

Title 446 WAC

STATE PATROL

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Chapter 446-08 WAC PRACTICE AND PROCEDURE

WAC

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WAC 446-08-090 Service of process—By whom served. The agency shall cause to be served all orders, notices, and other papers issued by it, together with any

other papers which it is required by law to serve. Every other paper shall be served by the party filing it.

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

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

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

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

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

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

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

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

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

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

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

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

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

WAC 446-08-160 Issuance to parties. Upon application of counsel or other representative authorized to practice before the agency for any party to a contested

case, there shall be issued to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding. The chief, Washington state patrol, may issue subpoenas to parties not so represented upon request or upon a showing of general relevance and reasonable scope of the testimony or evidence sought.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1990 Ed.)

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

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

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

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

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

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

WAC 446-08-260 Authorization. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than three days in writing to the agency and all parties. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known a general description sufficient to identify him or the particular class or group to which he belongs. On motion of a party upon whom the notice is served, the hearing officer or board may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

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

WAC 446-08-270 Protection of parties and deponents. After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the hearing officer or board may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain

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

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

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

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

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

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

WAC 446-08-300 Signing attestation and return. (1) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him. Unless such examination

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

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

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

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

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

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

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

WAC 446-08-330 Depositions upon interrogatories—Submission of interrogatories. Where the deposition is taken upon written interrogatories, the party offering the testimony shall separately and consecutively number each interrogatory and file and serve them with a notice stating the name and address of the person who is to answer them and the name or descriptive title and

address of the officer before whom they are to be taken. Within ten days thereafter a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within five days thereafter, the latter may serve redirect interrogatories upon the party who served cross-interrogatories.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) **Controversion.** Any party may controvert a request or a suggestion that official notice of a material fact be taken at the time the same is made if it be made orally, or by a pleading reply or brief in response to the pleading or brief or notice in which the same is made or suggested. If any decision is stated to rest in whole or in part upon official notice of a material fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by appropriate exceptions if such notice be taken in an initial or intermediate decision or by a petition for reconsideration if notice of such fact be taken in a final report. Such controversion shall concisely and clearly set forth the sources, authority and other data relied upon to show the existence or nonexistence of the material fact assumed or denied in the decision;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The simplification of issues;

(2) The necessity of amendments to the pleading;

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

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

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

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

WAC 446-08-440 Record of conference action. The hearing officer or board shall make an order or statement which recites the action taken at the conference, the amendments allowed to the pleadings, and the

agreements made by the parties or their qualified representatives as to any of the matters considered, including the settlement or simplification of issues, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order or statement shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

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

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

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

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

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

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

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

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

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

fixed sufficiently in advance of the hearing to permit the other interested parties to investigate such qualifications.

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

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

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

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

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

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

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

WAC 446-08-510 Continuances. Any party who desires a continuance shall, immediately upon receipt of notice of a hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify the hearing officer or board of said desire, stating in detail the reasons why such continuance is necessary. The hearing officer or board, in passing upon a request for continuance, shall consider whether such request was promptly and timely made. For good cause shown, the hearing officer or board may grant such a continuance

and may at any time order a continuance upon its or his own motion. During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the hearing officer or board may, in its discretion, continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Such oral notice shall constitute final notice of such continued hearing.

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

WAC 446-08-520 Rules of evidence—Admissibility criteria. Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the hearing officer or board, is the best evidence reasonably obtainable, having due regard for its necessity, availability, and trustworthiness. In passing upon the admissibility of evidence, the officer conducting the hearing shall give consideration to, but shall not be bound to follow the rules of evidence governing civil proceedings, in matters not involving trial by jury, in the superior court of the state of Washington.

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

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

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

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

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

**Chapter 446-10 WAC
PUBLIC RECORDS**

WAC	
446-10-010	Purpose.
446-10-020	Definitions.
446-10-030	Description of central and field organizations of the Washington state patrol.
446-10-040	Operations and procedures.
446-10-050	Public records available.
446-10-060	Public records officer.
446-10-070	Office hours.
446-10-080	Requests for public records.
446-10-090	Charge for public records.
446-10-100	Exemptions.
446-10-110	Review of denials of public records requests.
446-10-120	Protection of public records.
446-10-130	Records index.
446-10-140	Request for information.
446-10-150	Adoption of form.

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

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

WAC 446-10-020 Definitions. (1) Public record – includes any writing containing information relating to the conduct of governmental or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

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

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

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

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

- District I – 3737 South Puget Sound Avenue, Tacoma 98409
- District II – 2803 – 156th Avenue S. E., Bellevue 98007
- District III – 2715 Rudkin Road, Union Gap 98903
- District IV – East 7421 First Avenue, Spokane 99206
- District V – 605 East Evergreen Boulevard, Vancouver 98661
- District VI – 1517 North Wenatchee Avenue, Wenatchee 98801
- District VII – 20th and Chestnut, Everett 98201
- District VIII – 4846 Auto Center Way, Bremerton 98310

[Statutory Authority: RCW 42.17.250. 79-04-037 (Order 79-2), § 446-10-030, filed 3/23/79.]

WAC 446-10-040 Operations and procedures. The department has and exercises throughout the states such police powers and duties as are vested in sheriffs and

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

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

WAC 446-10-050 Public records available. All public records of the department, as defined in WAC 446-10-020(1), are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by section 31, chapter 1, Laws of 1973, and WAC 446-10-100.

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

WAC 446-10-060 Public records officer. The department's public records shall be in custody of the public records officer designated by the department. The person so designated shall be located in the administrative office of the department. The public records officer shall be responsible for the following: The implementation of the department's rules and regulations regarding release of public records, coordinating the staff of the department in this regard, and generally ensuring compliance by the staff with the public records disclosure requirements of chapter 1, Laws of 1973.

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

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

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

WAC 446-10-080 Requests for public records. In accordance with requirements of chapter 1, Laws of 1973 [chapter 42.17 RCW], that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained by members of the public upon compliance with the following procedures:

(1) If, after access to the departmental index, a particular record is desired and that record is not an item routinely available as a matter of public service, a request shall be made in writing upon a form prescribed

by the department which shall be available at its administrative office. The form shall be presented to the public records officer or to any member of the department's staff if the public records officer is not available at the administrative office of the department during customary office hours. The request shall include the following information:

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

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

(c) The nature of the request;

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

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

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made to assist the member of the public in an appropriately identifying the public record requested.

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

WAC 446-10-090 Charge for public records. No fee shall be charged for the inspection of public records. The department shall charge a fee of ten cents per page of copy for providing copies of public records and for use of the department copy and duplicating equipment, and actual costs for postage, mailing and UPS services. These charges are the amounts necessary to reimburse the department for its actual costs incident to such copying and mailing.

[Statutory Authority: RCW 42.17.250. 90-10-097, § 446-10-090, filed 5/2/90, effective 6/2/90; 79-04-037 (Order 79-2), § 446-10-090, filed 3/23/79.]

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

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

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

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

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

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

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

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

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

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

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

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

WAC 446-10-140 Request for information. All communications with the department, including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 1, Laws of 1973 [chapter 42.17 RCW], and these rules, requests for copies of the department's decisions, and other matters, shall be addressed as follows:

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Washington State Patrol, c/o Public Records Officer, General Administration Building, AX-12, Olympia, Washington 98504.

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

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

REQUEST FOR PUBLIC RECORD

Date ----- Time -----

Name -----

Address -----

Nature or Description of Record (see index):

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

Signature

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

**Chapter 446-16 WAC
WASHINGTON STATE IDENTIFICATION
SECTION**

WAC	
446-16-010	Definitions.
446-16-020	Scope of the rules.
446-16-025	Expungement of arrest records.
446-16-030	Inspection by the subject of his records.
446-16-040	Reporting of persons detained in custody.
446-16-050	Report by social and health services on change of parole status—Other changes—Requirements.
446-16-060	Disposition reports—When required.
446-16-070	Report contents—General.
446-16-080	Report time limitations.
446-16-090	Law enforcement agencies—Reporting responsibilities.
446-16-100	Prosecutorial agencies—Reporting responsibilities.
446-16-110	Courts—Reporting responsibilities.
446-16-120	Audit of reporting compliance.

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

(1) "Criminal offender record information" includes, and shall be restricted to identifying data and public record information recorded as the result of an arrest or other initiation of criminal proceedings and the consequent proceedings related thereto. "Criminal offender

record information" shall not include intelligence, analytical or investigative reports and files.

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

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

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

[Order 1, 446-16-010, filed 2/11/74.]

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

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

WAC 446-16-025 Expungement of arrest records.

(1) A person desiring the destruction of his fingerprints and/or other identifying data, pursuant to RCW 43.43.730, shall make his request therefor on a form furnished by the Washington state patrol section on identification. The request shall be mailed or delivered to the central office of the section located at 3330 Capitol Boulevard, Tumwater, Washington.

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

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

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

[Order 1, § 446-16-025, filed 2/11/74.]

(1990 Ed.)

WAC 446-16-030 Inspection by the subject of his records. (1) Any person desiring to inspect criminal offender record information which refers to himself may do so at the central office of the Washington state identification section located at 3330 Capitol Boulevard, Tumwater, Washington, between the hours of 8 a.m. and 5 p.m., Monday through Friday, excepting legal holidays.

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

(3) A reasonable period of time, not to exceed 15 minutes, shall be allowed each individual to examine criminal offender record information pertaining to themselves.

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

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

[Order 1, § 446-16-030, filed 2/11/74.]

WAC 446-16-040 Reporting of persons detained in custody. (1) The principal officers of the jails, correctional institutions, state mental institutions or other places of detention to which a person is committed under chapter 10.76 or 71.06 RCW shall report to the section any inter-institutional transfer, release or change of release status of any person held in their custody, within 72 hours of such occurrence, upon forms provided by the section.

(2) Said form shall include the name and address of the subject, the date on which he was arrested and the offense or cause for which he was placed in custody or confinement, the expected date of release and shall contain the subject's fingerprints. It shall also contain a

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physical description of the individual and other identification data contained in the files of the agency.

[Order 1, § 446-16-040, filed 2/11/74.]

WAC 446-16-050 Report by social and health services on change of parole status--Other changes--Requirements. The department of social and health services shall notify the section of the release on order of the state board of prison terms and paroles, or the discharge from custody or the expiration of sentence or the discharge from active parole supervision of any person who is serving a sentence for a term of confinement in a state correctional facility for convicted felons pursuant to court commitment within ten days of such occurrence. Such notice shall be made on forms provided by the section and shall include the name of the person released or discharged, the place to which such person has been released or discharged, the conditions of his release or discharge and fingerprints and other identifying data concerning said person. The department of social and health services shall additionally notify the section of any change in residence or conditions of release or discharge of persons on active parole supervision on forms prescribed and furnished by the section within ten days of such occurrence.

[Order 1, § 446-16-050, filed 2/11/74.]

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

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

WAC 446-16-070 Report contents--General. The report of disposition shall be made on forms provided by the section. The name of the subject about which the report is made, the designated fingerprints of the subject, the name of the original contributor of the fingerprint or arrest record, and the original arrest number shall be entered on the disposition report exactly the same as they appear on the fingerprint card or arrest record previously forwarded to the section. The section number should be indicated on the disposition report if known.

[Order 1, § 446-16-070, filed 2/11/74.]

WAC 446-16-080 Report time limitations. All of the information requested on the disposition report shall be completed and the report mailed to the Washington State Identification Section, P.O. Box 2527, Olympia, Washington 98504, within 10 days of the date that a disposition becomes effective.

[Order 1, § 446-16-080, filed 2/11/74.]

WAC 446-16-090 Law enforcement agencies--Reporting responsibilities. (1) If the disposition of criminal

charges is made by the arresting agency, as where the individual is released without charge, the arresting agency shall fill in and complete the disposition report and mail same to the section. If the disposition is known at the time and arrest record or fingerprint card is submitted to the section, this information should be noted thereon. In this case, it shall be unnecessary to forward a disposition report.

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

[Order 1, § 446-16-090, filed 2/11/74.]

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

[Order 1, § 446-16-100, filed 2/11/74.]

WAC 446-16-110 Courts--Reporting responsibilities. Where the disposition of criminal charges occurs as a result of action taken by or within the jurisdiction of any court in the state of Washington, the disposition of such charges shall be reported to the section pursuant to rules of the supreme court of the state of Washington on forms approved by the supreme court and supplied by the section.

[Order 1, § 446-16-110, filed 2/11/74.]

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

current disposition report or status report for each person for whom a disposition report is overdue.

[Order 1, § 446-16-120, filed 2/11/74.]

Chapter 446-20 WAC
EMPLOYMENT--CONVICTION RECORDS

WAC

- 446-20-010 General applicability.
- 446-20-020 Definitions.
- 446-20-030 Convictions under appeal or review.
- 446-20-040 Deferred prosecutions.
- 446-20-050 Criminal justice agencies.
- 446-20-060 Certification of agencies.
- 446-20-070 Inspection—Individual's right to review record.
- 446-20-080 Inspection—Forms to be made available.
- 446-20-090 Inspection of record by the subject of record.
- 446-20-100 Inspection—Timeliness and manner of agency response.
- 446-20-110 Deletion—Notification.
- 446-20-120 Challenge—Individual's right to challenge.
- 446-20-130 Challenge—Forms to be made available.
- 446-20-140 Challenge—Agency to make determination.
- 446-20-150 Correction of erroneous information.
- 446-20-160 Review of refusal to alter record.
- 446-20-170 Secondary dissemination.
- 446-20-180 Dissemination pursuant to contract for services.
- 446-20-190 Dissemination—Research purposes.
- 446-20-200 Disclosure to assist victim.
- 446-20-210 Protection from accidental loss or injury.
- 446-20-220 Protection against unauthorized access.
- 446-20-230 Personnel security.
- 446-20-240 Personnel training.
- 446-20-250 Contractor personnel clearances.
- 446-20-260 Auditing of criminal history record information systems.
- 446-20-270 Establishment of procedures.
- 446-20-280 Employment—Conviction records.
- 446-20-285 Employment—Conviction records—Child and adult abuse information.
- 446-20-290 Fees.
- 446-20-300 Privacy—Security.
- 446-20-310 Audits.
- 446-20-400 Form of request to inspect record.
- 446-20-410 Form of request to review refusal to modify record.
- 446-20-420 Model agreement for research, evaluative or statistical purposes.
- 446-20-430 Certification request.
- 446-20-440 Contract for support services model agreement under WAC 446-20-180.
- 446-20-450 CHRI challenge form.
- 446-20-500 Sex offender registration.
- 446-20-510 History retention.
- 446-20-515 Photograph/fingerprint requirement.
- 446-20-520 Photographs.
- 446-20-525 Change of address form.
- 446-20-530 Refundable fee.

WAC 446-20-010 General applicability. The regulations in this chapter shall apply to state and local criminal justice agencies in the state of Washington that collect and maintain or disseminate criminal history record information. The regulations shall also apply to criminal justice or other agencies outside the jurisdiction of the state of Washington for the purpose of the dissemination of criminal history record information to other agencies by state of Washington criminal justice agencies. The provisions of chapter 10.97 RCW do not generally apply to the courts and court record keeping agencies. The courts and court record keeping agencies

have the right to request and receive criminal history record information from criminal justice agencies. The regulations are intended to cover all criminal justice records systems that contain criminal history record information, whether the systems are manual or automated. Chapter 10.97 RCW defines the rights and privileges relating to criminal history record information and should not be interpreted to redefine or amend rights or privileges relevant to any other kinds of records or information.

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

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

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

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

(4) The definitions as enumerated in chapter 486, Laws of 1987, and as amended by chapter 3, Laws of 1990, "An act relating to child and adult abuse information," shall apply whenever applicable in these regulations.

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

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

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

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

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

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

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

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

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

(d) The board of prison terms and paroles;

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

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

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

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

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

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

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

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-050, filed 7/1/80.]

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

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

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

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

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

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

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

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

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

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

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

WAC 446-20-090 Inspection of record by the subject of record. (1) Any person desiring to inspect criminal history record information which pertains to himself may do so at the central records keeping office of any criminal justice agency or at the state identification section located at 3310 Capitol Boulevard, Tumwater, Washington, during normal business hours, Monday through Friday, excepting legal holidays.

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

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

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

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

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

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-090, filed 7/1/80.]

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

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

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

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

(c) At the identification section the request shall cause a copy of all Washington state criminal history record information in the files of the identification section relating to the individual requester to be forwarded to the criminal justice agency submitting the request.

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

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-100, filed 7/1/80.]

WAC 446-20-110 Deletion--Notification. When a criminal justice agency deletes nonconviction data criminal history record information in accordance with RCW

10.97.060, the state identification section shall be notified of the deletion.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-110, filed 7/1/80.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-170, filed 7/1/80.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Training to be provided shall include not only initial training, but continuing training, designed to maintain among criminal history record information system

personnel current knowledge and operational proficiency with respect to security and privacy law and regulations.

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

WAC 446-20-250 Contractor personnel clearances.

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

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

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

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

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

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

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

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

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

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

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

WAC 446-20-280 Employment--Conviction records. (1) A transcript of a conviction record will be furnished consistent with the provisions of chapter 202, Laws of 1982, upon the submission of a written request of any employer, accompanied by fingerprints and other identifying data of the employee or prospective employee.

(2) Fingerprints shall be submitted on cards of the type specified by the identification section, and shall

contain a certification by the employer that the information is being disseminated to and will be available only to persons involved in the hiring, background investigation, or job assignment of the person whose record is disseminated, that the record will be used only as necessary for the purposes enumerated in this section, and that the request for conviction data is for one of the following purposes:

(a) Securing a bond required for any employment;

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

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

[Statutory Authority: 1982 c 202 § 1(7). 82-22-006 (Order 82-5), § 446-20-280, filed 10/22/82.]

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

(1) Convictions of crimes against children or other persons as defined in RCW 43.43.830(6), and as amended by chapter 3, Laws of 1990;

(2) Department of health disciplinary authority final decisions of specific findings of physical or sexual abuse or exploitation of a child and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary authority final decision; for the businesses and professions defined in chapter 3, Laws of 1990; and

(3) Civil adjudications of child abuse, as amended by chapter 3, Laws of 1990.

This information will be furnished, consistent with the provisions of RCW 43.43.830 through 43.43.840, on an approved request for criminal history information form available from the Washington State Patrol, Identification and Criminal History Section, Mailstop QE-02, Olympia, Washington, 98504.

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

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

(b) For positive identification, the request for criminal history information form may be accompanied by fingerprint cards of a type specified by the Washington state patrol identification section, and shall contain a certification by the business or organization; the state board of education; or the department of social and health services, that the information is being requested and will be used only for the purposes as enumerated in chapter 486, Laws of 1987.

(c) In the absence of fingerprint cards, the applicant may provide a right thumb fingerprint impression in the area provided on the request for criminal history information form. In the event of a possible match, where the applicant's name and date of birth as submitted varies from that of the record contained by the identification section, the right thumb fingerprint impression will be used for identification verification purposes only. An **exact name and date of birth match** will be required for dissemination of conviction information in the absence of a fingerprint card or thumbprint impression for positive identification or verification of record.

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

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

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

[Statutory Authority: 1990 c 3. 90-20-003 (Order 90-003), § 446-20-285, filed 9/20/90, effective 10/21/90. Statutory Authority: RCW 43.43.838. 89-23-017, § 446-20-285, filed 11/6/89, effective 12/7/89. Statutory Authority: RCW 43.43.838 and 1987 c 486 § 5. 88-07-066 (Order 88-03-A), § 446-20-285, filed 3/17/88.]

WAC 446-20-290 Fees. (1) A nonrefundable fee of ten dollars shall accompany each request for conviction records submitted pursuant to RCW 43.43.815 and chapter 486, Laws of 1987, unless through prior arrangement an account is authorized and established. Fees are to be made payable to the "Washington state patrol," and are to be remitted only by cashier's check, money order or check written on a commercial business account. The Washington state patrol identification section shall adjust the fee schedule as may be practicable

to ensure that direct and indirect costs associated with the provisions of these chapters are recovered.

(2) Pursuant to provisions of RCW 43.43.838, no fees will be charged to a nonprofit organization, including school districts and educational service districts, for the request for conviction records.

[Statutory Authority: 1990 c 3. 90-20-003 (Order 90-003), § 446-20-290, filed 9/20/90, effective 10/21/90. Statutory Authority: RCW 43.43.838 and 1987 c 486 § 5. 88-07-066 (Order 88-03-A), § 446-20-290, filed 3/17/88. Statutory Authority: 1982 c 202 § 1(7). 82-22-006 (Order 82-5), § 446-20-290, filed 10/22/82.]

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

(2) Businesses or organizations, the state board of education, and the department of social and health services receiving conviction records of crimes against persons, disciplinary board final decision information, or a civil adjudication record pursuant to chapter 486, Laws of 1987, shall comply with the provisions of WAC 446-20-220 (1) and (3) relating to privacy and security of the records.

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

(b) No employee of the state, employee of a business or organization, or the organization is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any lawful dissemination of information under RCW 43.43.830 through 43.43.840 or 43.43-760.

[Statutory Authority: RCW 43.43.838 and 1987 c 486 § 5. 88-07-066 (Order 88-03-A), § 446-20-300, filed 3/17/88. Statutory Authority: 1982 c 202 § 1(7). 82-22-006 (Order 82-5), § 446-20-300, filed 10/22/82.]

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

(2) Businesses or organizations, the state board of education and the department of social and health services receiving conviction records of crimes against persons, disciplinary board final decision information or civil adjudication records pursuant to chapter 486, Laws of 1987, may be subject to periodic audits by Washington state patrol personnel to determine compliance with the provisions of WAC 446-20-300(2).

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

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

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

Agency Agency No. Date Time

(Signature of Applicant) (Address of Applicant)

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

I, request to inspect such criminal history record information pertaining to myself and maintained in the files of the above named agency.

I was born (Date of Birth) in (Place of Birth), and to ensure positive identification as the person in question, I am willing to submit my fingerprints in the space provided below, if required or requested.

(Fill in and check applicable box)

Because I am unable to read I do not understand English; otherwise need assistance in reviewing my record; I designate and consent that (Print Name), whose address is, assist me in examining the criminal history record information concerning myself.

Prints of right four fingers taken simultaneously (Signature or mark of Applicant) (Address) (Signature of Designee)

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

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

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

DATE

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

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

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

AGREEMENT made this day of 198, between (hereinafter referred to as "RESEARCHER") and (hereinafter referred to as "CRIMINAL JUSTICE AGENCY")

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

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

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

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

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

(Describe in detail)***

2. The RESEARCHER will:

- (a) Use the said information only for the research, evaluative, or statistical purposes described in the above mentioned written request dated, and for no other purpose;
(b) Limit access to said information to the RESEARCHER and those of the RESEARCHER's employees whose responsibilities cannot be accomplished without such access, and who have been advised of, and agreed to comply with, the provisions of this agreement, and of 28 CFR Part 22;****
(c) Store all said information received pursuant to this agreement in secure, locked containers;
(d) So far as possible, replace the name and address of any record subject with an alphanumeric or other appropriate code;
(e) Immediately notify the CRIMINAL JUSTICE AGENCY in writing of any proposed material

changes in the purposes or objectives of its research, or in the manner in which said information will be used.

3. The RESEARCHER will not:

- (a) Disclose any of the said information in a form which is identifiable to an individual, in any project report or in any manner whatsoever, except pursuant to 28 CFR Part 22.24 (b)(1)(2).
- (b) Make copies of any of the said information, except as clearly necessary for use by employees or contractors to accomplish the purposes of the research. (To the extent reasonably possible, copies shall not be made of criminal history record information, but information derived therefrom which is not identifiable to specific individuals shall be used for research tasks. Where this is not possible, every reasonable effort shall be made to utilize coded identification data as an alternative to names when producing copies of criminal history record information for working purposes.)
- (c) Utilize any of the said information for purposes or objectives or in a manner subject to the requirement for notice set forth in 2.(e) until specific written authorization therefor is received from the CRIMINAL JUSTICE AGENCY.

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

5. The RESEARCHER further agrees that:

- (a) The CRIMINAL JUSTICE AGENCY shall have the right, at any time, to monitor, audit, and review the activities and policies of the RESEARCHER or its subcontractors in implementing this agreement in order to assure compliance therewith; and
- (b) Upon completion, termination or suspension of the researcher, it will return all said information, and any copies thereof made by the RESEARCHER, to the CRIMINAL JUSTICE AGENCY, unless the CRIMINAL JUSTICE AGENCY gives its written consent to destruction, obliteration or other alternative disposition.

6. In the event the RESEARCHER fails to comply with any term of this Agreement the CRIMINAL JUSTICE AGENCY shall have the right to

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

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

IN WITNESS WHEREOF the parties have signed their names hereto this ---- day of -----, 198...

----- (CRIMINAL JUSTICE AGENCY)

by -----
(Name)

Title: -----

----- (RESEARCHERS)

by -----
(Name)

Title: -----

COMPLIANCE AGREEMENT of employee, consultant or subcontractor.

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

(date)

(signature)

(date)

(signature)

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-420, filed 7/1/80.]

WAC 446-20-430 Certification request.

INSTRUCTIONS

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

REQUEST FOR CERTIFICATION

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

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

Signature of person filling out form
Title
Date

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

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

I. General Provisions

- A. Parties: This agreement is made and entered into this day of 198, by and between (head of agency), Administrator of (criminal justice agency) and (head of agency) of (Support Services Agency of "User").
B. Purpose of Agreement: This agreement authorizes (user) to collect, retrieve, maintain and/or disseminate criminal history record information (hereinafter, CHRI) pursuant to RCW 10.97.050(5), WAC 446-20-180,

and the terms of this contract. In addition, it provides for the security and privacy of information in that dissemination to criminal justice agencies shall be limited for the purposes of the administration of justice and criminal justice agency employment. Dissemination to other individuals and agencies shall be limited to those individuals and agencies authorized by either the Washington state patrol, under chapter 10.97 RCW or local ordinance, as specified by the terms of this contract, and shall be limited to the purposes for which it was given and may not be disseminated further.

II. Duties of Criminal Justice Agency

- A. In accordance with federal and state regulations, (criminal justice agency) agrees to furnish complete and accurate criminal history information to user, pursuant to RCW 10.97.040.
B. (Criminal justice agency) shall specify and approve those individuals or agencies authorized to obtain CHRI, which includes non-conviction data, pursuant to RCW 10.97.050(4) or by local ordinance.

III. Duties of User

- A. (User) will collect, retrieve, maintain and/or disseminate all information covered by the terms of this agreement in strict compliance with all present and future federal and state laws and regulations. In addition, all programs, tapes, source documents, listings, and other developmental or related data processing information containing or permitting any person to gain access to CHRI and all personnel involved in the development, maintenance, or operation of an automated information system containing CHRI are subject to the requirements of RCW 10.97.050(5) and WAC 446-20-180.
B. (User) will obtain the assistance of the (criminal justice agency) to familiarize its personnel with and fully adhere to section 524(b) of the Crime Control Act 1973 (42 USC 3771(b)), 28 CFR Part 20, chapter 10.97 RCW and chapter 446-20 WAC, promulgated by the Washington state patrol.
C. (User) will disseminate CHRI only as authorized by chapter 10.97 RCW and as specified by (criminal justice agency) in this agreement.
D. (User) agrees to fully comply with all rules and regulations promulgated by the Washington state patrol, pursuant to RCW 10.97.090(2), regarding standards for the

physical security, protection against unauthorized access and personnel procedures and safeguards.

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

IV. Suspension of Service

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

V. Cancellation

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

VI. Indemnification

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

VII. Construction

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

(CRIMINAL JUSTICE AGENCY) (USER)

By: _____ Title: _____ Date: _____

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-440, filed 7/1/80.]

WAC 446-20-450 CHRI challenge form.

CHRI CHALLENGE FORM

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

AGENCY _____ AGENCY CASE NO. _____ ADDRESS _____ DATE _____

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

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

Table with 4 columns: Agency, Case No., Date, Charge. Rows are blank lines for entry.

and request modification to read:

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

(Signature of Challenger)

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

WAC 446-20-500 Sex offender registration. E2SSB 6259, chapter 3, Laws of 1990, "An act relating to criminal offender" requires any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense as defined in RCW 9.94A.030 to register with the county sheriff for the county of that person's residence. The sheriff is required to forward the registration information to the section within five working days. The state patrol is mandated to maintain a central registry of sex offenders consistent with chapters 10.97, 10.98, and 43.43 RCW. The following regulations implement the provisions of this act.

[Statutory Authority: 1990 c 3. 90-20-003 (Order 90-003), § 446-20-500, filed 9/20/90, effective 10/21/90.]

WAC 446-20-510 History retention. Sex offender registration information will be maintained in the offender's criminal history file according to retention periods outlined in chapter 3, Laws of 1990. Once an offender is registered, a notation of "registered sex offender" shall be printed on the rap sheet for that individual.

[Statutory Authority: 1990 c 3. 90-20-003 (Order 90-003), § 446-20-510, filed 9/20/90, effective 10/21/90.]

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

- Name; Address; Social Security number;

Place of employment;
 Crime for which convicted;
 Date/place of conviction; and
 Aliases used.

[Statutory Authority: 1990 c 3. 90-20-003 (Order 90-003), § 446-20-515, filed 9/20/90, effective 10/21/90.]

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

On the reverse side of the photo, write full name, date of birth, and SID number. Paperclip (no staples please) the photo to the fingerprint card with the registration information completed and forward to Washington State Patrol, Identification and Criminal History Section, Mailstop QE-02, Olympia, WA 98504.

[Statutory Authority: 1990 c 3. 90-20-003 (Order 90-003), § 446-20-520, filed 9/20/90, effective 10/21/90.]

WAC 446-20-525 Change of address form. Sex offenders who change residence from one county to another are required to register with the sheriff in the county of their new residence and also notify the county sheriff where they were previously registered. A "change of address" form WSP-CRD-502 must be sent to the county sheriff of the former residence and the offender must then register with the county sheriff of the new residence.

Registered sex offenders are required to send written notice of a change of address to the sheriff within ten days of establishing a new residence within the same county. "Change of address" forms must be forwarded to the Washington state patrol identification and criminal history section within five working days.

[Statutory Authority: 1990 c 3. 90-20-003 (Order 90-003), § 446-20-525, filed 9/20/90, effective 10/21/90.]

WAC 446-20-530 Refundable fee. Agencies are to bill the Washington state patrol for the actual registration cost not to exceed thirty-two dollars for each registration which shall include photographs and fingerprints submitted pursuant to section 403, chapter 3, Laws of 1990. This fee will further ensure that direct and indirect costs at the county level associated with the provisions of this chapter are refunded by the Washington state patrol on a monthly basis upon receipt of an invoice from the county sheriff indicating the number of registrations submitted.

[Statutory Authority: 1990 c 3. 90-20-003 (Order 90-003), § 446-20-530, filed 9/20/90, effective 10/21/90.]

Chapter 446-30 WAC

DISPOSITION OF VEHICLES SEIZED FOR ALTERED VEHICLE IDENTIFICATION NUMBERS--HEARINGS

WAC

446-30-010 Purpose.
 446-30-020 Definitions.
 446-30-030 Hearing officer.
 446-30-040 Procedure.

446-30-050 Burden of proof.
 446-30-060 Record.
 446-30-070 Appeal.

WAC 446-30-010 Purpose. The purpose of this regulation is to provide administrative rules and standards for hearings conducted pursuant to chapter 124, Laws of 1974 1st ex. sess. (RCW 9.54.030(3)) relating to the disposition of motor vehicles, motorcycles, motor-driven cycles, trailers, vessels, motorboats, or component parts thereof impounded by the Washington state patrol.

[Order II, § 446-30-010, filed 11/22/74.]

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

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

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

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

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

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

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

(2) In accordance with chapter 124, Laws of 1974 1st ex. sess. (RCW 9.54.030(3)), any person claiming ownership or right of possession hereunder may remove the matter to a court of competent jurisdiction if the aggregate value of the article involved is one hundred dollars or more. If the article involved is a component part or parts of a vehicle, then the right to remove the matter to a court of competent jurisdiction shall be conditioned on the component part or parts having an aggregate value

of one hundred dollars or more. An officer of the Washington state patrol assigned to the motor vehicle theft section shall determine the current market value of the article based on such factors as the condition of the vehicle, the year, and the make of the vehicle, etc. The value finally arrived at by the officer should reflect the value of the vehicle on the open market. If the value of the article cannot be agreed upon by the officer and the interested party, a dealer who specializes in the type article shall be contacted to determine the current market value.

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

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

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

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

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

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

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

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

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

Chapter 446-40 WAC

DISABILITY RETIREMENTS--APPLICATIONS--DECISIONS--APPEALS

WAC

- 446-40-010 Purpose.
- 446-40-020 Definitions.
- 446-40-025 Line duty disabilities.
- 446-40-030 Application for disability.
- 446-40-040 Application by member or personnel officer.

(1990 Ed.)

- 446-40-050 Action by chief.
- 446-40-060 Finality of chief's decision--Exception.
- 446-40-070 The board--Responsibilities and functions.
- 446-40-080 Procedure.
- 446-40-090 Responsibility of member.
- 446-40-100 Duties of board following hearing.
- 446-40-110 Decision by the chief.
- 446-40-130 Statement of earnings and status.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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

WAC 446-40-010 Purpose. The purpose of this regulation is to provide an administrative procedure and standards for disability retirements under RCW 43.43-.040.

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

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

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

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

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

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

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

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

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

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

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

WAC 446-40-025 Line duty disabilities. (1) Line duty disabilities occur when a commissioned officer of

the Washington state patrol is injured or incapacitated while:

- (a) Performing traffic law enforcement duties.
- (b) Investigating accidents or suspected criminal activities.
- (c) Participating in law enforcement training that requires physical exertion, use of firearms, or exposure to hazardous elements.
- (d) Performing other activities which must be performed by a commissioned law enforcement officer and exposes the officer to hazardous elements or requires physical exertion.

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

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

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

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

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

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

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

(3) Similarly, when a member of the Washington state patrol is in disability retirement status and seeks return to active service status, he shall apply to the chief,

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

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

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

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

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

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

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

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

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

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

(5) When reviewing an application by a member or the personnel officer for disability retirement status, the

board shall recommend whether the chief should deny or grant the application.

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

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

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

WAC 446-40-080 Procedure. The provisions of chapter 446-08 WAC shall govern the conduct of the hearing and procedure before the board. The burden of proof in the hearing before the board shall be upon the applicant, whether a member or the department, who is seeking a change in a member's status to disability retirement or to active service.

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

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

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

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

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

WAC 446-40-110 Decision by the chief. (1) The chief shall review the record if he has not heard the evidence, and in all cases shall review the findings, exceptions and recommendations of the other members of the

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

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

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

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

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

Chapter 446-50 WAC

TRANSPORTATION OF HAZARDOUS MATERIALS

WAC

446-50-010	Authority.
446-50-020	Purpose.
446-50-030	Definitions.
446-50-040	Procedure upon entering the state.
446-50-050	Inspection.
446-50-060	Inspection forms.
446-50-070	Intrastate quarterly inspection.
446-50-080	Transportation requirements.

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

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

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

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

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

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

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

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

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

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

WAC 446-50-040 Procedure upon entering the state. Effective October 10, 1979 all carriers of radioactive waste materials entering the state of Washington shall be required to enter the state through one of only two allowable ports of entry. These ports of entry are located on Interstate 90 approximately one-half mile west of the Idaho state line, in Spokane County, and on Washington State Sign Route 14 approximately one mile north of the Oregon state line, in Benton County.

[Statutory Authority: RCW 46.48.190. 80-01-009 (Order 79-4), § 446-50-040, filed 12/11/79.]

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

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

WAC 446-50-060 Inspection forms. No interstate carrier of radioactive waste material will be allowed to

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enter any radioactive waste materials disposal site without displaying a certificate of inspection form issued by a member of the Washington state patrol, for that particular load. The chief of the Washington state patrol shall prepare and furnish such certificate of inspection forms and any other forms deemed necessary to assure compliance.

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

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

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

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

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

[Statutory Authority: RCW 46.48.170 - 46.48.190. 85-20-070 (Order 85-1), § 446-50-080, filed 9/30/85. Statutory Authority: RCW 46.48.170. 84-05-010 (Order 82-3), § 446-50-080, filed 2/7/84; 83-

03-008 (Order 82-3), § 446-50-080, filed 1/11/83; 82-07-100 (Order 82-2), § 446-50-080, filed 3/24/82. Statutory Authority: RCW 46.48.190. 81-03-008 (Order 80-2), § 446-50-080, filed 1/8/81; 80-01-009 (Order 79-4), § 446-50-080, filed 12/11/79.]

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

Chapter 446-55 WAC
PRIVATE CARRIER REGULATIONS--
QUALIFICATIONS OF DRIVERS

WAC

446-55-005	Promulgation.
446-55-010	Scope and interpretation of the rules in this chapter—Additional qualifications—Duties of private carrier—drivers.
446-55-020	General exemptions.
446-55-030	Definitions.
446-55-040	Familiarity with rules.
446-55-050	Aiding or abetting violations.
446-55-060	Qualifications of drivers.
446-55-070	Disqualification of drivers.
446-55-080	Application for employment.
446-55-090	Investigation and inquiries.
446-55-100	Annual review of driving record.
446-55-110	Record of violations.
446-55-120	Road test.
446-55-130	Equivalent of road test.
446-55-140	Written examination.
446-55-150	Examination format.
446-55-160	Equivalent of written examination.
446-55-165	Exemptions for single vehicle owner drivers.
446-55-170	Physical qualifications for drivers.
446-55-180	Medical examination—Certificate of physical examination.
446-55-190	Persons who must be medically examined and certified.
446-55-220	Driver qualification files.
446-55-230	Drivers who were regularly employed for a continuous three-year period prior to the effective date of this rule.
446-55-250	Intermittent, casual, or occasional drivers.
446-55-260	Drivers furnished by other motor carriers.
446-55-270	Drivers of articulated (combination) farm vehicles.
446-55-280	Intrastate drivers of vehicles transporting combustible liquids.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

446-55-200	Resolution of conflicts of medical evaluation. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-200, filed 4/1/86.] Repealed by 87-05-012 (Order 446-87-1), filed 2/11/87. Statutory Authority: RCW 46.73.010 and 46.73.020.
446-55-210	Waiver of certain physical defects. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-210, filed 4/1/86.] Repealed by 87-05-012 (Order 446-87-1), filed 2/11/87. Statutory Authority: RCW 46.73.010 and 46.73.020.
446-55-240	Drivers of lightweight vehicles. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-240, filed 4/1/86.] Repealed by 87-05-012 (Order 446-87-1), filed 2/11/87. Statutory Authority: RCW 46.73.010 and 46.73.020.

WAC 446-55-005 Promulgation. By authority of RCW 46.73.010 and 46.73.020, the Washington state

patrol hereby adopts the following rules establishing standards for qualifications of drivers for private carriers as defined by RCW 81.80.010(6).

[Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-55-005, filed 2/11/87.]

WAC 446-55-010 Scope and interpretation of the rules in this chapter—Additional qualifications—Duties of private carrier—drivers. (1) The rules in this chapter establish minimum qualifications for persons who drive motor vehicles as, for, or on behalf of private carriers. The rules in this chapter also establish minimum duties of private carriers with respect to the qualifications of their drivers. The rules in this chapter shall be interpreted by the chief or designee, and when applicable shall be consistent with the federal interpretations of Part 391 of the Code of Federal Regulations as documented in the Federal Highway Administration, Department of Transportation, Federal Motor Carrier Safety Regulations, Interpretations.

(2) The rules in this chapter do not prevent a private carrier from imposing more stringent or additional qualifications, requirements, examinations, or certificates than are imposed by these rules.

(3) A private carrier who employs himself as a driver must comply with both the rules in this chapter that apply to private carriers and the rules in this chapter that apply to drivers except as provided in WAC 446-55-165.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-010, filed 4/1/86.]

WAC 446-55-020 General exemptions. (1) Passenger car operations. The rules in this chapter do not apply to a driver who drives only a motor vehicle that:

(a) Is a passenger-carrying vehicle with a seating capacity of 10 or less persons, including the driver;

(b) Is not transporting passengers for hire; and

(c) Is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with part 177.823 of the Code of Federal Regulations.

(2) Certain farm vehicle drivers. The rules in this chapter do not apply to a farm vehicle driver operating equipment that meets the requirements of RCW 46.16.090, except a farm vehicle driver who drives an articulated (combination) motor vehicle that has a gross weight, including its load of more than 26,000 pounds. (For limited exemptions for farm vehicle drivers of heavier articulated vehicles see WAC 446-55-270.)

(3) Farm custom operations. The rules in this chapter do not apply to a driver who drives a motor vehicle that meets the requirements of RCW 46.16.090 controlled and operated by a person engaged in custom-harvesting operations, if the vehicle is used to:

(a) Transport farm machinery, supplies, or both, to or from a farm for custom-harvesting operations on a farm; or

(b) Transport custom-harvested crops to storage or market.

(4) Apiarian industries. The rules in this chapter do not apply to a driver who is operating a motor vehicle controlled and operated by a beekeeper engaged in the seasonal transportation of bees.

(5) Lightweight vehicle drivers. The rules in this chapter do not apply to a driver who drives only a lightweight vehicle as defined in WAC 446-55-030(5).

(6) Exempt carriers as defined in WAC 446-55-030(8).

(7) Licensed tow truck drivers. The rules in this chapter do not apply to a driver who drives a tow truck for a towing firm that possesses a valid business and tow truck registration(s) as per the requirements of chapter 46.55 RCW.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-55-020, filed 2/11/87; 86-08-067 (Order 446-86-1), § 446-55-020, filed 4/1/86.]

WAC 446-55-030 Definitions. (1) A "private carrier" is a person who transports by his own motor vehicle, with or without compensation therefor, property which is owned or is being bought or sold by such person, or property of which such person is the seller, purchaser, lessee, or bailee where such transportation is incidental to and in furtherance of some other primary business conducted by such person in good faith. The term "private carrier" includes a private carrier and the agents, officers, representatives, and employees of a private carrier who are responsible for the hiring, supervision, training, assignment, or dispatching of drivers.

(2) The term "chief" means the chief of the Washington state patrol.

(3) A private carrier "employs" a person as a driver within the meaning of this chapter whenever it requires or permits that person to drive a motor vehicle (whether or not the vehicle is owned by the private carrier) in furtherance of the business of the private carrier.

(4) The term "farm vehicle driver" means a person who drives only a motor vehicle that is:

(a) Controlled and operated by a farmer;

(b) Being used to transport either:

(i) Agricultural products; or

(ii) Farm machinery, farm supplies, or both, to or from a farm;

(c) Not being used in the operations of a common or contract carrier;

(d) Not carrying hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with part 177.823 of the Code of Federal Regulations; and

(e) Either:

(i) A vehicle having a gross weight, including its load, of twenty-six thousand pounds or less; or

(ii) A vehicle being used within 150 miles of the farmer's farm.

(5) The term "lightweight vehicle" as used in this chapter or used in rules adopted by reference, shall mean a motor vehicle that:

(a) Was manufactured on or after January 1, 1972, and has a gross vehicle weight rating including its load of twenty-six thousand pounds or less, in the case of a

single vehicle, or a gross combination weight rating including its load of twenty-six thousand pounds or less, in the case of an articulated vehicle; or

(b) Was manufactured before January 1, 1972, and has a gross weight, including its load and the gross weight of any vehicle being towed by the motor vehicle, of twenty-six thousand pounds or less, except:

(c) The term "lightweight vehicle" does not include a vehicle that is being used to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with WAC 480-12-195.

(d) The term "lightweight vehicle" does not include private carrier buses as defined in RCW 46.04.416.

(6) "Common carrier" means any person who undertakes to transport property for the general public by motor vehicle for compensation, whether over regular or irregular routes, or regular or irregular schedules, including motor vehicle operations of other carriers by rail or water and of express or forwarding companies.

(7) "Contract carrier" shall include all motor vehicle operators not included under the terms "common carrier" and "private carrier" as herein defined in subsections (1) and (6) of this section, and further shall include any person who under special and individual contracts or agreements transports property by motor vehicle for compensation.

(8) "Exempt carrier" means any person operating a vehicle exempted from certain provisions of this chapter under RCW 81.80.040.

(9) "Motor carrier" means and includes "common carrier," "contract carrier," "private carrier," and "exempt carrier" as herein defined.

(10) "Motor vehicle" means any truck, trailer, semi-trailer, tractor, dump truck which uses a hydraulic or mechanical device to dump or discharge its load or any self-propelled or motor driven vehicle used upon any public highway of this state for the purpose of transporting property, but not including baggage, mail and express transported on the vehicles of auto transportation companies carrying passengers.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-55-030, filed 2/11/87; 86-08-067 (Order 446-86-1), § 446-55-030, filed 4/1/86.]

WAC 446-55-040 Familiarity with rules. Each private carrier and each driver shall know, and be familiar with, the rules in this chapter.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-040, filed 4/1/86.]

WAC 446-55-050 Aiding or abetting violations. No person shall aid, abet, encourage, or require a private carrier or a driver to violate the rules in this chapter.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-050, filed 4/1/86.]

WAC 446-55-060 Qualifications of drivers. (1) A person shall not drive a motor vehicle unless he is qualified to drive a motor vehicle. Except as provided in chapter 46.20 RCW and WAC 446-55-250, a private

carrier shall not require or permit a person to drive a motor vehicle unless that person is qualified to drive a motor vehicle.

(2) Except as provided in WAC 446-55-220 through 446-55-280, a person is qualified to drive a motor vehicle if he is qualified according to chapter 46.20 RCW and:

- (a) Is at least 18 years old;
- (b) Can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records;
- (c) Can, by reason of experience, training, or both, safely operate the type of motor vehicle he drives;
- (d) Can, by reason of experience, training, or both, determine whether the cargo he transports has been properly located, distributed, and secured in or on the motor vehicle he drives;
- (e) Is familiar with methods and procedures for securing cargo in or on the motor vehicle he drives;
- (f) Is physically qualified to drive a motor vehicle in accordance with WAC 446-55-170 through 446-55-190;
- (g) Has been issued a currently valid motor vehicle operator's license or permit;
- (h) Has prepared and furnished the private carrier that employs him with the list of violations or the certificate as required by WAC 446-55-110;
- (i) Is not disqualified to drive a motor vehicle under chapter 46.20 RCW and the rules in WAC 446-55-070;
- (j) Has successfully completed a driver's road test and has been issued a certificate of driver's road test in accordance with WAC 446-55-120, or has presented an operator's license or a certificate of road test which the private carrier that employs him has accepted as equivalent to a road test in accordance with WAC 446-55-130;
- (k) Has taken a written examination and has been issued a certificate of written examination in accordance with WAC 446-55-140, or has presented a certificate of written examination which the private carrier that employs him has accepted as equivalent to a written examination in accordance with WAC 446-55-160; and
- (l) Has completed and furnished the private carrier that employs him with an application for employment in accordance with WAC 446-55-080.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-55-060, filed 2/11/87; 86-08-067 (Order 446-86-1), § 446-55-060, filed 4/1/86.]

WAC 446-55-070 Disqualification of drivers. (1) General. A driver who is disqualified shall not drive a motor vehicle. A private carrier shall not require or permit a driver who is disqualified to drive a motor vehicle.

(2) Disqualification for loss of driving privileges. A driver is disqualified for the duration of his loss of his privilege to operate a motor vehicle on public highways, either temporarily or permanently, by reason of the revocation, suspension, withdrawal, or denial of an operator's license, permit, or privilege, until that operator's

license, permit, or privilege is restored by the authority that revoked, suspended, withdrew, or denied it.

(3) Disqualification for criminal misconduct.

(a) General rule. A driver who is convicted of, or forfeits bond or collateral upon a charge of, a disqualifying offense specified in (b) of this subsection is disqualified for the period of time specified in (c) of this subsection if:

(i) The offense was committed after December 31, 1970; and

(ii) The offense was committed while the driver was driving a motor vehicle in the employ of a private carrier or in furtherance of a commercial enterprise in interstate, intrastate, or foreign commerce.

(b) Disqualifying offenses. The following offenses are disqualifying offenses:

(i) Operating a motor vehicle while under the influence of alcohol, an amphetamine, a narcotic drug, a formulation of an amphetamine, or a derivative of a narcotic drug;

(ii) A crime involving the knowing transportation, knowing possession, or unlawful use of amphetamines, narcotic drugs, formulations of an amphetamine, or derivatives of narcotic drugs;

(iii) Leaving the scene of an accident which resulted in personal injury or death;

(iv) A felony involving the use of a motor vehicle.

(c) Duration of disqualification for criminal misconduct.

(i) First offenders. A driver is disqualified for 1 year after the date of his conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, he was not convicted of, and did not forfeit bond or collateral upon a charge of, an offense that would disqualify him under the rules of this section.

(ii) Subsequent offenders. A driver is disqualified for 3 years after the date of his conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, he was convicted of, or forfeited bond or collateral upon a charge of, an offense that would disqualify him under the rules in this section.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-070, filed 4/1/86.]

WAC 446-55-080 Application for employment. (1) Except as provided in WAC 446-55-165 and 446-55-230 through 446-55-280, a person shall not drive a motor vehicle unless he has completed and furnished the private carrier that employs him with an application for employment that meets the requirements of subsection (2) of this section.

(2) The application for employment shall be made on a form furnished by the private carrier. Each application form must be completed by the applicant, must be signed by him, and must contain the following information:

(a) The name and address of the employing private carrier;

(b) The applicant's name, address, date of birth, and social security number;

(c) The addresses at which the applicant has resided during the 3 years preceding the date on which the application is submitted;

(d) The date on which the application is submitted;

(e) The issuing state, number, and expiration date of each unexpired motor vehicle operator's license or permit that has been issued to the applicant;

(f) The nature and extent of the applicant's experience in the operation of motor vehicles, including the type of equipment (such as busses, trucks, truck tractors, semitrailers, full trailers, and pole trailers) which he has operated;

(g) A list of all motor vehicle accidents in which the applicant was involved during the 3 years preceding the date the application is submitted, specifying the date and nature of each accident and any fatalities or personal injuries it caused;

(h) A list of all violations of motor vehicle laws or ordinances (other than violations involving only parking) of which the applicant was convicted or forfeited bond or collateral during the 3 years preceding the date the application is submitted;

(i) A statement setting forth in detail the facts and circumstances of any denial, revocation, or suspension of any license, permit, or privilege to operate a motor vehicle that has been issued to the applicant, or a statement that no such denial, revocation, or suspension has occurred;

(j) A list of the names and addresses of the applicant's employers during the 3 years preceding the date the application is submitted, together with the dates he was employed by, and his reason for leaving the employ of, each employer; and

(k) The following certification and signature line, which must appear at the end of the application form and be signed by the applicant:

This certifies that this application was completed by me, and that all entries on it and information in it are true and complete to the best of my knowledge.

(Date)

(Applicant's signature)

(3) A private carrier may require an applicant to provide information in addition to the information required by subsection (2) of this section on the application form.

(4) Before an application is submitted, the private carrier shall inform the applicant that the information he provides in accordance with subsection (2)(j) of this section may be used, and the applicant's prior employers may be contacted, for the purpose of investigating the applicant's background as required by WAC 446-55-090.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-080, filed 4/1/86.]

WAC 446-55-090 Investigation and inquiries. (1) Except as provided in WAC 446-55-165 and 446-55-

230 through 446-55-280, each private carrier shall make the following investigations and inquiries with respect to each driver it employs, other than a person who has been a regularly employed driver of the private carrier for a continuous three-year period prior to the effective date of this rule.

(a) An inquiry into the driver's driving record during the preceding 3 years to the appropriate agency of every state in which the driver held a motor vehicle operator's license or permit during those 3 years; and

(b) An investigation of the driver's employment record during the preceding 3 years.

(2) The inquiry to state agencies required by subsection (1)(a) of this section must be made within 30 days of the date the driver's employment begins and shall be made in the form and manner those agencies prescribe. A copy of the response by each state agency, showing the driver's driving record or certifying that no driving record exists for that driver, shall be retained in the carrier's files as part of the driver's qualification file.

(3) The investigation of the driver's employment record required by subsection (1)(b) of this section must be made within 30 days of the date his employment begins. The investigation may consist of personal interviews, telephone interviews, letters, or any other method of obtaining information that the carrier deems appropriate. Each private carrier must make a written record with respect to each past employer who was contacted. The record must include the past employer's name and address, the date he was contacted, and his comments with respect to the driver. The record shall be retained in the private carrier's files as part of the driver's qualification file.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-090, filed 4/1/86.]

WAC 446-55-100 Annual review of driving record. Except as provided in WAC 446-55-165 and 446-55-230 through 446-55-280, each private carrier shall, at least once every 12 months, review the driving record of each driver it employs to determine whether that driver meets minimum requirements for safe driving or is disqualified to drive a motor vehicle pursuant to WAC 446-55-070. In reviewing a driving record, the private carrier must consider any evidence that the driver has violated applicable provisions of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations. The private carrier must also consider the driver's accident record and any evidence that the driver has violated laws governing the operation of motor vehicles, and must give great weight to violations, such as speeding, reckless driving, and operating while under the influence of alcohol or drugs, that indicate that the driver has exhibited a disregard for the safety of the public. A note, setting forth the date upon which the review was performed and the name of the person who reviewed the driving record, shall be included in the driver's qualification file.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-100, filed 4/1/86.]

WAC 446-55-110 Record of violations. (1) Except as provided in WAC 446-55-165 and 446-55-230 through 446-55-280, each private carrier shall, at least once every 12 months, require each driver it employs to prepare and furnish it with a list of all violations of motor vehicle traffic laws and ordinances (other than violations involving only parking) of which the driver has been convicted or on account of which he has forfeited bond or collateral during the preceding 12 months.

(2) Each driver shall furnish the list required in accordance with subsection (1) of this section. If the driver has not been convicted of, or forfeited bond or collateral on account of, any violation which must be listed, he shall so certify.

(3) The form of the driver's list or certification shall be prescribed by the private carrier. The following form may be used to comply with this section:

MOTOR VEHICLE DRIVER'S CERTIFICATION

(I certify that the following is a true and complete list of traffic violations (other than parking violations) for which I have been convicted or forfeited bond or collateral during the past 12 months)

Date of conviction	Offense	Location	Type of vehicle operated
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

If no violations are listed above, I certify that I have not been convicted or forfeited bond or collateral on account of any violation required to be listed during the past 12 months.

_____ (Date of certification)	_____ (Driver's signature)
_____ (Private carrier's name)	_____ (Private carrier's address)
_____ (Reviewed by: Signature)	_____ (Title)

(4) The private carrier shall retain the list or certification required by this section, or a copy of it, in its files as part of the driver's qualification file.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-110, filed 4/1/86.]

WAC 446-55-120 Road test. (1) Except as provided in WAC 446-55-130, 446-55-165, 446-55-230, and 446-55-270, a person shall not drive a motor vehicle unless he has first successfully completed a road test and has been issued a certificate of driver's road test in accordance with this section.

(2) The road test shall be given by the private carrier or a person designated by it. However, a driver who is a private carrier must be given the test by a person other than himself. The test shall be given by a person who is competent to evaluate and determine whether the person who takes the test has demonstrated that he is capable of operating the vehicle and associated equipment, that the private carrier intends to assign him.

(3) The road test must be of sufficient duration to enable the person who gives it to evaluate the skill of the person who takes it at handling the motor vehicle, and associated equipment, that the private carrier intends to assign to him. As a minimum, the person who takes the test must be tested, while operating the type of motor vehicle the private carrier intends to assign him, on his skill at performing each of the following operations:

- (a) The pretrip inspection as outlined in the Code of Federal Regulations, part 392.7;
- (b) Coupling and uncoupling of combination units, if the equipment he may drive includes combination units;
- (c) Placing the vehicle in operation;
- (d) Use of the vehicle's controls and emergency equipment;
- (e) Operating the vehicle in traffic and while passing other vehicles;
- (f) Turning the vehicle;
- (g) Braking, and slowing the vehicle by means other than braking; and
- (h) Backing and parking the vehicle.

(4) The private carrier shall provide a road test form on which the person who gives the test shall rate the performance of the person who takes it at each operation or activity which is a part of the test. After he completes the form, the person who gave the test shall sign it.

(5) If the road test is successfully completed, the person who gave it shall complete a certificate of driver's road test in substantially the form prescribed in subsection (6) of this section.

(6) The form for the certificate of driver's road test is substantially as follows:

CERTIFICATION OF ROAD TEST

Driver's name _____
 Social Security No. _____
 Operator's or Chauffeur's License No. _____
 State _____
 Type of power unit _____ Type of trailer(s) _____
 If passenger carrier, type of bus _____

This is to certify that the above-named driver was given a road test under my supervision on _____, 19__ , consisting of approximately _____ miles of driving.

It is my considered opinion that this driver possesses sufficient driving skill to operate safely the type of commercial motor vehicle listed above.

(Signature of examiner)

(Title)

(Organization and address of examiner)

(7) A copy of the certificate required by subsection (5) of this section shall be given to the person who was examined. The private carrier shall retain in the driver qualification file of the person who was examined:

- (a) The original of the signed road test form required by subsection (4) of this section; and
- (b) The original, or a copy of, the certificate required by subsection (5) of this section.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-120, filed 4/1/86.]

WAC 446-55-130 Equivalent of road test. (1) Except as provided in WAC 446-55-165, in place of, and as equivalent to, the road test required by WAC 446-55-120, a person who seeks to drive a motor vehicle may present, and a private carrier may accept:

(a) A valid operator's license which has been issued to him by a state that licenses drivers to operate specific categories of motor vehicles and which, under the laws of that state, licenses him after successful completion of a road test in a motor vehicle of the type the private carrier intends to assign to him; or

(b) A copy of a valid certificate of driver's road test issued to him pursuant to WAC 446-55-120 within the preceding 3 years.

(2) If a driver presents, and a private carrier accepts, a license or certificate as equivalent to the road test, the private carrier shall retain a legible copy of the license or certificate in its files as part of the driver's qualification file.

(3) A private carrier may require any person who presents a license or certificate as equivalent to the road test to take a road test or any other test of his driving skill as a condition to his employment as a driver.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-130, filed 4/1/86.]

WAC 446-55-140 Written examination. (1) Except as provided in WAC 446-55-160, 446-55-165, 446-55-230, and 446-55-270, a person shall not drive a motor vehicle unless he has first taken a written examination and has been issued a certificate of written examination in accordance with this section.

(2) The objective of the written examination is to instruct prospective drivers in the rules and regulations established by the Federal Highway Administration pertaining to commercial vehicle safety. It is an instructional tool only, and a person's qualifications to drive a motor vehicle under the rules in this chapter are not affected by his performance on the examination.

(3) The written examination shall be given by the private carrier or a person designated by it, on a form prescribed by the private carrier.

(4) Prior to, and during, the examination, the person who takes it shall be permitted to examine and consult a copy of the Federal Motor Carrier Safety Regulations, chapter III, subchapter B, parts 390 through 397, in addition to any other material explaining the provisions of those regulations that the private carrier may provide. There is no time limit for completing the examination, and persons taking it shall be so advised in advance.

(5) The examination shall consist of 66 questions, covering the examinee's knowledge of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations. However, a person who is being examined with a view to employment as the driver of a motor vehicle which will not transport hazardous materials of a type or quantity that requires the vehicle to be marked

or placarded in accordance with part number 177.823 of the Code of Federal Regulations need not answer questions 58 through 66, inclusive. The questions given during the examination must be the same questions as those in WAC 446-55-150.

(6) After the examinee completes the examination, the person who administered it shall advise him of the correct answers to any questions he failed to answer correctly. The private carrier may also provide the examinee with such additional instruction in the pertinent regulations as appears to be warranted on the basis of his performance on the examination.

(7) The private carrier, or the person who administered the examination on the private carrier's behalf, shall provide every person who completes the examination with a certificate in substantially the following form:

CERTIFICATE OF WRITTEN EXAMINATION

This is to certify that the person whose signature appears below has completed the written examination under my supervision in accordance with the provisions of WAC 446-55-140.

(Signature of person taking examination)

(Date of examination)

(Location of examination)

(Signature of examiner)

(Title)

(Organization and address of examiner)

(8) A copy of the certificate required by subsection (7) of this section shall be given to the person who was examined. The private carrier shall retain, in the driver qualification file of the person who was examined:

- (a) The original, or a copy of, the certificate required by subsection (7) of this section;
- (b) The questions asked on the examination; and
- (c) The person's answers to those questions.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-140, filed 4/1/86.]

WAC 446-55-150 Examination format. The following examination format and answer key shall be utilized for written testing as provided by WAC 446-55-140.

All of the questions contained herein are based on the United States Department of Transportation's Federal Motor Carrier Safety Regulations. Applicants for the position of private carrier driver are required to take the examination.

Each question has four answers but only one is right. Your job is to read all of the answers and then to pick the one answer you believe is right. Mark an "X" in the space next to the answer you choose. Do not pick more than one answer for each question.

Here is a sample question to show you what is to be done:

The Federal Motor Carrier Safety Regulations were written for:

1. () vehicle makers.
2. () drivers only.
3. () carriers only.
4. () drivers and carriers.

The right answer is number 4, "drivers and carriers," so you would mark an "X" in the space next to answer number 4.

Finally, be sure to answer every question and do not skip any pages. Keep in mind that most of the regulations covered here apply to commercial bus and truck drivers and are different from what is required of passenger car drivers. Again, pick only one answer for each question. There is no time limit on the examination, but try to work as fast as you can.

1. Section 390.32 A motor carrier who is also a driver (owner-operator):

1. () is not covered by the safety regulations.
2. () must obey only those parts of the regulations which cover drivers.
3. () must obey only those parts of the regulations which cover motor carriers.
4. () must obey both the parts covering drivers and the parts covering motor carriers.

2. Section 391.11(b)(1) With only a few exceptions, the Federal Motor Carrier Safety Regulations say a driver must be:

1. () at least 18 years old.
2. () at least 19 years old.
3. () at least 20 years old.
4. () at least 21 years old.

3. Section 391.15(c)(2)(3) A driver cannot drive a motor vehicle:

1. () for one year after a first offense conviction for a felony involving a commercial motor vehicle operated by the driver.
2. () for one year after a first offense conviction for driving a commercial vehicle under the influence of alcohol or narcotics.
3. () for one year after a first offense conviction for leaving the scene of an accident which resulted in personal injury or death.
4. () for one year after a first offense conviction for any of the above.

4. Section 391.21(b)(7)(8)(10) Every driver applicant must fill out an application form giving:

1. () a list of all vehicle accidents during the previous 3 years.
2. () a list of all motor vehicle violation convictions and bond forfeits (except for parking) during the previous 3 years.
3. () a list of names and addresses of all employers during the previous 3 years.
4. () all of the above.

5. Section 391.27(a)(b) At least once a year, a driver must fill out a form listing all motor vehicle violations (except parking) occurring during the previous 12 months. The driver must fill out the form:

1. () even if there were no violations.
2. () only if convicted.
3. () only if convicted or had forfeited bond or collateral.
4. () only if the carrier requires it.

6. Section 391.33(a)(2) If a driver applicant has a valid certificate showing successful completion of a driver's road test:

1. () the carrier must accept it.
2. () the carrier may still require the applicant to take a road test.
3. () the carrier cannot accept it.
4. () the carrier may request a road test waiver from the Bureau of Motor Carrier Safety.

7. Section 391.41(b)(5) A person with breathing problems which may affect safe driving:

1. () cannot drive.
2. () cannot drive unless the vehicle has an emergency oxygen supply.
3. () cannot drive unless another driver is along.
4. () cannot drive except on short runs.

8. Section 391.41(b)(7) Persons with arthritis, rheumatism, or any such condition which may affect safe driving:

1. () cannot drive unless they are checked by a doctor before each trip.
2. () cannot drive.
3. () cannot drive except when they are free of pain.
4. () cannot drive unless another driver is along.

9. Section 391.41(b)(8) Persons who have ever had epilepsy:

1. () cannot drive unless another driver is along.
2. () cannot drive.
3. () cannot drive on long runs.
4. () cannot drive without monthly medical examinations.

10. Section 391.41(b)(9)(12)(13) In order to be able to drive, a driver:

1. () must not have any mental, nervous or physical problem likely to affect safe driving.
2. () must not use an amphetamine, narcotic or any habit-forming drug.
3. () must not have a current alcoholism problem.
4. () must not have or use any of the above.

11. Section 391.45(c) If a driver gets an injury or illness serious enough to affect the ability to perform duties, the driver:

1. () must report it at the next scheduled physical.
2. () cannot drive again.
3. () must take another physical and be recertified before driving again.
4. () must wait at least 1 month after recovery before driving again.

12. Section 392.2 A driver may not drive faster than posted speed limits:

1. () unless the driver is sick and must complete the run quickly.
2. () at any time.
3. () unless the driver is passing another vehicle.
4. () unless the driver is late and must make a schedule arrival.

13. Section 392.3 When a driver's physical condition while on a trip requires the driver to stop driving, but stopping would not be safe, the driver:

1. () must stop anyway.
2. () may try to complete the trip, but as quickly as possible.
3. () may continue to drive to the home terminal.
4. () may continue to drive, but must stop at the nearest safe place.

14. Section 392.5(a)(1) A driver may not drink or be under the influence of any alcoholic beverage (regardless of alcoholic content):

1. () within 4 hours before going on duty or driving.
2. () within 6 hours before going on duty or driving.
3. () within 8 hours before going on duty or driving.
4. () within 12 hours before going on duty or driving.

15. Section 392.7 A driver must be satisfied that service and parking brakes, tires, lights and reflectors, mirrors, coupling and other devices are in good working order:

1. () at the end of each trip.
2. () before the vehicle may be driven.
3. () only when the driver considers it necessary.
4. () according to schedules set by the carrier.

16. Section 392.8 The following must be in place and ready for use before a vehicle can be driven:

1. () at least one spare fuse or other overload protector of each type used on the vehicle.
2. () a tool kit containing a specified list of hand tools.
3. () at least one spare tire for every four wheels.
4. () a set of spark plugs.

17. Section 392.9(a)(3) If any part of the cargo or anything else blocks a driver's front or side views, arm or leg movements, or the driver's access to emergency equipment, the driver:

1. () can drive the vehicle, but must report the problem at the end of the trip.
2. () cannot drive the vehicle.
3. () can drive the vehicle, but only at speeds under 40 miles per hour.
4. () can drive the vehicle, but only on secondary roads.

18. Section 392.9(a) Any driver who needs glasses to meet the minimum visual requirements:

1. () must drive only during daylight hours.
2. () must always wear glasses when driving.
3. () must always carry a spare pair of glasses.
4. () must not drive a motor vehicle.

19. Section 392.9(b) A driver with a hearing aid:

1. () if the driver always has it turned on while driving.
2. () if the driver always carries a spare power source for it.
3. () if the driver can meet the hearing requirements when the hearing aid is turned on.
4. () if all of the above requirements are met.

20. Section 392.10(a) A driver required to stop at a railroad crossing should bring the vehicle to a stop no closer to the tracks than:

1. () 5 feet.
2. () 10 feet.
3. () 15 feet.
4. () 20 feet.

21. Section 392.10(a) Shifting gears is not permitted:

1. () when traveling faster than 35 miles per hour.
2. () when moving across any bridge.
3. () when crossing railroad tracks.
4. () when traveling down a hill steeper than 10 degrees.

22. Section 392.13 A driver of a motor vehicle, not required to stop at drawbridges without signals, must:

1. () drive at a rate of speed which will permit a stop before reaching the lip of the draw.
2. () sound the horn before crossing.
3. () proceed across without reducing speed.
4. () slow down only if directed by an attendant.

23. Section 392.15(a) When turning a vehicle a driver should begin flashing the turn signals:

1. () at least 50 feet before turning.
2. () at least 60 feet before turning.
3. () at least 75 feet before turning.
4. () at least 100 feet before turning.

24. Section 392.16 Which of the following is true?

1. () if a seat belt is installed in the vehicle, a driver must have it fastened before beginning to drive.
2. () a driver may or may not use the seat belt, depending on the driver's judgment.
3. () seat belts are not necessary on heavier vehicles.
4. () A driver must use the seat belt only if required by the carrier.

25. Section 392.21 When a motor vehicle cannot be stopped off the traveled part of the highway, the driver:

1. () must keep driving.
2. () may stop, but shall get as far off the traveled part of the highway as possible.
3. () may stop, but shall make sure that the vehicle can be seen as far as possible to its front and rear.
4. () may stop if the driver has to, but should do both 2 and 3 above.

26. Section 392.22(b)(1) If a vehicle has a breakdown, the driver must place one emergency signal:

1. () 100 feet in front of the vehicle in the center of the lane it occupies.
2. () 100 feet in back of the vehicle in the center of the lane it occupies.
3. () 10 feet in front or back of the traffic side.

4. () at all of the above locations.

27. Section 392.22(b)(1)(i) If a vehicle has a breakdown on a poorly-lit street or highway, the driver shall place on the traffic side:

1. () a reflective triangle.
2. () a lighted red electric lantern.
3. () a red reflector.
4. () any one of the above.

28. Section 392.22(b)(2)(iii) No emergency signals are required for a vehicle with a breakdown if the street or highway lighting is bright enough so it can be seen at a distance of:

1. () 100 feet.
2. () 200 feet.
3. () 500 feet.
4. () 750 feet.

29. Section 392.22(b)(2)(v) If a vehicle has a breakdown and stops on a poorly-lit *divided or one way* highway, the driver must place one emergency signal:

1. () 200 feet in back of the vehicle in the center of the lane it occupies.
2. () 100 feet in back of the vehicle on the traffic side of the vehicle.
3. () 10 feet in back of the vehicle on the traffic side of the vehicle.
4. () at all of the above locations.

30. Section 392.25 Lighted flame-producing emergency signals, including fuses:

1. () may not be used with vehicles carrying Class A or B explosives.
2. () may not be used with tank vehicles, loaded or empty, which are used to carry flammable liquids or gas.
3. () may not be used with any vehicle using compressed gas as a fuel.
4. () may not be used with any of the above.

31. Section 392.30(a) A driver is required to turn on vehicle lights:

1. () from one-half hour before sunset to one-half hour *before* sunrise.
2. () from one-half hour before sunset to sunrise.
3. () from one-half hour *after* sunset to one-half hour *before* sunrise.
4. () from sunset to one-half hour before sunrise.

32. Section 392.32(a)(b) When lights are required on the highway, a driver shall use the high beam:

1. () except when within 500 feet of an on-coming vehicle or a vehicle the driver is following.
2. () except when within 400 feet of an on-coming vehicle or a vehicle the driver is following.
3. () except when within 200 feet of an on-coming vehicle or a vehicle the driver is following.
4. () except when within 100 feet of an on-coming vehicle or a vehicle the driver is following.

33. Section 392.32(a) When lights are required, a driver may use lower beam lights:

1. () when fog, dust, or other such conditions exist.
2. () when approaching tunnels or bridges.
3. () when driving on one-way highways.

4. () when within 1,000 feet of business areas or where people live.

34. Section 392.40 Every driver involved in an accident must follow the safety regulation procedures whenever an injury or death is involved or if:

1. () the accident is caused by the driver and property damage of over \$2,000.00 results.
2. () property damage of over \$2,000.00 results, no matter who is at fault.
3. () property damage of over \$100.00 results.
4. () property damage of any kind results.

35. Section 392.41 If a driver strikes a parked vehicle, the driver should first:

1. () stop and call the local police.
2. () stop and call the carrier.
3. () stop and try to find the driver or owner of the parked vehicle.
4. () stop and estimate the damage.

36. Section 392.42 When a driver receives notice of license or permit revocation, suspension or other withdrawal action, the driver must:

1. () notify the carrier within 72 hours.
2. () notify the carrier within one week.
3. () notify the carrier before the end of the next business day.
4. () take no action since the carrier will get a notice.

37. Section 392.61 Except in emergencies, no driver shall allow a vehicle to be driven by any other person:

1. () except by those the driver knows are capable.
2. () except on roads with little or no traffic.
3. () except by those allowed by the carrier to do it.
4. () unless the driver goes along with the person driving.

38. Section 392.64 A person may ride inside a vehicle's closed body or trailer:

1. () only on short runs.
2. () only if there is an easy way to get out from the inside.
3. () only if the inside of the body or trailer is lighted.
4. () only if there is no cargo in it.

39. Section 392.66 If carbon monoxide is inside a vehicle or if a mechanical problem may produce a carbon monoxide danger, the vehicle:

1. () may be sent out and driven so long as the windows are left open.
2. () may not be sent out or driven.
3. () may be sent out and driven only if the carrier decides the vehicle has to be used.
4. () may be sent out and driven on short runs.

40. Section 392.68 No motor vehicle shall be operated out of gear:

1. () except when fuel must be saved.
2. () except on hills which are less than 20 degrees.
3. () except when it is necessary for stopping or shifting gears.
4. () except when the vehicle's speed is under 25 miles per hour.

41. Section 393.1(a) Under the Federal Motor Carrier Safety Regulations, no vehicle may be driven:

- 1.() until a list of all missing or defective equipment has been prepared and given to the carrier.
- 2.() until all equipment has been inspected and replacements for defective parts have been ordered.
- 3.() unless all missing equipment is to be replaced no later than the end of the vehicle's next run.
- 4.() until it meets all of the equipment requirements of the regulations.

42. Section 393 Minimum requirements for lighting, reflecting and electrical equipment and devices on buses and trucks:

- 1.() are set by the vehicle makers.
- 2.() are set by the National Safety Council.
- 3.() are specified in the safety regulations.
- 4.() are set by the trucking associations.

43. Section 393.18(a)(b) Every motor vehicle which has a load sticking out over its sides must be specifically marked with flags and lamps. Additional flags and lamps must be added if the load or tailgate sticks out beyond the rear of the vehicle by more than:

- 1.() 2 feet.
- 2.() 4 feet.
- 3.() 6 feet.
- 4.() 8 feet.

44. Section 393.41(a) Every vehicle shall have a parking brake system which will hold it, no matter what its load:

- 1.() on any grade on which it is operated which is free from ice and snow.
- 2.() on all grades under 15 degrees which are free from ice and snow.
- 3.() on all grades under 20 degrees which are free from ice and snow.
- 4.() on all grades under 25 degrees which are free from ice and snow.

45. Section 393.77(b)(6) A portable heater may not be used in any vehicle cab:

- 1.() unless the heater is secured.
- 2.() unless the heater is of the electric filament type.
- 3.() at any time.
- 4.() without approval from the carrier.

46. Section 395.3(a) A driver is not generally allowed to drive for more than:

- 1.() 6 hours following 8 straight hours off duty.
- 2.() 8 hours following 8 straight hours off duty.
- 3.() 10 hours following 8 straight hours off duty.
- 4.() 12 hours following 8 straight hours off duty.

47. Section 395.3(a) Most drivers of large vehicles are not allowed to drive:

- 1.() after they have been *on duty* for 16 hours.
- 2.() after they have been *on duty* for 15 hours.
- 3.() after they have been *on duty* for 14 hours.
- 4.() after they have been *on duty* for 12 hours.

2 48. Section 395.3(b) Generally, a driver may not be "on-duty":

- 1.() for more than 40 hours in any 7 straight days.
- 2.() for more than 50 hours in any 7 straight days.
- 3.() for more than 60 hours in any 7 straight days.
- 4.() for more than 70 hours in any 7 straight days.

49. Section 395.7 When a driver is riding in a vehicle, but is not driving and has no other responsibility, such time shall be counted as:

- 1.() on-duty time.
- 2.() on-duty time unless the driver is allowed 8 straight hours off duty upon arrival at the destination.
- 3.() on-duty time unless the driver is allowed 6 straight hours off duty upon arrival at the destination.
- 4.() on-duty time unless the driver is allowed 4 straight hours off duty upon arrival at the destination.

50. Section 395.8(f)(1) Every driver must prepare an original and one copy of the driver's record of duty status which must be kept current by updating it:

- 1.() every time a change of duty status is made.
- 2.() every 24 hours.
- 3.() every 8 hours.
- 4.() at the end of each trip.

51. Section 395.8(f)(2) Except for the name and main address of the carrier, all entries relating to the driver's record of duty status:

- 1.() must be printed in ink or typed.
- 2.() must be made by the carrier dispatcher.
- 3.() must be made in front of a witness.
- 4.() must be in the driver's handwriting.

52. Section 395.8(f)(5) and (h)(2) Which of the following is required to be put in a driver's record of duty status?

- 1.() time spent in a sleeper berth.
- 2.() total hours in each duty status.
- 3.() origin and destination.
- 4.() the name and make of the vehicle.

53. Section 395.11 If any emergency delays a run which could normally have been completed within hours of service limits, the driver:

- 1.() must still stop driving when the hours of service limits is reached.
- 2.() may drive for 1 extra hour.
- 3.() may drive for 2 extra hours.
- 4.() may finish the run without being in violation.

54. Section 395.13 A driver declared "Out of Service":

- 1.() must take a road test before driving again.
- 2.() must wait 72 hours before driving again.
- 3.() must appeal to the Director of the Bureau of Motor Carrier Safety to drive again.
- 4.() can drive again only after hours of service requirements are met.

55. Section 396.7 If a vehicle on a trip is in a condition likely to cause an accident or breakdown:

- 1.() the driver should report it at the end of the run so repairs can be made.

2.() the driver should drive at lower speeds for the rest of the run.

3.() the driver should stop immediately unless going on to the nearest repair shop is safer than stopping.

4.() the driver should change the route so as to get away from heavily traveled roads.

56. Section 396.9(c) If authorized Federal inspectors find a vehicle which is likely to cause an accident or breakdown:

1.() it will be reported to the carrier for repair as soon as the vehicle is not scheduled.

2.() it will be reported to the carrier for repair at the end of the trip.

3.() it will be marked with an "Out of Service Vehicle" sticker and not driven until repairs are made.

4.() the driver will be held responsible and declared "Out of Service."

57. Section 396.9(c)(4) If the driver personally makes repairs on an "Out of Service" vehicle:

1.() the work must be approved by a mechanic.

2.() the driver must complete and sign a "Certification of Repairman" form.

3.() the work must be approved by a supervisor.

4.() the work must be approved by a Federal inspector.

58. Section 397.3 Department of Transportation regulations covering the driving and parking of vehicles containing hazardous materials:

1.() replace State and local laws.

2.() prevent States and cities from having their own laws.

3.() must be obeyed even if State or local laws are less strict or disagree.

4.() should not be obeyed if State or local laws disagree.

59. Section 397.5(c) A vehicle which contains hazardous materials *other than* Class A or B explosives must be attended at all times:

1.() by the driver.

2.() by the driver except when involved in other driver duties.

3.() by the driver or a person chosen by the driver.

4.() by the driver or a police officer.

60. Section 397.5(d)(1) A vehicle containing Class A or B explosives or other hazardous materials on a trip is "attended":

1.() when the person in charge is anywhere within 100 feet of the vehicle.

2.() as long as the driver can see the vehicle from 200 feet away.

3.() when the person in charge is within 100 feet and has a clear view of the vehicle.

4.() when the person in charge is resting in the berth.

61. Section 397.7(a)(3) Except for short periods when operations make it necessary, trucks carrying Class A or B explosives cannot be parked any closer to bridges, tunnels, buildings or crowds of people than:

1.() 50 feet.

2.() 100 feet.

3.() 200 feet.

4.() 300 feet.

62. Section 397.13(a) Smoking or carrying a lighted cigarette, cigar, or pipe near a vehicle which contains explosives, oxidizing or flammable materials is not allowed:

1.() except in the closed cab of the vehicle.

2.() except when the vehicle is moving.

3.() except at a distance of 25 feet or more from the vehicle.

4.() except when approved by the carrier.

63. Section 397.15(b) When a vehicle containing hazardous materials is being fueled:

1.() no person may remain in the cab.

2.() a person must be in control of the fueling process at the point where the fuel tank is filled.

3.() the area within 50 feet of the vehicle must be cleared.

4.() the person who controls the fueling process must wear special clothes.

64. Section 397.17(a) If a vehicle carrying hazardous materials is equipped with dual tires on any axle, the driver must examine the tires:

1.() at all fueling stops only.

2.() only at the end of each day or tour of duty.

3.() at the beginning of each trip and each time the vehicle is parked.

4.() at the beginning of each trip only.

65. Section 397.17(c) If a driver of a vehicle carrying hazardous materials finds a tire which is overheated, the driver must:

1.() wait for the overheated tire to cool before going on.

2.() remove and replace the overheated tire, store it on the vehicle and drive on.

3.() remove the tire, place it a safe distance from the vehicle and not drive the vehicle until the cause of the overheating is fixed.

4.() drive slowly to the nearest repair shop and have the cause of the overheating fixed.

66. Section 177.823(a) When required, specified hazardous materials markings or signs must be placed:

1.() wherever they can be seen clearly.

2.() on the sides and rear of the vehicle.

3.() on the front, rear, and sides of the vehicle.

4.() on the front and rear bumpers of the vehicle.

SCORING KEY—WRITTEN EXAMINATION

Section	Answer
(1) 390.32	4
(2) 391.11(b)(1)	4
(3) 391.15(c)(2)(3)	4
(4) 391.21(b)(7)(8)(10)	4
(5) 391.27(a)(b)	1
(6) 391.33(a)(2)	2
(7) 391.41(b)(5)	1

SCORING KEY—WRITTEN EXAMINATION

Section	Answer
(8) 391.41(b)(7)	2
(9) 391.41(b)(8)	2
(10) 391.41(b)(9)(12)(13)	4
(11) 391.45(c)	3
(12) 392.2	2
(13) 392.2	4
(14) 392.5(a)(1)	1
(15) 392.7	2
(16) 392.8	1
(17) 392.9(a)(3)	2
(18) 392.9(a)	2
(19) 392.9(b)	4
(20) 392.10(a)	3
(21) 392.10(a)	3
(22) 392.13	1
(23) 392.15(a)	4
(24) 392.16	1
(25) 392.21	4
(26) 392.22(b)(1)	4
(27) 392.22(b)(1)(i)	4
(28) 392.22(b)(2)(iii)	3
(29) 392.22(b)(2)(v)	4
(30) 392.25	4
(31) 392.30(a)	3
(32) 392.32(a)(b)	1
(33) 392.32(a)	1
(34) 392.40	4
(35) 392.41	3
(36) 392.42	3
(37) 392.61	3
(38) 392.64	2
(39) 392.66	2
(40) 392.68	3
(41) 393.1(a)	4
(42) 393	3
(43) 393.18(a)(b)	2
(44) 393.41(a)	1
(45) 393.77(b)(6)	3
(46) 395.3(a)	3
(47) 395.3(a)	2
(48) 395.3(b)	3
(49) 395.7	2
(50) 395.8(f)(1)	1
(51) 395.8(f)(2)	4
(52) 395.8(f)(5) and (h)(2)	1
(53) 395.11	4
(54) 395.13	4
(55) 396.7(b)	3
(56) 396.9(c)	3
(57) 396.9(c)(4)	2
(58) 397.3	3
(59) 397.5(c)	2
(60) 397.5(d)(1)	3
(61) 397.7(a)(3)	4
(62) 397.13(a)	3
(63) 397.15(b)	2

SCORING KEY—WRITTEN EXAMINATION

Section	Answer
(64) 397.17(a)	3
(65) 397.17(c)	3
(66) 177.823(a)	3

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-150, filed 4/1/86.]

WAC 446-55-160 Equivalent of written examination. (1) Except as provided in WAC 446-55-165, in place of, and as equivalent to, the written examination required by WAC 446-55-140, a person who seeks to drive a motor vehicle may present, and a private carrier may accept, a valid certificate of written examination issued pursuant to WAC 446-55-140(7) within the preceding 3 years.

(2) If a private carrier accepts a certificate as equivalent to the written examination, it shall retain a legible copy of the certificate in its files as part of the driver's qualification file.

(3) A private carrier may require any person who presents a certificate as equivalent to the written examination to take the written examination prescribed in WAC 446-55-140 or participate in any other instructional process designed to acquaint him with the Code of Federal Regulations, chapter III, subchapter B, parts 390 through 397.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-160, filed 4/1/86.]

WAC 446-55-165 Exemptions for single vehicle owner drivers. WAC 446-55-080, 446-55-090, 446-55-100, 446-55-120, and 446-55-160 shall not apply to a single vehicle owner driver when operation as part of the owner's business.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-165, filed 4/1/86.]

WAC 446-55-170 Physical qualifications for drivers. (1) A person shall not drive a motor vehicle unless he is physically qualified to do so and, except as provided in WAC 446-55-270, has on his person the original, or a photographic copy, of a medical examiner's certificate that he is physically qualified to drive a motor vehicle.

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

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

(b) Has no impairment of:
(i) A hand or finger which interferes with prehension or power grasping; or

(ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a motor vehicle; or any other significant limb defect

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

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

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

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

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

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

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

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

(j) Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual

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

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

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

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

[Statutory Authority: RCW 46.73.010 and 46.73.020, 87-05-012 (Order 446-87-1), § 446-55-170, filed 2/11/87; 86-08-067 (Order 446-86-1), § 446-55-170, filed 4/1/86.]

WAC 446-55-180 Medical examination--Certificate of physical examination. (1) Except as provided in subsection (2) of this section, the medical examination shall be performed by a licensed doctor of medicine or osteopathy.

(2) A licensed optometrist may perform so much of the medical examination as pertains to visual acuity, field of vision, and the ability to recognize colors as specified in WAC 446-55-170 (2)(j).

(3) The medical examination shall be performed, and its results shall be recorded, substantially in accordance with the following instructions and examination form:

INSTRUCTIONS FOR PERFORMING AND RECORDING PHYSICAL EXAMINATIONS

The examining physician should review these instructions before performing the physical examination. Answer each question yes or no where appropriate.

The examining physician should be aware of the rigorous physical demands and mental and emotional responsibilities placed on the driver of a private motor vehicle. In the interest of public safety the examining physician is required to certify that the driver does not have any physical, mental, or organic defect of such a nature as to affect the driver's ability to operate safely a private motor vehicle.

General information. The purpose of this history and physical examination is to detect the presence of physical, mental, or organic defects of such a character and

extent as to affect the applicant's ability to operate a motor vehicle safely. The examination should be made carefully and at least as complete as indicated by the attached form. History of certain defects may be cause for rejection or indicate the need for making certain laboratory tests or a further, and more stringent, examination. Defects may be recorded which do not, because of their character or degree, indicate that certification of physical fitness should be denied. However, these defects should be discussed with the applicant and he should be advised to take the necessary steps to insure correction, particularly of those which, if neglected, might lead to a condition likely to affect his ability to drive safely.

General appearance and development. Note marked overweight. Note any posture defect, perceptible limp, tremor, or other defects that might be caused by alcoholism, thyroid intoxication, or other illnesses.

Head-eyes. When other than the Snellen chart is used, the results of such test must be expressed in values comparable to the standard Snellen test. If the applicant wears corrective lenses, these should be worn while applicant's visual acuity is being tested. If appropriate, indicate on the Medical Examiner's Certificate by checking the box, "Qualified only when wearing corrective lenses." In recording distance vision use 20 feet as normal. Report all vision as a fraction with 20 as numerator and the smallest type read at 20 feet as denominator. Note ptosis, discharge, visual fields, ocular muscle imbalance, color blindness, corneal scar, exophthalmos, or strabismus, uncorrected by corrective lenses. If the driver habitually wears contact lenses, or intends to do so while driving, there should be sufficient evidence to indicate that he has good tolerance and is well adapted to their use. The use of contact lenses should be noted on the record.

Ears. Note evidence of mastoid or middle ear disease, discharge, symptoms of aural vertigo, or Meniere's Syndrome. When recording hearing, record distance from patient at which a forced whispered voice can first be heard. If audiometer is used to test hearing, record decibel loss at 500 Hz, 1,000 Hz, and 2,000 Hz.

Throat. Note evidence of disease, irremediable deformities of the throat likely to interfere with eating or breathing, or any laryngeal condition which could interfere with the safe operation of a motor vehicle.

Thorax-heart. Stethoscopic examination is required. Note murmurs and arrhythmias, and any past or present history of cardiovascular disease, of a variety known to be accompanied by syncope, dyspnea, collapse, enlarged heart, or congestive heart failures. Electrocardiogram is required when findings so indicate.

Blood pressure. Record with either spring or mercury column type of sphygmomanometer. If the blood pressure is consistently above 160/90 mm. Hg., further tests may be necessary to determine whether the driver is qualified to operate a motor vehicle.

Lungs. If any lung disease is detected, state whether active or arrested; if arrested, your opinion as to how long it has been quiescent.

Gastrointestinal system. Note any diseases of the gastrointestinal system.

Abdomen. Note wounds, injuries, scars, or weakness of muscles of abdominal walls sufficient to interfere with normal function. Any hernia should be noted if present. State how long and if adequately contained by truss.

Abnormal masses. If present, note location, if tender, and whether or not applicant knows how long they have been present. If the diagnosis suggests that the condition might interfere with the control and safe operation of a motor vehicle, more stringent tests must be made before the applicant can be certified.

Tenderness. When noted, state where most pronounced, and suspected cause. If the diagnosis suggests that the condition might interfere with the control and safe operation of a motor vehicle, more stringent tests must be made before the applicant can be certified.

Genito-urinary. Urinalysis is required. Acute infections of the genito-urinary tract, as defined by local and state public health laws, indications from urinalysis of uncontrolled diabetes, symptomatic albumin-urea in the urine, or other findings indicative of health conditions likely to interfere with the control and safe operation of a motor vehicle, will disqualify an applicant from operating a motor vehicle.

Neurological. If positive Romberg is reported, indicate degrees of impairment. Pupillary reflexes should be reported for both light and accommodation. Knee jerks are to be reported absent only when not obtainable upon reinforcement and as increased when foot is actually lifted from the floor following a light blow on the patella, sensory vibratory and positional abnormalities should be noted.

Extremities. Carefully examine upper and lower extremities. Record the loss of impairment of a leg, foot, toe, arm, hand, or fingers. Note any and all deformities, the presence of atrophy, semiparalysis or paralysis, or varicose veins. If a hand or finger deformity exists, determine whether sufficient grasp is present to enable the driver to secure and maintain a grip on the steering wheel. If a leg deformity exists, determine whether sufficient mobility and strength exist to enable the driver to operate pedals properly. Particular attention should be given to and a record should be made of, any impairment or structural defect which may interfere with the driver's ability to operate a motor vehicle safely.

Spine. Note deformities, limitation of motion, or any history of pain, injuries, or disease, past or presently experienced in the cervical or lumbar spine region. If findings so dictate, radiologic and other examinations should be used to diagnose congenital or acquired defects; or spondylolisthesis and scoliosis.

Recto-genital studies. Diseases or conditions causing discomfort should be evaluated carefully to determine the extent to which the condition might be handicapping while lifting, pulling, or during periods of prolonged driving that might be necessary as part of the driver's duties.

Laboratory and other special findings. Urinalysis is required, as well as such other tests as the medical history or findings upon physical examination may indicate are necessary. A serological test is required if the applicant has a history of luetic infection or present physical

findings indicate the possibility of latent syphilis. Other studies deemed advisable may be ordered by the examining physician.

Diabetes. If mild diabetes is noted at the time of examination and it is stabilized by use of a hypoglycemic drug and a diet that can be obtained while the driver is on duty, it should not be considered disqualifying. However, the driver must remain under adequate medical supervision.

The physician must date and sign his findings upon completion of the examination.

EXAMINATION TO DETERMINE PHYSICAL CONDITION OF DRIVERS

Driver's name _____ New Certification
Address _____ Recertification
Social Security No. _____
Date of birth _____ Age _____

Table with 3 columns: Yes, No, Health History. Lists various medical conditions like Head or spinal injuries, Seizures, fits, convulsions, or fainting, etc.

If answer to any of the above is yes, explain:

PHYSICAL EXAMINATION

General appearance and development:

Good ___ Fair ___ Poor ___

Vision: For distance:

Right 20/ ___ Left 20/ ___

Without corrective lenses.

With corrective lenses if worn.

Evidence of disease or injury:

Right ___ Left ___

Color test _____

Horizontal field of vision:

Right ___° Left ___°

Hearing:

Right ear ___ Left ear ___

Disease or injury _____

Audiometric test (complete only if audiometer is used to test hearing) decibel loss as 500 Hz ___, at 1,000 Hz ___, at 2,000 Hz ___

Throat _____

Thorax:

Heart _____

If organic disease is present, is it fully compensated? _____

Blood pressure:

Systolic ___ Diastolic ___

Pulse: Before exercise _____

Immediately after exercise _____

Lungs _____

Abdomen:

Scars ___ Abnormal masses ___

Tenderness _____

Hernia: Yes ___ No ___

If so, where? _____

Is truss worn? _____

Gastrointestinal:

Ulceration or other disease:

Yes ___ No ___

Genito-urinary:

Scars _____

Urethral discharge _____

Reflexes:

Romberg _____

Pupillary ___ Light R ___ L ___

Accommodation Right ___ Left ___

Knee jerks:

Right:

Normal ___ Increased ___ Absent ___

Left:

Normal ___ Increased ___ Absent ___

Remarks _____

Extremities:

Upper _____

Lower _____

Spine _____

Laboratory and other special findings:

Urine: Spec. Gr. ___ Alb. ___

Sugar _____

Other laboratory data (Serology, etc.) _____

Radiological data _____

Electrocardiograph _____

General comments _____

(Date of examination)

(Address of examining doctor)

(Name of examining doctor (Print))

(Signature of examining doctor)

Note: This section to be completed only when visual test is conducted by a licensed ophthalmologist or optometrist.

(Date of examination)

(Address of ophthalmologist or optometrist)

(Name of ophthalmologist or optometrist (Print))

(Signature of ophthalmologist or optometrist)

If the medical examiner finds any physical condition listed in WAC 446-55-170 (2)(a) through (m) that is

likely to interfere with my ability to operate a motor vehicle safely, I consent to the department of licensing using information on this medical examination to arrive at a decision regarding my ability to safely operate a motor vehicle.

(Signature of driver)

(Date)

(4) If the medical examiner finds that the person he examined is physically qualified to drive a motor vehicle in accordance with WAC 446-55-170(2), he shall complete a certificate in the form prescribed in subsection (5) of this section and furnish one copy to the person who was examined and one copy to the private carrier that employs him.

(5) If the medical examiner finds any physical condition listed in WAC 446-55-170 (2)(a) through (m) that is likely to interfere with the drivers ability to operate or control a motor vehicle safely, it shall be the responsibility of the driver to immediately forward a copy of the drivers medical examination to the Drivers Services Medical Section, Department of Licensing, Highways-Licensing Building, Olympia, WA 98504. Upon receipt of the medical examination, the department of licensing will review and evaluate the driver's physical qualifications to operate the class of motor vehicle the person intends to drive.

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

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

(6) The medical examiner's certificate shall be in accordance with following form:

MEDICAL EXAMINER'S CERTIFICATE

I certify that I have examined _____ (driver's name (print)) in accordance with WAC 446-55-170 through 446-55-190 and with knowledge of his duties, I find him qualified under WAC 446-55-170(2).

Qualified only when wearing corrective lenses.

A completed examination form for this person is on file in my office at _____ (Address)

(Date of examination)

(Name of examining doctor (Print))

(Signature of examining doctor)

(Signature of driver)

(Address of driver)

If the driver is qualified only when wearing a hearing aid, the following statement must appear on the medical examiner's certificate: "Qualified only when wearing a hearing aid."

[Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-55-180, filed 2/11/87; 86-08-067 (Order 446-86-1), § 446-55-180, filed 4/1/86.]

WAC 446-55-190 Persons who must be medically examined and certified. Except as provided in WAC 446-55-270, the following persons must be medically examined and certified in accordance with WAC 446-55-180 as physically qualified to drive a motor vehicle:

(1) Any person who has not been medically examined and certified as physically qualified to drive a motor vehicle;

(2) Any driver who has not been medically examined and certified as qualified to drive a motor vehicle during the preceding 24 months; and

(3) Any driver whose ability to perform his normal duties has been impaired by a physical or mental injury or disease.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-190, filed 4/1/86.]

WAC 446-55-220 Driver qualification files. (1) Each private carrier shall maintain a driver qualification file for each driver it employs. A driver's qualification file may be combined with his personnel file.

(2) The qualification file for a driver who has been a regularly employed driver of the private carrier for a continuous three-year period prior to the effective date of this rule, must include:

(a) The medical examiner's certificate of his physical qualification to drive a motor vehicle or a legible photographic copy of the certificate;

(b) The note relating to the annual review of his driving record required by WAC 446-55-100;

(c) The list or certificate relating to violations of motor vehicle laws and ordinances required by WAC 446-55-110; and

(d) Any other matter which relates to the driver's qualifications or ability to drive a motor vehicle safely.

(3) The qualification file for a regularly employed driver who has not been regularly employed by the private carrier for a continuous three-year period prior to the effective date of this rule, must include:

(a) The documents specified in subsection (2) of this section;

(b) The driver's application for employment completed in accordance with WAC 446-55-080;

(c) The responses of state agencies and past employers to the private carrier's inquiries concerning the driver's driving record and employment pursuant to WAC 446-55-090;

(d) The certificate of driver's road test issued to the driver pursuant to WAC 446-55-120(5), or a copy of the license or certificate which the private carrier accepted as equivalent to the driver's road test pursuant to WAC 446-55-130; and

(e) The questions asked, the answers the driver gave, and the certificate of written examination issued to him pursuant to WAC 446-55-140, or a copy of a certificate which the private carrier accepted as equivalent to a written examination pursuant to WAC 446-55-160.

(4) The qualification file for an intermittent, casual, or occasional driver employed under the rules in WAC 446-55-250 must include:

(a) The medical examiner's certificate of his physical qualification to drive a motor vehicle or a legible photographic copy of the certificate;

(b) The certificate of driver's road test issued to the driver pursuant to WAC 446-55-120(5), or a copy of the license or certificate which the private carrier accepted as equivalent to the driver's road test pursuant to WAC 446-55-120;

(c) The questions asked, the answers the driver gave, and the certificate of written examination issued to him pursuant to WAC 446-55-140, or a copy of a certificate which the private carrier accepted as equivalent to a written examination pursuant to WAC 446-55-160; and

(d) The driver's name, his social security number, and the identification number, type, and issuing state of his motor vehicle operator's license.

(5) A using carrier's qualification file for a driver who is regularly employed by another private carrier, and who is employed by the using carrier in accordance with WAC 446-55-260, shall include a copy of a certificate, as prescribed by WAC 446-55-260 (1)(b), by the regularly employing carrier that the driver is fully qualified to drive a motor vehicle.

(6) Except as provided in subsections (7) and (8) of this section, each driver's qualification file shall be kept at the private carrier's principal place of business for as long as a driver is employed by that private carrier and for 3 years thereafter.

(7) Upon a written request to and with the approval of the chief of the Washington state patrol or his designee, the carrier may retain one or more of its drivers' qualification files at a regional or terminal office.

(8) The following records may be removed from a driver's qualification file after 3 years from date of execution:

(a) The medical examiner's certificate of his physical qualification to drive a motor vehicle or the photographic copy of the certificate as required by WAC 446-55-180(4);

(b) The note relating to the annual review of his driving record as required by WAC 446-55-100;

(c) The list or certificate relating to violations of motor vehicle laws and ordinance as required by WAC 446-55-110.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-55-220, filed 2/11/87; 86-08-067 (Order 446-86-1), § 446-55-220, filed 4/1/86.]

WAC 446-55-230 Drivers who were regularly employed for a continuous three-year period prior to the effective date of this rule. The provisions of WAC 446-55-080 (relating to applications for employment), 446-55-090 (relating to investigations and inquiries), 446-55-

120 (relating to road tests), and 446-55-140 (relating to written examinations) do not apply to a driver who has been a regularly employed driver (as defined in WAC 446-60-020(6)) of a private carrier for a continuous three-year period prior to the effective date of this rule, as long as he continues to be a regularly employed driver of that private carrier. Such a driver is qualified to drive a motor vehicle if he fulfills the requirements of WAC 446-55-060 (2)(a) through (i) (relating to qualifications of drivers).

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-230, filed 4/1/86.]

WAC 446-55-250 Intermittent, casual, or occasional drivers. (1) If a private carrier employs a person who is not a regularly employed driver (as defined in WAC 446-60-020(6)) to drive a motor vehicle for a single trip or on an intermittent, casual, or occasional basis, the private carrier shall comply with all requirements of this chapter, except that the private carrier need not:

(a) Require the person to furnish an application for employment in accordance with WAC 446-55-080;

(b) Make the investigations and inquiries specified in WAC 446-55-090 with respect to that person;

(c) Perform the annual review of the person's driving record required by WAC 446-55-100; or

(d) Require the person to furnish a record of violations or a certificate in accordance with WAC 446-55-110.

(2) Before a private carrier permits a person described in subsection (1) of this section to drive a motor vehicle, the private carrier must obtain his name, his social security number, and the identification number, type and issuing state of his motor vehicle operator's license. The private carrier must retain that information in its files for 3 years after the person's employment by the private carrier ceases.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-250, filed 4/1/86.]

WAC 446-55-260 Drivers furnished by other motor carriers. (1) A private carrier may employ a driver who is not a regularly employed driver of that private carrier without complying with the generally applicable driver qualification file requirements in this chapter, if:

(a) The driver is regularly employed by another motor carrier; and

(b) The motor carrier which regularly employs the driver certifies that the driver is fully qualified to drive a motor vehicle in a written statement which:

(i) Is signed and dated by an officer or authorized employee of the regularly employing carrier;

(ii) Contains the driver's name and signature;

(iii) Certifies that the driver has been employed regularly to drive, as defined in WAC 446-55-030(3) or Part 391.3(c) of the Code of Federal Regulations;

(iv) Certifies that the driver is fully qualified to drive a motor vehicle under WAC 446-55-010 through 446-55-280 or Part 391 of the Code of Federal Regulations;

(v) States the expiration date of the driver's medical examiner's certificate;

(vi) Specifies an expiration date for the certificate, which shall be not longer than 2 years or, if earlier, the expiration date of the driver's current medical examiner's certificate; and

(vii) After the effective date of this rule, is substantially in accordance with the following form:

(Name of driver)

(SS No.)

(Signature of driver)

I certify that the above-named driver as defined in 391.3(c) of the Code of Federal Regulations or WAC 446-55-030(3) is regularly driving a vehicle operated by the below-named carrier and is fully qualified under Part 391, Federal Motor Carrier Safety Regulations or WAC 446-55-010 through 446-55-280. His current medical examiner's certificate expires on _____
(Date)

This certificate expires:

(Date not later than expiration date of medical certificate)

Issued on _____ (date)
Issued by _____
(Name of carrier)

(Address)

(Signature)

(Title)

(2) A private carrier that obtains a certificate in accordance with subsection (1)(b) of this section shall retain a copy of that certificate in its files for 3 years.

(3) A carrier which certifies a driver's qualifications under this section shall:

(a) Be responsible for the accuracy of the certificate; and

(b) Recall the unexpired certificate carried by a driver immediately upon learning that the driver is no longer qualified under the rules in this chapter.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-260, filed 4/1/86.]

WAC 446-55-270 Drivers of articulated (combination) farm vehicles. The following rules in this chapter do not apply to a farm vehicle driver (as defined in WAC 446-55-030(4)) who drives an articulated motor vehicle:

(1) WAC 446-55-060 (2)(g), (i), (j), and (k) (relating to driver qualifications in general).

(2) WAC 446-55-080 through 446-55-110 (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of drivers).

(3) WAC 446-55-120 through 446-55-160 (relating to road tests and written examinations).

(4) So much of WAC 446-55-170 and 446-55-190 as require a driver to be medically examined and to have a medical examiner's certificate on his person.

(5) WAC 446-55-220 (relating to maintenance of files and records).

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-270, filed 4/1/86.]

WAC 446-55-280 Intrastate drivers of vehicles transporting combustible liquids. (1) The provisions of WAC 446-55-080 (relating to application for employment), 446-55-090 (relating to investigations and inquiries), 046-55-120 (relating to road test), and 446-55-140 (relating to written examination) do not apply to a driver who is otherwise qualified and was a regularly employed driver (as defined in WAC 446-60-020(6)) for a continuous three-year period prior to the effective date of this rule, and continues to be a regularly employed driver of that motor carrier and who drives a motor vehicle that is transporting combustible liquids (as defined in subchapter 173.115 of the Code of Federal Regulations).

(2) In addition to the exemptions provided in subsection (1) of this section, the provisions of WAC 446-55-170 (2)(j) (relating to minimum visual requirements), do not apply to a driver who was a regularly employed driver (as defined in WAC 446-60-020(6)) for a continuous three-year period prior to the effective date of this rule, and continues to be a regularly employed driver of that motor carrier and who drives a vehicle that:

- (a) Is a truck;
- (b) Is operated in retail delivery service;
- (c) Is transporting combustible liquids.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-280, filed 4/1/86.]

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

WAC	
446-60-005	Promulgation.
446-60-010	Compliance with, knowledge of, and interpretation of, the rules in this chapter.
446-60-015	General exemptions.
446-60-020	Definitions.
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446-60-060	Adverse driving conditions.
446-60-070	Emergency conditions.
446-60-080	Relief from regulations.
446-60-090	Drivers declared out of service.

WAC 446-60-005 Promulgation. By authority of RCW 46.73.010 and 46.73.020, the Washington state patrol adopts the following rules establishing standards for hours of service of drivers for private carriers as defined by RCW 81.80.010(6).

[Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-60-005, filed 2/11/87.]

WAC 446-60-010 Compliance with, knowledge of, and interpretation of, the rules in this chapter. General.

(1) Every private carrier and its officers, drivers, agents, employees, and representatives shall comply with the rules in this chapter, and every motor carrier shall require that its officers, drivers, agents, employees, and representatives be conversant with the rules in this chapter.

(2) The rules in this chapter shall be interpreted by the chief or his designee and when applicable shall be consistent with the federal interpretation of Part 395 of the Code of Federal Regulations as documented in the Federal Highway Administration, Department of Transportation, Federal Motor Carrier Safety Regulations, Interpretations.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-60-010, filed 4/1/86.]

WAC 446-60-015 General exemptions. (1) Passenger car operations. The rules in this chapter do not apply to a driver who drives only a motor vehicle that:

(a) Is a passenger-carrying vehicle with a seating capacity of 10 or less persons, including the driver;

(b) Is not transporting passengers for hire; and

(c) Is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with part 177.823 of the Code of Federal Regulations.

(2) Certain farm vehicle drivers. The rules in this chapter do not apply to a farm vehicle driver operating equipment that meets the requirements of RCW 46.16-.090, except a farm vehicle driver who drives an articulated (combination) motor vehicle that has a gross weight, including its load of more than 26,000 pounds. (For limited exemptions for farm vehicle drivers of heavier articulated vehicles see WAC 446-55-270.)

(3) Farm custom operations. The rules in this chapter do not apply to a driver who drives a motor vehicle that meets the requirements of RCW 46.16.090 controlled and operated by a person engaged in custom-harvesting operations, if the vehicle is used to:

(a) Transport farm machinery, supplies, or both, to or from a farm for custom-harvesting operations on a farm; or

(b) Transport custom-harvested crops to storage or market.

(4) Apiarian industries. The rules in this chapter do not apply to a driver who is operating a motor vehicle controlled and operated by a beekeeper engaged in the seasonal transportation of bees.

(5) Lightweight vehicle drivers. The rules in this chapter do not apply to a driver who drives only a lightweight vehicle as defined in WAC 446-55-030(5).

(6) Exempt carriers as defined in WAC 446-55-030(8).

(7) Licensed tow truck drivers. The rules in this chapter do not apply to a driver who drives a tow truck

for a towing firm that possesses a valid business and tow truck registration(s) as per the requirements of chapter 46.55 RCW.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-60-015, filed 2/11/87.]

WAC 446-60-020 Definitions. As used in this chapter, the following words and terms are construed to mean:

(1) A "private carrier" is a person who transports by his own motor vehicle, with or without compensation therefor, property which is owned or is being bought or sold by such person, or property of which such person is the seller, purchaser, lessee, or bailee where such transportation is incidental to and in furtherance of some other primary business conducted by such person in good faith. The term "private carrier" includes a private carrier and the agents, officers, representatives, and employees of a private carrier who are responsible for the hiring, supervision, training, assignment, or dispatching of drivers.

(2) A private carrier "employs" a person as a driver within the meaning of this chapter whenever it requires or permits that person to drive a motor vehicle (whether or not the vehicle is owned by the private carrier) in furtherance of the business of the private carrier.

(3) "Common carrier" means any person who undertakes to transport property for the general public by motor vehicle for compensation, whether over regular or irregular routes, or regular or irregular schedules, including motor vehicle operations of other carriers by rail or water and of express or forwarding companies.

(4) "Contract carrier" shall include all motor vehicle operators not included under the terms "common carrier" and "private carrier" as herein defined in subsections (1) and (3) of this section, and further shall include any person who under special and individual contracts or agreements transports property by motor vehicle for compensation.

(5) "Exempt carrier" means any person operating a vehicle exempted from certain provisions of this chapter under RCW 81.80.040.

(6) "Motor carrier" means and includes "common carrier," "contract carrier," "private carrier," and "exempt carrier" as herein defined.

(7) The term "chief" means the chief of the Washington state patrol.

(8) On-duty time. All time from the time a driver begins to work or is required to be in readiness to work until the time he is relieved from work and all responsibility for performing work. The term "on-duty" time shall include:

(a) All time at a carrier or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the private carrier;

(b) All time inspecting, servicing, or conditioning any motor vehicle at any time;

(c) All driving time as defined in subsection (9) of this section;

(d) All time, other than driving time, in or upon any motor vehicle except time spent resting in a sleeper berth as defined in subsection (14) of this section;

(e) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;

(f) All time spent performing the driver requirements relating to accidents;

(g) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle;

(h) Performing any other work in the capacity of, or in the employ or service of, a private motor carrier.

(9) Driving time. The terms "drive" and "driving time" shall include all time spent at the driving controls of a motor vehicle in operation.

(10) Seven consecutive days. The term "7 consecutive days" means the period of 7 consecutive days beginning on any day at the time designated by the private carrier for a 24-hour period.

(11) Eight consecutive days. The term "8 consecutive days" means the period of 8 consecutive days beginning on any day at the time designated by the private carrier for a 24-hour period.

(12) Twenty-four hour period. The term "24-hour period" means any 24 consecutive hour period beginning at the time designated by the private carrier for the terminal from which the driver is normally dispatched.

(13) Regularly employed driver. The term "regularly employed driver" means a driver who in any period of 7 consecutive days is employed or used as a driver solely by a single motor carrier.

(14) Sleeper berth. The term "sleeper berth" means a berth conforming to the requirements of 49 CFR part 393.76.

(15) Driver-salesman. The term "driver-salesman" means any employee who is employed solely as such by a private carrier of property by motor vehicle, who is engaged both in selling goods, services, or the use of goods, and in delivering by motor vehicle the goods sold or provided or upon which the services are performed, who does so entirely within a radius of 100 miles of the point at which he reports for duty, who devotes not more than 50 percent of his hours on duty to driving time. The term "selling goods" for purposes of this subsection shall include in all cases solicitation or obtaining of reorders or new accounts, and may also include other selling or merchandising activities designed to retain the customer or to increase the sale of goods or services, in addition to solicitation or obtaining of reorders or new accounts.

(16) Multiple stops. All stops made in any one village, town, or city may be computed as one.

(17) Principal place of business or main office address. The principal place of business or main office address is the geographic location designated by the private carrier where the records required to be maintained by this chapter will be made available for inspection.

(18) Providers of essential services shall include fire protection services, medical assistance services, sewer

services, and public/private service companies regulated under Title 80 RCW.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-60-020, filed 2/11/87; 86-08-067 (Order 446-86-1), § 446-60-020, filed 4/1/86.]

WAC 446-60-030 Maximum driving and on-duty time. (1) Except as provided in subsections (3) and (4) of this section and in WAC 446-60-060, no private carrier shall permit or require any driver used by it to drive nor shall any such driver drive:

(a) More than 10 hours following 8 consecutive hours off duty; or

(b) For any period after having been on duty 15 hours following 8 consecutive hours off duty;

(c) Exemption: Drivers using sleeper berth equipment as defined in WAC 446-60-020(6), or who are off duty at a natural gas or oil well location, may cumulate the required 8 consecutive hours off duty resting in a sleeper berth in two separate periods totaling 8 hours, neither period to be less than 2 hours, or resting while off duty in other sleeping accommodations at a natural gas or oil well location.

(2) Except as provided in subsection (5) of this section, no private carrier shall permit or require any driver used by it to be on duty, nor shall any such driver be on duty, more than 60 hours in any 7 consecutive days as defined in WAC 446-60-020(3) regardless of the number of motor carriers using the driver's services: *Provided*, That carriers operating vehicles every day in the week may permit drivers to remain on duty for a total of not more than 70 hours in any period of 8 consecutive days: *Provided further*, That the limitations of this subsection shall not apply with respect to any driver-salesman whose total driving time does not exceed 40 hours in any 7 consecutive days: *And provided further*, That private carriers operating log trucks, dump trucks and those persons engaged in agricultural pursuits, as defined in RCW 46.04.182, will be permitted to drive a total of 12 hours in any given 24-hour period, as designated by the owner, inclusive of on-duty time: *And provided further*, That the total driving time and on-duty time will not exceed 90 hours in any 8 consecutive days.

(3) The provisions of subsection (1) of this section shall not apply with respect to drivers used wholly in driving motor vehicles having not more than 2 axles and whose gross weight does not exceed 10,000 pounds, unless such vehicle is used to transport passengers or explosives or other dangerous articles of such type and in such quantity as to require the vehicle to be specifically marked or placarded under the Hazardous Materials Regulations, subchapter 177.823 of the Code of Federal Regulations, or when operated without cargo under conditions which require the vehicle to be so marked or placarded under the cited regulations: *Provided*, That this section shall not apply with respect to drivers of motor vehicles engaged solely in making deliveries for retail stores during the period from December 10 to December 25, both inclusive, of each year.

(4) In the instance of drivers of motor vehicles used exclusively in the transportation of oil field equipment,

including the stringing and picking up of pipe used in pipelines, and servicing of the field operations of the natural gas and oil industry, any period of 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-60-030, filed 4/1/86.]

WAC 446-60-040 Travel time. When a driver at the direction of a private carrier is traveling, but not driving or assuming any other responsibility to the carrier, such time shall be counted as on-duty time unless the driver is afforded at least 8 consecutive hours off duty when arriving at destination, in which case he shall be considered off duty for the entire period.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-60-040, filed 4/1/86.]

WAC 446-60-050 Driver's record of duty status.

(1) Every private carrier shall require every driver used by the private carrier to record his/her duty status, in duplicate, for each 24-hour period. Every driver who operates a motor vehicle shall record his/her duty status, in duplicate, for each 24-hour period. The duty status time shall be recorded on a specified grid, as shown in subsection (7) of this section. The grid and the requirements of subsection (4) of this section may be combined with any company forms.

(2) The duty status shall be recorded as follows:

- (a) "Off duty" or "OFF";
- (b) "Sleeper berth" or "SB" (only if a sleeper berth used);
- (c) "Driving" or "D";
- (d) "On-duty not driving" or "ON."

(3) For each change of duty status (e.g., the place of reporting for work, starting to drive, on-duty not driving and where released from work), the name of the city, town, or village, with state abbreviation, shall be recorded.

Note: If a change of duty status occurs at a location other than a city, town, or village, show one of the following: (a) The highway number and nearest milepost followed by the name of the nearest city, town, or village and state abbreviation, (b) the highway number and the name of the service plaza followed by the name of the nearest city, town, or village and state abbreviation, or (c) the highway numbers of the nearest two intersecting roadways followed by the name of the nearest city, town, or village and state abbreviation.

(4) The following information must be included on the form in addition to the grid:

- (a) Date;
- (b) Total miles driving today;
- (c) Truck or tractor number;
- (d) Name of carrier;
- (e) Driver's signature/certification;
- (f) 24-hour period starting time (e.g. midnight, 9:00 a.m., noon, 3:00 p.m.);
- (g) Main office address;
- (h) Remarks;
- (i) Total mileage today;
- (j) Name of co-driver;

- (k) Home terminal address;
- (l) Total hours (far right edge of grid);
- (m) Shipping document number(s), or name of shipper and commodity;
- (n) Origin; and
- (o) Destination or turnaround points.

(5) Failure to complete the record of duty activities, failure to preserve a record of such duty activities, or making of false reports in connection with such duty activities as prescribed herein shall make the driver and/or the carrier liable to prosecution.

(6) The driver's activities shall be recorded in accordance with the following provisions:

(a) Entries to be current. Drivers shall keep their record of duty status current to the time shown for the last change of duty status.

(b) Entries made by driver only. All entries relating to driver's duty status must be legible and in the driver's own handwriting.

(c) Date. The month, day, and year for the beginning of each 24-hour period shall be shown on the form containing the driver's duty status record.

(d) Total mileage driven. Total mileage driven during the 24-hour period shall be recorded on the form containing the driver's duty status record.

(e) Vehicle identification. The carrier's vehicle number or state and license number of each truck, truck tractor, and trailer operated during that 24-hour period shall be shown on the form containing the driver's duty status record.

(f) Name of carrier. The name(s) of the private carrier or other motor carrier(s) for which work is performed shall be shown on the form containing the driver's duty status record. When work is performed for more than one motor carrier during the same 24-hour period, the beginning and finishing time, showing a.m. or p.m., worked for each carrier shall be shown after each carrier name. Drivers of leased vehicles shall show the name of the motor carrier performing the transportation.

(g) Signature/certification. The driver shall certify to the correctness of all entries by signing the form containing the driver's duty status record with his/her legal name or name of record. The driver's signature certifies that all entries required by this section made by the driver are true and correct.

(h) Time base to be used.

(i) The driver's duty status record shall be prepared, maintained, and submitted using the time standard in effect at the driver's home terminal, for a 24-hour period beginning with the time specified by the private carrier for that driver's home terminal.

(ii) The term "7 or 8 consecutive days" means the 7 or 8 consecutive 24-hour periods as designated by the private carrier for the driver's home terminal.

(iii) The 24-hour period starting time must be identified on the driver's duty status record. One-hour increments must appear on the graph, be identified, and preprinted. The words "midnight" and "noon" must appear above or beside the appropriate one-hour increment.

(i) Main office address. The private carrier's main office address shall be shown on the form containing the driver's duty status record.

(j) Recording days off duty. Two or more consecutive 24-hour periods off duty may be recorded on one duty status record.

(k) Total mileage today. Total mileage today shall be that mileage traveled while driving, on duty not driving, and resting in a sleeper berth, as defined in WAC 446-60-020(7) during the day covered by the record of duty status.

(l) Home terminal. The driver's home terminal address shown shall be that at which the driver normally reports for duty.

(m) Total hours. The total hours in each duty status: Off duty other than in a sleeper berth; off duty in a sleeper berth; driving, and on duty not driving, shall be entered to the right of the grid, the total of such entries shall equal 24 hours.

(n) Shipping document number(s), or name of shipper and commodity shall be shown on the driver's record of duty status.

(o) Origin and destination. The name of the place where a trip begins and the final destination or farthest turn-around point shall be shown. If the trip requires more than 1 calendar day, the record of duty status for each day shall show the original and final destination. If a driver departs from and returns to the same place on any day, the destination shall be indicated by entering the farthest point reached followed by the words "and return."

(7) Graph grid. The following graph grid must be incorporated into a private carrier recordkeeping system which must also contain the information required in subsection (4) of this section.

Graph Grid - Horizontally

OFF DUTY																								
SLEEPER BERTH																								
DRIVING																								
ON DUTY (Not Driving)																								
REMARKS																								

Graph Grid - Vertically

REMARKS	OFF DUTY	
	SLEEPER BERTH	
	DRIVING	
	ON DUTY (Not Driving)	

(8) Graph grid preparation. The graph grid may be used horizontally or vertically and shall be completed as follows:

(a) Off duty. Except for time spent resting in a sleeper berth, a continuous line shall be drawn between the appropriate time markers to record the period(s) of time when the driver is not on duty, is not required to be in readiness to work, or is not under any responsibility for performing work.

(b) Sleeper berth. A continuous line shall be drawn between the appropriate time markers to record the period(s) of time off duty resting in a sleeper berth, as defined in WAC 446-60-020(14). (If a nonsleeper berth operation, sleeper berth need not be shown on the grid.)

(c) Driving. A continuous line shall be drawn between the appropriate time markers to record the period(s) of time on duty driving a motor vehicle, as defined in WAC 446-60-020(9).

(d) On duty not driving. A continuous line shall be drawn between the appropriate time markers to record the period(s) of time on duty not driving specified in WAC 446-60-020(8).

(e) Location—Remarks. The name of the city, town, or village, with state abbreviation where each change of duty status occurs shall be recorded.

Note: If a change of duty status occurs at a location other than a city, town, or village, show one of the following: (i) The highway number and nearest milepost followed by the name of the

nearest city, town, or village and state abbreviation, (ii) the highway number and the name of the service plaza followed by the name of the nearest city, town, or village and state abbreviation, or (iii) the highway numbers of the nearest two intersecting roadways followed by the name of the nearest city, town, or village and state abbreviation.

(9) Filing driver's record of duty status. The driver shall submit or forward by mail the original driver's record of duty status to the regular employing private carrier within 13 days following the completion of the form.

(10) Drivers used by more than one motor carrier. (a) When the services of a driver are used by more than one motor carrier during any 24-hour period in effect at the driver's home terminal, the driver shall submit a copy of the record of duty status to each motor carrier. The record shall include:

- (i) All duty time for the entire 24-hour period;
- (ii) The name of each motor carrier served by the driver during that period; and
- (iii) The beginning and finishing time, including a.m. or p.m., worked for each carrier.

(b) Private carriers, when using a driver for the first time or intermittently, shall obtain from the driver a signed statement giving the total time on duty during the immediately preceding 7 days and the time at which the driver was last relieved from duty prior to beginning work for the private carriers.

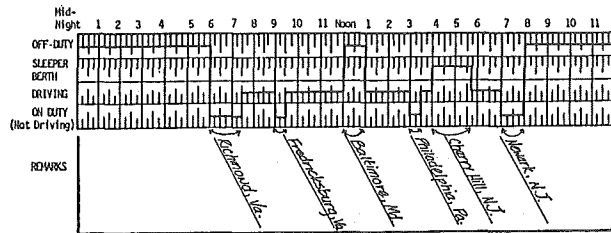
(11) Retention of driver's record of duty status. (a) Driver's records of duty status for each calendar month may be retained at the driver's home terminal until the 20th day of the succeeding calendar month. Such records shall then be forwarded to the private carrier's principal place of business where they shall be retained with all supporting documents for a period of 6 months from date of receipt.

(b) Exception. Upon written request to, and with the approval of, the chief of the Washington state patrol or his designee, a private carrier may forward and maintain such records at a regional or terminal office. The address to mail the written request to is: Chief of the Washington State Patrol, State Patrol Headquarters, General Administration Building, Olympia, WA 98504.

(c) The driver shall retain a copy of each record of duty status for the previous 7 consecutive days which shall be in his/her possession and available for inspection while on duty.

Note: Driver's record of duty status. The graph grid, when incorporated as part of any form used by a private carrier, must be of sufficient size to be legible.

The following executed specimen grid illustrates how a driver's duty status should be recorded for a trip from Richmond, Virginia, to Newark, New Jersey. The grid reflects the midnight to midnight 24-hour period.



Graph Grid (Midnight to Midnight Operation)

The driver in this instance reported for duty at the motor carrier's terminal. The driver reported for work at 6 a.m., helped load, checked with dispatch, made a pretrip inspection, and performed other duties until 7:30 a.m. when the driver began driving. At 9 a.m. the driver had a minor accident in Fredericksburg, Virginia, and spent one-half hour handling details with the local police. The driver arrived at the company's Baltimore, Maryland, terminal at noon and went to lunch while minor repairs were made to the tractor. At 1 p.m. the driver resumed the trip and made a delivery in Philadelphia, Pennsylvania, between 3 p.m. and 3:30 p.m. at which time the driver started driving again. Upon arrival at Cherry Hill, New Jersey, at 4 p.m., the driver entered the sleeper berth for a rest break until 5:45 p.m. at which time the driver resumed driving again. At 7 p.m. the driver arrived at the company's terminal in Newark, New Jersey. Between 7 p.m. and 8 p.m. the driver prepared the required paperwork including completing the driver's record of duty status, vehicle condition report, insurance report for the Fredericksburg, Virginia accident, checked for the next day's dispatch, etc. At 8 p.m., the driver went off duty.

(12) Exemptions.

(a) 100-air mile radius driver. A driver is exempt from the requirements of this section if:

- (i) * * *
- (ii) The driver, except a driver salesperson, returns to the work reporting location and is released from work within 12 hours;
- (iii) At least 8 consecutive hours off duty separate each 12 hours on duty;
- (iv) The driver had 8 consecutive hours off duty prior to reporting for duty;
- (v) The driver does not exceed 10 hours maximum driving time following 8 consecutive hours off duty;
- (vi) The private carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:

- (A) The time the driver reports for duty each day;
- (B) The total number of hours the driver is on duty each day;
- (C) The time the driver is released from duty each day; and

(D) The total time for the preceding 7 days in accordance with subsection (10)(b) of this section for drivers used for the first time or intermittently.

(b) Drivers of lightweight vehicles. The rules in this section do not apply to a driver of a lightweight vehicle as defined in subchapter 390.17 of the Code of Federal Regulations.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-60-050, filed 4/1/86.]

WAC 446-60-060 Adverse driving conditions. (1) A driver who encounters adverse driving conditions (as defined in subsection (2) of this section) and cannot, because of those conditions, safely complete the run within the 10-hour maximum driving time permitted by WAC 446-60-030(1) may drive and be permitted or required to drive a motor vehicle for not more than 2 additional hours in order to complete that run or to reach a place offering safety for vehicle occupants and security for the vehicle and its cargo. However, that driver may not drive or be permitted or required to drive:

(a) For more than 12 hours in the aggregate following 8 consecutive hours off duty; or

(b) After he has been on duty 15 hours following 8 consecutive hours off duty.

(2) "Adverse driving conditions" means snow, sleet, fog, other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions, none of which were apparent on the basis of information known to the person dispatching the run at the time it was begun.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-60-060, filed 4/1/86.]

WAC 446-60-070 Emergency conditions. In case of any emergency, a driver may complete his run without being in violation of the provisions of these regulations, if such run could reasonably have been completed without such violation.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-60-070, filed 4/1/86.]

WAC 446-60-080 Relief from regulations. These regulations shall not apply to any private carrier subject thereto when transporting passengers or property to or from any section of the country with the object of providing relief in case of earthquake, flood, fire, famine, drought, epidemic, pestilence, or other calamitous visitation or disaster, or providers of essential services while providing or restoring those services during an emergency or outage condition.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-60-080, filed 2/11/87; 86-08-067 (Order 446-86-1), § 446-60-080, filed 4/1/86.]

WAC 446-60-090 Drivers declared out of service. (1) Authority to declare drivers out of service. All commissioned officers and commercial vehicle enforcement officers of the Washington state patrol are authorized by the chief of the Washington state patrol to declare a

driver out of service and to notify the private carrier of that declaration, upon finding at the time and place of examination that the driver has violated the out of service criteria as set forth in subsection (2) of this section.

(2) Out of service criteria.

(a) No driver shall drive after being on duty in excess of the maximum periods permitted by this chapter.

(b) No driver required to maintain a record of duty status under WAC 446-60-050 shall fail to have a record of duty status current on the day of examination and for the prior 7 consecutive days.

(c) Exception. A driver failing only to have possession of a record of duty status current on the day of examination and the prior day, but has completed records of duty status up to that time (previous 6 days), will be given the opportunity to make the duty status record current.

(3) Responsibilities of private carriers. No private carrier shall:

(a) Require or permit a driver who has been declared out of service to operate a motor vehicle until that driver may lawfully do so under the rules in this chapter.

(b) Require a driver who has been declared out of service for failure to prepare a record of duty status to operate a motor vehicle until that driver has been off duty for 8 consecutive hours and is in compliance with this chapter. The consecutive 8-hour off-duty period may include sleeper berth time.

(4) Responsibilities of the driver.

(a) No driver who has been declared out of service shall operate a motor vehicle until that driver may lawfully do so under the rules of this chapter.

(b) No driver who has been declared out of service, for failing to prepare a record of duty status, shall operate a motor vehicle until the driver has been off duty for 8 consecutive hours and is in compliance with this chapter.

(c) A driver to whom a form has been tendered declaring the driver out of service shall within 24 hours thereafter deliver or mail the copy to a person or place designated by the private carrier to receive it.

(d) This section does not alter the hazardous materials requirements prescribed in subchapter 397.5 of the Code of Federal Regulations pertaining to attendance and surveillance of motor vehicles.

[Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-60-090, filed 4/1/86.]

Chapter 446-70 WAC AFFIRMATIVE ACTION

WAC

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

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

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

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

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

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

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

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

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

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

Protected groups: Means Blacks, Asian/Pacific Islanders, Hispanics, Native Americans, women, persons

in the protected age class, qualified persons with physical or mental handicaps meeting the established standards for law enforcement, Vietnam-era veterans, and disabled veterans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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