rooms B & C
John A. Cherberg Building
Olympia, Washington
5:00 Site Visit
6:00 Meeting Starts

MISCELLANEOUS

Table of WAC Sections Affected

KEY TO TABLE

This table covers the current calendar year through this issue of the Register and should be used to locate rules amended, adopted, or repealed subsequent to the publication date of the latest WAC or Supplement.

Symbols:

- AMD = Amendment of existing section
- A/R = Amending and recodifying a section
- DECOD = Decodification of an existing section
- NEW = New section not previously codified
- OBJEC = Notice of objection by Joint Administrative Rules Review Committee
- PREP = Preproposal comments
- RE-AD = Readoption of existing section
- RECOD = Recodification of previously codified section
- REP = Repeal of existing section
- RESCIND = Rescind previous emergency rule
- REVIEW = Review of previously adopted rule

Suffixes:

- C = Continuance of previous proposal
- E = Emergency action
- P = Proposed action
- S = Supplemental notice
- W = Withdrawal of proposed action
- X = Expedited repeal

Note: These filings will appear in a special section of Issue 97-14

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 #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
16-08-031	AMD-P	97-08-086	16-324-620	REP-P	97-07-075	16-700-080	AMD	97-04-078
16-08-141	AMD-P	97-08-086	16-324-630	REP-P	97-07-075	16-750-003	AMD	97-06-108
16-08-171	AMD-P	97-08-086	16-324-650	REP-P	97-07-075	16-750-011	AMD	97-06-108
16-162	PREP	97-04-065	16-324-660	REP-P	97-07-075	16-750-015	AMD	97-06-108
16-218-02001	AMD	97-05-003	16-324-670	REP-P	97-07-075	16-750-020	AMD	97-06-108
16-230-835	AMD-P	97-02-094	16-324-680	REP-P	97-07-075	16-750-130	AMD	97-06-108
16-230-835	AMD-W	97-06-003	16-409-020	AMD-S	97-02-098	51-11-1210	AMD	97-03-017
16-230-862	AMD-P	97-02-094	16-409-020	AMD	97-05-054	51-11-1301	AMD	97-03-017
16-230-862	AMD-W	97-06-003	16-459-010	AMD-E	97-03-063	51-26	PREP	97-06-107
16-324-360	REP-P	97-07-075	16-470-100	AMD-P	97-04-089	51-27	PREP	97-06-107
16-324-361	NEW-P	97-07-075	16-473-001	NEW-P	97-04-090	51-32	PREP	97-03-086
16-324-370	AMD-P	97-07-075	16-473-001	NEW-W	97-05-058	51-34	PREP	97-03-086
16-324-375	AMD-P	97-07-075	16-473-001	NEW-P	97-05-059	131-16	AMD-C	97-07-007
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16-324-381	NEW-P	97-07-075	16-473-010	NEW-W	97-05-058	131-16-011	AMD-E	97-07-006
16-324-382	NEW-P	97-07-075	16-473-010	NEW-P	97-05-059	131-16-021	AMD-E	97-07-006
16-324-390	REP-P	97-07-075	16-473-015	NEW-P	97-04-090	131-16-050	AMD-E	97-07-006
16-324-391	NEW-P	97-07-075	16-473-015	NEW-W	97-05-058	131-16-060	AMD-E	97-07-006
16-324-392	NEW-P	97-07-075	16-473-015	NEW-P	97-05-059	132E-111-010	PREP	97-08-080
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16-324-394	NEW-P	97-07-075	16-473-020	NEW-W	97-05-058	132K-04	AMD-P	97-07-018
16-324-395	NEW-P	97-07-075	16-473-020	NEW-P	97-05-059	132K-04-001	AMD-P	97-07-018
16-324-396	NEW-P	97-07-075	16-473-025	NEW-P	97-04-090	132K-04-010	AMD-P	97-07-018
16-324-397	NEW-P	97-07-075	16-473-025	NEW-W	97-05-058	132K-04-020	AMD-P	97-07-018
16-324-398	NEW-P	97-07-075	16-473-025	NEW-P	97-05-059	132K-04-030	AMD-P	97-07-018
16-324-400	REP-P	97-07-075	16-532	PREP	97-05-067	132K-04-050	AMD-P	97-07-018
16-324-401	NEW-P	97-07-075	16-536-040	PREP	97-08-083	132K-04-070	REP-P	97-07-018
16-324-402	NEW-P	97-07-075	16-695-005	NEW-E	97-04-020	132K-04-080	AMD-P	97-07-018
16-324-409	NEW-P	97-07-075	16-695-010	NEW-E	97-04-020	132K-04-110	AMD-P	97-07-018
16-324-410	REP-P	97-07-075	16-695-015	NEW-E	97-04-020	132K-04-130	AMD-P	97-07-018
16-324-420	AMD-P	97-07-075	16-695-020	NEW-E	97-04-020	132K-08-010	REP-P	97-07-017
16-324-430	REP-P	97-07-075	16-695-025	NEW-E	97-04-020	132N-20	PREP	97-06-008
16-324-431	NEW-P	97-07-075	16-695-030	NEW-E	97-04-020	132V-12-003	REP-P	97-03-128
16-324-435	REP-P	97-07-075	16-695-035	NEW-E	97-04-020	132V-12-003	REP	97-07-048
16-324-445	REP-P	97-07-075	16-695-040	NEW-E	97-04-020	132V-12-006	REP-P	97-03-128
16-324-446	NEW-P	97-07-075	16-695-045	NEW-E	97-04-020	132V-12-006	REP	97-07-048
16-324-450	REP-P	97-07-075	16-695-050	NEW-E	97-04-020	132V-12-009	REP-P	97-03-128
16-324-460	REP-P	97-07-075	16-695-055	NEW-E	97-04-020	132V-12-009	REP	97-07-048
16-324-470	REP-P	97-07-075	16-695-060	NEW-E	97-04-020	132V-12-012	REP-P	97-03-128
16-324-480	REP-P	97-07-075	16-695-065	NEW-E	97-04-020	132V-12-012	REP	97-07-048
16-324-490	REP-P	97-07-075	16-695-070	NEW-E	97-04-020	132V-12-015	REP-P	97-03-128
16-324-500	REP-P	97-07-075	16-695-075	NEW-E	97-04-020	132V-12-015	REP	97-07-048
16-324-510	REP-P	97-07-075	16-695-080	NEW-E	97-04-020	132V-12-018	REP-P	97-03-128
16-324-520	REP-P	97-07-075	16-700-010	AMD	97-04-078	132V-12-018	REP	97-07-048
16-324-530	REP-P	97-07-075	16-700-021	AMD-S	97-04-077	132V-12-021	REP-P	97-03-128
16-324-540	REP-P	97-07-075	16-700-021	AMD	97-04-078	132V-12-021	REP	97-07-048
16-324-600	REP-P	97-07-075	16-700-040	AMD	97-04-078	132V-12-024	REP-P	97-03-128
16-324-605	REP-P	97-07-075	16-700-050	AMD	97-04-078	132V-12-024	REP	97-07-048
16-324-610	REP-P	97-07-075	16-700-060	AMD	97-04-078	132V-12-027	REP-P	97-03-128

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
132V-12-419	REP-P	97-03-128	180-75-005	REP	97-04-088	180-78A-060	NEW	97-04-084
132V-12-419	REP	97-07-048	180-75-016	REP	97-04-088	180-78A-063	NEW	97-04-084
132V-12-422	REP-P	97-03-128	180-75-017	REP	97-04-088	180-78A-065	NEW	97-04-084
132V-12-422	REP	97-07-048	180-75-045	REP	97-04-088	180-78A-068	NEW	97-04-084
132V-12-425	REP-P	97-03-128	180-75-047	REP	97-04-088	180-78A-073	NEW	97-04-084
132V-12-425	REP	97-07-048	180-75-048	REP	97-04-088	180-78A-074	NEW	97-04-084
132V-12-428	REP-P	97-03-128	180-75-050	REP	97-04-088	180-78A-075	NEW	97-04-084
132V-12-428	REP	97-07-048	180-75-055	REP	97-04-088	180-78A-080	NEW	97-04-084
132V-12-431	REP-P	97-03-128	180-75-060	REP	97-04-088	180-78A-135	NEW	97-04-084
132V-12-431	REP	97-07-048	180-75-061	REP	97-04-088	180-78A-140	NEW	97-04-084
132V-12-434	REP-P	97-03-128	180-75-065	REP	97-04-088	180-78A-142	NEW	97-04-084
132V-12-434	REP	97-07-048	180-75-070	REP	97-04-088	180-78A-145	NEW	97-04-084
136-130-060	AMD	97-06-006	180-75-081	DECOD	97-04-082	180-78A-150	NEW	97-04-084
137-28-140	AMD	97-03-041	180-75-082	REP	97-04-088	180-78A-155	NEW	97-04-084
137-28-160	AMD	97-03-041	180-75-083	DECOD	97-04-082	180-78A-160	NEW	97-04-084
137-28-220	AMD	97-03-041	180-75-085	REP	97-04-088	180-78A-165	NEW	97-04-084
137-28-260	AMD	97-03-041	180-75-087	REP	97-04-088	180-78A-195	NEW	97-04-084
137-28-350	AMD	97-03-041	180-75-088	REP	97-04-088	180-78A-197	NEW	97-04-084
137-55-010	NEW	97-03-041	180-75-089	REP	97-04-088	180-78A-201	NEW	97-04-084
137-55-020	NEW	97-03-041	180-75-090	REP	97-04-088	180-78A-260	NEW	97-04-084
137-55-030	NEW	97-03-041	180-75-091	REP	97-04-088	180-78A-265	NEW	97-04-084
137-55-040	NEW	97-03-041	180-75-092	REP	97-04-088	180-78A-266	NEW	97-04-084
137-55-050	NEW	97-03-041	180-75-100	REP	97-04-088	180-78A-300	NEW	97-04-084
137-55-060	NEW	97-03-041	180-75-110	REP	97-04-088	180-78A-301	NEW	97-04-084
172-120-015	NEW	97-06-095	180-77-003	AMD	97-04-085	180-78A-302	NEW	97-04-084
172-120-020	AMD	97-06-095	180-77-031	AMD	97-04-085	180-78A-303	NEW	97-04-084
172-120-030	AMD	97-06-095	180-77-041	AMD	97-04-085	180-78A-304	NEW	97-04-084
172-120-040	AMD	97-06-095	180-77-120	AMD	97-04-085	180-78A-305	NEW	97-04-084
172-120-050	AMD	97-06-095	180-77A-003	NEW	97-04-087	180-78A-306	NEW	97-04-084
172-120-060	AMD	97-06-095	180-77A-004	NEW	97-04-087	180-78A-320	NEW	97-04-084
172-120-070	AMD	97-06-095	180-77A-006	NEW	97-04-087	180-78A-340	NEW	97-04-084
172-120-080	AMD	97-06-095	180-77A-012	NEW	97-04-087	180-78A-345	NEW	97-04-084
172-120-090	AMD	97-06-095	180-77A-014	NEW	97-04-087	180-78A-350	NEW	97-04-084
172-120-100	AMD	97-06-095	180-77A-016	NEW	97-04-087	180-78A-355	NEW	97-04-084
172-120-110	AMD	97-06-095	180-77A-018	NEW	97-04-087	180-78A-360	NEW	97-04-084
172-120-120	AMD	97-06-095	180-77A-020	NEW	97-04-087	180-78A-365	NEW	97-04-084
172-120-130	AMD	97-06-095	180-77A-025	NEW	97-04-087	180-79-003	REP	97-04-088
172-120-140	AMD	97-06-095	180-77A-026	NEW	97-04-087	180-79-005	REP	97-04-088
172-120-150	REP	97-06-095	180-77A-028	NEW	97-04-087	180-79-010	REP	97-04-088
173-22	AMD-C	97-03-129	180-77A-029	NEW	97-04-087	180-79-031	REP	97-04-088
173-22	AMD	97-04-076	180-77A-030	NEW	97-04-087	180-79-032	REP	97-04-088
173-22-015	REP	97-04-076	180-77A-033	NEW	97-04-087	180-79-035	REP	97-04-088
173-22-030	AMD	97-04-076	180-77A-037	NEW	97-04-087	180-79-041	REP	97-04-088
173-22-035	NEW	97-04-076	180-77A-040	NEW	97-04-087	180-79-045	REP	97-04-088
173-22-040	AMD	97-04-076	180-77A-057	NEW	97-04-087	180-79-047	REP	97-04-088
173-22-070	AMD	97-04-076	180-77A-165	NEW	97-04-087	180-79-049	REP	97-04-088
173-22-080	NEW	97-04-076	180-77A-170	NEW	97-04-087	180-79-060	REP	97-04-088
173-202-020	AMD-E	97-05-039	180-77A-175	NEW	97-04-087	180-79-062	REP	97-04-088
173-202-020	PREP	97-08-038	180-77A-180	NEW	97-04-087	180-79-063	REP	97-04-088
173-303	PREP	97-04-062	180-77A-195	NEW	97-04-087	180-79-065	REP	97-04-088
173-401-735	AMD-P	97-04-061	180-78-205	AMD	97-04-081	180-79-075	REP	97-04-088
173-401-735	AMD	97-08-084	180-78-207	RECOD	97-04-081	180-79-080	REP	97-04-088
173-430-040	AMD	97-03-021	180-78-215	AMD	97-04-081	180-79-086	REP	97-04-088
173-491-020	AMD	97-04-012	180-78-217	RECOD	97-04-081	180-79-115	REP	97-04-088
173-491-040	AMD	97-04-012	180-78-235	AMD	97-04-081	180-79-117	REP	97-04-088
173-491-050	AMD	97-04-012	180-78-237	RECOD	97-04-081	180-79-120	REP	97-04-088
174-116	PREP	97-05-044	180-78-285	AMD	97-04-081	180-79-121	REP	97-04-088
174-122	PREP	97-05-044	180-78A-003	NEW	97-04-084	180-79-122	REP	97-04-088
174-130	PREP	97-05-044	180-78A-004	NEW	97-04-084	180-79-123	REP	97-04-088
174-133	PREP	97-05-044	180-78A-005	NEW	97-04-084	180-79-124	REP	97-04-088
174-140	PREP	97-05-044	180-78A-006	NEW	97-04-084	180-79-125	REP	97-04-088
174-276	PREP	97-05-044	180-78A-007	NEW	97-04-084	180-79-126	REP	97-04-088
180-16-221	AMD	97-04-083	180-78A-010	NEW	97-04-084	180-79-127	REP	97-04-088
180-16-222	AMD	97-04-083	180-78A-012	NEW	97-04-084	180-79-128	REP	97-04-088
180-16-223	REP	97-04-083	180-78A-015	NEW	97-04-084	180-79-131	DECOD	97-04-081
180-16-224	REP	97-04-083	180-78A-025	NEW	97-04-084	180-79-136	DECOD	97-04-081
180-40-260	AMD-P	97-04-067	180-78A-026	NEW	97-04-084	180-79-140	DECOD	97-04-081
180-40-260	AMD	97-08-019	180-78A-028	NEW	97-04-084	180-79-230	REP	97-04-088
180-40-310	AMD-P	97-04-067	180-78A-030	NEW	97-04-084	180-79-236	REP	97-04-088
180-40-310	AMD	97-08-019	180-78A-033	NEW	97-04-084	180-79-241	REP	97-04-088
180-51-050	AMD-P	97-04-066	180-78A-037	NEW	97-04-084	180-79-245	REP	97-04-088
180-51-050	AMD	97-08-020	180-78A-047	NEW	97-04-084	180-79-247	REP	97-04-088
180-75-003	REP	97-04-088	180-78A-057	NEW	97-04-084	180-79-300	REP	97-04-088

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
180-79-303	REP	97-04-088	180-79A-170	NEW	97-04-088	180-79A-440	NEW	97-04-088
180-79-305	REP	97-04-088	180-79A-200	NEW	97-04-088	180-79A-445	NEW	97-04-088
180-79-311	REP	97-04-088	180-79A-205	NEW	97-04-088	180-79A-503	NEW	97-04-088
180-79-312	REP	97-04-088	180-79A-210	NEW	97-04-088	180-79A-510	NEW	97-04-088
180-79-315	REP	97-04-088	180-79A-215	NEW	97-04-088	180-79A-515	NEW	97-04-088
180-79-317	REP	97-04-088	180-79A-220	NEW	97-04-088	180-79A-517	NEW	97-04-088
180-79-320	REP	97-04-088	180-79A-225	NEW	97-04-088	180-79A-520	NEW	97-04-088
180-79-322	REP	97-04-088	180-79A-230	NEW	97-04-088	180-85-025	AMD	97-04-086
180-79-324	REP	97-04-088	180-79A-236	NEW	97-04-088	180-85-030	AMD	97-04-086
180-79-326	REP	97-04-088	180-79A-241	NEW	97-04-088	180-85-110	REP	97-04-086
180-79-328	REP	97-04-088	180-79A-300	NEW	97-04-088	180-85-115	REP	97-04-086
180-79-330	REP	97-04-088	180-79A-302	NEW	97-04-088	180-85-120	REP	97-04-086
180-79-332	REP	97-04-088	180-79A-304	NEW	97-04-088	180-85-135	REP	97-04-086
180-79-333	REP	97-04-088	180-79A-306	NEW	97-04-088	180-85-200	AMD	97-04-086
180-79-334	REP	97-04-088	180-79A-308	NEW	97-04-088	180-85-210	AMD	97-04-086
180-79-336	REP	97-04-088	180-79A-310	NEW	97-04-088	180-85-211	NEW	97-04-086
180-79-338	REP	97-04-088	180-79A-311	NEW	97-04-088	180-85-215	AMD	97-04-086
180-79-340	REP	97-04-088	180-79A-312	NEW	97-04-088	180-86-011	NEW	97-04-082
180-79-342	REP	97-04-088	180-79A-315	NEW	97-04-088	180-86-013	RECOD	97-04-082
180-79-344	REP	97-04-088	180-79A-317	NEW	97-04-088	180-86-014	RECOD	97-04-082
180-79-346	REP	97-04-088	180-79A-320	NEW	97-04-088	180-86-080	NEW	97-05-008
180-79-348	REP	97-04-088	180-79A-322	NEW	97-04-088	180-86-080	NEW-W	97-05-043
180-79-350	REP	97-04-088	180-79A-324	NEW	97-04-088	180-86-086	NEW-W	97-05-043
180-79-352	REP	97-04-088	180-79A-326	NEW	97-04-088	180-86-116	NEW	97-05-008
180-79-354	REP	97-04-088	180-79A-328	NEW	97-04-088	180-86-116	NEW-W	97-05-043
180-79-356	REP	97-04-088	180-79A-330	NEW	97-04-088	180-110	PREP	97-05-027
180-79-358	REP	97-04-088	180-79A-332	NEW	97-04-088	180-115	PREP	97-05-026
180-79-360	REP	97-04-088	180-79A-333	NEW	97-04-088	182-08-160	AMD-E	97-06-071
180-79-362	REP	97-04-088	180-79A-334	NEW	97-04-088	182-08-175	AMD-E	97-06-071
180-79-364	REP	97-04-088	180-79A-336	NEW	97-04-088	182-12-117	AMD-E	97-06-070
180-79-366	REP	97-04-088	180-79A-338	NEW	97-04-088	182-25-010	AMD-P	97-08-067
180-79-368	REP	97-04-088	180-79A-340	NEW	97-04-088	182-25-020	AMD-P	97-08-067
180-79-370	REP	97-04-088	180-79A-342	NEW	97-04-088	182-25-030	AMD-E	97-06-069
180-79-372	REP	97-04-088	180-79A-344	NEW	97-04-088	182-25-030	AMD-P	97-08-067
180-79-374	REP	97-04-088	180-79A-346	NEW	97-04-088	182-25-040	AMD-E	97-06-069
180-79-376	REP	97-04-088	180-79A-348	NEW	97-04-088	182-25-040	AMD-P	97-08-067
180-79-378	REP	97-04-088	180-79A-350	NEW	97-04-088	182-25-090	AMD-E	97-06-069
180-79-379	REP	97-04-088	180-79A-352	NEW	97-04-088	182-25-090	AMD-P	97-08-067
180-79-380	REP	97-04-088	180-79A-354	NEW	97-04-088	196-12-010	PREP	97-03-029
180-79-382	REP	97-04-088	180-79A-356	NEW	97-04-088	196-12-020	PREP	97-03-029
180-79-384	REP	97-04-088	180-79A-358	NEW	97-04-088	196-12-030	PREP	97-03-029
180-79-386	REP	97-04-088	180-79A-360	NEW	97-04-088	196-12-050	PREP	97-03-029
180-79-388	REP	97-04-088	180-79A-362	NEW	97-04-088	196-12-060	PREP	97-03-029
180-79-390	REP	97-04-088	180-79A-364	NEW	97-04-088	196-24-030	PREP	97-03-029
180-79-392	REP	97-04-088	180-79A-366	NEW	97-04-088	196-24-040	PREP	97-03-029
180-79-394	REP	97-04-088	180-79A-368	NEW	97-04-088	196-24-050	PREP	97-03-029
180-79-396	REP	97-04-088	180-79A-370	NEW	97-04-088	196-24-085	PREP	97-03-029
180-79-398	REP	97-04-088	180-79A-372	NEW	97-04-088	196-24-100	PREP	97-03-029
180-79A-003	NEW	97-04-088	180-79A-374	NEW	97-04-088	196-24-105	PREP	97-03-029
180-79A-005	NEW	97-04-088	180-79A-376	NEW	97-04-088	197-11	PREP	97-03-130
180-79A-010	NEW	97-04-088	180-79A-378	NEW	97-04-088	197-11-055	AMD-P	97-08-085
180-79A-012	NEW	97-04-088	180-79A-379	NEW	97-04-088	197-11-060	AMD-P	97-08-085
180-79A-013	NEW	97-04-088	180-79A-380	NEW	97-04-088	197-11-070	AMD-P	97-08-085
180-79A-015	NEW	97-04-088	180-79A-382	NEW	97-04-088	197-11-158	NEW-P	97-08-085
180-79A-020	NEW	97-04-088	180-79A-384	NEW	97-04-088	197-11-164	NEW-P	97-08-085
180-79A-022	NEW	97-04-088	180-79A-386	NEW	97-04-088	197-11-168	NEW-P	97-08-085
180-79A-025	NEW	97-04-088	180-79A-388	NEW	97-04-088	197-11-172	NEW-P	97-08-085
180-79A-101	NEW	97-04-088	180-79A-390	NEW	97-04-088	197-11-210	AMD-P	97-08-085
180-79A-105	NEW	97-04-088	180-79A-392	NEW	97-04-088	197-11-238	NEW-P	97-08-085
180-79A-110	NEW	97-04-088	180-79A-394	NEW	97-04-088	197-11-259	AMD-P	97-08-085
180-79A-115	NEW	97-04-088	180-79A-396	NEW	97-04-088	197-11-300	AMD-P	97-08-085
180-79A-117	NEW	97-04-088	180-79A-398	NEW	97-04-088	197-11-310	AMD-P	97-08-085
180-79A-120	NEW	97-04-088	180-79A-403	NEW	97-04-088	197-11-315	AMD-P	97-08-085
180-79A-122	NEW	97-04-088	180-79A-405	NEW	97-04-088	197-11-330	AMD-P	97-08-085
180-79A-125	NEW	97-04-088	180-79A-415	NEW	97-04-088	197-11-340	AMD-P	97-08-085
180-79A-126	NEW	97-04-088	180-79A-417	NEW	97-04-088	197-11-355	NEW-P	97-08-085
180-79A-130	NEW	97-04-088	180-79A-420	NEW	97-04-088	197-11-390	AMD-P	97-08-085
180-79A-131	NEW	97-04-088	180-79A-422	NEW	97-04-088	197-11-408	AMD-P	97-08-085
180-79A-140	NEW	97-04-088	180-79A-423	NEW	97-04-088	197-11-502	AMD-P	97-08-085
180-79A-150	NEW	97-04-088	180-79A-424	NEW	97-04-088	197-11-508	AMD-P	97-08-085
180-79A-160	NEW	97-04-088	180-79A-430	NEW	97-04-088	197-11-535	AMD-P	97-08-085
180-79A-161	NEW	97-04-088	180-79A-433	NEW	97-04-088	197-11-600	AMD-P	97-08-085
180-79A-165	NEW	97-04-088	180-79A-435	NEW	97-04-088	197-11-660	AMD-P	97-08-085

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197-11-680	AMD-P	97-08-085	220-52-07300Q	NEW-E	97-04-049	220-72-088	REP	97-08-078
197-11-702	AMD-P	97-08-085	220-52-07300Q	REP-E	97-05-025	220-72-091	REP	97-08-078
197-11-721	NEW-P	97-08-085	220-52-07300R	NEW-E	97-05-025	220-72-094	REP	97-08-078
197-11-728	AMD-P	97-08-085	220-52-075	AMD	97-08-052	220-77-020	AMD	97-08-078
197-11-775	NEW-P	97-08-085	220-56	AMD-C	97-05-075	220-77-040	AMD	97-08-078
197-11-790	AMD-P	97-08-085	220-56-100	AMD	97-07-078	220-77-065	NEW	97-08-078
197-11-800	AMD-P	97-08-085	220-56-103	AMD	97-07-078	220-88A-070	AMD	97-08-052
197-11-912	AMD-P	97-08-085	220-56-105	AMD	97-07-078	220-88A-080	AMD	97-08-052
197-11-914	AMD-P	97-08-085	220-56-128	AMD	97-07-078	220-95-013	AMD-W	97-03-075
197-11-938	AMD-P	97-08-085	220-56-180	AMD	97-07-078	220-95-018	AMD-W	97-03-075
197-11-940	AMD-P	97-08-085	220-56-205	AMD	97-07-078	220-95-022	AMD-W	97-03-075
197-11-948	AMD-P	97-08-085	220-56-225	AMD-C	97-07-052	220-95-032	AMD-W	97-03-075
197-11-970	AMD-P	97-08-085	220-56-235	AMD	97-07-078	220-110-010	AMD-P	97-07-077
204-10-035	NEW	97-03-087	220-56-240	AMD	97-08-017	220-110-020	AMD-P	97-07-077
204-10-045	PREP	97-03-042	220-56-24000F	REP-E	97-03-001	220-110-031	NEW-P	97-07-077
204-10-045	NEW-P	97-07-036	220-56-24000G	NEW-E	97-03-001	220-110-035	AMD-P	97-07-077
204-41-060	PREP	97-03-043	220-56-255	AMD	97-07-078	220-110-331	NEW-P	97-07-077
204-41-060	NEW-P	97-07-037	220-56-27000A	NEW-E	97-06-035	220-110-332	NEW-P	97-07-077
204-60	AMD	97-04-054	220-56-28500I	NEW-E	97-06-036	220-110-333	NEW-P	97-07-077
204-60-010	AMD	97-04-054	220-56-28500I	REP-E	97-06-036	220-110-334	NEW-P	97-07-077
204-60-030	AMD	97-04-054	220-56-305	AMD	97-08-018	220-110-335	NEW-P	97-07-077
204-72-040	PREP	97-06-100	220-56-310	AMD	97-07-078	220-110-336	NEW-P	97-07-077
204-90-040	AMD	97-04-055	220-56-31000N	REP-E	97-05-011	220-110-337	NEW-P	97-07-077
204-91A-060	AMD-S	97-04-053	220-56-31000P	NEW-E	97-05-011	220-110-338	NEW-P	97-07-077
204-91A-060	AMD-E	97-04-056	220-56-320	AMD	97-07-078	222-10-042	NEW-S	97-08-077
294-91A-060	AMD	97-08-021	220-56-325	AMD	97-07-078	222-12-090	AMD-E	97-07-054
204-91A-140	AMD-S	97-04-053	220-56-330	AMD	97-07-078	222-12-090	AMD-S	97-08-077
204-91A-140	AMD-E	97-04-056	220-56-336	NEW	97-07-078	222-16-010	AMD-S	97-08-077
294-91A-140	AMD	97-08-021	220-56-350	AMD	97-07-078	222-16-030	PREP	97-05-033
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204-95-080	NEW	97-03-127	220-56-36000T	NEW-E	97-04-045	222-16-080	AMD-S	97-08-077
208-440-030	AMD-W	97-03-074	220-56-36000T	REP-E	97-04-045	222-16-087	NEW-S	97-08-077
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208-630-021	NEW-P	97-06-092	220-56-36000U	REP-E	97-07-051	222-30-050	AMD-S	97-08-077
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208-630-023	NEW-P	97-06-092	220-56-380	AMD	97-07-078	222-30-065	AMD-S	97-08-077
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220-20-021	AMD-P	97-04-080	220-57-31000U	NEW-E	97-06-036	230-02-520	AMD-P	97-03-093
220-20-021	AMD	97-07-043	220-57-31500C	NEW-E	97-08-048	230-04-138	AMD-P	97-03-093
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220-32-05700U	NEW-E	97-03-002	220-72-013	REP	97-08-078	230-20-247	AMD	97-05-061
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232-28-02270	AMD	97-06-056	242-02-830	AMD	97-04-008	246-838-030	REP-P	97-07-074
232-28-02280	AMD-W	97-06-084	242-02-832	NEW	97-04-008	246-838-040	REP-P	97-07-074
232-28-02290	AMD	97-06-055	242-02-834	NEW	97-04-008	246-838-050	REP-P	97-07-074
232-28-02290	AMD-P	97-06-127	242-02-840	REP	97-04-008	246-838-060	REP-P	97-07-074
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232-28-61900D	REP-E	97-03-100	246-11-290	AMD-P	97-08-092	246-839-070	REP-P	97-07-074
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242-02-520	AMD	97-04-008	246-321-018	REP	97-03-080	246-839-440	REP-P	97-07-074
242-02-52001	NEW	97-04-008	246-321-020	REP	97-03-080	246-839-450	REP-P	97-07-074
242-02-52002	NEW	97-04-008	246-321-025	REP	97-03-080	246-839-700	REP-P	97-07-074
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242-02-522	AMD	97-04-008	246-321-035	REP	97-03-080	246-839-720	REP-P	97-07-074
242-02-532	AMD	97-04-008	246-321-040	REP	97-03-080	246-839-730	REP-P	97-07-074
242-02-533	AMD	97-04-008	246-321-045	REP	97-03-080	246-839-740	REP-P	97-07-074
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242-02-570	AMD	97-04-008	246-828-015	NEW	97-04-042	246-839-770	REP-P	97-07-074
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246-839-850	REP-P	97-07-074	246-851-150	AMD-P	97-08-094	260-24-520	NEW-P	97-04-060
246-839-860	REP-P	97-07-074	246-851-160	AMD-P	97-08-094	260-24-530	NEW-P	97-04-060
246-839-870	REP-P	97-07-074	246-851-170	AMD-P	97-08-094	260-24-540	NEW-P	97-04-060
246-839-880	REP-P	97-07-074	246-851-180	AMD-P	97-08-094	260-24-550	NEW-P	97-04-060
246-839-890	REP-P	97-07-074	246-851-190	AMD-P	97-08-094	260-24-560	NEW-P	97-04-060
246-839-900	REP-P	97-07-074	246-851-200	AMD-P	97-08-094	260-24-570	NEW-P	97-04-060
246-840-010	NEW-P	97-07-074	246-851-210	REP-P	97-08-094	260-24-580	NEW-P	97-04-060
246-840-020	NEW-P	97-07-074	246-851-220	AMD-P	97-08-094	260-24-590	NEW-P	97-04-060
246-840-030	NEW-P	97-07-074	246-851-230	AMD-P	97-08-094	260-24-600	NEW-P	97-04-060
246-840-030	NEW-P	97-08-093	246-851-240	AMD-P	97-08-094	260-24-610	NEW-P	97-04-060
246-840-040	NEW-P	97-07-074	246-907-020	AMD	97-06-019	260-24-620	NEW-P	97-04-060
246-840-050	NEW-P	97-07-074	246-907-030	AMD	97-06-019	260-24-630	NEW-P	97-04-060
246-840-060	NEW-P	97-07-074	251-01-045	AMD-P	97-08-090	260-24-640	NEW-P	97-04-060
246-840-070	NEW-P	97-07-074	251-01-110	AMD-P	97-08-090	260-24-650	NEW-P	97-04-060
246-840-080	NEW-P	97-07-074	251-04-040	AMD-P	97-08-090	260-24-660	NEW-P	97-04-060
246-840-090	NEW-P	97-07-074	251-04-050	AMD-P	97-08-090	260-24-670	NEW-P	97-04-060
246-840-100	NEW-P	97-07-074	251-10-030	AMD-P	97-08-090	260-24-680	NEW-P	97-04-060
246-840-105	NEW-P	97-07-074	251-12-270	REP-P	97-08-090	260-24-690	NEW-P	97-04-060
246-840-110	NEW-P	97-07-074	251-12-600	AMD-P	97-08-090	260-24-700	NEW-P	97-04-060
246-840-113	NEW-P	97-07-074	251-14-060	AMD	97-06-012	260-32	PREP	97-04-059
246-840-115	NEW-P	97-07-074	251-14-120	AMD	97-06-012	260-48	PREP	97-04-058
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246-840-300	NEW-P	97-07-074	260-24-020	REP-P	97-04-060	262-02-030	PREP	97-06-112
246-840-305	NEW-P	97-07-074	260-24-030	REP-P	97-04-060	262-03	PREP	97-07-068
246-840-310	NEW-P	97-07-074	260-24-040	REP-P	97-04-060	275-27-023	AMD-E	97-03-033
246-840-315	NEW-P	97-07-074	260-24-050	REP-P	97-04-060	275-27-023	AMD-P	97-08-007
246-840-320	NEW-P	97-07-074	260-24-060	REP-P	97-04-060	275-27-220	AMD-E	97-03-033
246-840-330	NEW-P	97-07-074	260-24-070	REP-P	97-04-060	275-27-220	AMD-P	97-08-007
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246-840-345	NEW-P	97-07-074	260-24-090	REP-P	97-04-060	275-27-221	REP-P	97-08-007
246-840-350	NEW-P	97-07-074	260-24-100	REP-P	97-04-060	275-27-222	NEW-P	97-08-007
246-840-360	NEW-P	97-07-074	260-24-110	REP-P	97-04-060	275-27-223	AMD-E	97-03-033
246-840-365	NEW-P	97-07-074	260-24-120	REP-P	97-04-060	275-27-223	AMD-P	97-08-007
246-840-370	NEW-P	97-07-074	260-24-130	REP-P	97-04-060	275-27-400	AMD-E	97-03-033
246-840-400	NEW-P	97-07-074	260-24-140	REP-P	97-04-060	275-27-400	AMD-P	97-08-007
246-840-410	NEW-P	97-07-074	260-24-150	REP-P	97-04-060	284-04	NEW-C	97-03-023
246-840-420	NEW-P	97-07-074	260-24-160	REP-P	97-04-060	284-04	NEW-C	97-03-120
246-840-430	NEW-P	97-07-074	260-24-170	REP-P	97-04-060	284-04	NEW-C	97-08-091
246-840-440	NEW-P	97-07-074	260-24-180	REP-P	97-04-060	284-13-505	NEW	97-05-012
246-840-450	NEW-P	97-07-074	260-24-190	REP-P	97-04-060	284-13-515	NEW	97-05-012
246-840-540	AMD-P	97-07-074	260-24-200	REP-P	97-04-060	284-13-520	AMD	97-05-012
246-840-565	AMD-P	97-07-074	260-24-210	REP-P	97-04-060	284-13-530	NEW	97-05-012
246-840-700	NEW-P	97-07-074	260-24-220	REP-P	97-04-060	284-13-535	NEW	97-05-012
246-840-705	NEW-P	97-07-074	260-24-230	REP-P	97-04-060	284-13-540	AMD	97-05-012
246-840-710	NEW-P	97-07-074	260-24-240	REP-P	97-04-060	284-13-550	AMD	97-05-012
246-840-715	NEW-P	97-07-074	260-24-250	REP-P	97-04-060	284-13-560	AMD	97-05-012
246-840-720	NEW-P	97-07-074	260-24-260	REP-P	97-04-060	284-13-570	AMD	97-05-012
246-840-730	NEW-P	97-07-074	260-24-270	REP-P	97-04-060	284-13-590	AMD	97-05-012
246-840-745	NEW-P	97-07-074	260-24-280	REP-P	97-04-060	284-13-595	NEW	97-05-012
246-840-747	NEW-P	97-07-074	260-24-290	REP-P	97-04-060	284-30-395	NEW-S	97-03-090
246-840-750	NEW-P	97-07-074	260-24-300	REP-P	97-04-060	284-30-395	NEW-C	97-08-045
246-840-760	NEW-P	97-07-074	260-24-310	REP-P	97-04-060	284-43-110	NEW-W	97-08-044
246-840-770	NEW-P	97-07-074	260-24-320	REP-P	97-04-060	284-43-120	NEW-W	97-08-044
246-840-780	NEW-P	97-07-074	260-24-330	REP-P	97-04-060	284-43-130	NEW-W	97-08-044
246-840-800	NEW-P	97-07-074	260-24-340	REP-P	97-04-060	284-43-200	NEW-W	97-08-044
246-840-810	NEW-P	97-07-074	260-24-350	REP-P	97-04-060	284-43-210	NEW-W	97-08-044
246-840-820	NEW-P	97-07-074	260-24-360	REP-P	97-04-060	284-43-300	NEW-W	97-08-044
246-840-830	NEW-P	97-07-074	260-24-370	REP-P	97-04-060	284-43-310	NEW-W	97-08-044
246-840-840	NEW-P	97-07-074	260-24-380	REP-P	97-04-060	284-43-320	NEW-W	97-08-044
246-840-850	NEW-P	97-07-074	260-24-390	REP-P	97-04-060	284-43-330	NEW-W	97-08-044
246-840-860	NEW-P	97-07-074	260-24-400	REP-P	97-04-060	284-43-340	NEW-W	97-08-044
246-840-870	NEW-P	97-07-074	260-24-410	REP-P	97-04-060	284-43-350	NEW-W	97-08-044
246-840-880	NEW-P	97-07-074	260-24-420	REP-P	97-04-060	284-43-360	NEW-W	97-08-044
246-840-890	NEW-P	97-07-074	260-24-430	REP-P	97-04-060	284-43-400	NEW-W	97-08-044
246-840-900	NEW-P	97-07-074	260-24-440	REP-P	97-04-060	284-43-410	NEW-W	97-08-044
246-840-930	AMD-P	97-07-074	260-24-450	REP-P	97-04-060	284-43-420	NEW-W	97-08-044
246-840-940	AMD-P	97-07-074	260-24-460	REP-P	97-04-060	284-43-500	NEW-W	97-08-044
246-851-090	AMD-P	97-08-094	260-24-465	REP-P	97-04-060	284-43-510	NEW-W	97-08-044
246-851-100	AMD-P	97-08-094	260-24-470	REP-P	97-04-060	284-43-520	NEW-W	97-08-044
246-851-110	AMD-P	97-08-094	260-24-480	REP-P	97-04-060	284-43-530	NEW-W	97-08-044

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
284-43-540	NEW-W	97-08-044	296-11-250	DECOD	97-08-042	296-17-89502	AMD-P	97-08-051
284-43-550	NEW-W	97-08-044	296-11-260	DECOD	97-08-042	296-20	PREP	97-02-096
284-43-560	NEW-W	97-08-044	296-11-270	DECOD	97-08-042	296-20-125	PREP	97-02-097
284-43-600	NEW-W	97-08-044	296-11-280	DECOD	97-08-042	296-20-135	PREP	97-02-097
284-43-610	NEW-W	97-08-044	296-11-290	DECOD	97-08-042	296-20-135	AMD-P	97-05-076
284-43-620	NEW-W	97-08-044	296-11-300	DECOD	97-08-042	296-23	PREP	97-02-096
284-43-630	NEW-W	97-08-044	296-11-310	DECOD	97-08-042	296-23-220	PREP	97-02-097
284-43-640	NEW-W	97-08-044	296-11-320	DECOD	97-08-042	296-23-220	AMD-P	97-05-076
284-43-650	NEW-W	97-08-044	296-11-330	DECOD	97-08-042	296-23-230	PREP	97-02-097
284-43-700	NEW-C	97-05-006	296-11-340	DECOD	97-08-042	296-23-230	AMD-P	97-05-076
284-43-700	NEW-C	97-08-046	296-11-350	DECOD	97-08-042	296-23A	PREP	97-02-097
284-44-240	REP-W	97-08-044	296-11-360	DECOD	97-08-042	296-23A-0100	NEW	97-06-066
284-44-410	REP-W	97-08-044	296-11-370	DECOD	97-08-042	296-23A-0110	NEW	97-06-066
284-46-575	REP-W	97-08-044	296-11-380	DECOD	97-08-042	296-23A-0120	NEW	97-06-066
284-51-050	PREP	97-04-074	296-11-390	DECOD	97-08-042	296-23A-0130	NEW	97-06-066
286-13-040	PREP	97-08-079	296-11-400	DECOD	97-08-042	296-23A-0140	NEW	97-06-066
286-13-045	AMD-P	97-04-006	296-11-410	DECOD	97-08-042	296-23A-0150	NEW	97-06-066
286-13-045	AMD	97-08-003	296-11-420	DECOD	97-08-042	296-23A-0160	NEW	97-06-066
286-13-085	AMD-P	97-04-006	296-11-430	DECOD	97-08-042	296-23A-0170	NEW	97-06-066
286-13-085	AMD	97-08-003	296-11-440	DECOD	97-08-042	296-23A-0180	NEW	97-06-066
286-13-110	AMD-P	97-04-006	296-11-450	DECOD	97-08-042	296-23A-0190	NEW	97-06-066
286-13-110	AMD	97-08-003	296-11-460	DECOD	97-08-042	296-23A-0195	NEW	97-06-066
286-13-110	PREP	97-08-079	296-11-470	DECOD	97-08-042	296-23A-0200	NEW	97-06-066
286-13-115	PREP	97-08-079	296-11-480	DECOD	97-08-042	296-23A-0210	NEW	97-06-066
286-26-080	AMD-P	97-03-006	296-11-490	DECOD	97-08-042	296-23A-0220	NEW	97-06-066
286-26-080	AMD	97-08-003	296-11-500	DECOD	97-08-042	296-23A-0230	NEW	97-06-066
286-27-040	AMD-P	97-03-006	296-11-510	DECOD	97-08-042	296-23A-0240	NEW	97-06-066
286-27-040	AMD	97-08-003	296-11-520	DECOD	97-08-042	296-23A-0250	NEW	97-06-066
286-27-050	REP-P	97-03-006	296-11-530	DECOD	97-08-042	296-23A-0300	NEW	97-06-066
286-27-050	REP	97-08-003	296-11-540	DECOD	97-08-042	296-23A-0310	NEW	97-06-066
286-35-030	AMD-P	97-03-006	296-11-550	DECOD	97-08-042	296-23A-0350	NEW	97-06-066
286-35-030	AMD	97-08-003	296-11-560	DECOD	97-08-042	296-23A-0360	NEW	97-06-066
286-35-040	REP-P	97-03-006	296-11-570	DECOD	97-08-042	296-23A-0400	NEW	97-06-066
286-35-040	REP	97-08-003	296-11-580	DECOD	97-08-042	296-23A-0410	NEW	97-06-066
286-40-020	AMD-P	97-03-006	296-11-590	DECOD	97-08-042	296-23A-0420	NEW	97-06-066
286-40-020	AMD	97-08-003	296-17-45003	AMD	97-06-007	296-23A-0430	NEW	97-06-066
292-09-010	AMD-P	97-05-022	296-17-45003	AMD-E	97-08-043	296-23A-0440	NEW	97-06-066
292-11-010	NEW-S	97-05-023	296-17-45003	AMD-P	97-08-051	296-23A-0450	NEW	97-06-066
292-11-020	NEW-S	97-05-023	296-17-45006	NEW	97-06-007	296-23A-0460	NEW	97-06-066
292-120-010	NEW-P	97-03-133	296-17-45006	AMD-E	97-08-043	296-23A-0470	NEW	97-06-066
292-120-010	NEW	97-07-058	296-17-45006	AMD-P	97-08-051	296-23A-0480	NEW	97-06-066
292-120-020	NEW-P	97-03-133	296-17-52107	REP	97-06-007	296-23A-0490	NEW	97-06-066
292-120-020	NEW	97-07-058	296-17-52112	REP	97-06-007	296-23A-0500	NEW	97-06-066
292-120-030	NEW-P	97-03-133	296-17-52114	NEW	97-06-007	296-23A-0520	NEW	97-06-066
292-120-030	NEW	97-07-058	296-17-52114	REP-E	97-08-043	296-23A-0530	NEW	97-06-066
292-120-040	NEW-P	97-03-133	296-17-52114	REP-P	97-08-051	296-23A-0540	NEW	97-06-066
292-120-040	NEW	97-07-058	296-17-52115	NEW	97-06-007	296-23A-0550	NEW	97-06-066
296-11-001	DECOD	97-08-042	296-17-52115	REP-E	97-08-043	296-23A-0560	NEW	97-06-066
296-11-003	DECOD	97-08-042	296-17-52115	REP-P	97-08-051	296-23A-0570	NEW	97-06-066
296-11-010	DECOD	97-08-042	296-17-52116	NEW	97-06-007	296-23A-0575	NEW	97-06-066
296-11-020	DECOD	97-08-042	296-17-52117	NEW	97-06-007	296-23A-0580	NEW	97-06-066
296-11-030	DECOD	97-08-042	296-17-52117	REP-E	97-08-043	296-23A-0600	NEW	97-06-066
296-11-040	DECOD	97-08-042	296-17-52117	REP-P	97-08-051	296-23A-0610	NEW	97-06-066
296-11-050	DECOD	97-08-042	296-17-52118	NEW-E	97-08-043	296-23A-0620	NEW	97-06-066
296-11-060	DECOD	97-08-042	296-17-52118	NEW-P	97-08-051	296-23A-100	REP	97-06-066
296-11-070	DECOD	97-08-042	296-17-52119	NEW-E	97-08-043	296-23A-105	REP	97-06-066
296-11-080	DECOD	97-08-042	296-17-52119	NEW-P	97-08-051	296-23A-106	REP	97-06-066
296-11-090	DECOD	97-08-042	296-17-52120	NEW-E	97-08-043	296-23A-110	REP	97-06-066
296-11-100	DECOD	97-08-042	296-17-52120	NEW-P	97-08-051	296-23A-115	REP	97-06-066
296-11-110	DECOD	97-08-042	296-17-52121	NEW-E	97-08-043	296-23A-120	REP	97-06-066
296-11-120	DECOD	97-08-042	296-17-52121	NEW-P	97-08-051	296-23A-125	REP	97-06-066
296-11-130	DECOD	97-08-042	296-17-52122	NEW-E	97-08-043	296-23A-130	REP	97-06-066
296-11-140	DECOD	97-08-042	296-17-52122	NEW-P	97-08-051	296-23A-135	REP	97-06-066
296-11-150	DECOD	97-08-042	296-17-52123	NEW-E	97-08-043	296-23A-140	REP	97-06-066
296-11-160	DECOD	97-08-042	296-17-52123	NEW-P	97-08-051	296-23A-145	REP	97-06-066
296-11-170	DECOD	97-08-042	296-17-52124	NEW-E	97-08-043	296-23A-150	REP	97-06-066
296-11-180	DECOD	97-08-042	296-17-52124	NEW-P	97-08-051	296-23A-155	REP	97-06-066
296-11-190	DECOD	97-08-042	296-17-52125	NEW-E	97-08-043	296-23A-160	REP	97-06-066
296-11-200	DECOD	97-08-042	296-17-52125	NEW-P	97-08-051	296-23A-165	REP	97-06-066
296-11-210	DECOD	97-08-042	296-17-52126	NEW-E	97-08-043	296-23A-170	REP	97-06-066
296-11-220	DECOD	97-08-042	296-17-52126	NEW-P	97-08-051	296-23A-175	REP	97-06-066
296-11-230	DECOD	97-08-042	296-17-89502	NEW	97-06-007	296-23A-180	REP	97-06-066
296-11-240	DECOD	97-08-042	296-17-89502	AMD-E	97-08-043	296-23A-185	REP	97-06-066

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
296-23A-190	REP	97-06-066	296-116-150	DECOD	97-08-042	296-400A-030	NEW-P	97-03-084
296-23A-200	REP	97-06-066	296-116-170	DECOD	97-08-042	296-400A-031	NEW-P	97-03-084
296-23A-205	REP	97-06-066	296-116-175	DECOD	97-08-042	296-400A-032	NEW-P	97-03-084
296-23A-210	REP	97-06-066	296-116-185	DECOD	97-08-042	296-400A-033	NEW-P	97-03-084
296-23A-215	REP	97-06-066	296-116-200	AMD	97-06-106	296-400A-035	NEW-P	97-03-084
296-23A-220	REP	97-06-066	296-116-200	DECOD	97-08-042	296-400A-045	NEW-P	97-03-084
296-23A-225	REP	97-06-066	296-116-205	DECOD	97-08-042	296-400A-050	NEW-P	97-03-084
296-23A-230	REP	97-06-066	296-116-2051	DECOD	97-08-042	296-400A-070	NEW-P	97-03-084
296-23A-235	REP	97-06-066	296-116-300	AMD-P	97-08-041	296-400A-100	NEW-P	97-03-084
296-23A-300	REP	97-06-066	296-116-300	DECOD	97-08-042	296-400A-110	NEW-P	97-03-084
296-23A-310	REP	97-06-066	296-116-315	DECOD	97-08-042	296-400A-120	NEW-P	97-03-084
296-23A-315	REP	97-06-066	296-116-35001	DECOD	97-08-042	296-400A-121	NEW-P	97-03-084
296-23A-320	REP	97-06-066	296-116-360	AMD-P	97-06-103	296-400A-130	NEW-P	97-03-084
296-23A-400	REP	97-06-066	296-116-360	AMD-E	97-06-104	296-400A-140	NEW-P	97-03-084
296-23A-430	REP	97-06-066	296-116-360	DECOD	97-08-042	296-400A-300	NEW-P	97-03-084
296-24-07801	AMD-P	97-03-085	296-116-370	DECOD	97-08-042	296-400A-400	NEW-P	97-03-084
296-24-084	AMD-P	97-03-085	296-116-400	DECOD	97-08-042	296-400A-425	NEW-P	97-03-084
296-24-088	AMD-P	97-03-085	296-116-410	DECOD	97-08-042	296-401	PREP	97-02-095
296-27-15503	AMD-P	97-03-085	296-116-420	DECOD	97-08-042	296-401-080	AMD-P	97-03-083
296-46	PREP	97-02-095	296-116-500	DECOD	97-08-042	296-401-090	AMD-P	97-03-083
296-46-090	AMD-P	97-03-083	296-128-013	NEW-W	97-03-073	296-401-100	AMD-P	97-03-083
296-46-130	AMD-P	97-03-083	296-150C-0090	NEW-W	97-04-070	296-401-120	AMD-P	97-03-083
296-46-140	AMD-P	97-03-083	296-150C-1010	NEW-W	97-04-070	296-401-165	AMD-P	97-03-083
296-46-150	REP-P	97-03-083	296-150C-3000	AMD-P	97-03-132	296-401-175	AMD-P	97-03-083
296-46-21008	AMD-P	97-03-083	296-150F-3000	AMD-P	97-03-132	308-11-140	NEW-P	97-07-035
296-46-21052	AMD-P	97-03-083	296-150M-3000	AMD-P	97-03-132	308-11-150	NEW-P	97-07-035
296-46-225	AMD-P	97-03-083	296-150R	PREP	97-03-082	308-11-160	NEW-P	97-07-035
296-46-23028	AMD-P	97-03-083	296-150R-3000	AMD-P	97-03-132	308-12-025	AMD	97-03-121
296-46-23062	AMD-P	97-03-083	296-155-527	AMD-P	97-03-085	308-12-031	AMD	97-03-121
296-46-30001	AMD-P	97-03-083	296-200	PREP	97-03-081	308-12-040	AMD	97-03-121
296-46-360	AMD-P	97-03-083	296-200-025	AMD-P	97-03-132	308-12-050	AMD	97-03-121
296-46-370	AMD-P	97-03-083	296-200-050	AMD-P	97-03-132	308-12-140	REP	97-03-121
296-46-514	AMD-P	97-03-083	296-200-900	AMD-P	97-03-132	308-12-145	REP	97-03-121
296-46-553	NEW-P	97-03-083	296-306-060	REP-P	97-03-131	308-12-210	NEW	97-03-121
296-46-700	AMD-P	97-03-083	296-306-060	REP-E	97-06-040	308-12-220	NEW	97-03-121
296-46-725	AMD-P	97-03-083	296-306-060	REP	97-08-051A	308-12-230	NEW	97-03-121
296-46-910	AMD-P	97-03-083	296-306-330	REP-P	97-03-131	308-12-240	NEW-W	97-03-065
296-46-915	AMD-P	97-03-083	296-306-330	REP-E	97-06-040	308-12-240	NEW	97-03-121
296-46-920	AMD-P	97-03-083	296-306-330	REP	97-08-051A	308-12-250	NEW-W	97-03-065
296-49	PREP	97-03-082	296-306-400	REP-P	97-03-131	308-12-260	NEW-W	97-03-065
296-62	PREP	97-05-047	296-306-400	REP-E	97-06-040	308-12-320	AMD	97-06-064
296-62	PREP	97-06-101	296-306-400	REP	97-08-051A	308-12-324	AMD	97-03-121
296-62-05413	AMD-P	97-03-085	296-306-40007	REP-P	97-03-131	308-12-326	AMD	97-06-064
296-86-020	AMD-P	97-03-132	296-306-40007	REP-E	97-06-040	308-13-045	NEW-P	97-03-022
296-86-030	AMD-P	97-03-132	296-306-40007	REP	97-08-051A	308-13-045	NEW	97-06-065
296-86-050	AMD-P	97-03-132	296-306-40009	REP-P	97-03-131	308-13-160	AMD-P	97-03-022
296-86-060	AMD-P	97-03-132	296-306-40009	REP-E	97-06-040	308-13-160	AMD	97-06-065
296-86-070	AMD-P	97-03-132	296-306-40009	REP	97-08-051A	308-14-210	NEW-P	97-07-031
296-86-075	AMD-P	97-03-132	296-306A-08018	AMD-P	97-03-131	308-14-220	NEW-P	97-07-031
296-86-080	AMD-P	97-03-132	296-306A-08018	AMD	97-08-051A	308-14-230	NEW-P	97-07-031
296-86-090	NEW-P	97-03-132	296-306A-16003	AMD-P	97-03-131	308-19-400	NEW-P	97-07-026
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296-93-320	REP-P	97-03-132	296-306A-16003	AMD	97-08-051A	308-19-420	NEW-P	97-07-026
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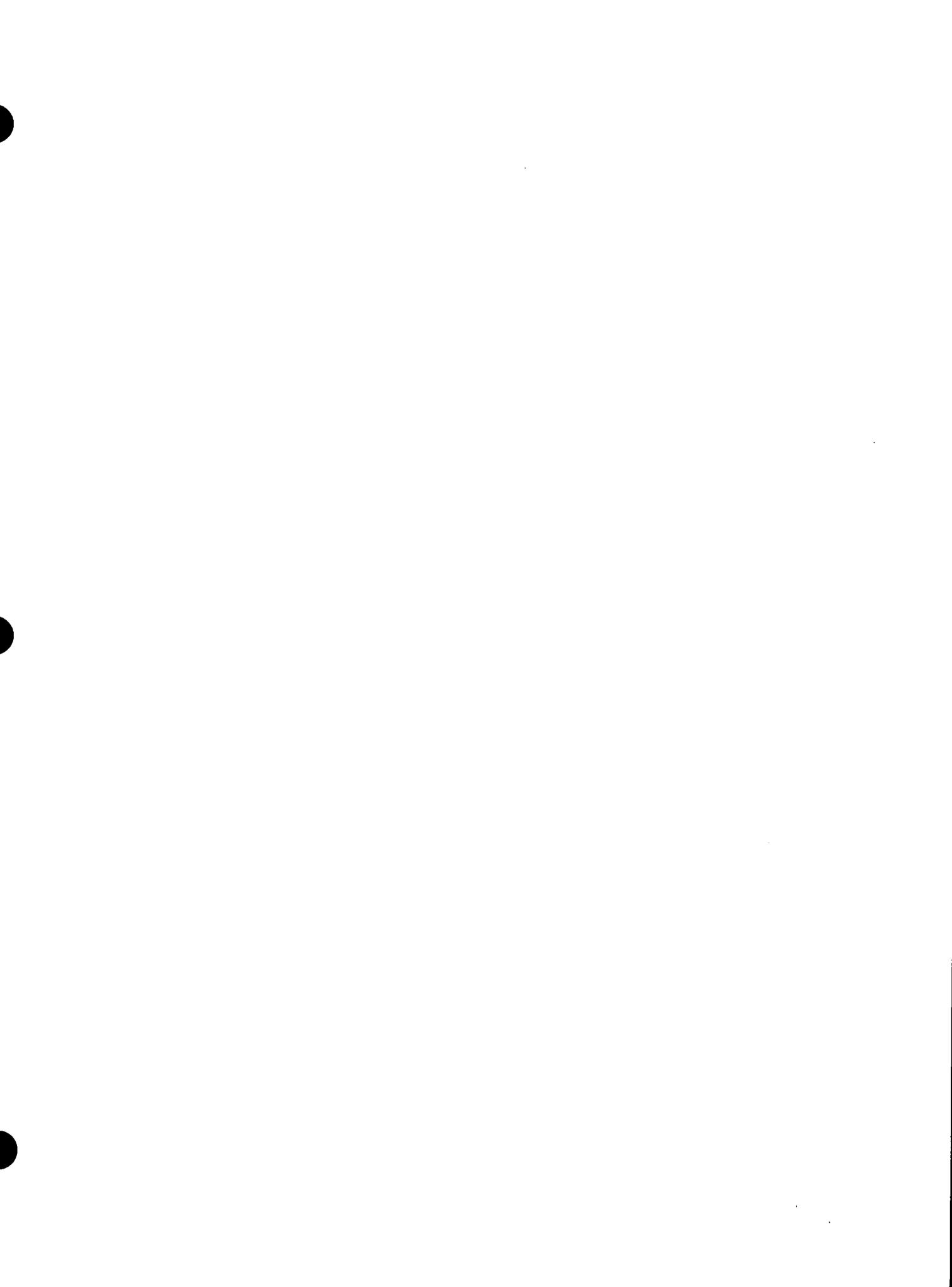
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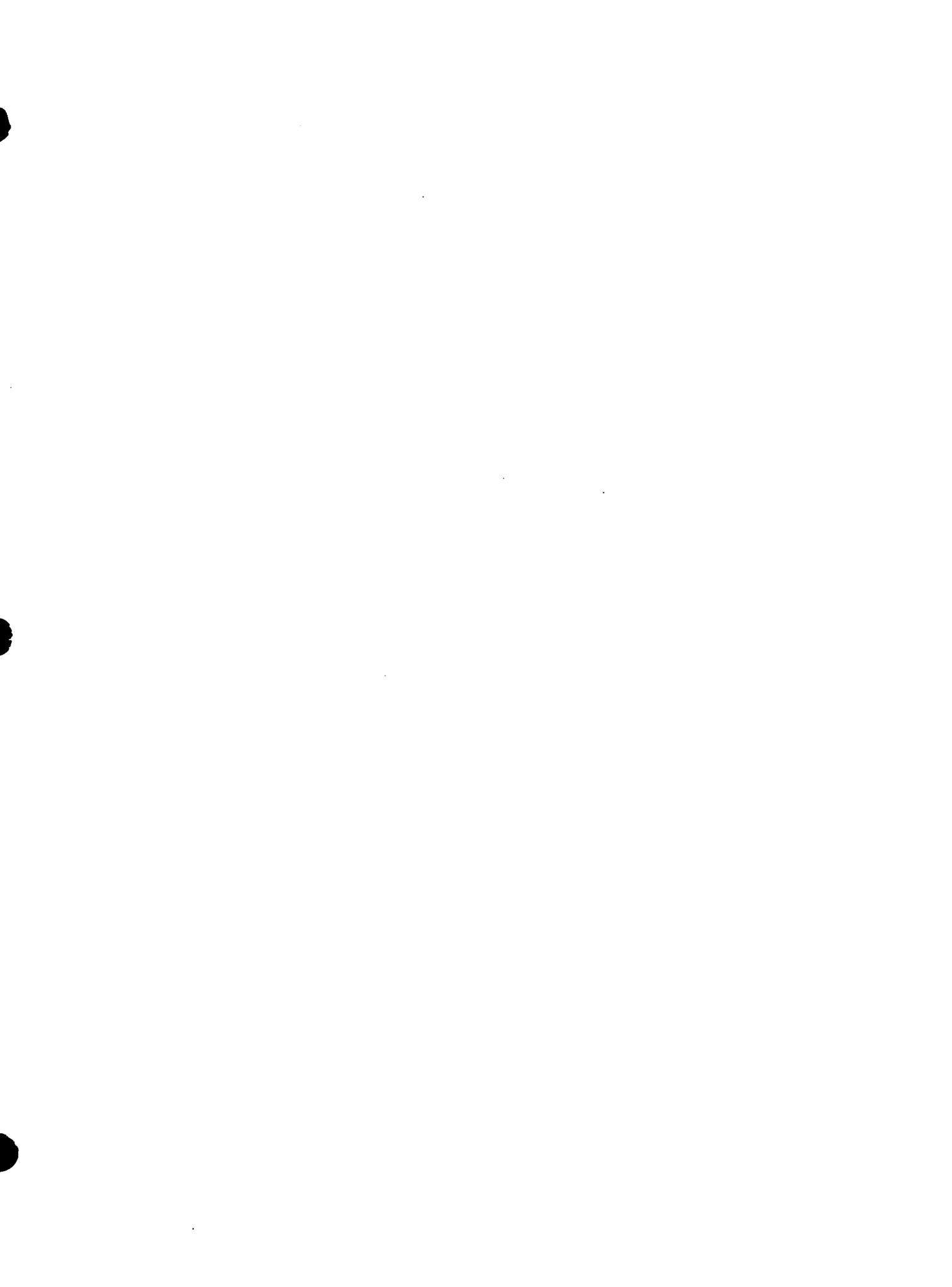












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