

Title 192 WAC

EMPLOYMENT SECURITY DEPARTMENT

Chapters

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DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

Chapter 192-08 PRACTICE AND PROCEDURE

Later promulgation, see chapter 192-09 WAC, Practice and procedure.

<p>192-08-001 Promulgation. [Regulation 15 (part), adopted 5/18/58.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-002 Promulgation. [Regulation 16, last paragraph, effective 1/1/66.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-009 Preamble. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-010 Appearance and practice before the employment security department—Who may appear. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53. Prior: Regulation 15, adopted and effective 5/15/58. Later promulgation, see WAC 192-08-070.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-020 Appearance and practice before the employment security department—Appearance in certain proceedings may be limited to attorneys. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53. Prior: Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] As reenacted effective 1/1/66, now codified as WAC 192-08-002, 192-08-010 through 192-08-060, and 192-08-080 et seq. Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-030 Appearance and practice before the employment security department—Solicitation of business unethical. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-040 Appearance and practice before the employment security department—Standards of ethical conduct.</p>	<p>192-08-001 [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-002 [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-009 [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-010 [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-020 [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-030 [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p> <p>192-08-040 [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.</p>
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192-08-160	Subpoenas—Issuance to parties. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	
192-08-170	Subpoenas—Service. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-320	Depositions and interrogatories in contested cases—Fees of officers and deponents. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-180	Subpoenas—Fees. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-330	Depositions upon interrogatories—Submission of interrogatories. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-181	Subpoenas—Cost bills. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-340	Depositions upon interrogatories—Interrogation. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-190	Subpoenas—Proof of service. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-350	Depositions upon interrogatories—Attestation and return. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-200	Subpoenas—Quashing. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-360	Depositions upon interrogatories—Provisions of deposition rule. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/70.] Repealed by Order 2602, filed 4/24/70.
192-08-210	Subpoenas—Enforcement. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-370	Official notice—Matters of law. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-220	Subpoenas—Geographical scope. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-380	Official notice—Material facts. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-221	Withdrawal of appeal. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-390	Presumptions. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-230	Depositions and interrogatories in contested cases—Right to take. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-400	Stipulations and admissions of record. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-240	Depositions and interrogatories in contested cases—Scope. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-410	Form and content of decisions in contested cases. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-250	Depositions and interrogatories in contested cases—Officer before whom taken. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-420	Definition of issues before hearing. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-260	Depositions and interrogatories in contested cases—Authorization. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-430	Prehearing conference rule. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-270	Depositions and interrogatories in contested cases—Protection of parties and deponents. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-440	Prehearing conference rule—Record of conference action. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-280	Depositions and interrogatories in contested cases—Oral examination and cross-examination. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-450	Submission of documentary evidence in advance. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-290	Depositions and interrogatories in contested cases—Recordation. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-460	Excerpts from documentary evidence. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-300	Depositions and interrogatories in contested cases—Signing attestation and return. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.	192-08-470	Expert or opinion testimony and testimony based on economic and statistical data—Number and qualifications of witnesses. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
192-08-310	Depositions and interrogatories in contested cases—Use and effect. [Regulation 16 (part), effective	192-08-480	Expert or opinion testimony and testimony based on economic and statistical data—Written sworn statements. [Regulation 16 (part), effective 1/1/66;

- Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-490 Expert or opinion testimony and testimony based on economic and statistical data—Supporting data. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-500 Expert or opinion testimony and testimony based on economic and statistical data—Effect of noncompliance with WAC 192-08-470 or 192-08-480. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-510 Continuances. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-511 Informal disposition of hearing. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-520 Rules of evidence—Admissibility criteria. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-530 Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-540 Petitions for rule-making, amendment or repeal—Who may petition. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-550 Petitions for rule-making, amendment or repeal—Requisites. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-560 Petitions for rule-making, amendment or repeal—Agency must consider. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-570 Petitions for rule-making, amendment or repeal—Notice of disposition. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-580 Declaratory rulings. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-08-590 Forms. [Regulation 16 (part), effective 1/1/66; Regulation 16 (part), adopted 6/10/53, effective 6/20/53.] Repealed by Order 2602, filed 4/24/70.
- 192-14-040 Operations and procedures. [Order 2-73, § 192-14-040, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see chapter 192-15 WAC.
- 192-14-050 Public records available. [Order 2-73, § 192-14-050, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see chapter 192-15 WAC.
- 192-14-060 Public records officer. [Order 2-73, § 192-14-060, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see chapter 192-15 WAC.
- 192-14-070 Office hours. [Order 2-73, § 192-14-070, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see WAC 192-15-120.
- 192-14-080 Requests for public records. [Order 2-73, § 192-14-080, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see chapter 192-15 WAC.
- 192-14-090 Copying. [Order 2-73, § 192-14-090, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see WAC 192-15-120.
- 192-14-100 Exemptions. [Order 2-73, § 192-14-100, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see chapter 192-15 WAC.
- 192-14-110 Review of denials of public records requests. [Order 2-73, § 192-14-110, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see chapter 192-15 WAC.
- 192-14-120 Protection of public records. [Order 2-73, § 192-14-120, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see chapter 192-15 WAC.
- 192-14-130 Records index. [Order 2-73, § 192-14-130, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see WAC 192-15-150.
- 192-14-140 Responsible addressee. [Order 2-73, § 192-14-140, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see WAC 192-15-160.
- 192-14-150 Forms. [Order 2-73, § 192-14-150, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see WAC 192-15-170.

Chapter 192-14 PUBLIC DISCLOSURE

- 192-14-010 Purpose. [Order 2-73, § 192-14-010, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see WAC 192-15-010.
- 192-14-020 Definitions. [Order 2-73, § 192-14-020, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see WAC 192-15-020.
- 192-14-030 Description of central and field organization of employment security department. [Order 2-73, § 192-14-030, filed 11/15/73.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.13.030, 74.22.110 and 74.23.120. Later promulgation, see WAC 192-15-030.

Chapter 192-09 WAC PRACTICE AND PROCEDURE

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WAC 192-09-010 Promulgation. Pursuant to and in accordance with RCW 50.12.040, 42.32.010, and chapter 34.04 RCW, Maxine E. Daly, commissioner of the employment security department of the state of Washington, hereby prescribes that WAC 192-08-001 be recodified as 192-09-020; that WAC 192-08-070 be recodified as 192-09-065; that WAC 192-12-030, 192-12-040, 192-12-060, and 192-12-090 shall be amended as set forth herein; that WAC 192-08-002 through 192-08-061 and 192-08-070 through 192-08-590 shall each be repealed; and that a new chapter to be designated as chapter 192-09 WAC shall be adopted as set forth herein; which action is to take effect thirty days after the filing of these regulations with the office of the code reviser.

[Order 2602, § 192-09-010, filed 4/24/70.]

[Title 192 WAC—p 4]

WAC 192-09-020 Promulgation. Pursuant to the appropriate provisions of the Washington Employment Security Act (chapter 35, Laws of 1945, as amended), and in accordance with section 43 thereof, I, Peter R. Giovine, commissioner of the employment security department, do hereby adopt the foregoing regulation, designated as regulation 15, and prescribe that the same shall take effect May 15, 1958.

[Order 2602, § 192-09-020, filed 4/24/70. Formerly WAC 192-08-001.]

WAC 192-09-030 Preamble. RCW 50.32.010 provides, in part, as follows:

" . . . Notice of any appeal or petition for hearing taken to an appeal tribunal in any proceeding under this act may be filed with such agency as the commissioner may by regulation prescribe."

RCW 50.32.020 provides, in part, as follows:

"The applicant or claimant, his most recent employing unit or any interested party which the commissioner by regulation prescribes, may file an appeal from any determination or redetermination with the appeal tribunal . . ."

RCW 50.32.060 provides, in part, as follows:

"The manner in which any dispute shall be presented to the appeal tribunal, and the conduct of hearings and appeals, shall be in accordance with regulations prescribed by the commissioner for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. . . ."

RCW 50.32.070 provides:

"Within ten days from the date of notification or mailing, whichever is the earlier, of any decision of an appeal tribunal, the commissioner on his own order may, or upon petition of any interested party shall, take jurisdiction of the proceedings for the purpose of review thereof. Appeal from any decision of an appeal tribunal may be perfected so as to prevent finality of such decision if, within ten days from the date of mailing the appeal tribunal decision, or notification thereof, whichever is the earlier, a petition in writing for review by the commissioner is received by the commissioner or by such representative of the commissioner as the commissioner by regulation shall prescribe. The commissioner may also prevent finality of any decision of an appeal tribunal and take jurisdiction of the proceedings for his review thereof by entering an order so providing on his own motion and mailing a copy thereof to the interested parties within the same period allowed herein for receipt of a petition for review. The time limit provided herein for seeking review by the commissioner and for the commissioner's assumption of jurisdiction on his own motion for review shall be deemed to be jurisdictional."

RCW 50.32.100 provides:

"In all proceedings provided by this title prior to court review involving dispute of an individual's initial determination, or claim for waiting period credit, or for benefits, the fees of all witnesses attending such proceedings pursuant to subpoena shall be paid at the rate fixed by such regulation as the commissioner shall prescribe and

such fees and all costs of such proceedings otherwise chargeable to such individual, except charges for services rendered by counsel or other agent representing such individual, shall be paid out of the unemployment compensation administration fund. In all other respects and in all other proceedings under this title the rule in civil cases as to costs and attorney fees shall apply: *Provided*, That cost bills may be served and filed and costs shall be taxed in accordance with such regulation as the commissioner shall prescribe."

RCW 50.20.150 provides:

"The applicant for initial determination, his most recent employing unit as stated by the applicant, and any other interested party which the commissioner by regulation prescribes, shall, if not previously notified within the same continuous period of unemployment, be given notice promptly in writing that an application for initial determination has been filed and such notice shall contain the reasons given by the applicant for his last separation from work. If, during his benefit year, the applicant becomes unemployed after having accepted subsequent work, and reports for the purpose of re-establishing his eligibility for benefits, a similar notice shall be given promptly to his then most recent employing unit as stated by him, or to any other interested party which the commissioner by regulation prescribes.

"Each base year employer shall be promptly notified of the filing of any application for initial determination which may result in a charge to his account."

RCW 50.12.010 provides, in part, as follows:

"The commissioner shall administer this title. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, . . . as he deems necessary or suitable to that end. . . ."

RCW 34.04.020 provides, in part, as follows:

"In addition to other rule-making requirements imposed by law:

(1) Each agency shall adopt rules governing the formal and informal procedures prescribed or authorized by this chapter and rules of practice before the agency, together with forms and instructions: *Provided*, That RCW 34.04.022 shall apply to agencies which have not adopted comprehensive rules of practice and procedure, in accordance with the provisions of this chapter, prior to July 1, 1967."

RCW 34.04.090 provides, in part, as follows:

"(7) Each agency shall adopt appropriate rules of procedure for notice and hearing in contested cases.

"(8) Agencies, or their authorized agents, may

"(d) take or cause depositions to be taken pursuant to rules promulgated by the agency, . . ."

The commissioner accordingly prescribes:

[Statutory Authority: RCW 50.12.010, 78-09-027 (Order 1-78), § 192-09-030, filed 8/14/78; Order 2602, § 192-09-030, filed 4/24/70.]

WAC 192-09-035 Predetermination procedure-- Separation issue. No determination on a separation issue (RCW 50.20.050, 50.20.060) will be issued until both

the interested employer and the claimant have been afforded an opportunity to present facts concerning the matter in issue.

[Order 2-72, § 192-09-035, filed 7/6/72.]

WAC 192-09-040 Interested parties defined. As used in this regulation, unless the context clearly indicates otherwise, the term "interested party" means:

(1) In the case of a claim for waiting period credit or benefits, the claimant, and in the event of an issue concerning a separation from work for reasons other than lack of work, the party from whose employ the claimant became separated.

(2) In the case of an assessment for, or denial of a claim for refund of, contributions, interest, or penalties, or a denial of a redetermination of benefit charges made to an employer's account or an employer's determined or redetermined rate of contribution, the party whose contributions, experience rating, benefit charges, or rate of contribution is affected by such assessment or denial.

(3) Any other party whom the commissioner shall in writing recognize as an interested party.

[Statutory Authority: RCW 50.12.010 and 50.12.040, 85-11-038 (Order 1-85), § 192-09-040, filed 5/15/85. Statutory Authority: RCW 50.12.010, 78-09-027 (Order 1-78), § 192-09-040, filed 8/14/78; Order 2602, § 192-09-040, filed 4/24/70.]

WAC 192-09-050 Appearance--Who may appear.

Any interested party may appear at any hearing by an attorney-at-law or other qualified person. The commissioner or an appeal tribunal may refuse to allow any person who is found guilty of unethical conduct or who intentionally and repeatedly fails to observe the provisions of the Washington Employment Security Act or the rules and regulations of the employment security department, to represent others in any proceeding.

[Order 2602, § 192-09-050, filed 4/24/70.]

WAC 192-09-060 Appeals--Right to notice of. Notice of appeal rights shall be set forth on the face of, or as an attachment to, each of the following:

- (1) Redetermination of an initial determination.
- (2) Determination of allowance or denial of waiting period credit or benefits.
- (3) Redetermination of allowance or denial of waiting period credit or benefits.
- (4) Notice of assessment of contributions, interest, or penalties.
- (5) Denial of a claim for refund of contributions, interest, or penalties.
- (6) Denial of a redetermination of benefit charges made to an employer's account.
- (7) Denial of a redetermination or adjustment of an employer's determined or redetermined rate of contribution.
- (8) Denial of a request for relief of benefit charges.
- (9) Denial of approval or extension of standby status.
- (10) Decisions and orders issued by the office of administrative hearings other than an order approving a withdrawal of appeal.
- (11) Decisions of commissioner.

[Statutory Authority: Chapter 50.04 RCW, RCW 50.29.020, 50.12-010 and 50.12.040. 85-21-023 (Order 5-85), § 192-09-060, filed 10/10/85. Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-09-060, filed 5/15/85. Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-060, filed 8/14/78; Order 2602, § 192-09-060, filed 4/24/70.]

WAC 192-09-062 Appeals--Payments under federal programs. When the applicable federal law, regulations or guidelines for any federal program administered by the employment security department provides for the right of appeal from a decision or determination by the administering agency the procedures outlined in Title 50 RCW, Title 34 RCW, and chapter 192-09 WAC shall to the extent that said procedures are consistent with the federal law, regulations and guidelines, be utilized for the disposition of such appeals.

[Order 2-72, § 192-09-062, filed 7/6/72.]

WAC 192-09-063 Appeals--Who may appeal--Time limitation. Any interested party may appeal from a redetermination of an initial determination or a determination of allowance or denial of waiting period credit or benefits, or a redetermination thereof, by filing a written notice of appeal, or in the case of an assessment for, or denial of a claim for refund of, contributions, interest, or penalties, or denial of a redetermination of benefit charges made to an employer's account, or an employer's redetermined rate of contribution, by filing a petition for hearing with any office of the employment security department, or the unemployment compensation agency in any other state or territory. Such appeals and petitions for hearing shall be filed within ten days of the date such determination, redetermination, assessment or denial is delivered or mailed, whichever is the earlier. If the appeal and/or petition is mailed, it shall be deemed filed with the department on the postmark date, if said document is properly addressed and has sufficient postage affixed thereto.

On the request of any interested party, the commissioner shall furnish forms for the filing of a notice of appeal or petition for hearing, but the use of such forms shall not be a jurisdictional requirement.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-09-063, filed 5/15/85; Order 2602, § 192-09-063, filed 4/24/70.]

WAC 192-09-065 Appeals--Time computation. The time within which appeals and petitions are to be perfected, under the provisions of the Employment Security Act (Title 50 RCW, as amended) shall be computed by excluding the day of delivery or mailing of the determination, notice, or decision and including the last day. If the last day is a Saturday or Sunday or a holiday, the appeals and petitions must be perfected on the next business day.

[Order 2602, § 192-09-065, filed 4/24/70. Formerly WAC 192-08-070.]

WAC 192-09-070 Appeals--Withdrawal of. Any interested party may withdraw his notice of appeal, petition for hearing, or petition for review at any time

prior to a decision thereon, in which case the previous determination or decision shall be final in accordance with the provisions of the Employment Security Act. Such withdrawal shall, however, be subject to the approval of the appeal tribunal in the case of a notice of appeal or petition for hearing, and of the commissioner in the case of a petition for review.

[Order 2602, § 192-09-070, filed 4/24/70.]

WAC 192-09-100 Hearings--Notice requirement. Upon perfecting any appeal involving an individual's right to benefits within the time limits set forth in WAC 192-09-063, the appeal tribunal shall cause to be served a notice of hearing on all interested parties at least seven days before the date set for the hearing, and in all other appeals arising under Title 50 of the Revised Code of Washington at least twenty days before the date set for the hearing: *Provided, however,* That such notice may be waived by consent of the interested parties. Service of the notice of hearing shall be accomplished by mailing a copy thereof to the last known address of each interested party. The notice shall state the time, place, and issues involved.

[Order 2-73, § 192-09-100, filed 11/15/73; Order 2602, § 192-09-100, filed 4/24/70.]

WAC 192-09-105 Hearings--Scheduling--Location. All hearings contemplated by this regulation shall be scheduled and held at a time and place reasonably convenient to all interested parties and in such manner as will expedite a fair disposition of all issues on appeal: *Provided,* That all hearings will be scheduled between the hours of 8:00 a.m. and 5:00 p.m., Mondays through Fridays (state holidays excepted), at the local office where the claim was filed, the county seat of the county of residence of any interested party, or any other location necessary to assure reasonable opportunity to be heard.

[Order 2602, § 192-09-105, filed 4/24/70.]

WAC 192-09-110 Hearings--Special scheduling--Postponement. Requests for scheduling a hearing at a specific hour or on a specific day within the limitations as specified in WAC 192-09-105 shall be addressed in writing to the appeal tribunal who, in the exercise of sound discretion, shall grant such a hearing only upon a basis of good cause shown therefor. Any hearing, once scheduled, shall be rescheduled upon request of an interested party, only upon a basis of good cause shown therefor.

Any party who desires a postponement, immediately upon receipt of notice of a hearing, or as soon thereafter as facts requiring such postponement come to his or her knowledge, shall notify the designated appeal examiner, or in his or her absence the chief appeal examiner, of said desire, stating in detail the reasons why such postponement is necessary. The designated appeal examiner, or chief appeal examiner, in passing upon a request for postponement, shall consider whether such request was promptly and timely made. For good cause shown, the designated appeal examiner, or in his or her absence the

chief appeal examiner shall grant such postponement, and may at any time order a postponement upon his or her own motion.

[Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-110, filed 8/14/78; Order 2602, § 192-09-110, filed 4/24/70.]

WAC 192-09-115 Hearings--Open to public--Exceptions. Hearings before the appeal tribunal, in the absence of a showing of sufficient cause for a closed hearing, shall be open to the public.

[Order 2602, § 192-09-115, filed 4/24/70.]

WAC 192-09-120 Hearings--Representation--Cross-examination. Any interested party, or his legally authorized representative, shall have the right to give testimony and to examine and cross-examine any other interested party and/or witnesses with respect to facts material and relevant to the issues involved.

[Order 2602, § 192-09-120, filed 4/24/70.]

WAC 192-09-125 Hearings--Pleadings and papers to be served. All pertinent orders, notices and papers which the employment security department issues, together with any papers served on it by any interested party, shall be served by the employment security department on all counsel of record at the time of such filing and upon interested parties not represented by counsel or upon their designated agents.

[Order 2602, § 192-09-125, filed 4/24/70.]

WAC 192-09-130 Hearings--Duty of examiner. An appeals examiner designated by the chief examiner shall be responsible for the conduct of all hearings assigned him. The appeals examiner so designated shall determine the order of the presentation of evidence, administer oaths and affirmations, issue subpoenas and may examine or cross-examine any interested party and/or witness.

Whenever an interested party is not represented by counsel, the appeal examiner conducting the proceedings shall advise such party as to his rights, aid him in examining and cross-examining witnesses, and give him every assistance compatible with the discharge of the official duties of the appeal examiner.

[Order 2602, § 192-09-130, filed 4/24/70.]

WAC 192-09-135 Hearings--Evidence. At all hearings before an appeal tribunal testimony shall be taken under oath or on affirmation and the right of cross-examination afforded to all interested parties. The appeal tribunal shall receive any evidence logically tending to prove or disprove a given fact in issue, irrespective of common law rules of evidence, but no decision or findings of fact shall be based exclusively upon hearsay evidence unless such hearsay evidence would be considered admissible under the rules of evidence for superior courts of the state of Washington. The appeal tribunal, when any evidence is unnecessarily cumulative in effect or where any evidence neither tends to prove nor disprove a relevant fact in issue, may, on objection of an

interested party or on its own motion, exclude or prohibit such evidence from being received.

[Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-135, filed 8/14/78; Order 2602, § 192-09-135, filed 4/24/70.]

WAC 192-09-140 Hearings--Disposition of motions and objections. The appeal examiner shall rule upon all motions and objections to the introduction of evidence at the hearing subject to reserving his ruling as set forth in WAC 192-09-150.

[Order 2602, § 192-09-140, filed 4/24/70.]

WAC 192-09-145 Hearings--Objections to be specified. Parties objecting to the introduction of evidence shall state the precise grounds of such objection if represented by counsel. In all other cases the grounds for objection shall be stated as precisely as is practicable.

[Order 2602, § 192-09-145, filed 4/24/70.]

WAC 192-09-150 Hearings--Admissibility of evidence. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The appeals examiner conducting the hearing may, in his discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued.

[Order 2602, § 192-09-150, filed 4/24/70.]

WAC 192-09-155 Hearings--Stipulations. Any primary facts necessary to the determination of any issue may be evidenced by stipulation; but in case the appeal examiner has reason to believe that there is evidence available which would result in a finding of fact different from that sought to be established by stipulation, he shall require the production of such evidence.

[Order 2602, § 192-09-155, filed 4/24/70.]

WAC 192-09-160 Hearings--Continuance. During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the appeals examiner conducting the hearing shall continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Written notice of the time and place fixed for the continued hearing will be given to any interested party or witness not present at the original hearing.

[Order 2602, § 192-09-160, filed 4/24/70.]

WAC 192-09-165 Hearings--Consolidated cases. Hearings of several proceedings upon a consolidated record may be had whenever it appears to the appeal examiner that such procedure will not unduly complicate the issues in such proceedings. The appeal examiner shall determine the order in which the parties will proceed.

[Order 2602, § 192-09-165, filed 4/24/70.]

WAC 192-09-170 Hearings--Separate locations. Where, because of the distance involved or for other

reasons, it is impracticable for parties and their witnesses to appear at the same place of hearing, a hearing reasonably convenient for each party will be scheduled. Such hearings will be scheduled in as close proximity, time-wise, as possible. Parties involved in separate hearings may appear or submit questions to the appeals examiner to be asked of the opposing party, his witnesses, or representatives of the department. Such questions must be reduced to writing and submitted to the appeals examiner prior to the hearing. If the questions are material to the issues, the appeals examiner shall ask them of the opposing party, witness and/or departmental representative. Each interested party shall have all the rights of fair hearing with respect to any such separate hearing.

[Order 2602, § 192-09-170, filed 4/24/70.]

WAC 192-09-200 Subpoenas--Procedure for issuance. An appeal examiner, at the request of any interested party, or on his own motion, shall subpoena witnesses, records or documents who or which in the opinion of the examiner are relevant to the inquiry, including such records of the employment security department as are necessary for a proper determination of the issues.

[Order 2602, § 192-09-200, filed 4/24/70.]

WAC 192-09-205 Subpoenas--Form. Every subpoena shall state the name of the employment security department in the title of the proceeding, if any, and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents or things under his control at a specified time and place.

[Order 2602, § 192-09-205, filed 4/24/70.]

WAC 192-09-210 Subpoenas--Service. Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering him on demand the fees for one day's attendance and the mileage allowed by law.

[Order 2602, § 192-09-210, filed 4/24/70.]

WAC 192-09-215 Subpoenas--Proof of service. The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit, or acknowledgment of service with the employment security department or the appeal examiner before whom the witness is required to testify or produce evidence. Failure to make proof of service does not affect the validity of the service. In all proceedings prior to court review involving a dispute of an individual's initial determination, or claim for waiting period credit, or for benefits, both service of a subpoena and proof of service thereof shall be accomplished by an agent of the employment security department.

[Order 2602, § 192-09-215, filed 4/24/70.]

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WAC 192-09-220 Subpoenas--Attendance fees--How computed. Witnesses summoned before the employment security department shall be paid by the party at whose instance they appear the same fees and mileage that are paid to witnesses in the superior courts of the state of Washington: *Provided*, That in all proceedings provided by the Employment Security Act prior to court review involving a dispute of an individual's initial determination, or a claim for waiting period credit, or for benefits, the fees of all witnesses attending such proceedings pursuant to subpoena and all costs of such proceedings otherwise chargeable to such individual, except charges for services rendered by counsel or other agent representing such individual, shall be paid out of the unemployment compensation administration fund.

[Order 2602, § 192-09-220, filed 4/24/70.]

WAC 192-09-225 Subpoenas--Fees--Certification. The appeal examiner who conducted the hearing shall certify as to the service performed by any witness entitled to per diem and mileage fees and shall present an itemized statement of costs of the hearing to the chief appeals examiner for approval and referral to the fiscal officer of the employment security department for further approval and payment.

[Order 2602, § 192-09-225, filed 4/24/70.]

WAC 192-09-230 Subpoenas--Procedure to quash. Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance, by the person to whom the subpoena is directed (and upon notice to the party to whom the subpoena was issued) the appeal examiner who issued the subpoena or the chief appeal examiner may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion upon just and reasonable conditions.

[Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-230, filed 8/14/78; Order 2602, § 192-09-230, filed 4/24/70.]

WAC 192-09-235 Subpoenas--Judicial enforcement. Upon application and for good cause shown, the employment security department will seek judicial enforcement of subpoenas issued to parties and which have not been quashed.

[Order 2602, § 192-09-235, filed 4/24/70.]

WAC 192-09-240 Subpoenas--Geographical scope. Such attendance of witnesses and such production of evidence may be required from any place in the state of Washington, at any designated place of hearing.

[Order 2602, § 192-09-240, filed 4/24/70.]

WAC 192-09-300 Decisions--Contents. Every decision issued by an appeal examiner or the commissioner of the employment security department, shall:

- (1) Be correctly captioned as to name of agency and name of proceeding;
- (2) Designate all parties and counsel to the proceeding;

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

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

(5) Whenever practical, the conclusions of law shall include all reasons for the particular decision or remedy afforded;

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

[Order 2602, § 192-09-300, filed 4/24/70.]

WAC 192-09-305 Decisions--Preparation and service. Within a reasonable time after the conclusion of a hearing before the appeal tribunal and/or review before the commissioner, the appeal examiner and/or the commissioner shall prepare his decision in writing and serve same upon all interested parties by personal delivery or mailing to the party's last known address. Copies of said decisions shall be made available to affected divisions of the employment security department.

[Order 2602, § 192-09-305, filed 4/24/70.]

WAC 192-09-310 Decisions--Disposition by other than decision on the merits--Petition from. Upon approval of the appeal examiner, disposition may also be made of any hearing by stipulation, consent order or default. Any party deeming himself aggrieved by the entry of an order of default may petition the commissioner to review such order by complying with filing requirements set forth in WAC 192-09-315: *Provided, however,* That the default of such party shall be set aside by the commissioner only upon showing made of good and sufficient cause for such failure to appear or to request a postponement prior to the scheduled time for hearing. In the event such order of default is set aside, all interested parties shall be so notified in writing and the matter restored to the hearing calendar.

[Order 2602, § 192-09-310, filed 4/24/70.]

WAC 192-09-315 Decisions--Petition for review. Any interested party who is aggrieved by a decision of an appeal tribunal other than an order approving a withdrawal of an appeal or a withdrawal of a petition for hearing, may petition the commissioner to review such decision. Such petition for review must be completed in writing by the aggrieved party or his or her representative and forms for this purpose shall be furnished by the commissioner on request, although the use of such forms shall not be a jurisdictional requirement. The filing of a petition for review shall be deemed timely if the written petition is received at any office of the employment security department, or in an office of the unemployment compensation agency of any other state or territory, within ten days after the date on which the appeal tribunal decision was mailed to the aggrieved party's last known address. If the petition for review is mailed, it shall be deemed filed with the addressee on

the postmark date if said document is properly addressed and has sufficient postage affixed thereto.

[Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-315, filed 8/14/78; Order 2602, § 192-09-315, filed 4/24/70.]

WAC 192-09-400 Special proceedings--Prehearing conference--Purpose. In any complex proceeding, the appeal examiner upon his or her own motion, or upon the request of any interested party or their qualified representative, may in his or her discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider

- (1) The simplification of the issues;
- (2) The necessity of amendments to the pleadings;
- (3) The possibility of obtaining stipulations, admissions of fact and of documents;
- (4) The limitation of witnesses;
- (5) Such other matters as may aid in the disposition of the proceedings.

[Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-400, filed 8/14/78; Order 2602, § 192-09-400, filed 4/24/70.]

WAC 192-09-405 Special proceedings--Prehearing conference--Examiner's order. The appeal examiner may make an order or statement which recites the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties or their qualified representatives as to any of the matters considered, including the settlement or simplification of issues, and which limits the issues for hearing to those not disposed of by admission or agreements, and such order or statement shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

[Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-09-405, filed 8/14/78; Order 2602, § 192-09-405, filed 4/24/70.]

WAC 192-09-410 Special proceedings--Depositions and interrogatories. An appeals examiner may on his own motion, or on request of any interested party, take or cause to be taken depositions or interrogatories from interested parties and/or witnesses residing within or without the state.

[Order 2602, § 192-09-410, filed 4/24/70.]

WAC 192-09-415 Special proceedings--Reopening of a closed case. The chief appeals examiner may order the closing of the file in any case where the appellant has been compelled to be absent from the United States. Written application to reopen the case shall be made within a reasonable period of time following the appellant's return to the United States. Only upon a showing of good cause shall the chief appeals examiner order the reopening of the case and set the matter for hearing on its merits.

[Order 2602, § 192-09-415, filed 4/24/70.]

WAC 192-09-420 Special proceedings--Challenge of examiner--Bias or interest. No examiner shall hear or decide any disputed issues in any case in which he or she has an interest. Any interested party having reason to believe that the examiner assigned to the case is prejudiced in the matter, may, at any time prior to the issuance of a discretionary ruling by the examiner assigned to the case, petition the examiner, the chief appeal examiner, or the commissioner for a change of examiner. After the issuance of a discretionary ruling, a petition for a change of examiner will be considered only if the petitioner alleges that the examiner had an actual undisclosed personal or financial interest in the outcome of the case. At any time after a hearing and prior to the commissioner's decision, any interested party having reason to believe that the examiner assigned to the hearing before the appeal tribunal failed to disclose a personal or financial interest in the outcome of the case, may petition the commissioner for a new hearing before an impartial appeal tribunal. If an examiner assigned to hear a disputed matter refuses a petition for a change of examiner on a challenge to his or her interest, such challenge shall be heard and decided by the commissioner or his or her duly authorized representative.

[Statutory Authority: RCW 50.12.010, 78-09-027 (Order 1-78), § 192-09-420, filed 8/14/78; Order 2602, § 192-09-420, filed 4/24/70.]

WAC 192-09-425 Special proceedings--Challenge of commissioner--Bias or interest. The commissioner shall not review any case on petition in which he or she has an interest. Any interested party having reason to believe that the commissioner is prejudiced in the matter shall address his or her reasons in support of such belief to the commissioner in writing at any time before issuance of the commissioner's decision. If the commissioner deems himself or herself prejudiced in the matter, he or she shall under the authority of RCW 50.12.020, assign the matter for review and decision to any departmental employee he or she deems competent. Any decision issued under the authority of this provision shall be signed by the individual who prepared the decision with the designation, "representative of the commissioner" appearing immediately below his or her signature.

[Statutory Authority: RCW 50.12.010, 78-09-027 (Order 1-78), § 192-09-425, filed 8/14/78; Order 2602, § 192-09-425, filed 4/24/70.]

WAC 192-09-430 Petition for rule making, amendment or repeal--Who may petition. Any interested person may petition the commissioner for the promulgation, amendment or repeal of any rule.

[Order 4-72, § 192-09-430, filed 11/6/72.]

WAC 192-09-435 Petition for rule making, amendment or repeal--Requisites. Where the petition requests the promulgation of a rule, the requested or proposed rule must be set out in full. The petition must also include all the reasons for the requested rule together with briefs of any applicable law. Where the petition requests the amendment or repeal of a rule presently in effect,

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the rule or portion of the rule in question must be set out as well as a suggested amended form, if any. The petition must include all reasons for the requested amendment or repeal of the rule.

[Order 4-72, § 192-09-435, filed 11/6/72.]

WAC 192-09-440 Petition for rule making, amendment or repeal--Form. A petition requesting the promulgation, amendment or repeal of any rules shall generally adhere to the following form:

At the top of the page shall appear the wording "Before the commissioner of the department of employment security." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of the petitioning person) for (state whether promulgation, amendment or repeal) of rule (or rules)." Opposite the foregoing caption shall appear the word "petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning person and whether petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of existing rule, shall set forth the desired rule in its entirety. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by agency rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

The petition shall be dated and signed by the person or entity named in the first paragraph or by his attorney. The original and two legible copies shall be filed with the commissioner. Petitions shall be on white paper, either 8 1/2 by 11 or 8 1/2 by 13 inches in size.

[Order 4-72, § 192-09-440, filed 11/6/72.]

WAC 192-09-445 Petition for rule making, amendment or repeal--Consideration. All petitions shall be considered by the commissioner who may, at his discretion, order a hearing for the further consideration and discussion of the requested promulgation, amendment, repeal or modification of any rule.

[Order 4-72, § 192-09-445, filed 11/6/72.]

WAC 192-09-450 Petition for rule making, amendment or repeal--Disposition. Within sixty days after the submission of the petition, the commissioner shall notify the petitioning person of the disposition, if any, of the petition pursuant to RCW 34.04.060.

[Order 4-72, § 192-09-450, filed 11/6/72.]

WAC 192-09-455 Declaratory ruling--Who may petition--Scope. As prescribed by RCW 34.04.080, any interested person may petition the commissioner for a

declaratory ruling. The commissioner shall consider the petition and within a reasonable time shall:

- (1) Issue a nonbinding declaratory ruling; or
- (2) Notify the person that no declaratory ruling is to be issued; or
- (3) Set a reasonable time and place for an oral hearing for the submission of written evidence upon the matter in his presence or in the presence of his authorized representative. Reasonable notification shall be given to all interested persons of the time and place for such hearing or submission and of the issues involved.

If a hearing as provided in subsection (3) is conducted, the commissioner shall, upon due consideration of the evidence and within a reasonable time:

- (1) Issue a binding declaratory ruling; or
- (2) Issue a nonbinding declaratory ruling; or
- (3) Notify the petitioner that no declaratory ruling is to be issued.

[Order 4-72, § 192-09-455, filed 11/6/72.]

WAC 192-09-460 Declaratory ruling—Form. A petition for a declaratory ruling pursuant to RCW 34.04-.080 shall generally adhere to the following form:

At the top of the page shall appear the wording "Before the commissioner of the department of employment security." On the left side below the foregoing the following caption shall be set out: "In the matter of (name of petitioning person) for a declaratory ruling." Opposite the foregoing caption shall appear the word "petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning person. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

The original and two legible copies shall be filed with the agency. Petitions shall be on white paper, either 8 1/2 by 11 or 8 1/2 by 13 inches in size.

[Order 4-72, § 192-09-460, filed 11/6/72.]

**Chapter 192-10 WAC
HEARING AND REVIEW UNDER THE WORK
INCENTIVE PROGRAM**

WAC

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**DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS
CHAPTER**

192-10-260	Disposition by decision on the merits. [Order 4-72, § 192-10-260, filed 11/6/72.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 74.22.110 and 74.23.120.
192-10-270	Disposition by decision other than on the merits. [Order 4-72, § 192-10-270, filed 11/6/72.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 74.22.110 and 74.23.120.

WAC 192-10-010 Hearings and review under the work incentive program. Definitions:

(1) "AFDC" (aid to families with dependent children) means the program authorized under Title IV-A of the Federal Social Security Act to provide financial assistance and social services to needy families with children.

(2) "Appellant" means a registrant who requests a hearing with the appeal tribunal.

(3) "Appeals examiner" means an authorized hearing officer of the appeal tribunal.

(4) "Appeal tribunal" means the adjudicative body provided by the department to hear disputes under this chapter.

(5) "Commissioner" means the commissioner of the employment security department.

(6) "Appraisal" means the interview of a WIN registrant by WIN sponsor staff and separate administrative unit (SAU) staff to determine employability potential, to determine the need for supportive services, and to develop an employability plan.

(7) "Department" means the Washington state department of employment security in its capacity as state WIN sponsor.

(8) "DSHS" means the Washington state department of social and health services.

(9) "Exemption" means exclusion from the requirement imposed upon AFDC recipients under Title IV-A of the Social Security Act to register for the WIN program.

(10) "National review panel" means the highest level of administrative authority for appeals under the WIN program. The panel is established by the United States

Department of Labor pursuant to 29 CFR § 56.70 and is located in Washington, D.C.

(11) "Petitioner" means any person in interest who petitions the commissioner for review of a decision of the appeal tribunal.

(12) "Registrant" means an AFDC applicant or recipient who has registered with the WIN sponsor for manpower and related social services, including training and employment.

(13) "WIN" means the work incentive program established under Title IV-A of the Federal Social Security Act and mandatory for all nonexempt AFDC recipients.

[Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-010, filed 8/14/78; Order 4-72, § 192-10-010, filed 11/6/72.]

WAC 192-10-015 Computation of time. Unless otherwise provided, in computing any period of time prescribed or allowed by this chapter, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday.

[Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-015, filed 8/14/78.]

WAC 192-10-020 Purpose and scope. (1) This chapter sets forth the rules of practice applicable to appeal tribunal hearings and commissioner's review proceedings relating to certain disputes arising under the WIN program in the state of Washington. In the event that the rules in this chapter conflict with any federal law or regulation relating to the WIN program, the federal law or regulation shall control. Such disputes involve (a) the refusal or failure on the part of a registrant to accept employment or to participate in the WIN program without good cause, (b) the refusal or failure to appear for appraisal, (c) disputed assignments to a WIN component, and (d) unresolved WIN grievances.

(2) After reasonable attempts have been made at the local level to resolve disputes arising from work, or training assignment under WIN, the designated activity may be accepted without prejudicing the individual's right to protest such assignment. Such protest shall be handled by appeal tribunal hearing and commissioner's review in the same manner as if the registrant had, in fact, refused to participate in the WIN program.

[Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-020, filed 8/14/78; Order 4-72, § 192-10-020, filed 11/6/72.]

WAC 192-10-030 Hearings--Requests--Time limitations. Any registrant who disagrees with a determination proposing to terminate him or her from the WIN program or who disagrees with a departmental decision involving assignments to a WIN component or has an unresolved grievance may, within ten calendar days after the mailing of the notice of proposed deregistration or

other action, request a hearing with the appeal tribunal. The request for a hearing may be made either orally or in writing by the individual or his authorized representative to the WIN sponsor. If the request is mailed, it shall be deemed filed on the postmark date if it is properly addressed and has sufficient postage affixed.

[Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-030, filed 8/14/78; Order 4-72, § 192-10-030, filed 11/6/72.]

WAC 192-10-040 Hearings--Requests--How made. The request for a hearing may be made orally or in writing by the appellant or his duly authorized representative to the department's local office from which the determination or denial was received. If the request is mailed to the local office, it shall be deemed made on the postmark date if the request is properly addressed and has sufficient postage affixed thereto.

[Order 4-72, § 192-10-040, filed 11/6/72.]

WAC 192-10-050 Hearings--Preparation and service. Where the request is oral the department shall prepare required forms on behalf of the individual and obtain the individual's signature on the forms. In all cases the local office shall forward to the chief appeals examiner of the appeal tribunal the appellant's case records and request for hearing before the close of the next business day after receipt of the request.

[Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-050, filed 8/14/78; Order 4-72, § 192-10-050, filed 11/6/72.]

WAC 192-10-060 Hearings--Notice requirements. Within ten days after receipt of the formal request for hearing by the department a notice of hearing and a copy of the rules of practice shall be mailed to the appellant and any other person in interest at their last known address. The notice shall state the date, time and place of hearing and the issues to be heard.

[Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-060, filed 8/14/78; Order 4-72, § 192-10-060, filed 11/6/72.]

WAC 192-10-070 Hearings--Scheduling--Location. All hearings contemplated by this chapter shall be scheduled no earlier than ten days or later than thirty days following the mailing of the notice of hearing. The appeal tribunal may at its discretion approve a request for rescheduling a hearing. All hearings will be scheduled between the hours of 8:00 a.m. and 5:00 p.m., Mondays through Fridays (state holidays excepted), at any reasonable location in the area wherein the appellant resides or any other mutually convenient location.

[Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-070, filed 8/14/78; Order 4-72, § 192-10-070, filed 11/6/72.]

WAC 192-10-080 Parties and presentation of the case. The hearing shall be conducted by an appeal examiner. The registrant or his representative, and the designated WIN sponsor and DSHS shall be afforded the opportunity to present, examine, and cross-examine

witnesses. A member of the WIN staff or its legal representative shall have primary responsibility for presenting the case to the appeals examiner.

[Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-080, filed 8/14/78; Order 4-72, § 192-10-080, filed 11/6/72.]

WAC 192-10-090 Duties of the examiner. The hearing shall be conducted with full regard to the requirements of due process of law to assure a fair and impartial hearing. The appeals examiner shall:

- (1) Administer oaths and affirmations;
- (2) Issue subpoenas as hereinafter authorized;
- (3) Rule on offers of proof and receive relevant evidence;
- (4) Regulate the course of the hearing and the order of presentation of evidence; and
- (5) Take any other action necessary to insure an orderly hearing, including disqualification of a representative for improper conduct at the hearing. He may participate in eliciting testimony from the witnesses, but shall not act as an advocate for any party, and shall, if feasible, resolve the dispute by conciliation at any time prior to the conclusion of the hearing.

[Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-090, filed 8/14/78; Order 4-72, § 192-10-090, filed 11/6/72.]

WAC 192-10-100 Testimony and examination of witnesses. The appellant and/or his authorized representative, as well as representatives of the department and of DSHS, shall have the opportunity to give testimony and to present, examine, or cross-examine witnesses.

[Order 4-72, § 192-10-100, filed 11/6/72.]

WAC 192-10-110 Recording of testimony. The testimony at the hearing shall be recorded. It shall be transcribed only as needed or when the appeal tribunal's decision is to be reviewed by the National Review Panel.

[Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-110, filed 8/14/78; Order 4-72, § 192-10-110, filed 11/6/72.]

WAC 192-10-120 Access to records. The case record, or any portion thereof, shall be available for inspection and copying by any person in interest at, prior, or subsequent to the hearing upon said person's request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual.

[Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-120, filed 8/14/78; Order 4-72, § 192-10-120, filed 11/6/72.]

WAC 192-10-130 Admissibility of evidence. The appeals examiner shall receive any evidence logically tending to prove or disprove a given fact in issue, irrespective of common law rules of evidence, but no decision or finding of fact shall be based exclusively upon hearsay evidence. The examiner may, with or without objection, exclude or prohibit the reception of irrelevant or unnecessarily cumulative evidence.

(1986 Ed.)

[Order 4-72, § 192-10-130, filed 11/6/72.]

WAC 192-10-140 Documentary evidence. The appeals examiner shall receive and make part of the record documentary evidence offered by any party and accepted at the hearing and copies thereof shall be made available to other parties upon request.

[Order 4-72, § 192-10-140, filed 11/6/72.]

WAC 192-10-150 Stipulations. Any primary facts necessary to the determination of any issue may be evidenced by stipulation; but in case the appeals examiner has reason to believe that there is evidence available which would result in a finding of fact different from that sought to be established by stipulation, he shall require the production of such evidence.

[Order 4-72, § 192-10-150, filed 11/6/72.]

WAC 192-10-160 Deposition and interrogatories. The appeals examiner may on his own motion, or on request of any interested person, take or cause to be taken depositions or interrogatories from interested persons and/or witnesses residing within or without the state.

[Order 4-72, § 192-10-160, filed 11/6/72.]

WAC 192-10-170 Subpoenas--Procedure for issuance. The appeals examiner shall, upon request of any person in interest or upon his own motion, subpoena witnesses, record or documents that are, in the opinion of the examiner, relevant to the hearing.

[Order 4-72, § 192-10-170, filed 11/6/72.]

WAC 192-10-180 Subpoenas--Service. Unless service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering to him upon demand the fees for one day's attendance and the mileage allowed by law.

[Order 4-72, § 192-10-180, filed 11/6/72.]

WAC 192-10-190 Subpoenas--Proof of service. The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit, or acknowledgment of service with the appeals examiner before whom the witness is required to testify or produce evidence. Failure to make proof of service does not affect the validity of the service. Both service of a subpoena and proof of service shall be accomplished by an agent of the department.

[Order 4-72, § 192-10-190, filed 11/6/72.]

WAC 192-10-200 Subpoenas--Attendance fees. Witnesses summoned before the appeal tribunal shall be paid by the department the same fees and mileage that are paid to witnesses in the superior courts of the state of Washington. The appeals examiner shall certify as to the service performed by any witness entitled to such fees and shall present an itemized statement of costs of the hearing to the chief appeals examiner for approval

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and referral to the fiscal officer of the department for further approval and payment.

[Order 4-72, § 192-10-200, filed 11/6/72.]

WAC 192-10-210 Procedure to quash subpoenas.

Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed (and upon notice to the person to whom the subpoena was issued), the appeals examiner may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion upon just and reasonable conditions.

[Order 4-72, § 192-10-210, filed 11/6/72.]

WAC 192-10-220 Judicial enforcement. Upon application and for good cause shown, the appeal tribunal will seek judicial enforcement of subpoenas which have been properly issued and which have not been quashed.

[Order 4-72, § 192-10-220, filed 11/6/72.]

WAC 192-10-230 Geographical scope. Such attendance of witnesses and such production of evidence may be required from any place in the state of Washington, at any designated place of hearing.

[Order 4-72, § 192-10-230, filed 11/6/72.]

WAC 192-10-240 Medical evaluation. In any case in which a hearing involves a medical issue the appeals examiner may authorize a medical evaluation on the motion of any interested party. The costs of procuring the medical evaluation will be borne by the work incentive program, however, no fee shall be paid which would exceed the current fee schedule in effect at the department of social and health services for similar evaluations.

[Order 4-72, § 192-10-240, filed 11/6/72.]

WAC 192-10-250 Continuances. During a hearing, if it appears in the interest of justice that further testimony or argument should be received, the appeals examiner may continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Written notice of the time and place of the continued hearing will be given to any interested person or witness not present at the original hearing.

[Order 4-72, § 192-10-250, filed 11/6/72.]

WAC 192-10-265 Decision of appeals examiner. The appeals examiner may rule:

(1) That the individual has failed to appear for appraisal without good cause or has failed or refused to participate without good cause, and that appropriate de-registration shall be initiated;

(2) That good cause has been shown for failure or refusal to participate and the individual should be retained in the program;

(3) That the request for a hearing is dismissed because:

(a) It was filed untimely without good cause;

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(b) It has been withdrawn in writing;

(c) The individual failed to appear at the hearing without good cause; or

(d) Reasonable cause exists to believe that the request has been abandoned or that repeated requests for re-scheduling are arbitrary and for the purpose of unduly delaying or avoiding a hearing, in which case DSHS may initiate necessary action to impose appropriate sanctions;

(4) That the individual was appropriately or inappropriately assigned; or

(5) Render such other rulings as are appropriate to the issues in question. However, an appeals examiner shall not consider the validity or constitutionality of these regulations, federal regulations, or Title IV of the Social Security Act.

[Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-265, filed 8/14/78.]

WAC 192-10-280 Decisions—Preparation and service. On the basis of the record compiled at the hearing, the hearings examiner shall, within ten working days following the hearing, mail a written decision stating his findings and conclusions. Copies of the decision shall be served by certified mail on the applicant, the department, and all other persons in interest. Instructions for petitioning for commissioner's review of an adverse decision shall be attached to the appellant's copy. The case record shall be returned to the department.

[Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-280, filed 8/14/78; Order 4-72, § 192-10-280, filed 11/6/72.]

WAC 192-10-290 Certification of novel questions of law or policy. In cases involving novel questions of law or policy, the appeals examiner may, within five days after issuance of his written decision, certify the case for review and decision to the commissioner.

[Order 4-72, § 192-10-290, filed 11/6/72.]

WAC 192-10-300 Petition for review by the commissioner. Any party disagreeing with the decision of the appeal tribunal, may petition the commissioner in writing for review of said decision within ten days after the mailing of the appeal tribunal's written decision. In all cases, whether or not he is the petitioner, the registrant shall be furnished with the rules governing the commissioner's review along with notification of the receipt of the petition for such review. A petition for review shall not stay implementation of the decision.

[Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-300, filed 8/14/78; Order 4-72, § 192-10-300, filed 11/6/72.]

WAC 192-10-310 Commissioner's review procedure.

(1) The commissioner shall consider and render a decision on a written petition for review which is filed within ten days after the mailing of the written appeal tribunal decision. The petition need not be in any particular form but should specify the decision to which the petitioner takes exception and the date on which the decision was

received. The petition shall be signed by the petitioner or his duly authorized representative. The petition shall be deemed timely filed if it is received by the commissioner or by any local office of the department within the prescribed ten day time period. If the petition is mailed, it shall be deemed filed on the postmark date if the petition is properly addressed and has sufficient postage affixed thereto.

(2) Within thirty days after receipt of the petition for review, the commissioner shall prepare a written decision either affirming or reversing the appeal tribunal decision. The commissioner may also remand the case to the tribunal for further development of the evidence. The commissioner's decision shall be based solely upon his review of the hearing record and upon any additional evidence submitted to the tribunal in connection with the commissioner's review of the case. The decision shall state the findings and the reasons for the conclusions reached therein.

(3) Copies of the commissioner's decision shall be served by certified mail on the registrant and other persons in interest. Instructions for appealing an adverse decision to the National Review Panel and the conditions under which the panel will consider an appeal shall be attached to the registrant's copy of the decision.

(4) The commissioner may, in petitions involving novel questions of law or policy, certify the case within five days after his decision to the National Review Panel for review and decision.

(5) If a hearings examiner's adverse decision is reversed on appellate review, the individual shall be paid such retroactive WIN and welfare benefits as may be applicable and, where appropriate, shall be reinstated in the program.

[Statutory Authority: RCW 74.22.110 and 74.23.120. 78-09-027 (Order 1-78), § 192-10-310, filed 8/14/78; Order 4-72, § 192-10-310, filed 11/6/72.]

WAC 192-10-320 Withdrawal of request for hearing and of petition for review. A request for hearing or petition for review may be withdrawn at any time prior to a decision thereon, in which case the previous determination, denial or decision shall be final. Such withdrawal shall, however, be subject to the approval of the appeal tribunal in the case of a request for hearing, and of the commissioner in the case of a petition for review.

[Order 4-72, § 192-10-320, filed 11/6/72.]

WAC 192-10-330 Representation. An individual may represent himself or may be represented by legal counsel or by any spokesman of his choice, upon satisfactory proof of authorization. Charges or fees for services of a representative or attorney shall be the obligation of the individual.

[Order 4-72, § 192-10-330, filed 11/6/72.]

Chapter 192-12 WAC

SUBSTANTIVE RULES

WAC	General definitions and use of terms.
192-12-010	Definitions relating to RCW 50.04.145 and 50.24.130.
192-12-015	Definitions relating to use of shop facilities contingent upon compensation—Other consideration—RCW 50.04.225.
192-12-017	Definitions relating to musicians—Conditions for exemption of musicians and entertainers under chapter 50.04 RCW (section 1, chapter 47, Laws of 1985).
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192-12-025	Reports required of persons or entities for whom personal services are performed.
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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 192-12-120 Secrecy of information. [Order 2-73, § 192-12-120, filed 11/15/73; Regulation 11, adopted 6/10/53, effective 6/20/53.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.12.010.
- 192-12-131 Pending of benefit claims—Notice. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-02-061 (Order 1-84), § 192-12-131, filed 1/4/84.] Repealed by 84-13-050 (Order 4-84), filed 6/18/84. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-12-132 Pending of benefit claims—Notice—Advice on rights. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-02-061 (Order 1-84), § 192-12-132, filed 1/4/84.] Repealed by 84-13-050 (Order 4-84), filed 6/18/84. Statutory Authority: RCW 50.12.010 and 50.12.040.
- 192-12-134 Overpayments—Offsets—Right to hearing. [Statutory Authority: RCW 50.12.010 and 50.12.040. 84-02-061 (Order 1-84), § 192-12-134, filed 1/4/84.] Repealed by 87-01-026 (Order 5-86), filed 12/11/86. Statutory Authority: RCW 50.04.320, 50.12.010 and 50.12.040.
- 192-12-140 Registration and claims for benefits. [Order 2-72, § 192-12-140, filed 7/6/72; Regulation 13, effective 5/15/58.] Repealed by Order 2-77, filed 9/2/77.
- 192-12-157 Recovery of benefit payments. [Order 2-73, § 192-12-157, filed 11/15/73.] Repealed by 85-21-024 (Order 6-85), filed 10/10/85. Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040.

WAC 192-12-010 General definitions and use of terms. (1) Section 40 of the act (RCW 50.12.010) provides: "It shall be the duty of the commissioner to administer this act. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, * * * as he deems necessary or suitable to that end. * * *"

(2) The commissioner accordingly prescribes: In any rule or regulation now or hereafter promulgated, unless the context clearly indicates otherwise, all terms specially defined herein shall be given the meaning contained in such definition. However, the use of any term which has been specially defined in the act shall imply the same meaning as that term implies when used in the act. For purposes of contributions only:

(a) "Wages" shall include advances made to an individual in anticipation of services to be performed and such advances shall be deemed earned and paid when made. Petitions for refund or adjustment will be entertained in connection with contributions paid with respect to such advances, in the event that the anticipated services are not later performed.

(b) "Wages paid" include both wages actually received by an individual and wages constructively paid. Wages are constructively paid when they are credited to the account of or set apart for an individual so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case the wages must be credited or set apart to the individual without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn at any time, and their payment brought within his own control and disposition.

(c) Deductions: Whenever under any act of congress or under the law of any state an employer is required or permitted to deduct any amount from the remuneration of an individual in its employ and to pay the amount deducted to the United States, a state, or any political subdivision thereof, the amount so deducted shall be considered as wages and shall be considered to have been paid to the individual at the time of such deduction. Other amounts deducted from the wages of an individual by an employer also constitute wages paid to the individual at the time of the deduction.

[Regulation 1, adopted 6/10/53, effective 6/20/53.]

WAC 192-12-015 Definitions relating to RCW 50.04.145 and 50.24.130. For the purposes of RCW 50.04.145 and 50.24.130.

Definitions:

(1) "Same work" is defined as work performed in the same trade or craft (i.e., carpenters, electricians, etc.).

(2) "At the same time" is defined as occurring concurrently as opposed to the case of one contractor replacing another in the same trade.

(3) "Project" is defined as any work performed under a contract within the scope of a building permit; or, if a building permit is not required, work performed under a contract.

(4) "Separate set of books or records" is defined as records other than those maintained by the contractor for which services are performed.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-12-015, filed 8/17/82.]

WAC 192-12-017 Definitions relating to use of shop facilities contingent upon compensation—Other consideration—RCW 50.04.225. Definitions:

(1) "Use of the shop facilities by the individual performing the services is contingent upon compensation to the shop owner" means the exclusive use of all or part of the shop facilities is provided under a written or oral contract for lease or rent payments made by the individual performing the services to the person holding the shop location license. Lease or rent payments may be made on a flat fee or a percentage basis.

(2) "Other consideration" means anything of value that is not specified in the lease or rental agreement for use of the facilities and is provided by the shop owner to the individual performing the services.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-12-017, filed 8/17/82.]

WAC 192-12-018 Definitions relating to musicians—Conditions for exemption of musicians and entertainers under chapter 50.04 RCW (section 1, chapter 47, Laws of 1985). (1) A purchaser of musical or entertainment services will not be deemed the employer of the musician(s) or entertainers(s) if the following conditions are met:

(a) There is a written contract for a specific engagement or engagements, in which the dates and/or times of performance are clearly set forth; and

(b) Such contract identifies the owner(s) or leader of the music or entertainment group, or such contract is with a sole entertainer; and

(c) The musician or entertainer performs no other duties for the purchaser other than those musical or entertainment services specifically contracted for; and

(d) The musician or entertainer is not regularly and continuously employed by the purchaser.

Additionally, the purchaser will not incur secondary tax liability under RCW 50.24.130 if, at the time of performance of the services, the business, group, or individual providing the services is registered as an employer with the department.

(2) The music or entertainment business or the owner(s) or leader of a music or entertainment group, is/are deemed to be the employer of all other musicians and entertainers who perform as members of the group for unemployment insurance tax purposes when the conditions in subsection (1) are met. In such instances, the owner(s) or leader must register with the department for the purpose of determining reporting requirements.

(3) "Individuals employing musicians or entertainers on a casual basis" are not considered to be a music or entertainment business, nor are they considered to be a music or entertainment leader.

(4) Definitions as used in this section:

(a) A "music or entertainment business" is an organization whose principal business activity is music or entertainment, but does not include an organization which provides music or entertainment that is only incidental to its business activity.

(b) A "music or entertainment group" is an association whose principal business activity is music or entertainment.

(c) A "music or entertainment group leader" is an individual whose group's principal business activity is music or entertainment.

(d) "Regularly and continuously employed" means:

(i) Working for someone for a sufficient period of time that one could objectively be deemed to be an employee and not an independent venturer (the value and ownership of musical or sound equipment should be considered); or

(ii) An employment (or contractual) relationship in which the musician or group is regularly available on an "on call" basis during the span of the contract; or

(iii) A working relationship in which the individual musician(s) are hired by and under the direct control of the purchaser (or his or her agent) for an indefinite period of time.

(e) "Performs no other duties for the purchaser" means that a musician or entertainer provides no other duties under the contract outside of those in music or entertainment for which hired.

(f) "Employing on a casual basis" means:

(i) Hiring performers on an occasional, random basis to perform services that are unrelated to the purchaser's business activity; or

(ii) The services are not for the promotion of a business venture which is the purchaser's business activity.

[Statutory Authority: RCW 50.12.010, 50.12.040, chapter 50.04 RCW and 1985 c 47 § 1. 85-22-045 (Order 7-85), § 192-12-018, filed 11/1/85.]

WAC 192-12-019 Employer request for benefit charge relief. RCW 50.29.020(2) provides, in part, that a contribution-paying base year employer may request relief of benefit charges which result from payment to an individual who last left his/her employment voluntarily (for reasons not attributable to the employer) or was discharged for misconduct connected with the work. The employer request must be received within 30 days of the mailing of the notification of the claimant filing an initial claim (the initial "Notice to base year employer" EMS 166).

The commissioner accordingly prescribes:

(1) Reasons not attributable to the employer for voluntarily leaving work shall be personal reasons, not work connected. These reasons may include, but are not limited to:

- (a) Employee illness or disability;
- (b) Illness or death of member(s) of employee's immediate family;
- (c) Employee's leaving to accept work with another employer;
- (d) Incarceration of employee;
- (e) Marital or domestic responsibilities of the employee;
- (f) Employee's pursuit of additional education; or
- (g) Personal dissatisfaction with wages or hours known at time of hire.

(2) Reasons considered to be attributable to the employer are those work related factors of such a compelling nature as to cause a reasonably prudent person to leave his or her employment. Such work related factors may include, but are not limited to:

- (a) Substantial involuntary deterioration of the work factors;
- (b) Work location (distance and difficulty of travel);
- (c) Safety of work site, equipment/machine safety;
- (d) Employee skills no longer required for job performance; or
- (e) Such other work related factors as the commissioner may deem pertinent.

(3) The employer requests for benefit charging relief must be in writing and must be received or postmarked within 30 days of mailing of the notification of the initial determination (the initial "Notice to base year employer" EMS 166), except for good cause shown. Benefit charging relief is only available with respect to notices of initial determination (the initial "Notice to base year employer" EMS 166) mailed July 1, 1985, or later.

Any employer added to a monetary determination as a result of a redetermination of an initial claim, filed on July 1, 1985, or later, will be eligible for consideration of noncharging relief.

Any employer added to a monetary determination as the result of a redetermination of an initial claim filed prior to July 1, 1985, will be eligible for consideration of relief of charging if the notification of the initial determination ("Notice to base year employer" EMS 166) was mailed July 1, 1985, or later.

(4) **Timeliness.** If, upon receipt of the employer's written request, the department requires additional information, the employer shall provide the requested information within 10 working days from the date of mailing of the request by the department. Failure to respond within 10 working days will result in a denial of benefit charging relief for the employer unless good cause for the untimely response is shown.

(5) **Burden of proof.** It shall be the responsibility of the employer to provide all pertinent facts to the satisfaction of the department to allow a determination of noncharging relief or good cause for failure to respond in a timely manner.

(6) Any denial of a request for noncharging relief shall be in writing and will be the basis of appeal pursuant to RCW 50.32.050.

[Statutory Authority: Chapter 50.04 RCW, RCW 50.29.020, 50.12.010 and 50.12.040. 85-21-023 (Order 5-85), § 192-12-019, filed 10/10/85.]

WAC 192-12-020 Week defined. Section 37 of the act (RCW 50.04.360) provides: "'Week' means any period of seven consecutive calendar days ending at midnight as the commissioner may by regulation prescribe."

The commissioner accordingly prescribes: The term "week" shall mean a period of seven consecutive calendar days commencing with Sunday and ending at midnight the following Saturday.

[Regulation 2, adopted 6/10/53, effective 6/20/53.]

WAC 192-12-025 Requirements of corporations electing coverage of corporate officers. RCW 50.04.165 provides: "Services performed by corporate officers, as defined in RCW 23A.08.470, other than those covered by chapter 50.44 RCW, shall not be considered services in employment. However, a corporation may elect to cover not less than all of its corporate officers under RCW 50.24.160. If an employer does not elect to cover its corporate officers under RCW 50.24.160, the employer must notify its corporate officers in writing that they are ineligible for unemployment benefits. If the employer fails to notify any corporate officer, then that person shall not be considered to be a corporate officer for the purposes of this section."

In order for the employment security department to make timely and accurate employer liability determinations and unemployment insurance payments, the commissioner prescribes:

(1) The term "corporate officer" is defined the same as in RCW 23A.08.470, which states "The officers of a corporation shall consist of a president, one or more vice-presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two or more offices may be held by the same person, except the offices of president and secretary, except that when all of the

issued and outstanding stock of the corporation is owned of record by one shareholder, one person may hold all or any combination of offices."

(2) All services of corporate officers are deemed exempt until the effective date of approval of election of coverage by the commissioner.

(3) A written request for voluntary coverage must be submitted by the employer and be signed by someone authorized to legally bind the corporation. The request must be received by the department no later than thirty days prior to the end of the quarter in which the change of coverage is to begin.

(4) All changes in elected coverage of services of corporate officers can be effective from the beginning of any calendar quarter, and will remain in effect for not less than two calendar years. Coverage can be terminated only at the end of a calendar year, provided a written request for termination is submitted to the agency by the employer, on or before the 15th of January immediately following the end of the last calendar year of desired coverage.

(5) Wages or salary paid for services of corporate officers exempt under RCW 50.04.165 will not be used to determine liability of agricultural employers. However, if a corporation voluntarily covers its officers, the wages or salaries paid for such services shall be used to determine the liability of agricultural employers.

(6) A corporation exempt from covering the services of its officers under RCW 50.04.165 should not include those officers' names, social security numbers, wages or hours on any employment security quarterly wage and tax reports submitted for any calendar quarters which fall during the period of exemption.

(7) For wages paid on or after July 1, 1986, corporate officers are exempt under RCW 50.04.165 only if their employer has notified them in writing that they are ineligible for unemployment benefits, with the exemption becoming effective as of the date of the written notice.

[Statutory Authority: RCW 50.04.165, 50.12.010, 50.12.040 and 1986 c 110. 86-14-031 (Order 2-86), § 192-12-025, filed 6/26/86. Statutory Authority: RCW 50.04.165, 50.12.010 and 50.12.040. 83-23-034 (Order 3-83), § 192-12-025, filed 11/9/83. Statutory Authority: RCW 50.04.165, 50.04.320, 50.12.010 and 50.12.040. 81-23-010 (Order 4-81), § 192-12-025, filed 11/10/81.]

WAC 192-12-030 Reports required of persons or entities for whom personal services are performed. RCW 50.12.070 provides:

"* * * The commissioner may require from any employing unit any sworn or unsworn reports with respect to persons employed by it, which he deems necessary for the effective administration of this act. Each employer shall make periodic reports at such intervals as the commissioner may by regulation prescribe, setting forth the remuneration paid for employment to workers in its employ, the names of all such workers and such other information as the commissioner may by regulation prescribe."

RCW 50.20.150 provides:

"The applicant for initial determination, his most recent employing unit as stated by the applicant, and any

other interested party which the commissioner by regulation prescribes, shall, if not previously notified within the same continuous period of unemployment, be given notice promptly in writing that an application for initial determination has been filed and such notice shall contain the reasons given by the applicant for his last separation from work. If during the benefit year, the applicant becomes unemployed after having accepted subsequent work, and files a claim for waiting period credit or benefits, a similar notice shall be given promptly to his then most recent employing unit as stated by him, or to any other interested party which the commissioner by regulation prescribes."

RCW 50.32.020 provides:

"The applicant or claimant, his most recent employing unit or any interested party which the commissioner by regulation prescribes, may file an appeal from any determination or redetermination with the appeal tribunal within ten days after the date of notification or mailing, whichever is earlier, of such determination or redetermination to his last known address: * * *" RCW 50.12.010 provides:

"It shall be the duty of the commissioner to administer this act. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, * * * as he deems necessary or suitable to that end. * * *"

The commissioner accordingly prescribes:

(1) **Employer's status report.** Every person or entity which has or subsequent to January 1, 1936, had one or more individuals performing services for it in the state of Washington shall have on file with the commissioner immediately after the effective date of this regulation an employer's status report in accordance with the form therefor furnished by the commissioner.

(2) **Contribution and wage reports:**

(a) **Contribution report.** Each employer shall not later than the last day of the month following the expiration of any calendar quarter file with the commissioner, on forms which the commissioner shall furnish, a report with respect to such quarter setting forth the wages paid for employment to individuals in his employ. Calendar quarters shall be deemed to end March 31, June 30, September 30 and December 31 respectively of each year.

(b) **Wage report.** Each employer shall not later than the last day of the month following the expiration of such calendar quarter file with the commissioner, on forms which the commissioner shall furnish, a report with respect to such calendar quarter setting forth the wages paid during such calendar quarter for employment to individuals in his employ, the number of hours worked by each individual, the names of such individuals and their social security account numbers. Exceptions to the foregoing provisions 2(a) and (b) relative to the time and manner of reporting shall be allowed only after application has been made requesting exceptions and the application has been approved by the commissioner.

(c) **Termination of business.** Each employer who ceases business or for any reason causes his account to be closed by the department shall immediately file:

(i) A contribution report with respect to the current calendar quarter which report shall cover contributions due to the date such account is closed;

(ii) A quarterly wage report with respect to the current calendar quarter as provided in section (2)(b) of this regulation which report shall include all wages paid to the date such account is closed.

(d) **Reports for maritime service.**

(i) **Maritime contribution reports.** Contribution reports with respect to wages, including advances, allotments, slops, and payment in kind, such as board and lodging, earned in any pay period shall be submitted as of the calendar quarter in which any such wages in cash were actually paid or such wages in kind were furnished, except that any of such items which are unknown to the reporting office will be considered paid in the calendar quarter in which the voyage is terminated.

(ii) **Maritime wage reports.** Individual wage detail reports on wages falling within the purview of this regulation need not be filed prior to the time when reports regarding wages paid at the termination of such period must be filed; except, however, supplemental quarterly wage detail reports shall be filed whenever wages involved were actually paid in a previous calendar quarter. Such supplemental report shall be filed along with the related contribution report.

(iii) **Maritime special reports.** The employer shall, upon request of the commissioner, promptly furnish a statement of the wages of a seaman, whenever such statement is necessary in order to determine such seaman's eligibility for and rate of benefits. Such statements shall be prepared and submitted in such a manner as the commissioner may in each case prescribe.

(3) **Report of circumstances of applicant's separation from employment.** Whenever an individual files an application for an initial determination or thereafter lapses his reporting at the local office and later renews such reporting following intervening employment, a notice of such filing or renewal shall be mailed to the applicant's most recent employing unit as stated by the applicant. Any employing unit receiving such a notice and having knowledge of any factors which might render the applicant ineligible for waiting period credit or benefits shall report such factors to the employment security department at the address indicated on the notice within ten days of the date of mailing of such notice. The absence of the receipt of the employing unit's report within the ten day period shall be deemed to justify allowances to the applicant of waiting period credit and the payment of benefits, provided the applicant is in all respects eligible.

In the event that information reported by an employing unit, in response to either of the notices required herein, is claimed by the employing unit to require disqualification from allowance of waiting period credit or payment of benefits, a determination of benefit rights will be made and a copy of such determination mailed to the employing unit.

(4) **Low earnings report.** When requested to do so by an authorized representative of the commissioner any

person or entity for whom personal services are performed by individuals working less than full time during a "week" as defined in WAC 192-12-020 with resulting loss of earnings, to wit: Less than the maximum weekly benefit amount established by law, shall thereafter file with the nearest employment office, upon forms furnished by the commissioner, a report of low earnings with respect to such individuals for all weeks designated in the request.

(5) **Labor dispute report.** When any person or entity for whom personal services are performed has substantially curtailed or stopped operation by reason of a labor dispute or should such person or entity have reason to believe that such substantial curtailment or stoppage is due to a labor dispute, it shall advise the nearest employment office in writing of the date of the commencement of such substantial curtailment or stoppage of operations and upon the demand of the commissioner shall furnish, upon forms furnished by the commissioner, a report setting out the conditions under which such substantial curtailment or stoppage of operations occurred, together with the names, social security account numbers and job classifications of the individuals involved. Changes in the condition under which the labor dispute arose or in the status of any such individuals, occurring during the course of the dispute, shall be reported in the same manner.

Subsequent to the termination of the labor dispute, such person or entity shall advise the nearest employment service office in writing of the date of the termination of the labor dispute.

(6) **Vacation reports.** Each employer temporarily ceasing or substantially curtailing operations in order to allow a vacation period for individuals in its employ pursuant to an employment contract shall seven days prior to cessation or substantial curtailment of operations file with the nearest employment office a report giving the date of commencement and duration of the vacation period and shall further, upon the demand of the commissioner, furnish a report setting forth (a) the name of each individual ceasing work by reason of such cessation or curtailment of operations; (b) his Social Security account number; (c) the amount of wages or remuneration, if any, paid or payable to each individual for the vacation period; and (d) the identity of such individuals who have been or will be granted vacations during some other period.

(7) **Report form instructions.** All instructions contained on any report form issued by the employment security department shall have the same force and effect as if such instructions had been incorporated into and made a part of this regulation.

[Statutory Authority: RCW 50.12.010, 78-09-027 (Order 1-78), § 192-12-030, filed 8/14/78; Order 2602, § 192-12-030, filed 4/24/70; Regulation 3, filed 12/1/65, effective 1/1/66; Regulation 3, adopted 5/31/55, effective 7/3/55.]

Reviser's note: RCW 50.12.070, 50.20.150, and 50.12.010 as quoted in this section, do not accurately reflect the current version of those sections.

WAC 192-12-035 Registration of political subdivisions and instrumentalities thereof. RCW 50.44.030 requires any political subdivision or instrumentality of one or more political subdivisions of this state or one or more political subdivisions of this state and any other state, to file a written registration with the commissioner before December 15, 1977. The commissioner accordingly prescribes:

(1) Such registration, in accordance with the form therefor furnished by the commissioner, shall specify the manner in which the unit of government will finance the payment of benefits.

(2) If written registration is not received by December 15, 1977, the unit of government will automatically be assigned the method provided in RCW 50.44.035 (local government tax) or the method provided in chapters 50.24 and 50.29 RCW (payment of contributions), as is appropriate for that unit of government.

(3) Units of government created after January 1, 1978, will have thirty days from the date of inception to submit written registration with the commissioner, if not submitted within thirty days the unit of government will automatically be assigned a manner of financing benefits as provided in subsection (2) of this section.

(4) The commissioner for good cause may extend the time limits for registration provided in subsections (2) and (3) of this section.

[Statutory Authority: RCW 50.12.010, 78-09-027 (Order 1-78), § 192-12-035, filed 8/14/78.]

WAC 192-12-040 Contributions by employers. RCW 50.24.010 provides in part:

"Contributions shall accrue and become payable by each employer (except employers as described in RCW 50.44.010 who have properly elected to make payments in lieu of contributions and those employers who are required to make payments in lieu of contributions) for each calendar year in which the employer is subject to this title at the rate established pursuant to chapter 50.29 RCW.

"In each rate year, the amount of wages subject to tax for each individual shall be one hundred fifteen percent of the amount of wages subject to tax for the previous year rounded to the next lower one hundred dollars: *Provided*, That the amount of wages subject to tax in any rate year shall not exceed eighty percent of the 'average annual wage for contributions purposes' for the second preceding calendar year rounded to the next lower one hundred dollars: *Provided further*, That the amount subject to tax shall be twelve thousand dollars for rate year 1984 and ten thousand dollars for rate year 1985.

* * *

"Contributions shall become due and be paid by each employer to the treasurer for the unemployment compensation fund in accordance with such regulations as the commissioner may prescribe, * * *."

The commissioner accordingly prescribes:

(1) Contributions shall become due and be payable quarterly and shall reach the office of the treasurer not later than the last day of the month following the end of

the calendar quarter for which such contributions have accrued; but remittances made by mail shall be deemed to have been received timely in the office of the treasurer if they bear a postmark not later than midnight of the last day of such month. In the event that the last day of such month shall fall on a Sunday or a legal holiday or on a day which the legislature of the state of Washington has determined to be a nonwork day for the employees of the employment security department, then any contributions reaching the office of the treasurer or any duly constituted agent of the employment security department on the next work day shall be deemed to have been received timely. Each quarterly payment shall include contributions accrued upon all wages paid during such quarter.

(2) Whenever any employer shall cease to do business (or his account with the unemployment compensation division is closed), be adjudicated a bankrupt, make an assignment for the benefit of his creditors, or go into receivership, contributions for employment occurring prior to the date thereof shall become immediately due and payable and if not paid immediately shall be delinquent, but interest shall not accrue thereon until the first day of the second month following the end of the calendar quarter for which such contributions have accrued.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-12-040, filed 5/15/85; Order 2602, § 192-12-040, filed 4/24/70; Regulation 4, adopted 6/10/53, effective 6/20/53.]

WAC 192-12-041 Application of payments. (1) A payment received with a contribution report will be applied to the quarter for which the report is filed. A payment exceeding the legal fees, penalties, interests and contributions due for that quarter will be applied to any other indebtedness in the manner provided in subsection (2). If no indebtedness exists, a credit statement will be issued for any overpayments.

(2) A payment received without a contribution report will be applied in the following order of priority, beginning with the oldest quarter's indebtedness first:

- (a) Lien fees
- (b) Warrant fees
- (c) Late contribution report penalty
- (d) Late contribution penalty
- (e) Interest charges
- (f) Contributions.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 80-10-052 (Order 4-80), § 192-12-041, filed 8/6/80. Statutory Authority: RCW 50.12.010. 80-02-034 (Order 1-80), § 192-12-041, filed 1/10/80.]

WAC 192-12-042 Reports and contributions subject to penalty. (1) Contribution reports. Any employer who fails to file in a timely and complete manner a contribution report as described in WAC 192-12-030 (2)(a) shall be subject to a penalty of ten dollars per violation, unless such penalty is waived by the commissioner.

(2) Other reports. Any decision to assess a penalty for the filing of any other report described in WAC 192-12-030 in an untimely or incomplete manner shall be made on an individual basis by the commissioner or the

chief administrative officer of the tax branch as provided in RCW 50.12.220.

(3) Delinquent contributions. For purposes of RCW 50.12.220 which provides penalties for delinquent contributions, contributions will be deemed delinquent as provided in WAC 192-12-040 and RCW 1.12.070. No penalty so added shall be less than two dollars per quarter.

(4) The department may, for good cause, waive penalties in the following types of situations:

(a) The return was filed on time but inadvertently mailed to another agency;

(b) The delinquency was due to an action of an employee or an officer of the employment security department, including but not limited to, providing erroneous information to the employer in writing or orally when the source is identifiable, or not furnishing proper forms in sufficient time to permit the timely filing of tax reports or the timely payment of contributions;

(c) The delinquency was caused by death or serious illness of the employer or member of the employer's immediate family, or illness or death of the employer's accountant or member of the accountant's immediate family, prior to the filing date.

(d) The delinquency was caused by the destruction by fire or other casualty of the employer's place of business or business records.

(5) A request for a waiver of penalties must: Be in letter form, contain all pertinent facts, be accompanied by such proof as may be available and be filed through a tax office. In all cases the burden of proving the facts is upon the employer.

(6) The department, for good cause, may extend the due date for filing a report. Any extension will be conditioned upon deposit by the employer with the department of an amount equal to the estimated tax liability for the reporting period or periods for which the extension is granted. This deposit will be credited to the employer's account and will be applied to the employer's indebtedness. The amount of the deposit is subject to departmental approval.

[Statutory Authority: RCW 50.12.010. 80-02-034 (Order 1-80), § 192-12-042, filed 1/10/80.]

WAC 192-12-043 Definition of student for purpose of RCW 50.44.040(8). RCW 50.44.040 provides in part:

"The term 'employment' as used in RCW 50.44.010, 50.44.020 and 50.44.030 shall not include service performed:

"(8) In the employ of a school, college, or university, if such service is performed (a) by a student who is enrolled and is regularly attending classes at such school, college, or university, . . .

The status of the employee as a student performing the services shall be determined on the basis of the relationship of such employee with the organization for which the services are performed. Thus, an employee who performs services in the employ of a school, college,

or university as an incident to and for the purpose of pursuing a course of study at such school, college, or university has the status of a student in the performance of such services.

[Order 2-72, § 192-12-043, filed 7/6/72.]

WAC 192-12-050 Records. RCW 50.12.070 provides: "Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe . . ."

RCW 50.12.010 provides: "The commissioner shall administer this title. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, . . . as he deems necessary or suitable to that end."

The commissioner accordingly prescribes:

(1) Each person or entity shall preserve existing records with respect to personal services performed for it on and after January 1, 1936. On and after the effective date of this regulation, each such person or entity shall establish and maintain records with respect to each individual performing services for it, which records shall show the following: (a) The name of each such individual; (b) his Social Security account number; (c) the days and weeks during which each such individual performed services for said person or entity; (d) hours spent in employment and in nonsubject work with respect to any pay period; (e) the amount of wages or remuneration paid or payable to such individual on account of such services, said amounts to be segregated in such records into cash payment and payments in media other than cash; (f) the location at which such services were performed; (g) the date upon which each such individual was engaged or reengaged to perform services or returned to work after a temporary layoff; (h) the date when any individual's name was removed from the payroll; (i) in the case of any individual whose separation from work was due to discharge, the cause of such discharge, or if his work was terminated by quit, the cause of such quit if known to such person or entity; and (j) in the case of a farm operator contracting with a crew leader, the name of the crew leader, the inclusive dates of the contract, the types of services performed, and the number of persons performing such services.

(2) Records relating to services performed in employment shall be maintained and preserved for not less than four years subsequent to the date contributions have been paid in respect thereto. Records relating to services not performed in employment shall be preserved and maintained for not less than four years subsequent to the calendar year in which the remuneration for such services was paid.

[Statutory Authority: RCW 50.12.010, 78-09-027 (Order 1-78), § 192-12-050, filed 8/14/78; Regulation 5, adopted 6/10/53, effective 6/20/53.]

WAC 192-12-060 Joint accounts. RCW 50.24.170 provides:

[Title 192 WAC—p 22]

"The commissioner shall prescribe regulations for the establishment, maintenance, and dissolution of joint accounts by two or more employers and shall, in accordance with such regulations and upon application by two or more employers to establish such account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account."

The commissioner accordingly prescribes:

Any two or more employers may consolidate their accounts for the purposes of reporting and dealing with the division of unemployment compensation when the ends of convenience will be served thereby if the commissioner shall find that the plan of consolidated reporting proposed by such employer will not impair the obligation of any such employers to the division of unemployment compensation or interfere with the payment of benefits to workers and will adequately provide for the maintenance of all records necessary under the Employment Security Act, and if such proposed plan of joint reporting will not result in administrative inconvenience to the division of unemployment compensation nor allow an employer to receive an experience rate to which he would not otherwise be entitled. No consolidation of accounts shall occur until the plan of consolidation has been approved by the commissioner in writing.

[Order 2602, § 192-12-060, filed 4/24/70; Regulation 6, adopted 6/10/53, effective 6/20/53.]

WAC 192-12-066 Tips as wages--Remuneration. RCW 50.04.320 provides in part: "For the purpose of payment of benefits and payment of contributions, the term 'wages' includes tips which are received after January 1, 1987, while performing services which constitute employment, and which are reported to the employer for federal income tax purposes."

For the employment security department to make timely and accurate employer liability determinations and unemployment insurance payments, the commissioner prescribes:

(1) For the purposes of this chapter, "tips which are reported to the employer for federal income tax purposes" are those tips that the employee is required to report to the employer by federal law.

(2) Tips must be reported by the employer for unemployment insurance purposes, each quarter on an as paid basis. Tips are considered "paid" when they are reported by the employee to the employer for federal income tax purposes, or when they are distributed by the employer to the employee.

(3) Individuals receiving unemployment insurance benefits for a given week, must report all tips received during that week as earnings. At a claimant's request, the department will adjust benefits when tips that have been reported by the claimant for benefit purposes are later deemed nonreportable to the employer for federal income tax purposes.

[Statutory Authority: RCW 50.04.320, 50.12.010 and 50.12.040, 87-01-026 (Order 5-86), § 192-12-066, filed 12/11/86.]

WAC 192-12-070 Cash value of certain remunerations. RCW 50.04.320 provides:

"Remuneration" means all compensation paid for personal services including commissions and bonuses and the cash value of all compensation paid in any medium other than cash. The reasonable cash value of compensation paid in any medium other than cash and the reasonable value of gratuities shall be estimated and determined in accordance with rules prescribed by the commissioner." The commissioner accordingly prescribes:

(1) Effective January 1, 1982, the value of meals and/or lodging provided for the convenience of the employer is not considered remuneration except when it comprises twenty-five percent or more of the employee's total compensation. "Convenience of the employer" means provided by the employer, on the employer's business premises, or as a condition of employment.

(2) Compensation for personal services paid in kind or in any medium other than cash shall, for all purposes under the act, except as indicated in (1) above, be given its actual cash value to the worker, and such value shall be used in computing contributions due under the law. If any contract of hire shall fix the value of such items, the value so fixed shall be taken as the actual value thereof. If the actual cash value of any item of compensation is not readily determinable, it shall be fixed by the commissioner. In the latter case, until a specific determination is made by the commissioner, board and lodging furnished in addition to, or in lieu of money wages shall be deemed to have not less than the following values:

Full board and room, weekly	\$75.00
Meals, per meal	\$ 2.00
Lodging, per week	\$50.00

[Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-12-070, filed 5/15/85. Statutory Authority: RCW 50.04.165, 50.04.320, 50.12.010 and 50.12.040. 81-23-010 (Order 4-81), § 192-12-070, filed 11/10/81. Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-12-070, filed 8/14/78; Rule 1, filed 12/1/65, effective 1/1/66; Rule 1, adopted 11/21/49, effective 10 days after filing with secretary of state and publication.]

WAC 192-12-072 Predecessor-successor relationship defined. For the purposes of Title 50 RCW, a predecessor employer is any individual or type of organization defined as an employer under RCW 50.04-.080 that transfers, during any calendar year, either substantially all its operating assets, or the operating assets of a separate unit of its trade or business, to another employer, whether by sale, lease, gift, or any legal process.

A successor employer is any individual or type of organization defined as an employer under RCW 50.04-.080 that acquires, during any calendar year, either substantially all the operating assets of another employer, or the operating assets of a separate unit of another employer's trade or business, whether by purchase, lease, gift, or any legal process.

Operating assets are defined as those properties of a business used in the normal course of business operations to generate the operating income of that business.

In no case will a predecessor-successor relationship exist where any four consecutive calendar quarters, one of which includes the acquisition date, pass without reportable employment by either the predecessor, successor, or a combination of both.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-12-072, filed 5/15/85.]

WAC 192-12-074 Predecessor-successor transfers through intermediaries. RCW 50.04.320 and 50.29.062 describe predecessor-successor transactions. Certain franchise transactions, repossessions, or other economic activities result in the transfer of operating assets from one employer to another through an intermediary whose function is to arrange or facilitate the transfer process.

The presence of such an intermediary will not necessarily negate a predecessor-successor relationship between the original and final user of the operating assets transferred.

In such cases, the presence or absence of a predecessor-successor relationship will be considered on a case-by-case basis. In making a determination the department will consider the intent of the parties involved and the economic reality of the transactions, as opposed to the strict legal format of the multiple transfers.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-12-074, filed 5/15/85.]

WAC 192-12-076 Delinquent predecessor contributions. RCW 50.29.062 provides that under certain circumstances a successor employer, as defined in WAC 192-12-072, will take on the contribution rate of the predecessor employer. When a successor employer has been assigned the maximum contribution rate due to late payment or nonpayment of contributions by a predecessor, the successor employer shall, upon written application to the department and after payment of those delinquent contributions by the cut-off date, be assigned for the rate year following the cut-off date the contribution rate the predecessor would have transferred to the successor had those contributions been paid in a timely manner. The successor will then retain this rate until eligible under experience rate statutes for a different rate.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 85-11-038 (Order 1-85), § 192-12-076, filed 5/15/85.]

WAC 192-12-080 Workers to procure Social Security account numbers. Section 40 of the act (RCW 50.12.010) provides: "It shall be the duty of the commissioner to administer this act. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, * * * as he deems necessary or suitable to that end. * * *"

The commissioner accordingly prescribes:

(1) Each employer shall ascertain the federal Social Security account number of each individual engaged by him in employment subject to the Washington employment security law.

(2) The employer shall report the individual's federal Social Security account number in making any report

required by the employment security department with respect to an individual in employment.

(3) If an employer has in his employ an individual engaged in employment who does not have an account number, such employer shall request the individual to show him a receipt issued by an office of the Social Security Administration acknowledging that the individual has filed an application for an account number. The receipt shall be retained by the individual. In making any report required by the employment security department with respect to such an individual, the employer shall report the date of issue of the receipt, its termination date, the address of the issuing office, and the name and address of the individual exactly as shown in the receipt.

(4) If an individual fails to report to the employer his correct federal Social Security account number or fails to show the employer a receipt issued by an office of the Social Security Administration acknowledging that he has filed an application for an account number, the employer shall inform the individual that applicable regulations of the bureau of internal revenue, United States Treasury Department, under the Federal Insurance Contributions Act provide that:

(a) Each individual shall report to every employer for whom he is engaged in employment, his federal Social Security account number and his name exactly as shown on the account number card issued to him by the Social Security Administration.

(b) Each individual engaged in employment who has not secured an account number shall file an application for a federal Social Security account number on Form SS-5 of the Treasury Department, Bureau of Internal Revenue. The application shall be filed on or before the seventh day after the date on which the individual first performs employment for wages, except that the application shall be filed on or before the date the individual leaves the employ of his employer if such date precedes such seventh day. Copies of Form SS-5, "Application for a Social Security account number," can be secured at the field office of the Social Security Administration nearest the individual's place of employment or the local post office.

(c) If, within 14 days after the date on which the individual first performs employment for wages for the employer, or on the day on which he leaves the employ of the employer, whichever is the earlier, the individual does not have a federal Social Security account number, and has not shown the employer a receipt issued to the worker by an office of the Social Security Administration acknowledging that he has filed an application for an account number, the individual shall furnish the employer an application on Form SS-5, completely filled in and signed by the individual. If a copy of Form SS-5 is not available, the individual shall furnish the employer a written statement, signed by the individual, of the date of the statement, the individual's full name, present address, date and place of birth, father's full name, mother's full name before marriage, individual's sex and color, and a statement as to whether the individual had previously filed an application on Form SS-5, and, if so,

the date and place of such filing. Furnishing the employer with an executed Form SS-5, or statement in lieu thereof, does not relieve the individual of his obligation to make an application on Form SS-5 as required in paragraph (b).

(5) The employer shall inform the individual, in instances in which the information is pertinent, that in accordance with applicable regulations of the Bureau of Internal Revenue, United States Treasury Department:

(a) Any individual who has lost his federal Social Security account number card may secure a duplicate card by applying at the field office of the Social Security Administration nearest the individual's place of employment.

(b) Any individual may have his account number changed at any time by applying to a field office of the Social Security Administration and showing good reason for a change. Any individual whose name is changed by marriage or otherwise, or who has stated incorrect information on Form SS-5, should report such change or correction to a field office of the Social Security Administration. Copies of the Form OAAAN-7003, "Employee's request for change in records," for making such reports may be obtained from any field office of the Social Security Administration, the central office of the employment security department, or any local office of the Washington state employment service.

(c) Any individual who has more than one Social Security account number shall report all numbers to the field office of the Social Security Administration nearest the worker's place of employment or to a local employment office.

[Regulation 7, adopted 6/10/53, effective 6/20/53.]

WAC 192-12-090 Employer elections to cover individuals performing personal services in more than one state. RCW 50.12.060 provides:

"The commissioner is hereby authorized to enter into arrangements with the appropriate agencies of other states, foreign governments or the federal government whereby services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states (a) in which any part of such individual's service is performed, or (b) in which such individual has his residence, or (c) in which the employing unit maintains a place of business: *Provided*, That there is in effect as to such services, an election by the employing unit with the acquiescence of such individual, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state."

RCW 50.12.010 provides:

"It shall be the duty of the commissioner to administer this act. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, * * * as he deems necessary or suitable to that end. * * *"

The commissioner accordingly prescribes:

(1) The following regulation shall govern the Washington employment security department in its administrative cooperation with other states subscribing to the interstate reciprocal coverage arrangement, hereinafter referred to as "the arrangement."

(2) **Definitions.** As used in this regulation, unless the context clearly indicates otherwise:

(a) "Jurisdiction" means any state of the United States, the District of Columbia, or, with respect to the federal government, the coverage of any federal unemployment compensation law;

(b) "Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated;

(c) "Agency" means any officer, board, commission or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction;

(d) "Interested jurisdiction" means any participating jurisdiction to which an election submitted under this regulation is sent for its approval; and "interested agency" means the agency of such jurisdiction;

(e) "Services 'customarily performed' by an individual in more than one jurisdiction" means performed in more than one jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

(3) **Submission and approval of coverage elections under the interstate reciprocal coverage arrangement.**

(a) Any person or entity for whom personal services are performed may file an election, on appropriate forms, to cover under the law of a single participating jurisdiction all of the services performed for him by any individual who customarily performs services for him in more than one participating jurisdiction.

Such an election may be filed with respect to an individual, with any participating jurisdiction in which (1) any part of the individual's services are performed; (2) the individual has his residence; or (3) the employing unit maintains a place of business to which the individual's services bear a reasonable relation.

(b) The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election.

If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable; and shall notify the agency of the elected jurisdiction accordingly.

The Washington agency before taking such action, shall require from the electing person or entity for whom personal services are performed satisfactory evidence

that the affected individuals engaged to perform services have been notified of, and have acquiesced in, the election.

(c) If the agency of the elected jurisdiction or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing person or entity of its action and of its reasons therefor.

(d) Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies.

An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

(e) In case any such election is approved only in part, or is disapproved by some of such agencies, the electing person or entity may withdraw its election within ten days after being notified of such action.

(4) **Effective period of elections.**

(a) **Commencement.** An election duly approved under this regulation shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter.

If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

(b) **Termination.**

(i) The application of an election to any individual under this regulation shall terminate, if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one participating jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such findings is mailed to all parties affected.

(ii) Except as provided in subparagraph (i) above, each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

(iii) Whenever an election under the regulation ceases to apply to any individual, under subparagraph i or ii (above), the electing unit shall notify the affected individual accordingly.

(5) **Reports and notices by the electing unit.**

(a) The electing unit shall promptly notify each individual affected by its approved election, on the appropriate forms supplied by the elected jurisdiction, and shall furnish the elected agency a copy of such notice.

(b) Whenever an individual covered by an election under this regulation is separated from his employment, the electing unit shall again notify him, forthwith, as to the jurisdiction under whose unemployment compensation law his services have been covered. If at the time of termination the individual is not located in the elected

jurisdiction, the electing unit shall notify him as to the procedure for filing interstate benefit claims.

(c) The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires him to perform services in a new participating jurisdiction.

[Order 2602, § 192-12-090, filed 4/24/70; Regulation 8, adopted 6/10/53, effective 6/20/53.]

WAC 192-12-100 Posting of notices by employers.

Section 82 of the act (RCW 50.20.140) provides: "* * * Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his employment and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations and such notices, instructions and other material as the commissioner may by regulation prescribe. Such printed material shall be supplied by the commissioner to each employer without cost to him * * *."

The commissioner accordingly prescribes: Every employer (including every person or entity for whom personal services are performed which has, with the approval of the commissioner, become an employer by election under the provisions of the act) shall post and maintain printed notices to individuals in his employ informing them that he is liable for contributions under the Employment Security Act. Such notices shall also include information applicable not only to workers who are separated but also to workers who are working less than full time and informing such individuals of their rights to benefits and instructions as to the procedure for registering for work and for filing claims for benefits. No such notice shall be posted or maintained by any person or entity to whom an unemployment compensation account number has not been assigned by the commissioner or who has ceased to be an employer. Such notices shall be furnished by the commissioner in such numbers as he may determine to be necessary and shall be posted and maintained in conspicuous places near the actual locations where the personal services are performed. Other notices including information as to individuals' rights to benefits and instructions as to procedure for registering for work and for filing claims for benefits shall be furnished by the commissioner to, and shall be similarly posted by, every person or entity for whom personal services are performed as the commissioner in his discretion deems administratively practicable so that any individual entitled to benefits (whether the person or entity for whom services are or were performed is or is not an employer) may be informed of his rights to benefits and the means of attaining them.

[Regulation 9, adopted 6/10/53, effective 6/20/53.]

WAC 192-12-110 Employing unit's liability for contributions due from contractors or subcontractors.

[Title 192 WAC—p 26]

RCW 50.24.130 provides: "No employing unit which contracts with or has under it any contractor or subcontractor who is an employer under the provisions of this title shall make any payment or advance to, or secure any credit for, such contractor or subcontractor (for) or on account of any contract or contracts to which said employing unit is a party unless such contractor or subcontractor has paid contributions, due or to become due, for wages paid or to be paid by such contractor or subcontractor for personal services performed pursuant to such contract or subcontract, or has furnished a good and sufficient bond acceptable to the commissioner for payment of contributions, including interest. Failure to comply with the provisions of this section shall render said employing unit directly liable for such contributions and interest and the commissioner shall have all of the remedies of collection against said employing unit under the provisions of this title as though the services in question were performed directly for said employing unit."

RCW 50.12.010 provides: "It shall be the duty of the commissioner to administer this act. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, * * * as he deems necessary or suitable to that end. * * *"

The commissioner accordingly prescribes:

(1) No employing unit under the provisions of RCW 50.24.130 of the act shall be held liable for contributions due the unemployment compensation fund from any contractor or subcontractor of such employing unit in excess of the amount of contribution attributable to the services performed by individuals engaged by such contractor or subcontractor for the employing unit pursuant to the contract or contracts in question.

(2) Whenever the commissioner deems that any bond that has been deposited with him pursuant to the provisions of RCW 50.24.130 of the act and this regulation is insufficient to guarantee payment of contributions collection of which was intended to be assured by such bond, he shall mail by registered mail addressed to the principal and to the surety named in the bond at their last known addresses a notice that such bond is no longer sufficient or acceptable to the commissioner as a guarantee of payment of the contributions in question and the reason therefor, and if within ten days from the mailing of the notice the bond is not increased so as to be acceptable to the commissioner, or a new bond furnished acceptable to the commissioner, as required in the notice, the bond on deposit, and deemed insufficient by the commissioner as stated in the notice, shall no longer be deemed a good and sufficient bond acceptable to the commissioner for the purposes of RCW 50.24.130. No recovery on any bond furnished to the commissioner shall be prejudiced by the provisions of this regulation or notices mailed pursuant to its provisions. Upon payment being made of all contributions and interest guaranteed by any bond furnished the commissioner, the commissioner shall forthwith cancel such bond.

(3) Any employing unit, may, in lieu of requiring a contractor or subcontractor to furnish a bond, withhold from any payment of indebtedness due a contractor or

subcontractor on any contract involving the performance of personal services an amount sufficient to pay the actual or estimated contributions due or to become due in respect to services performed for the employing unit pursuant to such contract and pay the same over to the employment security department or local office thereof for credit to the account of such contractor or subcontractor and in such event the employing unit shall be relieved of any direct liability for payment of such contributions to the extent of the amount so withheld and paid over to the employment security department and the account of the contractor or subcontractor shall be credited with such payment.

(4) If any contractor or subcontractor or any other person or entity on behalf of the contractor or subcontractor provides proof of payment of the contributions in question, such contributions paid shall relieve the employing unit of direct liability therefor to the extent of the payment made.

[Order 2-73, § 192-12-110, filed 11/15/73; Regulation 10, adopted 6/10/53, effective 6/20/53.]

WAC 192-12-115 Bonding and deposit requirements, nonprofit organizations. RCW 50.44.070 provides:

"In the discretion of the commissioner, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required . . . to execute and file with the commissioner a surety bond approved by the commissioner or it may elect instead to deposit with the commissioner money or securities. . . .

"The amount of the bond or deposit . . . shall be an amount deemed by the commissioner to be sufficient to cover any reimbursement payments which may be required from the employer attributable to employment during any year for which the election is in effect . . . The determination made pursuant to this subsection shall be based on payroll information, employment experience, and such other factors as the commissioner deems pertinent."

The commissioner accordingly prescribes:

(1) The amount of bond or deposit shall be determined by reviewing and computing taxable wages paid during the previous four quarters. Taxable wages will be determined on the basis of the coming years taxable wage base. The net annual taxable wage so developed multiplied by current tax rate will produce the amount of bond or deposit necessary for the coming calendar year.

The amount of bond requirement may be rounded in accordance with the following scale:

Computed Bond Requirement	May Be Rounded Down To
Up to \$500	Even \$5 segment
\$501 to \$5000	Even \$25 segment
\$5001 to \$50,000	Even \$100 segment
OVER \$50,000	Even \$1000 segment

(2) In the event an organization did not pay wages during the prior four consecutive quarters, then an estimated payroll based on the best information available

will be used for the computation described in subsection (1) of this section.

(3) Bond or deposit requirements will be reviewed and recomputed annually during the fourth quarter of each calendar year for adequacy. The employer will be notified of any necessary change in amount of bond or deposit as prescribed in RCW 50.44.070 (2) and (3).

(4) The following categories of nonprofit organizations are exempt from the bonding and deposit requirement: Hospitals, colleges and universities.

[Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-12-115, filed 8/14/78.]

WAC 192-12-130 Payment of benefits to interstate claimants. Section 44 of the act (RCW 50.12.050) provides: " * * * The commissioner may enter into agreement with any other state whereby in the event an individual files a claim in another state against wages earned in employment in this state, or against wage credits earned in this state and in any other state or who files a claim in this state against wage credits earned in employment in any other state, or against wages earned in this state and in any other state, the claim will be paid by this state or another state as designated by the agreement in accordance with a determination on the claim as provided by the agreement and pursuant to the qualification and disqualification provisions of this act or under the provisions of the law of the designated paying state (including another state) * * * ."

Section 40 of the act (RCW 50.12.010) provides: "It shall be the duty of the commissioner to administer this act. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, * * * as he deems necessary or suitable to that end. * * * ." The commissioner accordingly prescribes:

(1) The following regulation shall govern the Washington employment security department in its administrative cooperation with other states adopting similar regulation for the payment of benefits to interstate claimants.

(2) **Definitions.** As used in this regulation, unless the context clearly requires otherwise:

(a) "Interstate benefit payment plan" means the plan approved by the interstate conference of employment security agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(b) "Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of the agent state. The term interstate claimant shall not include any commuter provided, however, that the Washington employment security department may, by arrangement with any adjoining state employment security agency, treat certain commuters as interstate claimants if they reside in geographical areas from which the Washington employment security department finds that requiring commuters to file their benefit claims in the state of their last employment would cause undue hardship to such claimants. As herein used, the term commuter applies to each individual who, immediately

before becoming unemployed, customarily commuted from his residence in the agent state to his work in the liable state.

(c) "State" includes Alaska, Hawaii and the District of Columbia.

(d) "Agent state" means any state in which an individual files a claim for benefits from another state or states.

(e) "Liable state" means any state against which an individual files, through another state, a claim for benefits.

(f) "Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of any state.

(g) "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

(3) Registration for work.

(a) Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

(b) Each agent state shall duly report, to the liable state in question, whether each interstate claimant meets the registration requirements of the agent state.

(4) Benefit rights of interstate claimants.

(a) If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

For the purposes of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

(b) The benefit rights of interstate claimants established by this regulation shall apply only with respect to new claims (notices of unemployment) filed on or after July 5, 1953.

(5) Claim for benefits.

(a) Claims for benefits or waiting period shall be filed by interstate claimants on uniform interstate claims forms and in accordance with uniform procedures developed pursuant to the interstate benefit payment plan. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(b) Claims shall be filed in accordance with agent-state regulations for intrastate claims in local employment offices, or at an itinerant point, or by mail.

(i) With respect to claims for weeks of unemployment in which an individual was not working for his

regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one week, or one reporting period, late. If a claimant files more than one reporting period late, an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

(ii) With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state.

(6) Determination of claims.

(a) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(b) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

(7) Appellate procedure.

(a) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(b) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state.

(8) Extension of interstate benefit payments to include claims taken in and for Canada. This regulation shall apply in all its provisions to claims taken in and for Canada.

[Rule 12, adopted 6/10/53, effective 6/20/53.]

WAC 192-12-141 Registration, reports, and claims for unemployment compensation and related benefits. (1) Interstate claimants. Individuals who file interstate claims for benefits against this state through the local office of any agent state shall not be subject to this regulation. (See WAC 192-12-130.)

(2) Application for initial determination. Except for good cause shown an application for initial determination shall be filed in person at a Washington state employment security office on forms provided by the department. Such application may be made at any time.

(3) Registration for work. As a condition of eligibility for waiting period credit or benefits, an individual shall register for work at an office of the Washington state employment security department on forms provided and shall thereafter renew his registration as directed during the total period in which he maintains active claim status except as provided in WAC 192-12-150, covering the requirements for payment of benefits to partially unemployed individuals and standby workers.

(4) Perfecting a claim for waiting period credit.

(a) Except for good cause shown, to perfect a claim for waiting period credit, a claimant shall report in person at an employment security department office during the week for which he intends to claim waiting period credit.

(b) The claim for waiting period credit shall be made in writing on forms provided by the department. It shall be filed at the office during the calendar week immediately following the last day of the week being claimed except for good cause shown.

(5) **Claim for benefits.** A claim for benefits shall be filed with a Washington state employment security office, in writing, on forms prescribed by the department. The department shall determine the method and time sequence by which each individual shall file a claim for benefits.

(a) The method for filing claims shall be one of the following:

(i) In person method, whereby the claimant shall file the claim in person except for good cause shown;

(ii) Mail method, whereby the claimant shall file the claim by mail or in a Washington state employment security office drop box except for good cause shown. Claims submitted by mail shall be deemed filed with the department on the postmarked date.

(b) The time sequence for filing claims shall be one of the following:

(i) Weekly sequence, whereby claims shall be filed during the calendar week immediately following the week being claimed except for good cause shown;

(ii) Biweekly sequence, whereby a claim for a two-consecutive-week period shall be filed during the calendar week immediately following such period except for good cause shown.

(6) Certain exceptions pertaining to filing claims in person.

(a) A claimant who is directed to file a claim for waiting period credit or benefits in person and because of returning to work is unable to do so must be permitted to file the claim by mail. The claimant must file the claim or claims within the same period as the claimant was directed to file in person except for good cause shown, provided that claims submitted by mail shall be deemed filed with the department on the postmarked date.

(b) In the event that a claimant is scheduled to file a claim (or claims) in person on the last business day of the week and the claimant fails to file as scheduled, the claimant shall be allowed the next business day to file such claim (or claims) in person.

(7) **Reporting responsibility.** Irrespective of time sequences for filing claims for waiting period credit or benefits, the department may require a claimant to report to a local office in person for any reason deemed appropriate. Failure to report, as and when directed, shall result in the denial of benefits for the week during which such failure occurs, except for good cause shown.

(8) **Itinerant offices.** In cases where a representative of the employment security department shall establish a location apart from the usual place of reporting for the

purpose of taking registrations, initial applications or claims for waiting period credit or benefits, all individuals registering or filing an application or claims at such location shall be deemed to have registered or filed at an employment security office.

[Order 2-75, § 192-12-141, filed 2/10/75.]

WAC 192-12-142 Claims, appeals, petitions—Filing not to be refused. No employee or agent of the employment security department shall refuse to accept for filing any claim, appeal, or petition relating to any program administered by the department regardless of his or her personal evaluation of the efficacy of such action.

[Order 2-72, § 192-12-142, filed 7/6/72.]

WAC 192-12-150 Payment of benefits to partially unemployed persons and stand-by workers. RCW 50.20.130 provides: ". . . Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less seventy-five percent of that part of the remuneration (if any) payable to him with respect to such week which is in excess of five dollars. . . ."

RCW 50.20.010 provides: "An unemployed individual shall be eligible to receive waiting period credit or benefits with respect to any week only if the commissioner finds that

"(1) he has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulation as the commissioner may prescribe, except that the commissioner may by regulation waive or alter either or both of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which he finds that the compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this title; . . ."

RCW 50.04.310 provides: "An individual shall be deemed to be 'unemployed' in any week during which he performs no services and with respect to which no remuneration is payable to him, or in any week of less than full-time work, if the remuneration payable to him with respect to such week is less than his weekly benefit amount. The commissioner shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to such types of unemployment as the commissioner deems necessary."

RCW 50.12.010 provides: "The commissioner shall administer this title. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, . . . as he deems necessary or suitable to that end. . . ."

The commissioner accordingly prescribes:

(1) Definitions.

(a) The term "employer" as used in this regulation shall mean any person or entity for whom personal services are performed for wages.

(b) A partially unemployed individual is one who during a particular week earned some remuneration but less than his weekly benefit amount, was employed by his regular employer and worked less than his normal

customary full hours for such regular employer because of lack of full-time work.

(c) With respect to a partially unemployed individual whose remuneration is paid on a calendar week basis, a week of partial unemployment shall consist of the calendar week.

(d) With respect to partially unemployed individuals whose pay periods do not coincide with calendar weeks, remuneration earned during such pay periods may, if not allocated by the employer, be allocated by a representative of the commissioner directly from the employer's payroll records or from certified earnings reports from the employer to each calendar week during which such remuneration was earned.

(e) A "stand-by" worker is an individual who is totally unemployed, but who expects to resume work with his regular employer within a reasonable time and whose best interests and those of his regular employer are served, in the judgment of the commissioner, by his remaining in readiness to resume such work.

(2) Employer responsibility in the initiation of first claim for partial benefits in a new spell of partial unemployment.

(a) Immediately after the termination of any week beginning a new spell of partial unemployment in which an employer has furnished any individual in his employ less than such individual's customary full time hours of work and earnings of less than the maximum weekly benefit amount established by law, or, if weekly benefit amount is known, earnings less than such weekly benefit amount, such employer shall either

(i) Advise the worker that he may be entitled to partial benefits by handing him a weekly low earnings report or a substitute device for presentation at an employment office, or

(ii) Notify the local employment office nearest the establishment and await and abide by the instructions of that office concerning the taking of claims.

(3) Weekly low earnings report or substitute devices. After the employer has given notice to individuals in his employment and/or the employment office, as required above, he shall, throughout the continuance of the spell of partial unemployment, after the termination of each pay period within such spell, issue to each affected individual a weekly low earnings report showing the actual earnings of each such individual for each week of partial unemployment occurring within such pay period or shall furnish such individual with a payroll by-product. Such weekly low earnings reports or payroll by-products shall be issued by the employer not more than thirty days after the end of the week of partial unemployment to which they pertain. The payroll by-product must show in ink or typewriting:

(a) The name and official unemployment compensation code number of the employer;

(b) The name and social security account number of the individual in employment;

(c) The beginning or ending date of such week;

(d) The amount of remuneration earned in such week;

(e) The following certification: "I certify that the above amount represents reduced earnings in a week of less than full-time work because of lack of work."

(f) A signature (actual or facsimile) by the employer to the above certification, or other positive identification of the authority supplying the evidence.

In the event the local employment office furnishes a representative at the employer's establishment for the purpose of taking the claims and obtaining from the employer verification of earnings and affirmative evidence that all available work with such employer was taken by each claimant, no such low earnings report or substitute thereof shall be required.

Utilization of the payroll by-product is permissible only in the event the pay period for partial unemployment coincides with the calendar week.

(4) Registration and filing of claims for partial unemployment. An individual attached to a regular job may file a claim with respect to any calendar week during the next succeeding four calendar weeks following the receipt from the employer of information as to his earnings in any such week: *Provided*, That if the commissioner finds that the failure of any individual to file a claim for partial unemployment benefits within such four weeks was due to failure on the part of the employer to comply with any of the provisions of subsection (b) and (c) above of this regulation, or to coercion or to intimidation exercised by the employer to prevent the prompt filing of such claim, or to failure by the employment security department to discharge its responsibilities promptly in connection with such partial unemployment, the commissioner shall extend the period during which such claim may be filed to a date which shall be not less than one week after the individual has received appropriate notice of his potential rights to benefits and his earnings during the period of such partial unemployment.

A partially unemployed applicant for benefits who is attached to a regular job shall not be required to register for work in any week with respect to which he is partially unemployed, and prior registration shall not be a condition precedent to the filing of a claim for benefits for partial unemployment. Registration for work, initial applications, and claims for waiting period credit and benefits may be filed by mail on forms furnished by the employment security department, and given the same effect as though filed in person at an established employment security office whenever, in the judgment of the commissioner, the personal reporting of such claimant is or becomes impracticable.

(5) Registration and filing of claims by "stand-by" workers. The commissioner may waive the requirement of registration for work by a "stand-by" worker during the first four weeks of such worker's unemployment, and in such event prior registration shall not be a condition precedent to filing a claim for benefits for such four weeks. Such worker shall, however, during any calendar week for which benefits are claimed report in person, and in the next succeeding period of two calendar weeks shall make a certification with respect to the week for which benefits are claimed: *Provided*, That registration

for work, initial applications, and claims for waiting period credit and benefits may be filed by mail on forms furnished by the employment security department, and given the same effect as though filed in person at an established employment security office whenever, in the judgment of the commissioner, the personal reporting of such claimant is or becomes impracticable; and *Provided further*, That whenever failure to comply with this regulation is for reasons which, in the judgment of the commissioner, constitute good cause, the commissioner may make such exceptions to this regulation as he deems necessary.

Whether or not any claimant shall be determined by the commissioner to be in a "stand-by" status shall depend upon the length of the prospective period of unemployment, the availability of other suitable work, the temporary or permanent nature of the new prospective employment, the effect upon the employer and the worker of acceptance of new employment, the nature of the contract to be entered into by the worker in prospective new employment, and such other factors as the commissioner deems pertinent.

(6) Employer records in connection with partial unemployment. Each employer shall maintain its payroll records in such form that it will be possible from an inspection thereof by the employment security department to determine with respect to each individual in its employ who may be eligible for partial benefits: (a) Remuneration earned, by weeks, in such manner as to make possible and practical the allocating to calendar weeks of remuneration earned if the pay period does not coincide with calendar weeks; (b) Whether any week was in fact a week of less than full-time work; and (c) Time lost, if any, by each such worker, due to his unavailability for work.

[Statutory Authority: RCW 50.12.010, 78-09-027 (Order 1-78), § 192-12-150, filed 8/14/78; Regulation 14, adopted and effective 5/15/58.]

Reviser's note: RCW 50.20.010 and 50.04.310 as quoted in this section, do not accurately reflect the current version of those sections.

WAC 192-12-151 Benefit payments--Not a determination of allowance. Benefit payments which are identified as "conditional payments" in the message portion of the mailer will not be deemed determinations of allowance under RCW 50.20.160(3).

[Statutory Authority: RCW 50.12.010 and 50.12.040, 84-13-050 (Order 4-84), § 192-12-151, filed 6/18/84.]

WAC 192-12-153 Payment of benefits--Initial allowance--Employer appeal. A determination of allowance of benefits shall result in the prompt payment of any benefits due. The filing of an appeal by the employer shall not serve to stay the payment of benefits.

[Order 2-72, § 192-12-153, filed 7/6/72; General Order 2, § 192-12-153, filed 12/9/70.]

WAC 192-12-154 Payment of benefits by appeals tribunal--Claimant appeal. To the extent that any appeals decision allows benefits by reversing or modifying a local office determination such benefits shall be

promptly paid. The filing of a petition for the commissioner's review shall not operate to stay the effect of the appeals tribunal decision.

[Order 2-72, § 192-12-154, filed 7/6/72; General Order 2, § 192-12-154, filed 12/9/70.]

WAC 192-12-155 Payment of benefits by commissioner--Petition to court. To the extent that any commissioner's decision allows benefits by reversing or modifying an appeal tribunal decision, such benefits shall be promptly paid. The filing of a petition for judicial review shall not operate to stay the effect of the commissioner's decision.

[Order 2-72, § 192-12-155, filed 7/6/72; General Order 2, § 192-12-155, filed 12/9/70.]

WAC 192-12-156 Overpayment of benefits--Credit to employers' account. Benefits paid pursuant to WAC 192-12-153 through 192-12-155 shall be recoverable to the extent allowable pursuant to RCW 50.20.190 in the event that the decision allowing benefits is ultimately modified or reversed. Such ultimate reversal or modification shall not affect previous benefit charges based thereon; however, benefit credits in an amount equal to the erroneous charges shall be applied to the employers' account for the calendar year in which the decision is ultimately modified or reversed.

[Order 2-72, § 192-12-156, filed 7/6/72; General Order 2, § 192-12-156, filed 12/9/70.]

WAC 192-12-160 Withdrawals from trust fund. Section 62 of the act (RCW 50.16.030) provides: "Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and repayment of loans from the federal government to guarantee solvency of the unemployment compensation fund in accordance with regulations prescribed by the commissioner. * * *"

The commissioner accordingly prescribes: Moneys may be requisitioned from the unemployment trust fund from time to time when it shall be necessary for the payment of benefits upon requisitions signed by either the commissioner, the deputy commissioner, the supervisor of the unemployment compensation division or the treasurer of the unemployment compensation fund. Requisitions signed by any of the foregoing persons shall be deemed to be requisitions of the commissioner.

[Regulation 17, filed 12/1/65, effective 1/1/66; Regulation 17, adopted 6/10/53, effective 6/20/53.]

WAC 192-12-170 Unemployment compensation administration fund. Section 64 of the act (RCW 50.16.050) provides: "* * * The unemployment compensation administration fund shall consist of all moneys received from the United States of America or any department or agency thereof, or from any other source, for such purpose. All moneys in this fund shall be deposited, administered, and disbursed by the treasurer of the unemployment compensation fund under rules and regulations of the commissioner and none of the provisions of section 5501 of Remington's Revised Statutes, as

amended, shall be applicable to this revolving fund
* * *."

The commissioner accordingly prescribes: The treasurer shall deposit in, administer and disburse from the unemployment compensation administration fund in accordance with the terms of part IV (Fiscal management) of the Employment Security Manual, United States Department of Labor, Bureau of Employment Security, as it now is or as it may hereafter be amended.

[Regulation 18, adopted 6/10/53, effective 6/20/53.]

WAC 192-12-173 Federal programs--Maintenance of regulations and guidelines. The employment security department shall maintain a compilation of the federal law, regulations and guidelines governing the operations of federal programs administered by this agency. The compilation will be available at each local office and at the central office in Olympia. Each office shall have at least one person available to assist individuals seeking information on such programs.

[Order 2-72, § 192-12-173, filed 7/6/72.]

WAC 192-12-180 Training defined. As used in RCW 50.20.043 the term "training" means vocational or technical training or retraining (including but not limited to field or laboratory work and remedial or related academic and technical instruction incident thereto) which is being conducted as a program designed to prepare individuals for gainful employment in recognized occupations and in new and emerging occupations, but does not include basic education or training that has for its purpose the preparation of individuals for employment in occupations generally classified as professional or which require a baccalaureate or higher degree from institutions of higher education.

[Order 2-73, § 192-12-180, filed 11/15/73.]

WAC 192-12-182 Training--Approval by commissioner. Conditions for approval of training by the commissioner are as follows:

(1) No vocational training course, or courses in basic educational skills as a prerequisite for such vocational training, shall be considered for approval by the commissioner or his authorized representative unless:

An application to take such training course is made in writing and filed with the commissioner at any local office of the Washington employment security department, or in the case of an individual in another state, with the local office of such state through which the individual is filing his claim for unemployment compensation against the state of Washington. Such application must be filed prior to payment.

(2) In the approval of any program of training, the commissioner shall consider, among other factors, the following:

(a) The nature of the facility and the quality of the program of instruction, and

(b) Whether such program of instruction relates to an occupation or skill for which there are, or are expected

to be, reasonable employment opportunities in the state in which the individual intends to seek work, and

(c) Whether the individual has the qualifications and aptitudes to successfully complete such program of instruction; and further

(d) Whether employment opportunities for which the individual is fitted by past training and experience do not exist or have substantially diminished in the labor market due to business or economic conditions in the area, or because of conditions peculiar to the individual such as health, physical stature, criminal background, or other circumstances of a similar nature, to the extent that in the judgment of the commissioner the individual will experience an extended period of unemployment and dependence upon the unemployment compensation program.

(3) Any training program required as a condition of continued employment within the occupation shall be approved by the commissioner: *Provided, That:*

(a) The training program is vocational training, or basic education that is a prerequisite for vocational training, and

(b) The scheduling of the training is determined by a work related entity other than the claimant, and

(c) The training program meets the requirements of subsections (2)(a), (2)(b), and (2)(c) above. Requirements of subsection (2)(d) above do not apply to training programs which meet the requirement of this subsection (3).

[Statutory Authority: RCW 50.12.010 and 50.12.040. 80-10-052 (Order 4-80), § 192-12-182, filed 8/6/80; Order 2-73, § 192-12-182, filed 11/15/73.]

WAC 192-12-184 Training--Unemployment benefits while pursuing a course. The commissioner prescribes the following requisites:

(1) Individuals eligible for unemployment compensation under the provisions of RCW 50.20.010 shall not be ineligible for such benefits because of enrollment and attendance in a vocational training course, or a course in basic educational skills as a prerequisite for such vocational training, that is approved by the commissioner provided that an application to take such training course therefor is made in writing and filed with the commissioner at any local office of the Washington employment security department, or in the case of an individual in another state, with the local office of such state through which the individual is filing his claim for unemployment compensation against the state of Washington.

(2) Any claimant who, during a week, fails to attend half or more of the scheduled class days of the approved training, or a course in basic educational skills as a prerequisite for such training, will not be excused from meeting the availability for work and active search for work requirements of RCW 50.20.010(3) and the provisions of RCW 50.20.080 relating to failure to apply for, or refusal to accept suitable work, unless the training facility or organization certifies that such absence will not cause the claimant to be unsuccessful in completing the course.

(3) The claimant will certify his/her record of attendance each week, subject to verification by the Washington employment security department. Such certification shall include the claimant's attendance and a supporting statement explaining any absences. The department may contact the school regarding any absence to determine whether or not such absence will cause the claimant to be unsuccessful in completing the course.

(4) A claimant making application for unemployment compensation pursuant to the Employment Security Act and these regulations must comply with all other requirements of the Employment Security Act and commissioner's regulations.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 80-10-052 (Order 4-80), § 192-12-184, filed 8/6/80; Order 2-73, § 192-12-184, filed 11/15/73.]

WAC 192-12-186 Training--Denial of commissioner approval or continued approval of claim for unemployment benefits while pursuing a training course. The decision of the commissioner or his authorized representative to approve or disapprove an application of an individual or deny continued approval of an individual's claim for unemployment benefits under the provisions of the Employment Security Act and these regulations shall be in writing and shall set forth the reasons therefor. Decisions of the commissioner pursuant to these regulations shall be served upon the individual by personal delivery or by mailing to the individual's last-known address of record with the employment security department and shall be subject to appeal and review as provided under RCW 50.32.020, 50.32.070, and these regulations.

[Order 2-73, § 192-12-186, filed 11/15/73.]

WAC 192-12-190 Interpretive regulation--Failure to attend job search workshop or training or retraining course when directed. RCW 50.20.044 provides that: "If an otherwise eligible individual fails without good cause, as determined by the commissioner under rules prescribed by the commissioner, to attend a job search workshop or a training or retraining course when directed by the department and such workshop or course is available at public expense, such individual shall not be eligible for benefits with respect to any week in which such failure occurred."

If the commissioner finds that a claimant's chance to become reemployed will be enhanced by enrollment in a job search workshop, training or retraining course, the following general rules shall apply:

(1) The department shall not direct a claimant to attend a job search workshop, training or retraining course, if

(a) The individual has a verifiable bona fide job offer beginning within two weeks, or

(b) The workshop or training is given at a location outside the individual's labor market, or

(c) Cost of child care, transportation, or other training related to expense would substantially exceed the costs

of conducting an active work search and which would result in an unreasonable hardship on the individual, or

(d) Attendance at the workshop or course would work an unreasonable hardship on the individual, or

(e) The individual is a member in good standing of a full referral union, unless such individual is also being required to begin an independent search for work or has been identified as a dislocated worker as defined in RCW 50.04.075.

(2) Directives to attend training or retraining courses will be subject to periodic review of appropriateness of attendance in courses exceeding three weeks duration.

(3) An individual who, having been directed and who fails, without good cause, to attend during a week a substantial portion of the training course or workshop will be disqualified under RCW 50.20.044 for the entire week. Good cause shall include illness or disability of the claimant or the claimant's immediate family, or claimant's presence at a job interview scheduled with an employer. Reasons for absence shall be subject to verification.

(4) An individual attending a job search workshop shall not be disqualified as the result of such attendance for failure to be available for work or to actively seek work under the provisions of:

- (a) RCW 50.20.010(3),
- (b) RCW 50.20.015 (2)(a)(i), or
- (c) RCW 50.22.020(1).

(5) An individual attending a training or retraining course resulting from a directive under the provisions of RCW 50.20.044 shall not be disqualified as the result of such attendance for failure to seek work or failure to apply for or to accept work under the provisions of:

- (a) RCW 50.20.010(3),
- (b) RCW 50.20.080,
- (c) RCW 50.22.020 (1)(a),
- (d) RCW 50.22.020 (1)(b),
- (e) RCW 50.20.015 (2)(a)(i),
- (f) RCW 50.20.015 (2)(a)(ii).

(6) Definitions. For purposes of this regulation:

(a) "Available at public expense" means a job search workshop, training or retraining course that is offered at no expense to the individual by:

- (i) The employment security department, or
- (ii) Any other governmental or publicly funded organization, or
- (iii) Any organization offering a job search workshop or training or retraining program funded privately, but open to the general public, or

(iv) Any educational institution, if expenses are paid by the institution, by a grant to the institution, or a grant to the individual for training expenses.

(b) "Unreasonable hardship" means a result, not due to the individual's voluntary action, that would cause a reasonable person to be unable to attend.

[Statutory Authority: RCW 50.20.044. 84-24-061 (Order 6-84), § 192-12-190, filed 12/5/84.]

Chapter 192-15 WAC
PUBLIC DISCLOSURE AND PRIVACY OF
INFORMATION

WAC	
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WAC 192-15-010 Purpose. The purpose of this chapter is to insure compliance by the employment security department with the provisions of RCW 42.17-.250 through 42.17.320 concerning disclosure of public records, and to interpret and implement the provisions of chapter 50.13 RCW concerning the privacy and confidentiality of information or records held by the employment security department.

[Statutory Authority: RCW 50.13.030, 78-09-027 (Order 1-78), § 192-15-010, filed 8/14/78.]

WAC 192-15-020 Definitions. (1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

[Statutory Authority: RCW 50.13.030, 78-09-027 (Order 1-78), § 192-15-020, filed 8/14/78.]

WAC 192-15-030 Description of central and field organization of employment security department. (1) The employment security department is a public service agency. The administrative office of the employment security department and its staff are located at 212 Maple Park, Olympia, Washington 98504.

(2) The employment security department is headed by a commissioner appointed by the governor. Under the commissioner are an executive assistant, three deputy commissioners, and a limited number of special staff that report directly to him. There are also assistant attorneys general assigned to the department who provide legal services in all agency matters.

(a) Under the executive assistant to the commissioner are the public information office, the veterans services office, the legislative liaison, and the labor liaison.

(b) Under the deputy commissioner for field services are the personnel section, the reviewing officers, the monitor advocate, and the community organizations liaison.

(c) Under the deputy commissioner for resources and programs are employment and training (CETA), staff development, employment services, and unemployment insurance.

(d) Under the deputy commissioner for support services are the office of management and budget and the office of general administration.

(3) Job service centers and tax offices are located throughout the state and are headed by a manager.

[Statutory Authority: RCW 50.13.030, 78-09-027 (Order 1-78), § 192-15-030, filed 8/14/78.]

WAC 192-15-040 Procedures for obtaining public records—Designation of departmental employees responsible for public records. (1) The public records of the employment security department shall be in the custody of the administrator, office of general administration, who will be responsible for implementing departmental regulations regarding the release of public records and for insuring compliance by departmental employees with chapters 50.13 and 42.17 RCW and chapter 192-15 WAC.

(2) The department shall appoint a responsible employee or employees in each job service center and tax office to handle requests for public records. In the central office, the records officer, and such agents as he appoints, shall handle such requests.

(a) The responsible departmental employees shall familiarize themselves with chapters 50.13 and 42.17 RCW, and chapter 192-15 WAC.

(b) All identifiable requests for public records shall be referred to these employees, except in cases of subpoenas which shall be handled as specified by WAC 192-15-070.

(3) Requests for public records may be made orally, except in the case of governmental agency requests for individual or employing unit records under RCW 50.13-.060 which shall be handled as specified by WAC 192-15-060.

(a) If the responsible departmental employee is reasonably satisfied that the public record may be released under the provisions of chapters 42.17 and 50.13 RCW and these regulations, he may release it or provide access to the individual requesting it. If the employee is not satisfied that the requested information should be released, he shall refuse access to the public record.

(b) The departmental employee may consult with the department's records officer, or his agents, and/or any assistant attorney general for the department if he is unsure whether the public record should be released.

(4) Anyone refused access to public records held by the department who feels this refusal was improper may complete a request for public records form provided by the department at one of its offices.

(a) This form shall be published by the department's records officer and shall include a space for description of the records requested and for specification of reasons why the refusal of access was improper.

(b) The responsible departmental employee shall send the completed form to the department's records officer for consideration of the refusal.

(i) If the records officer, or his agents, decides that the public records may be disclosed under chapters 50.13 and 42.17 RCW and these regulations, he shall send the requested records to the appropriate departmental office or advise the date and place where the records will be available.

(ii) If the records officer, or his agents, decides that the public record cannot be disclosed or can only be partly disclosed under chapters 50.13 or 42.17 RCW and these regulations, he shall prepare a statement briefly explaining the reason that the record cannot be disclosed, including a statement of the specific statute prohibiting disclosure and an explanation of how the statute applies to the withheld record. This statement shall be forwarded to the proper job service center or tax office or to the person or agency requesting the records.

(iii) The records officer, or his agents, shall act as promptly as circumstances allow.

(5) In the event that the responsible departmental employee refuses access to records or information requested pursuant to RCW 50.13.050(1), the request form shall be sent to the appeal tribunal for handling by the examiner who is to hear the case in question. The examiner shall authorize the disclosure of the information or records if he deems them material to the proceeding. If the examiner does not deem the information or records material, he shall notify the interested party that they will not be disclosed and include an explanation of his action in his decision in the proceeding. After the decision of the appeal examiner and within the time limit provided in RCW 50.32.070, the interested party may petition the commissioner for a new hearing or the reopening of a hearing if the refusal to disclose was improper and prejudiced the presentation of the party's case. This procedure for review by the commissioner shall be in lieu of the procedure provided in WAC 192-15-050.

[Statutory Authority: RCW 50.13.030, 78-09-027 (Order 1-78), § 192-15-040, filed 8/14/78.]

WAC 192-15-050 Commissioner's review of denials of public records requests. (1) Any person who objects to the written denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review to the records officer, or

other staff member denying the request. The written request shall specifically refer to the written statement by the records officer, or other staff member, which constituted or accompanied the written denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the records officer, or other staff member denying the request, shall refer it to the commissioner of the employment security department. The commissioner shall immediately consider the matter and either affirm or reverse such written denial. In any case, the request shall be returned with a final decision, within two business days following the original written denial.

(3) Administrative remedies shall not be considered exhausted until the employment security department has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

[Statutory Authority: RCW 50.13.030, 78-09-027 (Order 1-78), § 192-15-050, filed 8/14/78.]

WAC 192-15-060 Access to individual or employing unit records or information by government agencies--

RCW 50.13.060. (1) Applications by government agencies for information or records deemed private and confidential by chapter 50.13 RCW shall be made to the responsible departmental employees specified in WAC 192-15-040. The applications shall be in writing on forms provided by the department.

(a) If the departmental employee is reasonably satisfied that the application meets the requirements of RCW 50.13.060, the government agency may have access to the information or records.

(b) If the departmental employee is not reasonably satisfied that the application meets the requirements of RCW 50.13.060 and refuses access, the agency may attach its application to the form specified by WAC 192-15-040(4) and obtain review of the refusal in the manner outlined in WAC 192-15-040 and 192-15-050.

(2) In the event of a refusal by a responsible departmental employee to release records or information under RCW 50.13.060(3), the government agency can immediately contact the commissioner for appeal.

(3) RCW 50.13.060(5) shall be interpreted to permit establishment of routine procedures for detection of fraud by claimants under the various social programs administered by government agencies. This statute permits access only to information needed to identify individuals improperly claiming under different programs. Further investigation of employment security department files concerning these individuals may be accomplished only if the normal requirements of RCW 50.13.060 are met.

(4) The term "other official of the agency" as used in RCW 50.13.060 (1)(b) means an employee who has substantial responsibility for the operation of the requesting agency or for one or more of its programs or administrative units.

[Statutory Authority: RCW 50.13.030, 78-09-027 (Order 1-78), § 192-15-060, filed 8/14/78.]

WAC 192-15-070 Response to subpoenas--RCW 50.13.070. An employee called to testify in a judicial or administrative proceeding shall not disclose information or records deemed private and confidential under chapter 50.13 RCW, unless the presiding officer makes a finding that the need for the disclosure outweighs any reasons for the privacy and confidentiality of the records or information, or unless the employee is responding to a subpoena containing such a finding.

An employee receiving a subpoena should notify one of the responsible departmental employees who has been designated to handle requests for public records pursuant to WAC 192-15-040. This latter employee should make arrangements for the appropriate response to the subpoena, including attendance of the proper employee before the tribunal. The departmental employee may contact the records officer for guidance.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-070, filed 8/14/78.]

WAC 192-15-080 Access to public records for operation and management purposes--RCW 50.13.080. RCW 50.13.080 shall be interpreted to permit incidental access to private or confidential information and records by private parties who are assisting the department in such areas as data processing and collection of employment security contributions. These parties are bound by the rules of confidentiality and privacy applicable to departmental employees and their activities will be monitored by the department to insure that private and confidential information or records are being handled correctly.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-080, filed 8/14/78.]

WAC 192-15-090 Consent to release of records or information--RCW 50.13.100. RCW 50.13.100, concerning consent to release of information or records deemed private and confidential, shall be liberally interpreted so that the department may release information or records to third parties who have been able to supply the department with reasonable written or oral assurances of their identity and that they are acting with the approval of the individual or employing unit whose records are involved. In cases where a certain record contains information about more than one individual or employing unit, all individuals or employing units concerned must give their consent before a record may be released or disclosed to other than the individuals or employing units.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-090, filed 8/14/78.]

WAC 192-15-100 Disclosure related to employment security programs. Chapter 50.13 RCW shall not be interpreted to prevent the employment security department from:

(1) Disclosing information in carrying out the department's duties under Title 50 RCW or under any other program for which the department is responsible; or

(2) Disclosing information to the employment security agencies of other states when such disclosure relates to the administration of the employment security law of the requesting state; or

(3) Disclosing information to the Internal Revenue Service when such disclosure relates to the Federal Unemployment Tax Act.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 195-15-100 (codified as WAC 192-15-100), filed 8/14/78.]

WAC 192-15-110 Public records available. All public records of the employment security department, as defined in WAC 192-15-020 shall be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.17.310.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-110, filed 8/14/78.]

WAC 192-15-120 Office hours. Public records shall be available for inspection and copying during the customary office hours of the employment security department. For the purposes of this chapter, the customary office hours shall be from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-120, filed 8/14/78.]

WAC 192-15-130 Copying. No fee shall be charged for the inspection of public records. The employment security department shall charge an established amount per page of copy for providing copies of public records and for use of the employment security department copy equipment. This charge is the amount necessary to reimburse the employment security department for its actual costs incident to such copying.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-130, filed 8/14/78.]

WAC 192-15-140 Protection of public records. When a public record is turned over for inspection or copying, a place will be provided so that adequate surveillance may be made to prevent damage, disorganization, and loss of such records. At no time shall the original record be transported from one area to another without a member of the agency staff being present.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-140, filed 8/14/78.]

WAC 192-15-150 Records index--Available material. The department finds that it would be unduly burdensome and would interfere with agency operations to maintain an index of records as specified in RCW 42.17.260(2), because of the complexity and diversity of its operations and the resulting volume of correspondence, reports, survey, staff studies and other materials. The department will make available for public inspection and copying all indexes which may at a future time be developed for agency use.

The following records shall be available for inspection and copying through the office of the public records officer and, in addition, those marked with an asterisk (*) shall be available for inspection at the department's job service centers.

- (1) Laws relating to employment security.*
- (2) Employment security department rules and regulations* Title 192 WAC.
- (3) Digest commissioner's decisions.*
- (4) Employer field audit manual (Tax).
- (5) Field office operations manual(Tax).
- (6) Benefits policy guide.*
- (7) Manual of local office benefit functions.*
- (8) Inventory of equipment.

[Statutory Authority: RCW 50.12.010. 80-07-026 (Order 2-80), § 192-15-150, filed 6/12/80. Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-150, filed 8/14/78.]

WAC 192-15-160 Responsible addressee. All communications with the employment security department including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 1, Laws of 1973 and these rules; requests for copies of the employment security department's decisions and other matters, shall be addressed as follows: Employment Security Department, Attention: Administrator, Office of General Administration, Olympia, Washington 98504.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-160, filed 8/14/78.]

WAC 192-15-170 Forms. The employment security department will provide forms for use by all persons requesting inspection and/or copying or copies of its records.

[Statutory Authority: RCW 50.13.030. 78-09-027 (Order 1-78), § 192-15-170, filed 8/14/78.]

**Chapter 192-16 WAC
INTERPRETATIVE REGULATIONS OF THE
COMMISSIONER OF THE EMPLOYMENT
SECURITY DEPARTMENT**

WAC

- 192-16-001 Interpretative regulations—Employer reports—Effect of omitting information—Limitation.
- 192-16-002 Interpretative regulations—Employer reports—Further defining hours worked—RCW 50.12.070.
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- 192-16-007 Interpretative regulations—Disqualification for leaving work voluntarily—Effective date of RCW 50.20.050.
- 192-16-009 Interpretative regulations—Disqualification for leaving work voluntarily—Meaning of good cause—RCW 50.20.050 (1) and (3).
- 192-16-011 Interpretative regulations—Leaving work to accept bona fide job offer—RCW 50.20.050 (2)(a).
- 192-16-013 Interpretative regulations—Leaving work because of illness or disability of self or immediate family member—RCW 50.20.050 (2)(b).
- 192-16-015 Interpretative regulations—Leaving work for marital or domestic reasons—RCW 50.20.050(4).

- 192-16-016 Interpretive regulations—Satisfying disqualification under RCW 50.20.050(4) when separation is for reasons of marital status and marriage occurs after date of separation.
- 192-16-017 Interpretative regulations—Satisfying disqualifications under RCW 50.20.050 (1) and (4), 50.20.060 and 50.20.080.
- 192-16-019 Interpretative regulations—Discharges and suspensions for misconduct—Effective date of RCW 50.20.060—Discharges for felony or misdemeanor.
- 192-16-021 Interpretative regulations—Suitable work factors—Effective date of RCW 50.20.100.
- 192-16-023 Interpretative regulations—Disqualification of students—RCW 50.20.095.
- 192-16-025 Lump sum retirement payment.
- 192-16-030 Interpretive regulation—Computation of pension deductions under RCW 50.04.323.
- 192-16-033 Interpretive regulation—Regular shareable benefits defined.
- 192-16-036 Interpretive regulation—Requalification for regular shareable, extended, or additional benefits under RCW 50.20.050(4).
- 192-16-040 Interpretive regulation—Good prospects of obtaining work within a reasonably short period of time under RCW 50.22.020(3)—Shareable, extended, or additional benefits.
- 192-16-042 Interpretive regulation—Failure to apply for or accept work under RCW 50.22.020 (4)(b)—Shareable, extended, or additional benefits.
- 192-16-045 Interpretive regulation—Disqualification for failing to accept an offer of or to apply for suitable work—Shareable, extended, or additional benefits.
- 192-16-047 Interpretive regulation—Interpretation of requirements of RCW 50.22.020(5)—Tangible evidence of a systematic and sustained effort to obtain work—Shareable, extended, or additional benefits.
- 192-16-050 Diversion of unemployment benefits to satisfy child support obligations.
- 192-16-051 Interpretive regulations—Special coverage provisions—Contract or reasonable assurance defined—RCW 50.44.050(1).
- 192-16-055 Interpretive regulations—Special coverage provisions—Bona fide notification of intent for substitute teacher—RCW 50.44.050(1).

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 192-16-003 Interpretative regulations—Effect of repeal of RCW 50.20.030—Pregnancy disqualification. [Order 4-75, § 192-16-003, filed 8/29/75, effective 10/6/75.] Repealed by 78-09-027 (Order 1-78), filed 8/14/78. Statutory Authority: RCW 50.12.010.

WAC 192-16-001 Interpretative regulations—Employer reports—Effect of omitting information—Limitation. RCW 50.12.070 generally requires employers to maintain accurate employment records and file required reports. Due to the failure on the part of certain employers to accurately report the number of weeks worked on their quarterly detail reports the processing of benefit claims has been hampered. In view of the requirements of federal law that unemployment insurance claims be promptly paid the department felt it necessary to have available to it a method of establishing and computing entitlement, at least on an interim basis, in an expeditious though necessarily arbitrary manner. The amendatory section was submitted with this remedy in mind.

The section is to be applied in the computation and establishment of initial claims filed on and after the week commencing June 29, 1975. If an employer reports -0- weeks on the form it will be deemed a completed

report and the entitlement will be computed on that basis. If the employer leaves the "weeks worked" box blank, the computation called for in the act will be applied in establishing the individual's right to benefits as set forth in the initial determination issued pursuant to RCW 50.20.140.

All employers are required to report the number of hours worked by each worker beginning July 1, 1977. If an employer reports -0- hours on the quarterly wage report form, EMS 5208, it will be deemed a completed report and the entitlement will be computed on that basis. If the employer leaves the "hours worked" column blank the computation called for in the act will be applied in establishing the individual's right to benefits as set forth in the initial determination issued pursuant to RCW 50.20.140.

The mathematical computation made by the department in accordance with this section will not be subject to employer appeal; however, the subsequent submittal of accurate and complete reports may result in a redetermination by the department. Benefits paid prior to the redetermination which are based on the arbitrary computation will be charged to each employer's account as though the initial determination were accurate even though subsequent redetermination based on accurate information would result in the issuance of a determination that the claim was invalid.

The amount paid to any claimant on the basis of the initial determination issued in accordance with the arbitrary computation procedure will not be established as an overpayment in the absence of fraud, misrepresentation or nondisclosure on the part of the claimant (RCW 50.20.160(1)); however, the department will not continue to pay benefits to a claimant once a redetermination of nonentitlement, based on accurate information on a complete wage detail report, has been issued. It was not the intention of the department in submitting the legislation, nor do we believe it was the intention of the legislature in adopting the legislation, to establish an exception to the qualification criteria, RCW 50.04.030, which would allow the continued payment of unemployment insurance benefits to individuals clearly not meeting the basic qualification criteria. It would be an unsound policy to dispense public funds in the guise of a penalty against an employer who has failed to comply with the provisions of the law when in fact it is the unemployment insurance fund which suffers the detriment and only the unqualified individual who is benefited.

[Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-16-001, filed 8/14/78; Order 2-77, § 192-16-001, filed 9/2/77; Order 4-75, § 192-16-001, filed 8/29/75, effective 10/6/75.]

WAC 192-16-002 Interpretative regulations--Employer reports--Further defining hours worked--RCW 50.12.070. RCW 50.12.070 requires employers to report "the hours worked by each worker and such other information as the commissioner may by regulation prescribe," beginning July 1, 1977. In order to further define what hours should be included on quarterly wage reports, the commissioner accordingly prescribes as follows:

(1) Vacation pay. The employee will be credited for the actual number of hours on leave with pay. Vacations without pay will not count as hours worked. Cash payments in lieu of vacations will not be counted as hours worked.

(2) Sick leave pay. Hours will not be reported for sick pay excluded under the provisions of RCW 50.04.330(1). However, sick pay which is not excluded under the provisions of RCW 50.04.330(1) shall be reported as leave with pay and the number of hours reported accordingly.

(3) Overtime. The number of hours actually worked for which overtime pay or compensatory time is provided, will be reported without regard to the amount of compensation paid.

(4) Employees on salary. If a salaried employee works irregular nonstandard weeks, he or she shall be reported for the actual number of hours worked. In the absence of reliable time figures, a full-time salaried employee will be reported for 40 hours worked for each week in which any of his or her duties are performed.

(5) Commissioned employees. Employees compensated by commission will be reported for the actual number of hours worked. In the absence of reliable time figures, a full-time commissioned employee will be reported for 40 hours worked for each week in which any of his or her duties are performed.

(6) Wages in lieu of notice. Employees paid wages in lieu of notice will be reported for the actual number of hours compensated thereby.

(7) Severance pay. Since the payment is predicated on past services, no additional hours are to be reported for severance pay. Severance pay is compensation for the separation from the employment itself as distinguished from wages in lieu of notice which compensates the employee for the amount of wages or salary he or she would have earned during the specified notice period.

(8) Payments in kind. The actual number of hours worked (or reasonable estimate thereof) for performing services which are compensated only by payment in kind shall be reported.

(9) Bonuses, tips and other gratuities. If such compensation is received during the course of performing regular compensated services for which hours are reported, no additional hours shall be reported for items in these categories. However, if the sole compensation for services performed are from any of these items, hours shall be reported.

(10) Fractions of hours. If the employee's total number of hours for the quarter results in a fraction amount, the total figure will be rounded off to the next higher number.

[Statutory Authority: RCW 50.12.010. 78-09-027 (Order 1-78), § 192-16-002, filed 8/14/78; Order 2-77, § 192-16-002, filed 9/2/77.]

WAC 192-16-005 Interpretative regulations--Applications for initial determinations--Backdating--RCW 50.04.030. (1) General rule. A benefit year begins no earlier than the first day of the calendar week in which the individual files an application for an initial determination. However, at the convenience of the department

or for good cause shown, the application for initial determination may be backdated.

(2) Definitions. As used in this section:

(a) "For the convenience of the department" is intended to embrace those situations in which the backdating of an initial application is required by circumstances which render impracticable or impossible the acceptance of an initial application during a week in which it would normally be filed. Such factors could be but are not limited to special handling prescribed by practicabilities of service, equipment breakdown, departmental employee-management disputes and lack of available personnel to accept applications.

(b) "Good cause" means factors peculiar to the claimant. "Good cause" in this context means factors which would effectively prevent a reasonable person facing similar circumstances from filing an initial application. Such circumstances include but are not limited to acting or failing to act based on authoritative advice directly from departmental personnel upon which a reasonable person would normally rely, severe weather conditions precluding safe travel to the point of filing, incapacity due to illness or injury and other factors of similar gravity.

(3) Limitations as to good cause.

(a) Good cause will not be found for backdating an application if an individual does not file the request for backdating during the first week in which factors constituting "good cause" for failure to file were not present.

(b) In backdating an application for good cause, the effective date will not be prior to the first week in which the conditions existed that precluded the individual from filing the application.

(c) Backdating of initial applications will not be allowed if the claimant alleges "good cause" based on erroneous advice or information from departmental personnel if he or she could be reasonably expected to question the accuracy of the information and knew or should have known of redetermination or appeal rights which he or she failed to exercise in a timely manner.

[Order 2-77, § 192-16-005, filed 9/2/77.]

WAC 192-16-007 Interpretative regulations--Disqualification for leaving work voluntarily--Effective date of RCW 50.20.050. RCW 50.20.050, the section of the act relating to disqualification of an individual who leaves work voluntarily, has been substantially amended by section 4, chapter 33, Laws of 1977 ex. sess. Section 11, chapter 33, Laws of 1977 establishes an effective date of this section of July 3, 1977. This section, therefore, will be applied to separations occurring on and after that date. Separations occurring prior to that date will be adjudicated under and disqualification will be imposed pursuant to the statute as it exists prior to the effective date of the amendatory language regardless of the date on which an individual first files his or her claim.

[Order 2-77, § 192-16-007, filed 9/2/77.]

WAC 192-16-009 Interpretative regulations--Disqualification for leaving work voluntarily--Meaning of

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good cause--RCW 50.20.050 (1) and (3). (1) General rule. Except as provided in WAC 192-16-011 and 192-16-013, in order for an individual to establish good cause within the meaning of RCW 50.20.050(1) for leaving work voluntarily it must be satisfactorily demonstrated:

(a) That he or she left work primarily because of a work connected factor(s); and

(b) That said work connected factor(s) was (were) of such a compelling nature as to cause a reasonably prudent person to leave his or her employment; and

(c) That he or she first exhausted all reasonable alternatives prior to termination: *Provided*, That the individual asserting "good cause" may establish in certain instances that pursuit of the otherwise reasonable alternatives would have been a futile act, thereby excusing the failure to exhaust such reasonable alternatives.

(2) Exceptions. Notwithstanding the provisions of subsection (1) above, neither the distance of the work from the individual's residence, if known at the time of hire nor any other work factor which was generally known and present at the time of hire will provide good cause for voluntarily leaving work unless the individual demonstrates to the satisfaction of the department:

(a) That the distance from the individual's residence at time of hire is substantially greater than the distance customarily traveled by workers in the individual's job classification and labor market; or,

(b) That the related work connected circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor; or

(c) That other work related circumstances would work an unreasonable hardship on the individual if he or she were required to continue in the employment.

(3) Definitions. For purposes of subsection (2) above:

(a) "Distance customarily traveled" means a distance normally traveled by a significant portion of the work force in the individual's job classification in the labor market area;

(b) "Generally known" means commonly known without reference to specific cases or individuals; and

(c) "Individual's job classification" means the job classification in which the individual was working when the individual voluntarily left work; and

(d) A "labor market" is the geographic area in which those workers in the individual's job classification, living in the vicinity of his or her residence, customarily work; and

(e) "Substantial involuntary deterioration" means an actual and considerable worsening of the work factor outside the control of the individual; and

(f) "Unreasonable hardship" means a result, not due to the individual's voluntary action, that would cause a reasonable person to leave that employment.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-16-009, filed 8/17/82; 80-10-052 (Order 4-80), § 192-16-009, filed 8/6/80; Order 2-77, § 192-16-009, filed 9/2/77.]

WAC 192-16-011 Interpretative regulations--Leaving work to accept bona fide job offer--RCW 50.20.050 (2)(a). An individual who leaves work to accept a

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bona fide offer of employment will be found to have good cause within the meaning of RCW 50.20.050(1) only if he or she satisfactorily demonstrates that:

- (1) Prior to leaving work, the individual received a definite offer of employment; and
- (2) The individual had a reasonable basis for believing that the offeror had authority to make the offer; and
- (3) A specific starting date and the terms and conditions of the employment were mutually agreed upon; and
- (4) The individual continued in his or her old employment for as long as was reasonably consistent with whatever arrangements were necessary to start working at the new job.

[Order 2-77, § 192-16-011, filed 9/2/77.]

WAC 192-16-013 Interpretative regulations--Leaving work because of illness or disability of self or immediate family member--RCW 50.20.050 (2)(b). (1) General rule. In order for an individual to establish good cause within the meaning of RCW 50.20.050 (2)(b) for leaving work voluntarily because of his or her illness or disability or the illness, disability, or death of a member of his or her immediate family it must be satisfactorily demonstrated:

- (a) That he or she left work primarily because of such illness, disability, or death; and
- (b) That such illness, disability, or death necessitated his or her leaving work; and
- (c) That he or she first exhausted all reasonable alternatives prior to termination, including but not limited to:
 - (i) Promptly notifying the employer of the reason for the absence; and
 - (ii) Prior to the time of separation, requesting reemployment when again able to return to work. (A request for reemployment made after the date of termination is not required to establish good cause within RCW 50.20.050 (2)(b).)

(2) Exception. Notwithstanding the provisions of subsection (1)(c) above the individual asserting good cause may establish in certain instances that the otherwise reasonable alternatives would have been a futile act, thereby excusing the failure to exhaust such reasonable alternatives.

(3) Definitions. As used in subsection (1) above:

- (a) "Disability" means the temporary or permanent loss of an individual's former capacity or capacities due to physical, mental or emotional impairment; and
- (b) "Immediate family" means the individual's spouse, children (including unborn children), step-children, foster children, or parents of either spouse, whether living with the individual or not, and other relatives who temporarily or permanently reside in the individual's household.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 80-10-052 (Order 4-80), § 192-16-013, filed 8/6/80; Order 2-77, § 192-16-013, filed 9/2/77.]

WAC 192-16-015 Interpretative regulations--Leaving work for marital or domestic reasons--RCW 50.20.050(4). (1) General rule. An individual whose

marital status or domestic responsibilities are the primary cause of his or her voluntarily leaving employment shall be disqualified from benefits pursuant to the terms of RCW 50.20.050(4). This rule applies whether or not the individual took reasonable precautions to preserve his or her employment. Domestic responsibilities mean obligations or duties relating to the individual's immediate family, and include the illness, disability, or death of a member of the claimant's "immediate family" as defined in WAC 192-16-013.

(2) Exception. Notwithstanding the provisions of subsection (1) above, an individual who leaves employment because of the illness, disability, or death of a member of his or her immediate family as defined in WAC 192-16-013 and who establishes good cause under RCW 50.20.050 (2)(b), will not be subject to disqualification under RCW 50.20.050(4): *Provided*, That if such individual fails to establish good cause under RCW 50.20.050 (2)(b), disqualification will be imposed under RCW 50.20.050(4) rather than under RCW 50.20.050(1).

[Statutory Authority: RCW 50.12.010 and 50.12.040. 80-10-052 (Order 4-80), § 192-16-015, filed 8/6/80; Order 2-77, § 192-16-015, filed 9/2/77.]

WAC 192-16-016 Interpretive regulations--Satisfying disqualification under RCW 50.20.050(4) when separation is for reasons of marital status and marriage occurs after date of separation. In *Yamauchi v. Department of Employment Security*, 96 Wn.2d 773 (1982), the Washington state supreme court held that an individual who leaves work to be married and relocate to a place outside of reasonable commuting distance and who is not married at the time of the leaving does so for reasons of marital status and should be disqualified from benefits pursuant to RCW 50.20.050(4) if there is a causal nexus between the marital status and leaving work. However, the court also ruled that an individual who so leaves work shall not benefit from the lesser disqualification of RCW 50.20.050(4) prior to the date of the marriage and move.

(1) An individual who voluntarily leaves work to marry and relocate to a place outside of reasonable commuting distance has left work for reasons of marital status pursuant to RCW 50.20.050(4) if there is a causal nexus between the marriage and leaving work.

(2) Any individual who leaves work for reasons of marital status as described in subsection (1) above shall be granted no credit toward satisfying the disqualification of benefits under RCW 50.20.050(4) described as the alternate method of satisfying the disqualification in WAC 192-16-017(2), for any week ending prior to marriage or relocation, whichever is the latter.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-16-016, filed 8/17/82.]

WAC 192-16-017 Interpretative regulations--Satisfying disqualifications under RCW 50.20.050 (1) and (4), 50.20.060 and 50.20.080. (1) Satisfying the disqualifications through subsequent employment. The voluntary leaving work section, RCW 50.20.050, the discharge

section, RCW 50.20.060, and the refusal of work or referral to employment section, RCW 50.20.080, may be satisfied by obtaining work and earning wages of not less than the suspended weekly benefit amount in each of five weeks. The disqualification imposed may be satisfied if the claimant demonstrates:

(a) That, since the occurrence of the disqualifying act, he or she has obtained work and performed services in at least five calendar weeks; and

(b) That, in at least five of the calendar weeks, the individual earned wages of not less than his or her suspended weekly benefit amount: *Provided*, That the wages earned need not be in covered employment; however, the department must be satisfied that the employment is not a sham designed in whole or in part to avoid the effect of the disqualification.

(2) The alternative method of satisfying the disqualification under RCW 50.20.050(4). The disqualification imposed by RCW 50.20.050(4) may be satisfied in the alternative by:

(a) The individual reporting in person to the department, or in the case of claimants filing in other states, to the employment office in such other state, in each of ten different calendar weeks, not necessarily consecutive; and

(b) Certifying on each occasion that he or she is ready, able and willing immediately to accept any suitable work which may be offered and is actively seeking work pursuant to customary trade practices, and is utilizing such employment counseling and placement services as are available through the employment office; and

(c) Having certified pursuant to subsection 2(b) above, completing a timely claim for benefits with respect to the week of certification, thereby attesting to the bona fide nature of said certification. The claim for benefits will not be compensable.

Provided, That in certain instances, literal compliance with the terms of the special requalification provisions in RCW 50.20.050(4) may impose an unreasonable hardship on claimants who live in remote portions of the state; therefore, the department may, when the individual's labor market does not encompass within it an employment office or itinerant point, establish procedures for special reporting which as nearly as possible approximate the exposure to work and availability checks contemplated by the express terms of the statute.

[Order 2-77, § 192-16-017, filed 9/2/77.]

WAC 192-16-019 Interpretative regulations—Discharges and suspensions for misconduct—Effective date of RCW 50.20.060—Discharges for felony or misdemeanor. (1) Effective date. The provisions of RCW 50.20.060 as amended by section 16, chapter 18, Laws of 1982 1st ex. sess. are effective as to all discharges or suspensions occurring on July 10, 1982, and thereafter.

(2) Definitions.

(a) "Felony" means every crime which may be defined as such by the applicable state or federal statutes.

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(b) "Gross misdemeanor" means every crime which may be defined as such by the applicable state or federal statutes.

(c) A "competent authority" may be:

(i) A court (including magistrate or court commissioner), prosecuting attorney, or law enforcement agency, or;

(ii) An assistant attorney general or an administrative law judge, or;

(iii) A regulatory agency or professional association charged by statute with maintaining professional standards or codes of conduct, or;

(iv) Any other person or body exclusive of the employer with authority to administer disciplinary action with regard to the claimant.

(d) Admissions of commission of a felony or gross misdemeanor to the employer or to an employee of the employment security department are not to be considered admissions to a competent authority for the purposes of RCW 50.20.060(2).

(3) Discharge for felony or gross misdemeanor. Any individual who has been discharged because of a felony or gross misdemeanor of which he or she has been convicted or has admitted committing shall be disqualified from receiving any benefits for which base year wage credits are earned in any employment prior to the discharge. *Provided*, That:

(a) The felony or gross misdemeanor must have been connected with the individual's work; and

(b) The admission must have been made to each and every element of the felony or gross misdemeanor which caused the individual to be discharged; and

(c) The admission must have been made to a competent authority, and

(d) The disqualification begins with the first day of the calendar week in which the individual was discharged.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-16-019, filed 8/17/82; Order 2-77, § 192-16-019, filed 9/2/77.]

WAC 192-16-021 Interpretative regulations—Suitable work factors—Effective date of RCW 50.20.100.

(1) Effective date and general comments. RCW 50.20.100 has been amended by section 6, chapter 33, Laws of 1977 ex. sess. and the provisions are effective as to all claims filed for weeks of unemployment beginning July 3, 1977, and thereafter. This amendment removes RCW 50.20.100 from consideration when adjudicating voluntary quits under RCW 50.20.050. This amendment also modifies the factors which are to be considered in determining whether work is suitable for purposes of RCW 50.20.080 and 50.20.010(3).

(2) Suitable work factors.

(a) Suitable work is employment in keeping with the individual's prior work experience, education, or training. If the individual lacks such prior work experience, education, or training or such employment is not available in the general area suitable work shall include any employment which the individual would have the physical and mental ability to perform.

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(b) In addition to the considerations set forth above and those set forth in RCW 50.20.110, the department shall consider the following factors in determining whether work is suitable to an individual:

(i) The degree of risk involved to the individual's health, safety, and morals;

(ii) The individual's physical fitness;

(iii) The individual's length of unemployment and prospects for securing work in the individual's customary occupation;

(iv) The distance of the available work from the individual's residence; and

(v) The existence of any state or national emergency.

(3) Definition of general area. "General area" means an individual's labor market area and includes the geographic area within which an individual would customarily seek work in a given occupation.

[Order 2-77, § 192-16-021, filed 9/2/77.]

WAC 192-16-023 Interpretative regulations--Disqualification of students--RCW 50.20.095. (1) General rule. An individual registered at an established school in a course of study providing scholastic instruction of twelve or more hours per week, or the equivalent thereof, is disqualified from receiving benefits or waiting period credit.

(2) The period of disqualification. The period of disqualification begins with either the first week of such scholastic instruction or the week of leaving employment to return to school, whichever is earlier. The disqualification ends midnight Saturday of the week that precedes the first full week in which the individual is no longer registered for twelve or more hours of scholastic instruction: *Provided*, That such individual shall be required to certify to the department that he or she is not currently registered for twelve or more credit hours and will not be registered for 12 or more credit hours for at least 60 days. An individual who fails to abide by the terms of the certification will be deemed to have been overpaid all benefits paid based on the certification. Such overpayment will be subject to assessment and recovery under RCW 50.20.190. Pre-registration for classes beginning 60 or more days in the future will not serve to extend the disqualification described in this subsection.

(3) Full-time students to whom disqualification does not apply. The disqualification shall not apply to any individual who:

(a) Is in approved training within the meaning of RCW 50.20.043; or

(b) At the time he or she applies for benefits, demonstrates by a preponderance of the evidence that his or her student status does not significantly interfere with his or her actual availability for work.

(4) Definitions. As used in this section:

(a) "School" includes primary schools, secondary schools, and institutions of higher education, as that phrase is defined in RCW 50.44.030;

(b) "Scholastic instruction" includes all teaching or opportunity for learning subjects other than those of a

strictly vocational nature. Subjects of a vocational nature are those embraced in the definition of "training" contained in WAC 192-12-180.

(c) "Twelve or more hours per week" means twelve or more credit hours per week or the equivalent thereof;

(d) "Preponderance of evidence" means evidence sufficient to persuade a reasonable person considering all the evidence, that the proposition sought to be established by that evidence is more probably true than not true.

(5) Other sections of act not pre-empted by student disqualification. Students who claim benefits are subject to all of the provisions of the Employment Security Act including:

(a) RCW 50.20.050 dealing with those who leave work voluntarily without good cause; and

(b) RCW 50.20.010(3) requiring claimants to be able and available for and actively seeking work.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 80-10-052 (Order 4-80), § 192-16-023, filed 8/6/80; Order 2-77, § 192-16-023, filed 9/2/77.]

WAC 192-16-025 Lump sum retirement payment. RCW 50.04.323(6) provides that, effective April 6, 1980, a lump sum payment of funds, accumulated in an employer-participating government or private retirement pension plan to one eligible for retirement pension, shall be prorated over the life expectancy of the retiree in a manner determined by the commissioner.

(1) Lump sum payments as described in the foregoing paragraph will be prorated over the life expectancy of the individual in accordance with Table I in Regulation 1.72-9 of the Internal Revenue Code as amended as of the effective date of the individual's benefit year.

(2) The withdrawal, upon separation from employment, of only the funds, and interest thereon, contributed to a retirement pension by an individual is not within the scope of RCW 50.04.323(6) and will not serve to reduce benefits.

(3) The phrase "one eligible for retirement" is defined as an individual eligible at the time of the lump sum payment for periodic payments under a pension program which is based on age or length of service.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 80-10-052 (Order 4-80), § 192-16-025, filed 8/6/80.]

WAC 192-16-030 Interpretive regulation--Computation of pension deductions under RCW 50.04.323. RCW 50.04.323 provides, in part, that the amount of any reduction under that section shall take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment, in accordance with regulations prescribed by the commissioner. There will be presumed to have been no employee contribution unless the claimant provides evidence satisfactory to the department that such a contribution was made.

In the absence of a written certification from the administrators of the plan under which the claimant is receiving the pension, retirement or retired pay, annuity,

or other similar periodic payment which verifies the specific percentage of the individual's contributions to the plan, the deductible pension amount will be calculated in the manner set forth in the following paragraph.

The deductible pension amount shall be determined as of the last pay period in the individual's base year for which contributions were made. For example, during such period the employees contributed 6% of gross wages and the employer contributed 7% of gross wages. The total contributions is 13% of gross wages. Dividing the employer's contributions by the total results in an employer share of contributions of 54%. The employer share represents that portion of the gross monthly pension that is deductible.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 81-13-016 (Order 2-81), § 192-16-030, filed 6/11/81.]

WAC 192-16-033 Interpretive regulation--Regular shareable benefits defined. The term "regular shareable benefits" refers to regular benefits in excess of 26 times an individual's weekly benefit amount, paid with respect to weeks of unemployment which occur during an extended benefit period.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 81-13-016 (Order 2-81), § 192-16-033, filed 6/11/81.]

WAC 192-16-036 Interpretive regulation--Requalification for regular shareable, extended, or additional benefits under RCW 50.20.050(4). RCW 50.22.020(7) provides that individuals cannot requalify for regular shareable or extended benefits unless such requalification is based upon employment subsequent to the date of the disqualifying separation.

RCW 50.22.100(3) provides that eligibility for additional benefits shall be determined and paid under the same terms and conditions as extended benefits.

An individual disqualified under RCW 50.20.050(4) who has requalified on the basis of reporting for ten weeks will not be eligible for regular shareable, extended, or additional benefits unless such an individual has, subsequent to the disqualifying separation, performed work in each of five weeks earning not less than his or her suspended weekly benefit amount in each of such weeks.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-16-036, filed 8/17/82; 81-13-016 (Order 2-81), § 192-16-036, filed 6/11/81.]

WAC 192-16-040 Interpretive regulation--Good prospects of obtaining work within a reasonably short period of time under RCW 50.22.020(3)--Shareable, extended, or additional benefits. For the purpose of RCW 50.22.020(3) an individual shall be deemed to have a good prospect for work within a reasonably short period of time if said individual has (1) a definite recall or hire date, within five weeks, or (2) a probable recall or hire date within five weeks, based on an extremely favorable position on a union out-of-work list, seasonal factors, or historical experience.

(1986 Ed.)

[Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-16-040, filed 8/17/82; 81-13-016 (Order 2-81), § 192-16-040, filed 6/11/81.]

WAC 192-16-042 Interpretive regulation--Failure to apply for or accept work under RCW 50.22.020(4)(b)--Shareable, extended, or additional benefits. RCW 50.22.020(4) provides, in part:

"Extended compensation shall not be denied under subsection (1)(a) of this section to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work if: . . . (b) The position was not offered to such individual in writing and was not listed with the employment security department";

This section means that a person will be disqualified from receiving extended, shareable, or additional benefits for failure to accept or apply for suitable work, as defined in RCW 50.22.020(3), if the job at issue was either offered to the person in writing or was listed with the employment security department and the other requirements of that subsection have been met.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-16-042, filed 8/17/82; 81-13-016 (Order 2-81), § 192-16-042, filed 6/11/81.]

WAC 192-16-045 Interpretive regulation--Disqualification for failing to accept an offer of or to apply for suitable work--Shareable, extended, or additional benefits. If, during a week for which an individual has claimed regular shareable, extended, or additional benefits, he or she fails to accept any offer of work or fails to apply for any work to which he or she was referred by the employment security department:

(a) Such individual will be disqualified from benefits under the terms of RCW 50.20.080 if the work was "suitable" under the provisions of RCW 50.20.100 and RCW 50.20.110 and if the individual's failure was without "good cause";

(b) Such individual, if disqualified from benefits under RCW 50.20.080 as provided in subparagraph (a) above, will further be disqualified from regular shareable, extended, and additional benefits under RCW 50.22.020 (1)(a) and (2) unless this additional disqualification is precluded by RCW 50.22.020(4);

(c) Such individual may be disqualified from regular shareable or extended benefits under only the provisions of RCW 50.22.020 (1)(a) and (2) if the work was not "suitable" under the provisions of RCW 50.20.100 or if the individual had "good cause" in refusing the work.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-16-045, filed 8/17/82; 81-13-016 (Order 2-81), § 192-16-045, filed 6/11/81.]

WAC 192-16-047 Interpretive regulation--Interpretation of requirements of RCW 50.22.020(5)--Tangible evidence of a systematic and sustained effort to obtain work--Shareable, extended, or additional benefits. Work search efforts for individuals claiming shareable and extended benefits must be of a quality and frequency that would clearly indicate that the individual is

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making sincere efforts to immediately return to gainful employment.

The completed work search section of the continued claim form which includes the date of work seeking contact, the name of the employer or union involved, and the type of work sought will be considered as tangible but not conclusive evidence of a systematic and sustained effort to obtain work.

An individual engaged in a training program approved by the commissioner in accordance with the requirements of 26 U.S.C. § 3304(a)(8), WAC 192-12-182, and 192-12-184 will be deemed to meet the requirements of RCW 50.22.020(5).

[Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-16-047, filed 8/17/82; 81-13-016 (Order 2-81), § 192-16-047, filed 6/11/81.]

WAC 192-16-050 Diversion of unemployment benefits to satisfy child support obligations. Section 11, chapter 18, Laws of 1982 1st ex. sess., require the department, upon proper notification by a child support agency, to withhold a portion of an individual's unemployment insurance benefits to be transmitted to the child support agency to satisfy child support obligations.

(1) Notification to claimant. The child support agency will serve notice on the claimant of the order to withhold unemployment insurance benefits.

(2) Overpayments. In the event an individual receives benefits to which he is not entitled, and those benefits are recoverable under the provisions of RCW 50.20.190, the overpayment will include the amount withheld and transmitted to the child support agency. The withheld benefits for child support obligations are considered to have been paid to the individual and then paid by the individual to the child support agency.

(3) Erroneous withholding. If an amount greater than the amount which should have been deducted from benefits is paid to the child support agency, that agency shall be responsible for reimbursing the individual claimant for any amount in excess of the amount properly received. If an amount less than the amount which should have been paid to the child support agency is withheld and paid, subsequent benefit entitlement of the claimant will be applied to satisfy the amount underpaid to the child support agency.

(4) Appeal rights. Any appeal regarding the validity of the child support obligation upon which the order to withhold is based including whether the obligation is owed, the total amount of obligation, and the amount to be withheld from benefits and paid over to the child support agency shall be resolved between the claimant and the child support agency. The employment security department will not be responsible for any appeals regarding such matters.

Any appeal regarding the validity of the employment security department's authority to make deductions, the applicable weeks for which the deduction was made, and the accuracy of the amount deducted may be appealed in the same manner in which nonmonetary benefit determinations are appealed. The department's notification

to the claimant shall contain an appeals notice. The laws and regulations relating to benefit appeals shall apply to appeals regarding matters subject to this regulation.

(5) Effective date of withholding. No amount shall be withheld from unemployment benefits paid for weeks prior to the date the notice to withhold is served on the individual, or prior to the date when an agreement to withhold is reached between the individual and the child support agency.

[Statutory Authority: Chapter 50.40 RCW and 1982 1st ex.s. c 18. 82-13-057 (Order 3-82), § 192-16-050, filed 6/14/82.]

WAC 192-16-051 Interpretive regulations--Special coverage provisions--Contract or reasonable assurance defined--RCW 50.44.050(1). (1) For the purposes of RCW 50.44.050(1), an individual has a contract to perform services in an instructional, research, or principal administrative capacity if there is a binding obligation on the part of the educational institution to provide such work and a binding obligation on the part of the individual to perform such services.

(2) For the purposes of RCW 50.44.050(1), a reasonable assurance that an individual will perform services in an instructional, research, or principal administrative capacity requires that the individual be given a bona fide notification of intent to assign him/her work in any such capacity.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-16-051, filed 8/17/82.]

WAC 192-16-055 Interpretive regulations--Special coverage provisions--Bona fide notification of intent for substitute teacher--RCW 50.44.050(1). In determining whether a notification of intent for a substitute teacher is bona fide, consideration shall be given, but not necessarily limited to the following factors:

(1) With respect to the preceding academic year(s) or term(s):

- (a) Number of full time teaching positions,
- (b) Student enrollment,
- (c) Number of schools,
- (d) Size of substitute list at beginning, during, and end of academic year(s) or term(s),
- (e) Priorities affecting the assignment of substitute teachers,
- (f) Average number of substitute teachers assigned each day.

(2) With respect to the ensuing academic year or term:

- (a) Projected number of full time teaching positions,
- (b) Projected student enrollment,
- (c) Projected number of schools,
- (d) Projected size of substitute list at beginning, during, and end of academic year(s) or term(s),
- (e) Priorities affecting the assignment of substitute teachers,
- (f) Projected average number of substitute teachers assigned each day.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 82-17-052 (Order 6-82), § 192-16-055, filed 8/17/82.]

Chapter 192-17 WAC
STATE ENVIRONMENTAL POLICY ACT--
INTERPRETATION

WAC
192-17-010 Exemption from provisions of WAC 197-10-800.

WAC 192-17-010 Exemption from provisions of WAC 197-10-800. The employment security department of the state of Washington has reviewed its authorized activities and found all of them to be exempt from the provisions of Title 197 WAC. This statement is provided as compliance with the requirements that the employment security department adopt guidelines consistent with Title 197 WAC.

[Order 1-76, § 192-17-010, filed 4/12/76.]

Chapter 192-18 WAC
EMPLOYEE CONFLICT OF INTEREST

WAC
192-18-010 No outside compensation for performing official duties.
192-18-020 Use of influence or position to aid individuals or organizations.
192-18-030 Limitations on outside employment—Potential conflict of duties.
192-18-040 Limitation on outside employment—Working hours—Use of state resources prohibited—Procedures.
192-18-050 Limitations on transacting business with friends, relatives or co-workers.
192-18-060 Definitions—Friend, relatives, co-workers.
192-18-070 Violations—Sanctions.

WAC 192-18-010 No outside compensation for performing official duties. No employee of the employment security department will ask for or accept compensation in any form from any individual or organization for services which would normally be performed as part of the employee's official duties.

[Statutory Authority: RCW 50.12.010. 80-07-026 (Order 2-80), § 192-18-010, filed 6/12/80.]

WAC 192-18-020 Use of influence or position to aid individuals or organizations. No employee of the employment security department will assist any individual or organization in any transaction involving the agency when such employee could affect the outcome of the transaction unless such assistance is tendered in the performance of the employee's official duties: *Provided, however,* This section does not prohibit an employee from assisting an individual who is seeking employment with the department.

[Statutory Authority: RCW 50.12.010. 80-07-026 (Order 2-80), § 192-18-020, filed 6/12/80.]

WAC 192-18-030 Limitations on outside employment—Potential conflict of duties. No employee of the employment security department will ask for or accept compensation in any form for services not related to their official duties from an individual or organization, except when such activity is specifically approved by the

commissioner or one of his deputies, when such individual or organization:

- (1) Is seeking to obtain contractual or other business or financial relationships with the department; or
- (2) Has interests which may be substantially affected by the employee's performance or nonperformance of official duties.

[Statutory Authority: RCW 50.12.010. 80-07-026 (Order 2-80), § 192-18-030, filed 6/12/80.]

WAC 192-18-040 Limitation on outside employment—Working hours—Use of state resources prohibited—Procedures. No employee may perform activities related to outside employment during normal working hours without special arrangements with his or her supervisor. No employee may use or cause to be used state premises, materials, facilities, equipment or personnel in connection with outside employment.

Any employee engaged in outside employment has the responsibility of insuring that there is no real or apparent conflict with the directives of this regulation. If the employee has doubts about the propriety of his or her activities, they should not engage in such activities until clearance in writing is obtained from the agency's central personnel office.

[Statutory Authority: RCW 50.12.010. 80-07-026 (Order 2-80), § 192-18-040, filed 6/12/80.]

WAC 192-18-050 Limitations on transacting business with friends, relatives or co-workers. In order to assure objectivity to the highest degree and to avoid any appearance of conflict of interest in claimstaking, adjudication of issues, and tax functions, the following policy is to take effect immediately.

Agency personnel will not perform the following acts for friends, relatives or co-workers:

- (1) Acceptance or processing of initial or continued claims;
- (2) Factfinding interviews or drafting of nonmonetary or overpayment determinations on claims.
- (3) Acceptance of cash, personal checks, bank drafts, money orders, or endorsed warrants to liquidate overpayments; negotiation of contracts for repayment of overpayments or recommending approval of offers of compromise for such individuals; or issuance of cash receipts;
- (4) Determination of tax liability or collection of taxes;
- (5) Auditing of employer accounts or initiation or processing of tax refunds.

[Statutory Authority: RCW 50.12.010. 80-07-026 (Order 2-80), § 192-18-050, filed 6/12/80.]

WAC 192-18-060 Definitions—Friend, relatives, co-workers. For the purposes of WAC 192-18-050 the terms, friend, relatives and co-workers are defined as follows:

- (1) A friend is:
 - (a) Any individual with whom the employee maintains or has maintained an active social relationship; or

(b) Any individual who, due to social or economic relationships with the employee or his acquaintances, could have a reasonable expectation that the employee might handle agency transactions involving such an individual in a less than objective manner.

(2) A relative means any of the following related to the employee by blood, marriage, or adoption: Spouse, children, parents, grandparents, sisters, brothers, aunts, uncles, nieces, nephews, and cousins.

(3) Co-worker means any employee of the agency, whether regular, intermittent, temporary, or part-time, who has worked or is working in the same organizational unit with, or who rates or is rated by the agency employee.

[Statutory Authority: RCW 50.12.010. 80-07-026 (Order 2-80), § 192-18-060, filed 6/12/80.]

WAC 192-18-070 Violations--Sanctions. Violation of any regulation in chapter 192-18 WAC will subject the offending employee to disciplinary action up to and including dismissal. Imposition of personnel sanctions shall not preclude the agency from pursuing available civil and criminal remedies against the offending employee.

[Statutory Authority: RCW 50.12.010. 80-07-026 (Order 2-80), § 192-18-070, filed 6/12/80.]

Chapter 192-20 WAC

OLD-AGE AND SURVIVORS INSURANCE

WAC

192-20-010 Due dates for submission of reports and contributions--Interest on delinquent contributions.

WAC 192-20-010 Due dates for submission of reports and contributions--Interest on delinquent contributions. RCW 41.48.050 (3)(a) provides:

"Each political subdivision as to which a plan has been approved under this section shall pay into the contribution fund, with respect to wages (as defined in RCW 41.48.020 of this act), at such time or times as the governor may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the governor under RCW 41.48.030."

The commissioner prescribes:

Contributions and reports covering the same shall become due for months after December 31, 1983, as follows:

(1) Contributions on wages paid during the first 15 days of each calendar month must reach the Employment Security Department (OASI section), Olympia, Washington 98504, not later than the 22nd day of that month and contributions on wages paid from the 16th through the last day of each calendar month must reach the employment security department (OASI section) by the 7th of the following month accompanied by a completed monthly remittance advice. Contributions due on a Saturday, Sunday or state holiday will be due on the

next state work day. Contributions received subsequent to the specified dates will be subject to a declaration of delinquency and an added interest charge at the rate of six percent per year or, if higher, the rate chargeable to the state by the secretary by virtue of federal law, if the late payment contributes to any federal penalty for late deposit.

[Statutory Authority: RCW 41.48.050 (3)(a) and 50.12.010. 83-23-102 (Order 4-83), § 192-20-010, filed 11/23/83. Statutory Authority: RCW 50.12.010. 80-07-026 (Order 2-80), § 192-20-010, filed 6/12/80.]

Chapter 192-23 WAC

CONDITIONAL PAYMENT REGULATIONS

WAC

- 192-23-001 Failure to respond to request for information results in a presumption of disqualifying information.
- 192-23-002 Failure to respond defined.
- 192-23-011 Failure to provide details of employment.
- 192-23-012 Failure to provide details on holiday and/or vacation pay.
- 192-23-013 Failure to report in person.
- 192-23-014 Failure to establish ability to work.
- 192-23-015 Failure to establish active search for work.
- 192-23-016 Failure to meet work search requirements.
- 192-23-017 Failure to respond to a request for information regarding late filing of claims.
- 192-23-051 Failure to provide details on separation from employment.
- 192-23-052 Failure to respond to a request for information regarding voluntary quit.
- 192-23-061 Failure to respond to a request for information regarding a discharge from work.
- 192-23-081 Failure to provide details on a refusal of an offer of work.
- 192-23-082 Failure to respond to a request for information regarding failure to apply for work.
- 192-23-091 Failure to respond to a request for information regarding labor dispute.
- 192-23-096 Failure to provide information regarding attendance at school.
- 192-23-113 Failure to respond to a request to provide information regarding athletic employment.
- 192-23-301 Failure to respond to a request for information regarding reasonable assurance of return to work.
- 192-23-320 Failure to respond to a request for documentation of a systematic and sustained work search.
- 192-23-350 Failure to respond to a request for pension information.
- 192-23-800 Claimant certification of ineligibility.
- 192-23-810 Claimant certification of return to full-time work.
- 192-23-900 Claimant liable for repayment of overpayments caused by conditional payment.

WAC 192-23-001 Failure to respond to request for information results in a presumption of disqualifying information. If a claimant provides potentially disqualifying information or fails to provide necessary information and then fails to respond to a request for specific information, the failure to respond will result in a presumption of disqualifying information and the issuance of a formal determination of disqualification. The presumption of disqualifying information is rebuttable. RCW 50.20.160 provides the department the authority to issue redeterminations. If a claimant successfully rebuts the

presumption of disqualifying information, provides information sufficient to establish eligibility, and a re-determination is permitted by RCW 50.20.160, a re-determination will be issued allowing benefits.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-001, filed 6/18/84.]

WAC 192-23-002 Failure to respond defined. An individual will be deemed to have failed to respond to a request for information if the claimant has not reported in person, if so directed, or responded in writing by the response date indicated in the request for information, providing all the information requested.

If the request for information requires an in-person response and the individual responds in writing, the individual will be deemed to have failed to respond unless the written response provides specific information that will establish good cause for a failure to respond in person.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-002, filed 6/18/84.]

WAC 192-23-011 Failure to provide details of employment. (1) If a claimant reports that he or she had work or earnings for one or more weeks or fails to indicate whether he or she had work or earnings and fails to respond to a request for subsequent information with respect to the work and earnings, the claimant will be presumed to be not unemployed as defined in RCW 50.04.310 and therefore not eligible for benefits pursuant to RCW 50.20.010.

(2) The denial of benefits authorized by this section is a denial for a definite period of time, being the week or weeks for which work and earnings information is incomplete.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-011, filed 6/18/84.]

WAC 192-23-012 Failure to provide details on holiday and/or vacation pay. (1) If a claimant certifies that he or she has received holiday and/or vacation pay, or fails to certify whether he or she has received holiday or vacation pay and fails to respond to provide details of the holiday and/or vacation pay, the individual will be presumed to be not unemployed as defined in RCW 50.04.310 and subject to denial pursuant to RCW 50.20.010.

(2) The denial of benefits authorized by this section is a denial for a definite period of time, being the week or weeks for which vacation and/or holiday pay information is incomplete.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-012, filed 6/18/84.]

WAC 192-23-013 Failure to report in person. (1) If a claimant fails to report in person when directed and fails to respond to provide information to explain why he or she did not report in person, the claimant will be presumed to have failed to report in person without good cause and be subject to denial pursuant to RCW 50.20.010(1).

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(2) The denial of benefits authorized by this section is a denial for a definite period of time, being the week or weeks in which the claimant failed to report as directed.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-013, filed 6/18/84.]

WAC 192-23-014 Failure to establish ability to work. (1) If a claimant certifies that he or she was not able to work or not available for work in any week or fails to certify whether he or she was able to work or was available for work, and fails to respond to provide details relating to his or her ability and or availability for work, the claimant will be presumed to be not able or available for work and subject to denial of benefits pursuant to RCW 50.20.010(3).

(2) The denial of benefits authorized by this section is a denial for a definite period of time, being the week or weeks for which information on the claimant's ability to work or availability for work is incomplete.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-014, filed 6/18/84.]

WAC 192-23-015 Failure to establish active search for work. (1) If a claimant certifies that he or she was not actively seeking work, fails to certify whether he or she made an active search for work, and/or fails to provide complete work search details and other information as directed and fails to respond to provide details relating to work search activity, the individual will be presumed to be not actively seeking work and will be subject to denial pursuant to RCW 50.20.010(3).

(2) For the purpose of this subsection complete work search details include:

- (a) Names of employers contacted,
- (b) Date of each employer contact,
- (c) Employer location,
- (d) Type of work sought, and
- (e) Methods of contact.

(3) The denial of benefits authorized by this section is a denial for a definite period of time, being the week or weeks for which work search information is incomplete.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-015, filed 6/18/84.]

WAC 192-23-016 Failure to meet work search requirements. (1) If a claimant has been directed to meet specific work search requirements, fails to report a work search that meets those requirements, and fails to respond to a request to provide additional work search information or responds with information that does not meet the specific requirements, the individual will be presumed to not be actively seeking work as directed and subject to denial pursuant to RCW 50.20.010(3).

(2) The denial of benefits authorized by this section is a denial for a definite period of time, being the week or weeks for which work search information does not meet specific work search requirements.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-016, filed 6/18/84.]

[Title 192 WAC—p 47]

WAC 192-23-017 Failure to respond to a request for information regarding late filing of claims. (1) If a claimant files a claim late as defined in WAC 192-12-141 and fails to respond to a request for an explanation of why the claim was filed late, it shall be presumed that the claim has not been filed as required and the individual will be subject to denial pursuant to RCW 50.20.010(2) and WAC 192-12-141.

(2) The denial of benefits authorized by this section is a denial for a definite period of time, being the week or weeks which were filed late.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-017, filed 6/18/84.]

WAC 192-23-051 Failure to provide details on separation from employment. If a claimant reports no work or earnings in a week following a week during which work and earnings were reported or in which he or she did not certify whether there were work and earnings or submits a claim after a break in reporting without reporting in person, does not provide complete employer and separation information, and does not respond to a request to supply complete employer and separation information, the individual will be presumed to have voluntarily left work without good cause and be subject to denial pursuant to RCW 50.20.050.

(1) A separation from employment occurs whenever the employer-employee relationship is interrupted or ended. For the purpose of this section a separation from employment occurs whenever:

(a) An employee is not scheduled to work for a period of one week or more.

(b) A claimant has a week with no earnings following a week in which the claimant had earnings.

(2) For the purpose of this section, complete employer and separation information consists of the following items:

(a) Name of employer,

(b) Complete address of employer,

(c) Last day worked,

(d) Reason for separation from employment,

(e) Information on hours worked and earnings if not previously reported.

(3) A "break in reporting" is any period of one or more weeks for which no continued claim forms are submitted.

(4) The denial of this section is indefinite in nature and will be applied until the claimant meets the requalification provisions of RCW 50.20.050.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-051, filed 6/18/84.]

WAC 192-23-052 Failure to respond to a request for information regarding voluntary quit. (1) If a claimant fails to respond to a notice to provide detailed information with respect to voluntarily quitting work, the claimant shall be presumed to have voluntarily left work without good cause and denied benefits pursuant to RCW 50.20.050.

[Title 192 WAC—p 48]

(2) The denial of this section is indefinite in nature and will be applied until the claimant meets the requalification provisions of RCW 50.20.050.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-052, filed 6/18/84.]

WAC 192-23-061 Failure to respond to a request for information regarding a discharge from work. (1) If a claimant fails to respond to a request for information regarding a discharge from work and has provided insufficient information to identify or contact the employer, the claimant may be presumed to be discharged for misconduct connected with the work and denied benefits pursuant to RCW 50.20.060. If the claimant has supplied the agency with sufficient information to contact the employer, the claimant may not be denied benefits pursuant to RCW 50.20.060 unless the employer has established by a preponderance of evidence that the claimant has been discharged for misconduct connected with the work.

(2) The denial of this section is indefinite in nature and will be applied until the claimant meets the requalification provisions of RCW 50.20.060.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-061, filed 6/18/84.]

WAC 192-23-081 Failure to provide details on a refusal of an offer of work. (1) If a claimant certifies that he or she refused an offer of work or fails to certify whether he or she refused an offer of work, and fails to respond to a notice to report or request to provide details relating to refusing an offer of work, the individual will be presumed to have refused an offer of available, suitable work without good cause and will be subject to denial of benefits pursuant to RCW 50.20.080.

(2) The denial of benefits under this section is indefinite in nature and will be applied until the claimant meets the requalification provisions of RCW 50.20.080. The beginning date of the denial will be the first day of week in which the claimant certified that he or she refused an offer of work or failed to indicate whether he or she refused an offer of work.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-081, filed 6/18/84.]

WAC 192-23-082 Failure to respond to a request for information regarding failure to apply for work. If the agency has directed a claimant to apply for work, the agency is advised that the claimant failed to apply as directed, and the claimant fails to respond to a request for information regarding the failure to apply as directed, the claimant shall be deemed to have failed to apply for available, suitable work without good cause and shall be subject to denial pursuant to RCW 50.20.080.

(2) The denial of benefits under this section is indefinite in nature and will be applied until the claimant meets the requalification provisions of RCW 50.20.080. The beginning date of the denial will be the date the claimant was directed to apply for work.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-082, filed 6/18/84.]

WAC 192-23-091 Failure to respond to a request for information regarding labor dispute. (1) If an individual fails to respond to a request for information regarding a labor dispute, the individual will be presumed to be unemployed due to the labor dispute and directly interested in and/or participating in the dispute.

(2) The presumption that the claimant is unemployed due to the labor dispute and directly interested in and/or participating in the dispute shall continue until the claimant provides information otherwise.

(3) The employer must establish that a stoppage of work caused by a labor dispute has resulted in the claimant being unemployed before the claimant may be denied benefits pursuant to RCW 50.20.090.

(4) The denial of benefits under this section is indefinite in nature and will continue as long as the employer can establish that there is a stoppage of work caused by a labor dispute.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-091, filed 6/18/84.]

WAC 192-23-096 Failure to provide information regarding attendance at school. (1) If claimant or another party notifies the agency that the claimant is in school and the claimant fails to respond to a request for information regarding school attendance, the claimant shall be presumed to be registered for academic instruction of twelve or more hours and to have a limited attachment to the labor market, and to be not available for work, and shall be subject to denial of benefits pursuant to RCW 50.20.095 and 50.20.010(3).

(2) The denial of benefits under this section is indefinite in nature and continues until the individual reestablishes eligibility pursuant to RCW 50.20.095 and 50.20.010(3).

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-096, filed 6/18/84.]

WAC 192-23-113 Failure to respond to a request to provide information regarding athletic employment. (1) If a claimant bases his or her eligibility for benefits on employment as a sport or athletic event participant and refuses to respond to a request for information regarding participation in past and coming seasons, the claimant shall be presumed to have a reasonable assurance of performing such services in an upcoming season and thereby be subject to denial of benefits pursuant to RCW 50.20.113.

(2) The denial in this section is definite in nature and applies to the entire period between seasons.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-113, filed 6/18/84.]

WAC 192-23-301 Failure to respond to a request for information regarding reasonable assurance of return to work. (1) In the case of a claimant whose benefits are based on services for an educational institution, and whose employer has provided information that the

claimant has reasonable assurance of returning to employment during the following term, academic year or period following holiday or vacation, failure of the claimant to respond to a request for information concerning such assurance will result in a denial pursuant to the applicable section of RCW 50.44.050.

(2) The denial of benefits under this section is definite in nature, applying to the period between terms, between academic years, or the appropriate vacation and/or holiday period.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-301, filed 6/18/84.]

WAC 192-23-320 Failure to respond to a request for documentation of a systematic and sustained work search. (1) If a claimant is receiving shareable or extended benefits and fails to report a systematic and sustained work search and fails to respond to a request to provide work search information, the claimant shall be presumed to have failed to actively engage in seeking work and be subject to denial of benefits pursuant to RCW 50.22.020 (1) and (2).

(2) The denial of benefits under this section is indefinite in nature and shall continue until the requalifying provisions of RCW 50.22.020(2) are met.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-320, filed 6/18/84.]

WAC 192-23-350 Failure to respond to a request for pension information. (1) If a claimant certifies that he or she has applied for a retirement pension or that his or her retirement pension has changed since his or her last claim or the claimant has failed to indicate whether he or she has applied for a pension or his or her pension changed, and fails to respond to a request for pension information, or responds with inadequate pension information, the individual will be presumed to be receiving a pension in an amount greater than his or her weekly benefit amount and contributed to solely by a base year employer and be subject to denial of benefits pursuant to RCW 50.04.323.

(2) The denial of benefits under this section is indefinite and will continue until the claimant establishes that he or she is no longer subject to disqualification pursuant to RCW 50.04.323.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-350, filed 6/18/84.]

WAC 192-23-800 Claimant certification of ineligibility. (1) If a claimant submits a claim form certifying that he or she was not available for work and not seeking work and providing additional information which supports such certification and which includes an unconditional statement of ineligibility, the submission of the form does not rise to the level of a claim for benefits and the claimant may be denied benefits pursuant to RCW 50.20.010(2) without requiring additional information or interview.

(2) The denial under this section is definite in nature and applies only to the week or weeks for which the claimant specifically indicates ineligibility.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-800, filed 6/18/84.]

WAC 192-23-810 Claimant certification of return to full-time work. (1) If a claimant certifies that he or she has returned to full-time work and reports hours worked consistent with a return to full-time work, but fails to provide specific earnings information, the certification of return to full-time work and hours worked shall be sufficient to determine that the individual is no longer an unemployed individual as defined in RCW 50.04.310 and subject to denial pursuant to RCW 50.20.010 without requiring additional information or interview.

(2) The denial under this section is definite in nature and applies only to the weeks claimed at the time of the certification of return to full-time work.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-810, filed 6/18/84.]

WAC 192-23-900 Claimant liable for repayment of overpayments caused by conditional payment. (1) If an overpayment of benefits results from a conditional payment and subsequent denial of benefits, the claimant is not eligible for waiver of that overpayment pursuant to RCW 50.20.190.

(2) A claimant who submits a claim form that fails to clearly establish eligibility and which results in a conditional payment is not without fault with respect to any overpayment subsequently established and therefore not eligible for the waiver provisions of RCW 50.20.190.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-23-900, filed 6/18/84.]

Chapter 192-24 WAC

CLAIMANT INFORMATION

WAC

192-24-001	Information for claimants.
192-24-010	Claimant information booklet.
192-24-020	Presentation of benefit rights.
192-24-030	Claimant directive.

WAC 192-24-001 Information for claimants. (1) The employment security department will provide claimants with information necessary for filing claims for benefits.

(2) The department will provide assistance at its job service centers or in writing to any person needing assistance in filing claims.

(3) A person given written information by the department will be responsible for acting in accord with that information for the duration of the claim and will be presumed to understand the information unless the individual asks for help in understanding.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-24-001, filed 6/18/84.]

WAC 192-24-010 Claimant information booklet. (1) The department will publish an *Information for Claimants* booklet, form number EMS 8139 to provide

basic information on the law, rules and procedures related to claims for unemployment insurance benefits. Single copies of the booklet will be available to the public at no charge.

(2) Each person filing a new claim for benefits will be given a copy of the most recent revision of the *Information for Claimants* booklet, form number EMS 8139.

(3) Each person given a copy of the information booklet will be responsible for filing claims in accordance with the instructions in the booklet.

(4) A replacement booklet will be given to any person who requests one.

(5) Each person given a booklet will be responsible for reporting and filing claims according to the information in the booklet for the duration of the claim unless other specific information is given to the person in writing.

(6) In its job service centers, the department will assist any person who may have difficulty understanding the booklet.

(7) If a person fails to ask for help in understanding the booklet, the person will be presumed to understand the contents of the booklet and held responsible for any failure to act as directed by the booklet.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-24-010, filed 6/18/84.]

WAC 192-24-020 Presentation of benefit rights. (1) The department will give each person filing a claim for benefits a presentation of benefit rights.

(2) If there is a change in eligibility requirements or if a person appears to need assistance, the department may require an individual to attend a presentation of benefit rights.

(3) Any person wishing to attend a presentation of benefit rights for general information or review may do so at a time convenient to the department.

(4) A person filing claims for benefits will be responsible for filing claims and providing information as directed in the presentation of benefit rights unless other written instructions are given after the presentation of benefit rights.

(5) If there is a conflict between written and spoken information given to a person, the written information will be held to apply.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-24-020, filed 6/18/84.]

WAC 192-24-030 Claimant directive. RCW 50.20.010(3) provides that to be eligible for benefits, an individual must be actively seeking work pursuant to customary trade practices and through other methods when so directed by the commissioner or his agents.

(1) A "claimant directive" is a notice to a claimant advising him or her that specific methods of work search are required in order to meet the actively seeking work requirements.

(2) No claimant directive will be effective until a written copy of the directive has been received by the claimant.

(3) A claimant directive may be issued to advise a claimant of any requirement related to the work search

including the method of reporting of work search required.

(4) An individual given a claimant directive will be required to abide by the directive until it is replaced by a new written directive.

(5) A directive shall remain in effect until a claimant establishes a new valid benefit year or until a new written directive is given.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 84-13-050 (Order 4-84), § 192-24-030, filed 6/18/84.]

Chapter 192-28 WAC

RECOVERY OF BENEFIT OVERPAYMENTS

WAC

192-28-100	Recovery of benefit overpayment—General provisions.
192-28-105	Recovery of benefit overpayment—Notification to individual.
192-28-110	Recovery of benefit overpayment—Fault provisions.
192-28-115	Recovery of benefit overpayment—Equity and good conscience provisions.
192-28-120	Recovery of benefit overpayment—By repayment or offset against future benefits.
192-28-125	Recovery of benefit overpayment—Notification of right to appeal.

WAC 192-28-100 Recovery of benefit overpayment—General provisions. The purpose of this chapter is to interpret and implement the provisions of RCW 50.20.190 concerning the recovery of benefit overpayments. RCW 50.20.190 provides: "An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: . . ."

The commissioner may waive an overpayment if he finds that said overpayment was not the result of fraud, misrepresentation, wilful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience: . . ."

[Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040. 85-21-024 (Order 6-85), § 192-28-100, filed 10/10/85.]

WAC 192-28-105 Recovery of benefit overpayment—Notification to individual. (1) When the department has information which causes it to believe that an individual has been paid more benefits than he or she is entitled to receive, the department will provide that individual with a written notice, the overpayment advice of rights, explaining that a potential overpayment exists. This notice shall contain the following:

(a) The reasons for the department's belief that the individual has been overpaid benefits.

(b) The amount of the overpayment as of the mailing or delivery date of the overpayment advice of rights.

(c) The fact that the department will collect overpayments in accordance with WAC 192-28-120.

(d) The fact that final overpayment assessments constitute legally enforceable debts which individuals are liable to repay whether or not they are claiming or receiving unemployment benefits. These debts can be used to obtain warrants which could result in liens, garnishment of salaries, and possible sale of real and personal properties.

(e) An explanation that if an individual is found to be not at fault, he or she has the right to request a waiver of the overpayment and that waiver means the individual would not have to repay the overpayment because it would be against the principles of equity and good conscience.

(f) An explanation that at the individual's request, an overpayment may be repaid by account adjustment without an overpayment assessment if both the individual and the department agree to the circumstances, the amount of the overpayment and the method of repayment. If an individual agrees to an account adjustment, he or she can repay the overpayment by authorizing the department to deduct past and/or future benefits payable. No account adjustment action whether formal or informal, will be taken until the individual has been advised of his or her rights and has been given an opportunity to be heard on the overpayment issue. All individuals will be advised in writing of their right to a formal overpayment assessment, the possibility of waiver and their appeal rights. The individual can ask for and the department will issue a formal overpayment assessment, even after an account adjustment has been completed.

(g) A statement that an individual has 10 days to submit information to the local job service center regarding or disputing the existence of an overpayment and whether or not he or she was at fault. Failure to do so will result in the department making a decision, based on available information, regarding the existence of the overpayment and the individual's eligibility for waiver.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-17-023 (Order 3-86), § 192-28-105, filed 8/12/86. Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040. 85-21-024 (Order 6-85), § 192-28-105, filed 10/10/85.]

WAC 192-28-110 Recovery of benefit overpayment—Fault provisions. (1) When an overpayment occurs, the department will make a finding of fault or nonfault based on information provided by the individual and/or by the employer and from information contained in the department's records. After reviewing all such information, the individual will be considered to be at fault when the overpayment is:

(a) The result of fraud, misrepresentation, wilful nondisclosure; or

(b) The result of a disqualification for a felony or gross misdemeanor pursuant to the provisions of RCW 50.20.060(2), or if all of the following three elements are established:

(i) The individual was paid benefits in an amount greater than he or she was entitled to receive and he or she accepted and retained those benefits; and

(ii) The payment of these benefits was based on incorrect information or a failure to furnish information which the individual should have provided as outlined in the information for claimants booklet, *The Presentation of Benefit Rights*, claimant directives and other reasonable written communications issued by the department; or information which the individual caused another to fail to disclose; and

(iii) The individual had sufficient notice that the information should have been reported.

(2) In accordance with WAC 192-23-900, an individual who is overpaid as the result of a conditional payment is liable for repayment.

(3) The individual may be considered to be at fault, even though he or she provided the department with all material information prior to the issuance of an applicable benefit eligibility decision, if the overpayment is the result of payment that the individual should reasonably have known was improper. Following are some, but not all, examples of instances in which an individual should reasonably have known that a payment was improper and therefore is at fault. These are intended as examples only and do not mean that the department would rule in this manner in every such situation.

(a) The individual correctly reported earnings but the department paid benefits at the full amount or incorrectly deducted the earnings.

(b) The individual reported that he or she was unavailable for one or more customary work days, but the department paid at the full amount and the payment was not a conditional payment.

(c) The individual received a retroactive pension payment that he or she had applied for and was reasonably sure would be awarded.

(d) The individual did not inform the department that he or she was eligible for benefits on an unexpired claim against another state.

(e) A lower level decision was reversed by the office of administrative hearings, the commissioner or a court because of new information that the individual failed to disclose to the department.

(f) Other circumstances in which department fact finding indicates that the individual knew the payment was improper.

(4) In determining whether or not an individual is at fault, the department shall also consider education, mental abilities, emotional state, the individual's experience with claiming unemployment insurance and other elements of the individual's personal situation which affect his or her knowledge and ability to comply with reporting all material information that is relevant to benefit eligibility. This includes information contained in the information for claimants booklet, *The Presentation of Benefit Rights*, claimant directives and other reasonable written communications issued by the department.

(5) The individual will be considered without fault when he or she provided the department with all material information prior to the issuance of an applicable benefit eligibility decision and the overpayment is the result of payment that the individual would not reasonably have known was improper. Following are some, but

not all, examples of instances in which an individual may not reasonably have known that a payment was improper and therefore is not at fault. These are intended as examples only and do not mean that the department would rule in this manner in every such situation.

(a) The department erroneously removed a payment stop, resulting in improper payment.

(b) The individual received a retroactive pension which was backdated by the pension source, not at the individual's request.

(c) A combined wage or federal claim was filed against Washington that should have been filed against another state.

(d) Extended benefits were paid by the department when the individual would have been eligible for a new claim against this or another state.

(e) A lower level decision, in which all information was provided by the individual, was reversed by the office of administrative hearings, the commissioner or a court.

(f) Other circumstances in which department fact finding indicates that the individual did not know the payment was improper.

(6) Fault and waiver are not considered if the individual agrees to an account adjustment as explained in WAC 192-28-120(5).

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-17-023 (Order 3-86), § 192-28-110, filed 8/12/86. Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040. 85-21-024 (Order 6-85), § 192-28-110, filed 10/10/85.]

WAC 192-28-115 Recovery of benefit overpayment—Equity and good conscience provisions. (1) The department will grant waiver of an overpayment when it is found that the individual was without fault in the overpayment and when it is determined that to require repayment would be against equity and good conscience. It will be against equity and good conscience to deny waiver when repayment of the overpayment would deprive the individual of income required for necessary living expenses unless there are unusual circumstances which would militate against waiver.

(2) The individual will be required to provide financial information for the determination of waiver of the overpayment. Failure on the part of the individual to provide such information within 10 days from the request date will result in the department making a decision, based on available information, regarding the individual's eligibility for waiver. All such information is subject to verification by the department. Any overpayment amount waived on the basis of information which is later determined to be fraudulent or misrepresented shall be restored to the overpayment balance.

(3) The financial information requested shall include:

(a) An account of the individual's income and to the extent available to the individual, other financially contributing members of the household for the month preceding, the current month and the month following the date the financial information is requested.

(b) An account of the individual's current and readily available liquid assets. Liquid assets may include, but

are not limited to, checking and savings account balances, stocks, bonds and cash on hand.

(c) An account of the individual's expenses for the month preceding, the current month and the month following the date the financial information is requested.

(4) If average monthly expenses equal or exceed average monthly income and there are no substantial liquid assets available, waiver of the overpayment will be considered. The presence of unusual circumstances may justify waiver on other than a financial basis when not to waive would be unconscionable.

(5) When an individual has been denied waiver or waiver was not considered, the individual may enter into a payment agreement with the department.

(6) When an individual has been denied waiver or has been unable to reach a payment agreement with the department, he or she may make an offer in compromise pursuant to the provisions of RCW 50.24.020. The allowance or denial of an offer in compromise will be in accordance with the same criteria used by the department for allowance or denial of waiver of an overpayment. Any overpayment amount compromised on the basis of information which is later determined to be fraudulent or misrepresented shall be restored to the overpayment balance.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-17-023 (Order 3-86), § 192-28-115, filed 8/12/86. Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040. 85-21-024 (Order 6-85), § 192-28-115, filed 10/10/85.]

WAC 192-28-120 Recovery of benefit overpayment--By repayment or offset against future benefits.

(1) An overpayment may be recovered either by offset or repayment by the individual. If not repaid by the individual, the amount assessed shall be deducted from benefits payable for any future week(s) claimed. If any recovery procedure is in conflict with federal regulations, the federal regulations shall apply.

(2) For overpayments brought about by a denial pursuant to RCW 50.20.070 for fraud, misrepresentation, or wilful nondisclosure, the amount to be deducted will be 100% of benefits payable for each future week(s) claimed. Such overpayments will be recouped before any other overpayment the individual may have.

(3) For overpayments assessed pursuant to RCW 50.20.010 because the individual asked to have his or her claim for unemployment insurance cancelled, the amount to be deducted will be 100% of benefits payable for each future week(s) claimed. The department will ensure that the individual was properly informed of the advantages and/or disadvantages of cancelling an existing claim to file a new claim.

(4) For all other overpayments that are not waived, the amount to be deducted will be 50% of benefits payable for each future week claimed. Provided, that at the request of the individual, an overpayment can be repaid at 100% of benefits payable for each future week claimed.

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(5) At the request of the individual, an overpayment may be repaid by account adjustment without an overpayment assessment if both the individual and the department agree to the circumstances, the amount of the overpayment and the method of repayment. If an individual agrees to an account adjustment, he or she can repay the overpayment by authorizing the department to deduct past and/or future benefits payable. No account adjustment action will be taken until the individual has been advised of his or her rights and has been given an opportunity to be heard on the overpayment issue. All individuals will be advised in writing of their right to a formal overpayment assessment, the possibility of waiver and their appeal rights. The individual can ask for and the department will issue a formal overpayment assessment even after an account adjustment has been completed.

(6) For an overpayment assessed by another state, the amount to be deducted for the other state will be deducted in accordance with WAC 192-28-120.

(7) Those individuals who have been denied waiver, as well as those individuals for whom waiver was not considered, will be notified in writing of their right to enter into a payment agreement with the department or to make an offer in compromise. Offers in compromise will not be approved for individuals whose overpayment was brought about by a denial pursuant to RCW 50.20.060(2) or 50.20.070.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-17-023 (Order 3-86), § 192-28-120, filed 8/12/86. Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040. 85-21-024 (Order 6-85), § 192-28-120, filed 10/10/85.]

WAC 192-28-125 Recovery of benefit overpayment--Notification of right to appeal.

(1) The department shall ensure that all interested employers and the individual to whom the overpayment is assessed are notified in writing of the overpayment assessment and their right to appeal any or all of the following elements of the overpayment assessment:

- (a) The reason for the overpayment;
- (b) The amount of the overpayment;
- (c) The finding of fault or nonfault;
- (d) The reason for waiver or denial of waiver of the overpayment.

(2) For the purposes of this chapter, interested employer means (1) any employer who provides information to the department which results in an overpayment assessment and (2) when waiver has been allowed all base year employers who make payments in lieu of contributions to the department.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-17-023 (Order 3-86), § 192-28-125, filed 8/12/86. Statutory Authority: RCW 50.20.190, 50.12.010 and 50.12.040. 85-21-024 (Order 6-85), § 192-28-125, filed 10/10/85.]

Chapter 192-30 WAC

MARGINAL LABOR FORCE ATTACHMENT

WAC

192-30-010 Marginal labor force attachment definitions.

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192-30-020	Responsibilities of the department in determining MLFA status.
192-30-030	Suspension of marginal labor force attachment requirements for claimants unemployed due to government action.
192-30-040	Suspension of marginal labor force attachment requirements for claimants unemployed due to economic distress.
192-30-100	Modification of marginal labor force attachment work search requirements for economic conditions within a labor market area.
192-30-200	Work search responsibilities for MLFA claimants.
192-30-210	Job service center work search activity plans for MLFA claimants.
192-30-220	Work search models—Purpose and description.
192-30-230	Work search model—Definition of terms.

WAC 192-30-010 Marginal labor force attachment definitions. For the purposes of this chapter and for the interpretation of RCW 50.20.015, 50.20.016 and 50.20.017, the following definitions apply:

(1) "MLFA" means marginal labor force attachment. The term is used to describe a pattern of employment and unemployment as defined in RCW 50.20.015(1) and is used to identify claimants who may be subject to special eligibility conditions as identified in RCW 50.20.015 and to provide benefit charging relief to employers as described in RCW 50.29.020. MLFA does not reflect on the quality of a claimant's work nor upon the claimant's long term or current attachment to the labor market but is simply the result of a mathematical calculation based on employment within a two year determination period.

(2) An "MLFA claimant" is a claimant who has filed an application for initial determination and who has been determined to have a marginal attachment to the labor force pursuant to RCW 50.20.015(1).

(3) "MLFA requirements" are the special eligibility requirements of RCW 50.20.015(2), which include special work search requirements and a revised definition of suitable work for MLFA claimants.

(4) "Economically distressed county" is a county for which the average total unemployment rate for the three calendar years preceding April 1st, of each year is twenty percent or more higher than the statewide average for the same period. The commissioner shall publish a list of economically distressed counties.

(5) "Labor market area" means a geographical area in which there are jobs deemed to be suitable work for the claimant. It encompasses the geographic area in which workers with similar occupational skills normally travel to obtain or perform suitable work.

(6) "Distressed industry" means, an industry within a labor market area which is experiencing employment sufficiently lower than historical levels to make application of the provisions of RCW 50.20.015(2) unreasonable.

(a) The commissioner will publish a list of industries which have been determined to be distressed industries and the counties affected by each distressed industry.

(b) The commissioner will determine that an industry is distressed if:

(i) The average annual employment of the industry in the county in the most recent calendar year for which data is available is twenty percent or more below the

average annual employment of the industry in the county for the two highest years in the last five years for which data is available; or,

(ii) Other measures of employment or unemployment indicate that the industry is distressed.

(c) The commissioner shall determine the industry groups and labor market areas to be considered based on labor market information, employment patterns, and other available data.

(7) The commissioner may identify labor market areas which have suffered a sudden and severe loss of employment. Such determinations will be for the limited purpose of this chapter. A "sudden and severe loss of employment" is a decrease in a labor market area's employed population which has a significant impact on the labor market area's economic stability. Causes of a sudden and severe loss of employment may include, but are not limited to, plant closure, permanent layoffs, industrywide declines, or natural disasters.

[Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-010, filed 11/6/85.]

WAC 192-30-020 Responsibilities of the department in determining MLFA status. (1) At the time of application for initial determination or prior to requiring the claimant to adhere to MLFA requirements, the department will explore exceptions, suspensions, and modifications to the MLFA provisions.

(2) At the time of application for initial determination or prior to requiring claimants to adhere to MLFA requirements and no less often than once every eight weeks, the MLFA status of claimants will be reviewed to determine whether suspension or modification of MLFA requirements is appropriate.

[Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-020, filed 11/6/85.]

WAC 192-30-030 Suspension of marginal labor force attachment requirements for claimants unemployed due to government action. RCW 50.20.016 provides that the MLFA requirements may be suspended for an MLFA claimant if government action prohibits normal activity in the claimant's occupation.

(1) The commissioner will publish a list of occupations in which government action has prohibited normal activity.

(2) If a claimant believes that his or her occupation should properly be on the list published pursuant to subsection (1) above, he or she may request a formal determination of whether government action has prohibited normal activity in the occupation. Such a request must be in writing, directed to the department, and provide evidence of the effect of government action on the occupation.

(3) When determining the impact that government action has on the normal activity in an occupation, the commissioner shall consider:

(a) The nature of the government action,

(b) Normal employment patterns in the occupation,

- (c) Seasonal factors,
 - (d) The purpose of the government action or regulation, and,
 - (e) Other pertinent factors relating to the occupation and the government action.
- (4) No periodic review of suspension pursuant to WAC 192-30-030 will be required.

[Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-030, filed 11/6/85.]

WAC 192-30-040 Suspension of marginal labor force attachment requirements for claimants unemployed due to economic distress. RCW 50.20.016 provides that the MLFA requirements may be suspended for an MLFA claimant if the claimant is subject to a condition of economic distress. RCW 50.20.017 further defines conditions of economic distress.

(1) A claimant is subject to a condition of economic distress if:

- (a) He or she resides in or customarily works in an economically distressed county; or,
- (b) The labor market area in which the claimant customarily works has experienced a sudden and severe loss of employment; or,
- (c) The labor market area in which the claimant works contains a distressed industry; or,
- (d) The commissioner determines that circumstances of the individual claimant warrant a finding of economic distress.

(2) The MLFA requirements shall be suspended only if the MLFA claimant is subject to a condition of economic distress and the claimant's lack of employment is caused by the condition of economic distress or expected duration of unemployment is lengthened by the condition of economic distress.

(3) Any suspension of RCW 50.20.015(2) authorized by this section will be reviewed no less often than once every eight weeks to consider the reasonableness of continuing to suspend or modify the MLFA requirements.

[Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-040, filed 11/6/85.]

WAC 192-30-100 Modification of marginal labor force attachment work search requirements for economic conditions within a labor market area. (1) The number of work search contacts required by RCW 50.20.015(2) for an MLFA claimant may be modified to a number consistent with economic conditions within a labor market area and WAC 192-30-200.

(2) In determining whether to modify and to what extent to modify the number of work search contacts required, the following factors should be considered:

- (a) Size of the labor market;
- (b) Impact of job search contacts on employer community;
- (c) Employment patterns in the labor market;
- (d) Whether work search contacts would be a futile act;

- (e) Customary work search methods in the labor market;
 - (f) Seasonal factors; and,
 - (g) Other factors related to the economy, employment, and unemployment.
- (3) Any determination to modify MLFA requirements based on this section shall be reviewed no less often than every eight weeks.

[Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-100, filed 11/6/85.]

WAC 192-30-200 Work search responsibilities for MLFA claimants. RCW 50.20.016 mandates that work search rules be adopted for claimants with marginal labor force attachment.

(1) The commissioner will consider customary trade practices and other reasonable work search methods in order to assist MLFA claimants in finding employment. As the length of time unemployed increases, so will work search planning and work search activity. As requirements change, claimants must be advised in writing.

(2) Claimants will be exempt from MLFA eligibility requirements until they have received a monetary determination or redetermination, if requested, which considers special program wages or hours, e.g., state, federal, military and out-of-state wages or hours for the period falling within the claimant's determination period.

(3) Claimants will be exempt from MLFA eligibility requirements until they have been advised in writing of the eligibility requirements.

(4) The MLFA special eligibility requirements will only apply to those claimants who are claiming regular benefits.

[Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-200, filed 11/6/85.]

WAC 192-30-210 Job service center work search activity plans for MLFA claimants. To provide consistent application of law and regulation, accurate information to claimants and the general public each job service center (JSC) will be responsible for developing its own written work search activity plan for claimants with marginal labor force attachment. Job service centers will be responsible for completing this plan within 30 days of the adoption of this rule. Due to fluctuating labor market conditions, MLFA JSC work search activity plans will be reviewed at least yearly (or more often as necessary) to assure that they reflect seasonal and economic conditions. Copies of the MLFA JSC work search activity plan will be available for public examination in the job service center and a copy must be forwarded to the employment security public records officer. Each MLFA JSC work search activity plan will include the following:

- (1) Area labor market(s) information;
- (2) Minimum work search requirements for each MLFA claimant group, and JSC rationale for such requirements;
- (3) Eligibility review interview (ERI) selection criteria;

- (4) Job service center work registration policy;
- (5) Job service center list of industries and occupations in demand and decline in the area labor market(s);
- (6) Identification of MLFA claimants with training needs and procedures for informing MLFA claimants about job training opportunities;
- (7) Job service center coordination of unemployment insurance, employment service, training program service, and other functions.

[Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-210, filed 11/6/85.]

WAC 192-30-220 Work search models—Purpose and description. Work search models are plans of service designed to provide the public with an outline of requirements and services provided by the employment security department to claimants filing claims for unemployment insurance benefits. The models identify services that job service centers will offer or provide, advise claimants what will be expected of them in the way of work search, and outline a progression of services, reviews, and requirements that will affect a claimant's eligibility for unemployment benefits.

(1) One of the primary purposes of a work search model is to ensure consistency throughout the state in administration of work search requirements.

(2) The commissioner will publish MLFA work search models which may be incorporated by reference into the MLFA JSC work search activity plans.

(3) All job service centers are required to use the models described unless another model is approved for use by the commissioner.

[Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-220, filed 11/6/85.]

WAC 192-30-230 Work search model—Definition of terms. For the purposes of work search models, the following definitions apply:

(1) "Length of unemployment" means the number of weeks that a claimant has claimed benefits since his or her last separation from employment, or since reopening a claim for benefits after a break in claim series exceeding two weeks without intervening employment.

(2) A "presentation of benefit rights" or "PBR" is a presentation to a claimant or a group of claimants outlining benefit rights, responsibilities, and procedures. A PBR is intended to provide a claimant with all the information necessary for claiming benefits and sources of additional information.

(3) A "presentation of benefit rights for claimants with a marginal labor force attachment" or "MLFA PBR" is a presentation to a claimant or a group of claimants outlining benefit rights, responsibilities, and procedures. An MLFA PBR is intended to provide a claimant with all the information necessary for claiming benefits and sources of additional information. In addition, an MLFA PBR will include information on how MLFA status is calculated, information on exceptions to

MLFA status, information on MLFA work search, tangible evidence and suitable work requirements, and information on modification and suspension of the MLFA special eligibility requirements.

(4) An "X MLFA PBR" is the same as a "PBR" and is given to claimants who were MLFA claimants but are no longer in MLFA status. Former MLFA claimants are advised that they are no longer bound by the MLFA special eligibility requirements.

(5) A "PBR-2" is a special PBR given to claimants who are about to enter extended or shareable benefits. The PBR-2 is designed to provide claimants with information on the special eligibility requirements that must be met to continue eligibility.

(6) "Eligibility review interview" or "ERI" means an interview or workshop which results in the development of a claimant work search plan. A copy of the plan will be given to the claimant and a copy will be retained by the job service center. Included in the plan will be:

(a) Claimant's name, Social Security number, signature, JSC, date, and interviewer's signature;

(b) A list of occupations in which the claimant will seek work and the wage demand for each occupation;

(c) A definitive statement of what the claimant will do to improve or increase his or her reemployment effort;

(d) A statement describing how the claimant will record and report work search contacts;

(e) A review and reconsideration of possible suspension or modification of MLFA requirements; and

(f) Follow-up, by the JSC, to agreements made at the ERI.

[Statutory Authority: RCW 50.20.015, 50.20.016, 50.20.017, 50.12.010 and 50.12.040. 85-22-071 (Order 8-85), § 192-30-230, filed 11/6/85.]

Chapter 192-40 WAC

HEARING AND REVIEW PROCEDURES UNDER THE JOB TRAINING PARTNERSHIP ACT

WAC

192-40-010	Introduction—Purpose of rules.
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192-40-050	Review of local decisions—Finality of assistant commissioner decision.
192-40-060	Review of decisions—Delegation of responsibility.
192-40-070	State level hearing request.
192-40-080	State level hearing procedure.
192-40-090	State level decision by office of administrative hearings.
192-40-100	Review of state level decision.
192-40-110	Savings provision.

WAC 192-40-010 Introduction—Purpose of rules. These rules are intended to assist persons, organizations or governmental entities in fulfilling their obligations or exercising their rights under the Job Training Partnership Act and the regulations enacted pursuant thereto. The rules will describe two procedures, the first dealing with complaints, alleged adverse actions or grievances in

which a hearing is required to be conducted at the administrative entity, recipient, or direct subrecipient level. The procedures for dealing with these matters are identified as procedures applicable to local hearings and decisions. The second set of procedures deals with complaints, alleged adverse action or grievances properly brought at the state level.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-08-073 (Order 1-86), § 192-40-010, filed 4/1/86.]

WAC 192-40-020 Definitions. The definitions set forth in this section shall apply throughout this chapter unless the context clearly requires otherwise.

(1) "Assistant commissioner" means the senior administrator for the training program services division of the employment security department.

(2) "Interested party" means an individual who participates in or applies for participation in a program administered under the JTPA, or a person or organization which is directly or adversely affected by organizations or individuals operating programs under JTPA.

(3) "JTPA" means the Job Training Partnership Act of 1982, Public Law No. 97-300, as amended, codified as 29 U.S.C. § 1501 et seq.

(4) "TPS" means the training program services division.

(5) "Provisions" means the Job Training Partnership Act provisions issued by the employment security department.

(6) "Reviewing officer" means the commissioner's reviewing officer or deputy reviewing officer who act as commissioner's delegates in the review of the employment security adjudicatory matters.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-08-073 (Order 1-86), § 192-40-020, filed 4/1/86.]

WAC 192-40-030 Local hearings--Obligation. Each administrative entity, subrecipient, and direct subrecipient shall provide hearings in accordance with the Job Training Partnership Act, regulations, and state provisions.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-08-073 (Order 1-86), § 192-40-030, filed 4/1/86.]

WAC 192-40-040 Review of local decisions. Any person adversely affected by a local decision or by the failure of the responsible entity to comply with its responsibilities to hold a hearing and issue a decision may request review of the decision or inaction, as the case may be, by filing a petition with the "assistant commissioner."

(1) Any individual or organization may petition for review of a local level decision or lack thereof when:

(a) Applicable JTPA procedures have been exhausted; and

(b) A decision was not received within sixty days of the filing of the complaint, alleged adverse action, or grievance; or

(c) The decision received was unsatisfactory to an interested party.

(1986 Ed.)

(2) A petition for review will be regarded as filed on the date a written request is received by the assistant commissioner of the training program services division of the employment security department. Petitions must be filed within ten days after the date on which the local decision was mailed or within ten days from the date on which the complainant should have received the local decision. If the petition is mailed, it will be deemed filed with the addressee on the postmark date if it is properly addressed and has sufficient postage.

Petition for review will be addressed to: Assistant Commissioner, Training Program Services Division, Employment Security Department, Mailstop KG-11, Olympia, Washington 98504.

(3) Within five days of any request from the assistant commissioner the local authority will transmit all records pertaining to the matter under review to the assistant commissioner.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-08-073 (Order 1-86), § 192-40-040, filed 4/1/86.]

WAC 192-40-050 Review of local decisions--Finality of assistant commissioner decision. The review of local decisions shall be confined to the record under review and shall be limited to consideration only of those matters over which the assistant commissioner has jurisdiction. In the event that the record is incomplete, or otherwise provides insufficient information upon which to base a decision, the assistant commissioner may remand the matter to the responsible local authority for the taking of further evidence and issuance of a new decision based thereon, subject to further review, or should he or she be convinced that a fair hearing will not be provided by the local authority he or she may assign the case to be heard by an administrative law judge to be designated by the office of administrative hearings. In the latter event the administrative law judge shall conduct a hearing and issue a decision which will be deemed the decision of the local authority subject to review by the assistant commissioner in the same manner as any other local decision.

The decision of the assistant commissioner upon review of local decisions is a final agency action and is subject to review under RCW 34.04.130.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-08-073 (Order 1-86), § 192-40-050, filed 4/1/86.]

WAC 192-40-060 Review of decisions--Delegation of responsibility. In the interest of fairness, the assistant commissioner reserves the option to delegate the review procedure as described in WAC 192-40-050 to the reviewing officer of the employment security department or other qualified legal authority. The decision of the delegated review authority is a final agency action and subject to review under RCW 34.04.130.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-08-073 (Order 1-86), § 192-40-060, filed 4/1/86.]

WAC 192-40-070 State level hearing request. Any aggrieved party with a timely complaint, alleged adverse

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action, or grievance against the state administrative office for JTPA shall be provided a written description of the training program services division complaint procedures including notification of their right to file a complaint and instructions on how to file.

Any party aggrieved by an unresolved complaint, alleged adverse action, or grievance properly filed with the state administrative office for JTPA operations will be deemed to have filed a request for hearing unless the party has waived right to hearing.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-08-073 (Order 1-86), § 192-40-070, filed 4/1/86.]

WAC 192-40-080 State level hearing procedure.

Upon receipt of a request for hearing, the training program services division will notify the office of administrative hearings to conduct a hearing pursuant to 29 U.S.C. § 1554 and § 1577, except for complaints of discrimination filed pursuant to 42 U.S.C. § 2000(d), et seq.

Advance written notice of the hearing will be provided by regular mail to all interested parties at least twenty days prior to the hearing to permit adequate preparation of the case. The notice will include:

(1) The time, date, and place of the hearing. Hearings shall be held at the regularly established hearing locations most convenient to the interested parties, or at the discretion of the hearing officer, by telephone;

(2) The name, address, and telephone number of the person to notify in the event it is not possible for the party or its legal counsel to attend the scheduled hearing;

(3) The hearing procedures, a statement of the issues, and any other information which would provide the party or its legal counsel with an understanding of the proceedings and contribute to the effective presentation of the party's case;

(4) An explanation that the party or its legal counsel may examine the case file prior to the hearing.

Any interested party may waive his/her right to notice either in writing or on the record.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-08-073 (Order 1-86), § 192-40-080, filed 4/1/86.]

WAC 192-40-090 State level decision by office of administrative hearings. After affording the interested parties an opportunity for hearing on the matter, the administrative law judge assigned by the office of administrative hearings shall issue his/her decision in the case. The decision shall be issued within 60 days of the initial filing of the request for hearing.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-08-073 (Order 1-86), § 192-40-090, filed 4/1/86.]

WAC 192-40-100 Review of state level decision.

When a request for review is made of a state level decision, a proceeding under WAC 192-40-070, the review shall be conducted by the reviewing officer of the employment security department. A request for such review must be directed to the reviewing officer within twenty days of the issuance of the decision of the administrative

law judge. Said review will be of the record prepared by the office of administrative hearings and will result in a decision in writing affirming, modifying, or reversing the decision of the administrative law judge, or in the event that the record is incomplete, or otherwise provides insufficient information upon which to pass a decision, the reviewing officer may remand the matter to the office of administrative hearings for the taking of further evidence and the issuance of a new decision based thereon. The decision of the reviewing officer shall be deemed a final state action subject to petition pursuant to RCW 34.04.130.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-08-073 (Order 1-86), § 192-40-100, filed 4/1/86.]

WAC 192-40-110 Savings provision. To the extent that any regulations adopted in this chapter are in conflict with provisions of federal law or regulations or state law, the conflicting provisions shall be deemed inoperative solely to the extent of the conflict.

[Statutory Authority: RCW 50.12.010 and 50.12.040. 86-08-073 (Order 1-86), § 192-40-110, filed 4/1/86.]