

# Washington State Register

April 18, 2001

OLYMPIA, WASHINGTON

ISSUE 01-08



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## CITATION

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

## PUBLIC INSPECTION OF DOCUMENTS

A copy of each document filed with the code reviser's office, pursuant to chapter 34.05 RCW, is available for public inspection during normal office hours. The code reviser's office is located on the ground floor of the Legislative Building in Olympia. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. Telephone inquiries concerning material in the Register or the Washington Administrative Code (WAC) may be made by calling (360) 786-6697.

## REPUBLICATION OF OFFICIAL DOCUMENTS

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## CERTIFICATE

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

DENNIS W. COOPER  
Code Reviser

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## STATE MAXIMUM INTEREST RATE

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

The maximum allowable interest rate applicable for the month of April 2001 pursuant to RCW 19.52.020 is twelve point zero percent (12.00%).

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

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# WASHINGTON STATE REGISTER

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### WASHINGTON STATE REGISTER

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

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# STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

## 1. ARRANGEMENT OF THE REGISTER

The Register is arranged in the following eight sections:

- (a) **PREPROPOSAL**-includes the Preproposal Statement of Inquiry that will be used to solicit public comments on a general area of proposed rule making before the agency files a formal notice.
- (b) **EXPEDITED REPEAL**-includes the Preproposal Statement of Inquiry that lists rules being repealed using the expedited repeal process. Expedited repeals are not consistently filed and may not appear in every issue of the Register.
- (c) **PROPOSED**-includes the full text of formal proposals, continuances, supplemental notices, and withdrawals.
- (d) **PERMANENT**-includes the full text of permanently adopted rules.
- (e) **EMERGENCY**-includes the full text of emergency rules and rescissions.
- (f) **MISCELLANEOUS**-includes notice of public meetings of state agencies, rules coordinator notifications, summaries of attorney general opinions, executive orders and emergency declarations of the governor, rules of the state Supreme Court, and other miscellaneous documents filed with the code reviser's office under RCW 34.08.020 and 42.30.075.
- (g) **TABLE**-includes a cumulative table of the WAC sections that are affected in the current year.
- (h) **INDEX**-includes a cumulative index of Register Issues 01 through 24.

Documents are arranged within each section of the Register according to the order in which they are filed in the code reviser's office during the pertinent filing period. Each filing is listed under the agency name and then describes the subject matter, type of filing and the WSR number. The three part number in the heading distinctively identifies each document, and the last part of the number indicates the filing sequence with a section's material.

## 2. PRINTING STYLE—INDICATION OF NEW OR DELETED MATERIAL

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

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

## 3. MISCELLANEOUS MATERIAL NOT FILED UNDER THE ADMINISTRATIVE PROCEDURE ACT

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

## 4. EFFECTIVE DATE OF RULES

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

## 5. EDITORIAL CORRECTIONS

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

2000 - 2001

DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

Issue Number	Closing Dates <sup>1</sup>			Distribution Date	First Agency Hearing Date <sup>3</sup>	Expedited Adoption <sup>4</sup>
	Non-OTS and 30 p. or more	Non-OTS and 11 to 29 p.	OTS <sup>2</sup> or 10 p. max. Non-OTS	Count 20 days from -	For hearing on or after	First Agency Adoption Date
For Inclusion in -	File no later than 12:00 noon -					
00 - 13	May 24, 00	Jun 7, 00	Jun 21, 00	Jul 5, 00	Jul 25, 00	Aug 22, 00
00 - 14	Jun 7, 00	Jun 21, 00	Jul 5, 00	Jul 19, 00	Aug 8, 00	Sep 5, 00
00 - 15	Jun 21, 00	Jul 5, 00	Jul 19, 00	Aug 2, 00	Aug 22, 00	Sep 19, 00
00 - 16	Jul 5, 00	Jul 19, 00	Aug 2, 00	Aug 16, 00	Sep 5, 00	Oct 3, 00
00 - 17	Jul 26, 00	Aug 9, 00	Aug 23, 00	Sep 6, 00	Sep 26, 00	Oct 24, 00
00 - 18	Aug 9, 00	Aug 23, 00	Sep 6, 00	Sep 20, 00	Oct 10, 00	Nov 7, 00
00 - 19	Aug 23, 00	Sep 6, 00	Sep 20, 00	Oct 4, 00	Oct 24, 00	Nov 21, 00
00 - 20	Sep 6, 00	Sep 20, 00	Oct 4, 00	Oct 18, 00	Nov 7, 00	Dec 5, 00
00 - 21	Sep 20, 00	Oct 4, 00	Oct 18, 00	Nov 1, 00	Nov 21, 00	Dec 19, 00
00 - 22	Oct 4, 00	Oct 18, 00	Nov 1, 00	Nov 15, 00	Dec 5, 00	N/A
00 - 23	Oct 25, 00	Nov 8, 00	Nov 22, 00	Dec 6, 00	Dec 26, 00	N/A
00 - 24	Nov 8, 00	Nov 22, 00	Dec 6, 00	Dec 20, 00	Jan 9, 01	N/A
01 - 01	Nov 22, 00	Dec 6, 00	Dec 20, 00	Jan 3, 01	Jan 23, 01	N/A
01 - 02	Dec 6, 00	Dec 20, 00	Jan 3, 01	Jan 17, 01	Feb 6, 01	N/A
01 - 03	Dec 27, 00	Jan 10, 01	Jan 24, 01	Feb 7, 01	Feb 27, 01	N/A
01 - 04	Jan 10, 01	Jan 24, 01	Feb 7, 01	Feb 21, 01	Mar 13, 01	N/A
01 - 05	Jan 24, 01	Feb 7, 01	Feb 21, 01	Mar 7, 01	Mar 27, 01	N/A
01 - 06	Feb 7, 01	Feb 21, 01	Mar 7, 01	Mar 21, 01	Apr 10, 01	N/A
01 - 07	Feb 21, 01	Mar 7, 01	Mar 21, 01	Apr 4, 01	Apr 24, 01	N/A
01 - 08	Mar 7, 01	Mar 21, 01	Apr 4, 01	Apr 18, 01	May 8, 01	N/A
01 - 09	Mar 21, 01	Apr 4, 01	Apr 18, 01	May 2, 01	May 22, 01	N/A
01 - 10	Apr 4, 01	Apr 18, 01	May 2, 01	May 16, 01	Jun 5, 01	N/A
01 - 11	Apr 25, 01	May 9, 01	May 23, 01	Jun 6, 01	Jun 26, 01	N/A
01 - 12	May 9, 01	May 23, 01	Jun 6, 01	Jun 20, 01	Jul 10, 01	N/A
01 - 13	May 23, 01	Jun 6, 01	Jun 20, 01	Jul 5, 01	Jul 25, 01	N/A
01 - 14	Jun 7, 01	Jun 21, 01	Jul 5, 01	Jul 19, 01	Aug 8, 01	N/A
01 - 15	Jun 20, 01	Jul 5, 01	Jul 18, 01	Aug 1, 01	Aug 21, 01	N/A
01 - 16	Jul 5, 01	Jul 18, 01	Aug 1, 01	Aug 15, 01	Sep 4, 01	N/A
01 - 17	Jul 25, 01	Aug 8, 01	Aug 22, 01	Sep 5, 01	Sep 25, 01	N/A
01 - 18	Aug 8, 01	Aug 22, 01	Sep 5, 01	Sep 19, 01	Oct 9, 01	N/A
01 - 19	Aug 22, 01	Sep 5, 01	Sep 19, 01	Oct 3, 01	Oct 23, 01	N/A
01 - 20	Sep 5, 01	Sep 19, 01	Oct 3, 01	Oct 17, 01	Nov 6, 01	N/A
01 - 21	Sep 26, 01	Oct 10, 01	Oct 24, 01	Nov 7, 01	Nov 27, 01	N/A
01 - 22	Oct 10, 01	Oct 24, 01	Nov 7, 01	Nov 21, 01	Dec 11, 01	N/A
01 - 23	Oct 24, 01	Nov 7, 01	Nov 21, 01	Dec 5, 01	Dec 25, 01	N/A
01 - 24	Nov 7, 01	Nov 21, 01	Dec 5, 01	Dec 19, 01	Jan 8, 02	N/A

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

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

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

<sup>4</sup> A minimum of forty-five days is required between the distribution date of the Register giving notice of the expedited adoption and the agency adoption date. No hearing is required, but the public may file written objections. See RCW 34.05.230 and 1.12.040.

## **REGULATORY FAIRNESS ACT**

The Regulatory Fairness Act, chapter 19.85 RCW, was enacted in 1982 to minimize the impact of state regulations on small business. Amended in 1994, the act requires a small business economic impact analysis of proposed rules that impose more than a minor cost on twenty percent of the businesses in all industries, or ten percent of the businesses in any one industry. The Regulatory Fairness Act defines industry as businesses within a four digit SIC classification, and for the purpose of this act, small business is defined by RCW 19.85.020 as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees."

### **Small Business Economic Impact Statements (SBEIS)**

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

### **Mitigation**

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

### **When is an SBEIS Required?**

When:

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

### **When is an SBEIS Not Required?**

When:

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

There is less than minor economic impact on business;

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

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

The rule is pure restatement of state statute.



**WSR 01-08-001****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Filed March 21, 2001, 2:42 p.m.]

Subject of Possible Rule Making: Commercial fishing gear design.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 77.12.047.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The Pacific Fisheries Management Council has set an extremely small quota for canary rockfish. These rockfish are taken as by-catch in the coastal shrimp trawl fishery. In order to allow the shrimp trawl fishery to continue, gear rules need to be amended to require fin fish excluder devices.

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

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Lew Atkins, Fish Program, Assistant Director, 600 Capitol Way, Olympia, WA 98501-1091, phone (360) 902-2651. Contact by June 19, 2001, expected proposal filing June 20, 2001.

March 21, 2001  
Evan Jacoby  
Rules Coordinator

**WSR 01-08-027****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(Medical Assistance Administration)

[Filed March 28, 2001, 4:10 p.m.]

Subject of Possible Rule Making: WAC 388-478-0065, 388-478-0075, and 388-478-0085.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.08.090, 74.04.057, 74.04.050, and 74.09.530.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The proposed amendment is necessary to adopt new federal poverty level (FPL) standards effective April 1, 2001, and to correct language in WAC 388-478-0065.

Process for Developing New Rule: The department invites the interested public to review and provide input into the adopted language of this proposed WAC amendment. The department will distribute draft material for an internal and external review process. All comments are taken into consideration before issuance of final rule.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Joanie Scotson, Program Manager, Medical Assistance Administration, Mailstop 45534, Olym-

pia, Washington 98504-5534, phone (360) 725-1330, fax (360) 664-0910, TDD 1-800-848-5429, e-mail SCOTSJK@DSHS.WA.GOV.

March 26, 2001

Susan Bush

for Bonita H. Jacques, Chief  
Office of Legal Affairs

**WSR 01-08-028****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(Medical Assistance Administration)

[Filed March 28, 2001, 4:11 p.m.]

Subject of Possible Rule Making: MAA is planning to amend WAC 388-468-0005 Residency, which contains the client eligibility rules regarding state residency.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.08.090.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: This amendment is needed to clarify parts of the rule that have consistently been the subject of confusion and misinterpretation.

Process for Developing New Rule: The department invites the interested public to review and provide input into the adopted language of this proposed WAC amendment. The department will distribute draft material for an internal and external review process. All comments are taken into consideration before issuance of final rule.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Joanie Scotson, Program Manager, Medical Assistance Administration, Mailstop 45534, Olympia, Washington 98504-5534, phone (360) 725-1330, fax (360) 664-0910, TDD 1-800-848-5429, e-mail SCOTSJK@DSHS.WA.GOV.

March 26, 2001

Susan Bush

for Bonita H. Jacques, Chief  
Office of Legal Affairs

**WSR 01-08-029****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

(Division of Assistance Programs)

[Filed March 28, 2001, 4:13 p.m.]

Subject of Possible Rule Making: DSHS will create a new rules and amend existing rules in chapter 388-454 WAC to set requirements of adults acting *in loco parentis* for a child to be eligible for temporary assistance for needy fami-

lies (TANF) benefits. This will also change rules on parental notification to be consistent with chapter 13.32A RCW.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 13.32A.080, 13.32A.082, 74.04.050, 74.04.055, 74.08.090, 74.12.290, 74.12.450, 74.12.460.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: DSHS has a responsibility to ensure the safety of the children it serves. Since an adult who is acting *in loco parentis* (as a parent) has no blood relationship to a child, the department must take appropriate steps to ensure the child's safety and promote a stable environment for the child.

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

Process for Developing New Rule: DSHS welcomes the public to take part in developing the rules. Anyone interested should contact the staff person identified below. After the rules are drafted, DSHS will file a copy with the Office of the Code Reviser with a notice of proposed rule making. A copy of the draft will be sent to everyone on the mailing list and to anyone who requests a copy.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting John Camp, Program Manager, Division of Assistance Programs, Lacey Government Center, P.O. Box 45470, Olympia, WA 98504-4570, phone (360) 413-3232, fax (360) 413-3493, e-mail CAMPJX@DSHS.WA.GOV.

March 27, 2001

Susan Bush

for Bonita H. Jacques, Chief  
Office of Legal Affairs

#### WSR 01-08-033

#### PREPROPOSAL STATEMENT OF INQUIRY CRIMINAL JUSTICE TRAINING COMMISSION

[Filed March 29, 2001, 3:06 p.m.]

Subject of Possible Rule Making: Chapter 139-05 WAC, rules are being drafted and amended to update and certify reserve police officer training. A rule is being amended to update training for railroad police officers.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 43.101.080.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The rules will clarify, simplify, and update the standards for the training of railroad police and reserve police officers.

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Sharon M. Tolton, 19010 1st Avenue South, Seattle, WA 98148-2055, (206) 835-7345, fax (206) 439-3860, e-mail stolton@cjtc.state.wa.us.

Hearing Location: Criminal Justice Training Center, 19010 1st Avenue South, Seattle, WA 98148-2055, on June 13, 2001, at 10:00 a.m. and on September 12, 2001, at 10:00 a.m.

March 20, 2001  
Sharon M. Tolton  
Deputy Director

#### WSR 01-08-049

#### PREPROPOSAL STATEMENT OF INQUIRY STATE TOXICOLOGIST

[Filed April 2, 2001, 8:19 a.m.]

Subject of Possible Rule Making: Administration of breath test program, chapter 448-13 WAC, Breath alcohol testing: Need for fifteen minute waiting period following invalid sample test; severability language; definition of simulator temperature determination; clarification of acceptable range for external standard result.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 46.61.506.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Response to legal challenges on admissibility of breath alcohol tests. Would clarify State Toxicologist's intention with respect to rules for conducting a breath alcohol test.

Process for Developing New Rule: Response to confusion expressed by the courts in interpreting rules for breath testing.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Dr. Barry K. Logan, Washington State Toxicologist, Forensic Laboratory Services Bureau, 2203 Airport Way South, Suite 360, Seattle, WA 98134, (206) 464-5302, e-mail blogan@wsp.wa.gov.

March 26, 2001

Dr. Barry K. Logan  
Washington State Toxicologist

#### WSR 01-08-053

#### WITHDRAWAL OF PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF ECOLOGY

[Filed April 2, 2001, 11:51 a.m.]

The Department of Ecology hereby withdraws the following preproposal statement of inquiry (CR-101):

WSR 99-12-093, filed June 1, 1999, AO 99-10, chapter 173-409 WAC, Omnibus fee rule.

WSR 98-10-090, filed May 6, 1998, AO 98-09, (original notice) and WSR 99-10-042, filed April 30, 1999, AO 98-09 (supplemental notice), chapter 173-415 WAC, Primary aluminum plants and chapter 173-481 WAC, Ambient air quality and environmental standards for fluoride.

WSR 98-17-085, filed August 18, 1998, AO 98-21,



chapter 173-204 WAC, Sediment management standards.

April 2, 2001

Jerome D. Thielen  
Regulatory Affairs Manager

**WSR 01-08-054**

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF AGRICULTURE**

[Filed April 2, 2001, 1:36 p.m.]

Subject of Possible Rule Making: General pesticide rules, chapter 16-228 WAC.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapters 17.21, 15.58 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Correct grammar; add wording regarding pollen shedding corn, methyl parathion (allow for elimination of the methyl parathion pollen shedding corn orders, eliminate wording on cancelled uses); correct editing errors and combine wording in some sections; drop sections and move sections relating to record keeping for distributors to two new sections for clarity and accuracy; allow the department to issue more overall permits for EUPs (efficiency); modify pesticide licensing examination requirements (agency policy clarified in rule).

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Federal Environmental Protection Agency, coordination and communication via established procedures.

Process for Developing New Rule: Agency study; and stakeholder input.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Bob Arrington, Assistant Director, Pesticide Management Division, Ann Wick, Program Manager, Program Development, Licensing and Certification, Ted Maxwell, Program Manager, Registration or Cliff Weed, Program Manager, Compliance; at the Department of Agriculture, Pesticide Management Division, P.O. Box 42589, Olympia, WA 98504-2589, phone (360) 902-2010, fax (360) 902-2093.

March 29, 2001

Bob Arrington  
Assistant Director

**WSR 01-08-060**

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF REVENUE**

[Filed April 2, 2001, 3:56 p.m.]

Subject of Possible Rule Making: WAC 458-20-240 Manufacturers, tax credits.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 82.32.300.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department is consider-

ing a revision of information now provided in Rule 240 to incorporate legislative amendments to chapter 82.62 RCW, Tax credits for eligible business projects. This legislation changed the geographic areas eligible for the business and occupation tax credit program and the amount of credit available for qualified employment positions.

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

Process for Developing New Rule: Modified negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Written comments may be submitted by mail, fax, or at the public meeting. Oral comments will be accepted at the public meeting. A preliminary draft of the proposed changes is available upon request. Written comments on and/or requests for copies of the rule may be directed to Alan R. Lynn, Legislation and Policy, P.O. Box 47467, Olympia, WA 98504-7467, phone (360) 570-6125, fax (360) 664-0693, e-mail alanl@dor.wa.gov.

Location and Date of Public Meeting: On May 8, 2001, at 1:30 p.m., Capital Plaza Building, 4th Floor, Room 400, Large Conference Room, 1025 East Union Avenue, Olympia, WA 98501.

Assistance for Persons with Disabilities: Contact Barb Vane no later than ten days before the hearing date TDD 1-800-451-7985, or (360) 570-6182.

April 2, 2001

Claire Hesselholt

Rules Manager

Legislation and Policy Division

**WSR 01-08-061**

**WITHDRAWAL OF  
PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF ECOLOGY**

[Filed April 3, 2001, 11:02 a.m.]

The Department of Ecology will not pursue rule making for the following rules as implied by a CR-101 filed on October 30, 1995, as WSR 95-22-068: Chapter 173-18 WAC, Shoreline Management Act—Streams and rivers constituting shorelines of the state; chapter 173-20 WAC, Shoreline Management Act—Lakes constituting shorelines of the state; and chapter 173-22 WAC, Adoption of designations of [shorelands and] wetlands associated with shorelines of the state.

A new CR-101 filing would precede any future rule-making activity.

April 3, 2001

Jerome D. Thielen

Regulatory Affairs Manager

**WSR 01-08-088**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**STATE BOARD OF HEALTH**

[Filed April 4, 2001, 10:34 a.m.]

Subject of Possible Rule Making: Review of chapter 246-100 WAC which describes standards for AIDS counseling, pretest counseling, and post test counseling associated with HIV testing.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 70.24.380 Board of health—Rules for counseling and testing.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Existing standards for HIV related counseling in chapter 246-100 WAC were adopted in 1988. Since that time, recommendations for HIV testing and counseling have evolved. Rule changes are necessary to assure these standards are consistent with current medical science, public health practice, federal recommendations, and community needs. Updating the standards will facilitate HIV testing where there is a medical need and better focus prevention counseling toward those with behavioral risk factors.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: DASA is responsible for regulating drug treatment programs under chapter 69.54 RCW. RCW 70.24.095 requires AIDS counseling to be provided to each person in treatment. Standards for AIDS counseling adopted by the board will impact those drug treatment providers. DASA will be given opportunity to comment on proposed rule changes. The federal Centers for Disease Control has issued recommendations for HIV counseling and testing and these will be considered in the proposed rule changes.

Process for Developing New Rule: Mailings, meetings and a board hearing will allow for public input. Existing meetings of groups such as the Governor's Advisory Council on HIV/AIDS, the AIDSNet Council, and the HIV prevention community-planning group will be used to solicit comments. Special meetings will be held on both the east side and west side of the state.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting: Primary - John Peppert, HIV Prevention Program, P.O. Box 47840, Olympia, WA 98504-7840, phone (360) 236-3427, fax (360) 236-3400, e-mail john.peppert@doh.wa.gov. Secondary - Laurie James, HIV Prevention Program, P.O. Box 47840, Olympia, WA 98504-7840, phone (360) 236-3487, fax (360) 236-3400, e-mail laurie.james@doh.wa.gov, or Don R. Sloma, Board of Health Executive Director, P.O. Box 47990, Olympia, WA 98504-7990, phone (360) 236-4102, e-mail don.sloma@doh.wa.gov. The State Board of Health and the Department of Health will devise a stakeholder review team to examine and comment upon all input to the review process, as well as devise multiple meetings among interested parties to solicit input into the review. All of these processes will be publicized to insure adequate comments to the review.

April 2, 2001  
 Don R. Sloma  
 Executive Director

**WSR 01-08-089**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**STATE BOARD OF HEALTH**

[Filed April 4, 2001, 10:36 a.m.]

Subject of Possible Rule Making: To consider amending the newborn screening rule to include which, if any, additional disorders should be included in the mandatory dried blood spot screening.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapters 70.83, 43.20 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Chapter 70.83 RCW delegates authority to the State Board of Health to determine which disorders, in addition to phenylketonuria (PKU), are to be included in the newborn screening required by the statute. Current regulation requires congenital hypothyroidism, hemoglobinopathies such as sickle cell disease, and congenital adrenal hyperplasia, in addition to PKU. Medical and technological advances in recent years have made it feasible to screen for an increasing number of additional disorders. Adding disorders to the panel could further prevent illness and death through early detection and treatment of affected newborns.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Department of Health will work closely with the State Board of Health in the review process.

Process for Developing New Rule: Agency study, will involve significant public input to consider the merits of the numerous candidate disorders.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Michael Glass, Department of Health, Newborn Screening Policy Liaison, 1610 N.E. 150th, Shoreline, WA 98155-9701, phone (206) 361-2890, toll free 1-866-660-9050, fax (206) 361-4996, e-mail mike.glass@doh.wa.gov; or Doreen Garcia, State Board of Health, Senior Policy Analyst, P.O. Box 47990, Olympia, WA 98504-7990, phone (360) 236-4101, e-mail doreen.garcia@doh.wa.gov. The Department of Health and the State Board of Health will establish an advisory group composed of interested parties to solicit and review information and obtain broad public input regarding which disorders should be recommended to the board for adoption. Input will be sought through publicized meetings and correspondence.

April 2, 2001  
 Don Sloma  
 Executive Director

**WSR 01-08-090**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**STATE BOARD OF HEALTH**

[Filed April 4, 2001, 10:38 a.m.]

Subject of Possible Rule Making: Chapter 246-491 WAC, Birth certificates, death certificates and fetal death certificates.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 70.58 RCW, RCW 43.20.050.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: There is a statutory requirement for the state of Washington to collect certificate data. The rule will be revised to comply with new federal standards and make the certificates more likely to be completed accurately.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Department of Health and Human Services through the National Center for Health Statistics will provide the Department of Health with the recommended changes.

Process for Developing New Rule: Mailings, meetings and a board hearing will allow for public input. A statewide stakeholder review team will represent the major stakeholder bodies from the community. Contact Person: David Rose, CHS-DOH, 1112 South Quince Street, Olympia, WA 98501, phone (360) 236-4346.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting David Rose, CHS-DOH, 1112 South Quince Street, Olympia, WA 98501, phone (360) 236-4346, fax (360) 753-4135. Secondary Contact Person: Dr. Patricia Starzyk, CHS-DOH, 1112 South Quince Street, Olympia, WA 9850 [98501], phone (360) 236-4323, fax (360) 753-4135 or Doreen Garcia, State Board of Health, Senior Policy Analyst, P.O. Box 47990, Olympia [Olympia], WA 98504-7990, phone (360) 236-4101. The Department of Health and the State Board of Health will devise a stakeholder review team to examine and comment upon all input to the certificate process, as well as devise multiple meetings among interested parties to solicit input into the change process. All of these processes will be publicized in order to insure adequate comments to the change process.

April 2, 2001  
Don Sloma  
Executive Director

maintenance organizations that provide benefits for pregnancy, childbirth or related medical conditions must follow these standards for prenatal diagnosis of congenital or heritable disorder of the fetus by means of screening and diagnostic procedures during pregnancy, if determined to be medically necessary.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Laboratories performing clinically diagnostic services are regulated by the state Department of Health (DOH), chapter 70.42 RCW. The Department of Social and Health Services (DSHS), Medical Assistance Administration (Medicaid) regulates the payment for these services when provided to a Medicaid client. Both DOH and DSHS staff will participate in the rule review process.

Process for Developing New Rule: Will involve significant public input to consider the merits of any additional prenatal procedures proposed.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. DOH and SBOH staff will devise a stakeholder review team to examine and comment upon all input to the review process, as well as devise multiple meetings among interested parties to solicit input into changes. All of these processes will be publicized in order to insure adequate comments to the change process. Contact Debra Lochner Doyle, MS, CGC State Coordinator for Genetic Services, 20435 72nd Avenue South, Suite #200, Mailstop K17-8, Kent, WA 98032, phone (253) 395-6742, fax (253) 395-6737, e-mail [debra.lochnerdoyle@doh.wa.gov](mailto:debra.lochnerdoyle@doh.wa.gov); or Doreen Garcia State Board of Health, Senior Policy Analyst, P.O. Box 47990, Olympia, WA 98504-7990, phone (360) 236-4101, e-mail [doreen.garcia@doh.wa.gov](mailto:doreen.garcia@doh.wa.gov).

March 30, 2001  
M. C. Selecky  
Secretary

### WSR 01-08-091

#### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF HEALTH

[Filed April 4, 2001, 10:40 a.m.]

Subject of Possible Rule Making: Prenatal tests, chapter 246-680 WAC, Congenital and heritable disorders, will be reviewed to determine any necessary changes in standards for prenatal procedures used to identify congenital or heritable disorders prior to birth.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 48.21.244, 48.44.344, 48.46.375.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The rules will be reviewed to determine if there is a need for any changes in the standards for prenatal procedures used to identify heritable and genetic disorders prior to birth. These rules set the standards for benefits for prenatal diagnosis of congenital or heritable disorders. Insurers, health care service contractors and health

### WSR 01-08-093

#### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF HEALTH

[Filed April 4, 2001, 10:45 a.m.]

Subject of Possible Rule Making: Prenatal tests, chapter 246-680 WAC, Congenital and heritable disorders, will be reviewed to determine any necessary changes in standards for prenatal procedures used to identify congenital or heritable disorders prior to birth.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 48.21.244, 48.44.344, 48.46.375.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The rules will be reviewed to determine if there is a need for any changes in the standards for prenatal procedures used to identify heritable and genetic disorders prior to birth. These rules set the standards for benefits for prenatal diagnosis of congenital or heritable disorders. Insurers, health care service contractors and health maintenance organizations that provide benefits for pregnancy, childbirth or related medical conditions must follow

these standards for prenatal diagnosis of congenital or heritable disorder of the fetus by means of screening and diagnostic procedures during pregnancy, if determined to be medically necessary.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Laboratories performing clinically diagnostic services are regulated by the state Department of Health (DOH), chapter 70.42 RCW. The Department of Social and Health Services (DSHS), Medical Assistance Administration (Medicaid) regulates the payment for these services when provided to a Medicaid client. Both DOH and DSHS staff will participate in the rule review process.

Process for Developing New Rule: Will involve significant public input to consider the merits of any additional prenatal procedures proposed.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. DOH and SBOH staff will devise a stakeholder review team to examine and comment upon all input to the review process, as well as devise multiple meetings among interested parties to solicit input into changes. All of these processes will be publicized in order to insure adequate comments to the change process. Contact Debra Lochner Doyle, MS, CGC State Coordinator for Genetic Services, 20435 72nd Avenue South, Suite #200, Mailstop K17-8, Kent, WA 98032, phone (253) 395-6742, fax (253) 395-6737, e-mail [debra.lochnerdoyle@doh.wa.gov](mailto:debra.lochnerdoyle@doh.wa.gov); or Doreen Garcia State Board of Health, Senior Policy Analyst, P.O. Box 47990, Olympia, WA 98504-7990, phone (360) 236-4101, e-mail [doreen.garcia@doh.wa.gov](mailto:doreen.garcia@doh.wa.gov).

April 2, 2001  
Don Sloma  
Executive Director

#### WSR 01-08-095

##### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF LICENSING

[Filed April 4, 2001, 10:59 a.m.]

Subject of Possible Rule Making: Removing reference to a Spokane Department of Licensing location from WAC 308-124B-050. The Spokane office was closed permanently in December of 2000.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.85.040(1).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The rule is currently misleading. It indicates that there is a Department of Licensing location in Spokane, but that location no longer exists.

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

Process for Developing New Rule: Correction of existing rule.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jana L. Jones, Real Estate Program,

Department of Licensing, P.O. Box 9015, Olympia, WA 98507-9015, phone (360) 586-0280, fax (360) 586-0998.

April 4, 2001

Jana L. Jones

Assistant Administrator

#### WSR 01-08-096

##### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF LICENSING

[Filed April 4, 2001, 10:59 a.m.]

Subject of Possible Rule Making: Adding to WAC 308-124H-061 Grounds for denial or withdrawal of course approval, the provision that if a course approval was granted through the mistake or inadvertence of the director, approval may be withdrawn

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.85.040(1).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The existing rule does not allow for withdrawal of course approval when that approval was granted through the mistake or inadvertence of the director (or the director's representatives).

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

Process for Developing New Rule: Amend existing rule.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jana L. Jones, Real Estate Program, Department of Licensing, P.O. Box 9015, Olympia, WA 98507-9015, phone (360) 586-0280, fax (360) 586-0998.

April 4, 2001

Jana L. Jones

Assistant Administrator

#### WSR 01-08-099

##### PREPROPOSAL STATEMENT OF INQUIRY OFFICE OF THE INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R-2001-03—Filed April 4, 2001, 11:04 a.m.]

Subject of Possible Rule Making: Audited financial statements.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 48.02.060, 48.05.073, 48.43.097, 48.44.050, and 48.46.200.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The purpose of this rule making is to amend the audited financial statement rule to address two technical issues that arose with the adoption of RCW 48.05.073 and 48.43.097. The current rule requires independent CPAs to include in their CPA audit reports "any other notes required by general accepted accounting principles" ("GAAP") that may not be required to be disclosed in

the notes to the annual statement. This disclosure is no longer required because RCW 48.05.073 and 48.43.097 requires GAAP-like disclosures in individual statements of statutory accounting principles ("SSAP") that comprise the NAIC accounting practices and procedure manual ("manual"). The last issue deals with specific related party and company disclosures. This requirement was removed because this disclosure is required in the Manual-SSAP 1.

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

Process for Developing New Rule: Agency study. Please send any comments regarding this rule to Kacy Brandeberry, P.O. Box 40255, Olympia, WA 98504-0255, e-mail Kacyb@oic.wa.gov, fax (360) 664-2782, by May 7, 2001.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Kacy Brandeberry, P.O. Box 40255, Olympia, WA 98504-0255, e-mail Kacyb@oic.wa.gov, fax (360) 664-2782.

April 4, 2001

Mike Kreidler

Insurance Commissioner

#### WSR 01-08-100

#### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF AGRICULTURE

[Filed April 4, 2001, 11:39 a.m.]

Subject of Possible Rule Making: Repeal of the Washington red raspberry grades and standards, chapter 16-143 WAC.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapters 69.04 and 15.17 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The director is proposing to repeal the Washington red raspberry grades and standards.

The Washington red raspberry grades and standards were adopted in May 2000. As a result of issues raised after the adoption of the rules, the director then extended the effective date of the rules until June 1, 2001. The director also determined that additional rules are necessary to address how red raspberries harvested outside of Washington can meet the Washington No. 1 processing grade standards and be deemed equivalent when the grades and standards go into effect.

On January 19, 2001, the Federal Food and Drug Administration issued final rules at 212 C.F.R., Part 120 - Hazard Analysis and Critical Control Point (HACCP) Systems. These federal rules will become effective January 22, 2002, or after depending on whether a business is small or very small. These rules require processors to implement a HACCP system that complies with the requirements established in the federal rules for the purpose of ensuring the safety of juice beverages. The department is consulting with the federal Food and Drug Administration to determine whether purees of fruits and vegetables used in products other than juice or beverages are covered by the require-

ments. At this point, FDA has not been able to provide a definitive answer.

Whether or not puree is included in the HACCP rules impacts the possible scope of the department's red raspberry grades and standards as well as any equivalency rules. At a minimum the HACCP requirements impact red raspberries used for juice. The determination of whether puree is included or excluded also impacts the nature and scope of the small business economic impact statement (SBEIS) that must be prepared. Without that determination, an adequate and accurate SBEIS cannot be prepared. As a result of the delay, the department will not be able to adopt equivalency rules in time to be effective June 1, 2001, when the red raspberry grades and standards will become effective.

In addition, following the adoption of the grades and standards rules, a petition was filed with the Joint Administrative Rules Review Committee (JARRC) contesting the small business economic impact statement (SBEIS) filed with the red raspberry grades and standards. The department delayed initiating the additional rule-making process on developing the equivalency rules until a determination was made on the adequacy of the SBEIS. A public hearing was held in Bellingham on January 18, 2001, to accept industry testimony on that subject and a report was prepared for JARRC. We have not received a final response from JARRC on its review. Finalization of that review may present additional issues that must be considered in the rule-making process.

The director is therefore proposing to repeal the present rules until such time as FDA can provide definitive guidance on the scope of the HACCP rules, the agency grades and standards can be modified as appropriate, and the equivalency rules can be incorporated with the grades and standards.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Relevant are the Federal Food and Drug Administration final rules at 21 C.F.R., Part 120 - Hazard Analysis and Critical Control Point (HACCP) Systems issued on January 19, 2001. We are in contact with FDA to clarify the scope of the federal rules. Also see above.

Process for Developing New Rule: The department will seek comments from the Red Raspberry Commission, growers and processors.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by submitting written comments to Linda Condon, Food Safety and Animal Health Division, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, fax (360) 902-2087, e-mail wsdarulescomments@agr.wa.gov.

April 4, 2001

John Daly

Assistant Director



**NO EXPEDITED REPEALS FILED IN THIS ISSUE**

**EXPEDITED REPEAL**





**WSR 01-06-057****PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Adult Services Administration)

[Filed March 7, 2001, 9:37 a.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 00-12-077.

Title of Rule: Chapter 388-96 WAC, Nursing home accounting and reimbursement system. WAC 388-96-010 Definitions, 388-96-218 Proposed, preliminary, and final settlements, 388-96-310 Interest on other excess, 388-96-369 The nursing facility shall maintain a subsidiary ledger with an account for each resident for whom the facility holds money, 388-96-384 Liquidation or transfer of resident personal funds, 388-96-559 Cost basis of land and depreciation base, 388-96-708 Reinstatement of beds previously removed from service under chapter 70.38 RCW—Effect on prospective payment rate, 388-96-709 Prospective rate revisions—Reduction in licensed beds, 388-96-710 Prospective payment for new contractors, 388-96-713 Rate determination, 388-96-714 Nursing facility Medicaid rate allocations—Economic trends and conditions adjustment factors, 388-96-723 How often will the department compare the statewide weighted average payment rate for the capital and noncapital portions of the rate for all nursing facilities with the statewide weighted average payment rate for the capital and noncapital portions of the rate identified in the Biennial Appropriations Act?, 388-96-732 How will the department determine whether its notice pursuant to WAC 388-96-724 was timely?, 388-96-740 What will the department use as the Medicaid case mix index when a facility does not meet the ninety percent minimum data set (MDS) threshold as identified in RCW 74.46.501?, 388-96-776 Add-ons to the payment rate—Capital improvements, 388-96-777 Add-ons to the prospective rate—Initiated by the department, 388-96-780 Exceptional therapy care—Covered Medicaid residents, 388-96-802 May the nursing facility (NF) contractor bill the department for a Medicaid resident's day of death, discharge, or transfer for the NF?, 388-96-803 When a nursing facility (NF) contractor becomes aware of a change in the Medicaid resident's income and/or resources, must he or she report it?, and 388-96-901 Disputes.

Purpose: WAC 388-96-010, deletes definitions for "anticipated resident days" and "anticipated resident occupancy." Defines "nursing facility occupancy percentage." Amends the change of ownership definition.

WAC 388-96-218, clarifies that the department may issue preliminary settlements more than one hundred twenty days after receipt.

WAC 388-96-310, amends to agree with chapter 74.46 RCW on when interest begins accruing on money owed by either the department or contractor.

WAC 388-96-369 and 388-96-384, changes local office to home and community services office.

WAC 388-96-559, delete reference to WAC 388-96-567 that was repealed.

WAC 388-96-708, clarifies the recalculation of a prospective payment rate when a nursing facility reinstates licensed beds. Clarifies that the post-reinstatement number of licensed beds must be used in all rate setting.

WAC 388-96-709, clarifies the recalculation of a prospective payment rate when a nursing facility banks licensed beds. Clarifies that the post-banking number of licensed beds must be used in all rate setting.

WAC 388-96-710, clarifies dates used in setting a new contractor's rate.

WAC 388-96-713, clarifies that limits, lids and/or medians are only calculated once for any rebase period. Adds subsection clarifying that rates are set using actual days or days at 85% occupancy.

WAC 388-96-714, amends to limit an economic trends and conditions adjustment factor to rate setting before April 2000.

WAC 388-96-723, changes timelines for comparison of statewide weighted average payment rate from monthly to quarterly.

WAC 388-96-732, indicates how the department will determine timely notice made pursuant to WAC 388-96-724.

WAC 388-96-740, changes to "one" the case mix index that the department will use if a nursing facility does not meet the 90% MDS threshold.

WAC 388-96-776, clarifies the effective date of a rate add-on granted pursuant to this section.

WAC 388-96-777, edit to update reference.

WAC 388-96-780, clarifies the minimum required participation in a rehabilitation program. Clarifies length of coverage for an exceptional therapy rate.

WAC 388-96-802, clarifies that the department will not pay for the last day of a resident's stay.

WAC 388-96-803, reinstates the requirement that a nursing home must report resident income changes to the department within seventy-two hours.

WAC 388-96-901, makes the department's use of its discretion in setting the issuance date of preliminary settlements not subject to review under WAC 388-96-904.

Statutory Authority for Adoption: RCW 74.46.431 and [74.46.]800.

Statute Being Implemented: Chapter 74.46 RCW.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Patricia Hague, 640 Woodland Square Loop S.E., Lacey, WA 98503, (360) 725-2447.

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

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

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

Proposal Changes the Following Existing Rules: See Purpose above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 18.85.020(1) a small business is defined as one with fewer than fifty employees and whose purpose is to make a profit. The revisions to chapter 388-96 WAC only impact busi-

nesses with fifty or more employees and approximately one third the businesses are nonprofit. Also the proposed new sections and revisions to chapter 388-96 WAC are exempt from an SBEIS under RCW 19.85.025(2) and 34.05.310(4). (d) Rules that only correct typographical errors make address or name changes, or clarify language of a rule without changing its effect; (e) rules the content of which is explicitly and specifically dictated by statute; and (f) rules that set or adjust fees or rates pursuant to legislative standards.

RCW 34.05.328 applies to this rule adoption. Under RCW 34.05.328 (5)(b)(vi), rules that set or adjust fees or rates pursuant to legislative standards are exempt from RCW 34.05.328. Amendments to and new sections of chapter 388-96 WAC instruct and clarify how the department is to set Medicaid payment rates for nursing homes pursuant to chapter 74.46 RCW. RCW 74.46.010 reads as follows: This chapter may be known and cited as the "nursing facility Medicaid payment system." The purposes of this chapter are to specify the manner by which legislative appropriations for Medicaid nursing facility services are to be allocated as payment rates among nursing facilities, and to set forth auditing billing, and other administrative standards associated with payments to nursing home facilities.

Hearing Location: Blake Office Building East (behind Goodyear Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on May 8, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Kelly Cooper by May 1, 2001, phone (360) 664-6094, TTY (360) 664-6178, e-mail coopekd@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, Kelly Cooper, Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, coopekd@dshs.wa.gov, by May 8, 2001.

Date of Intended Adoption: No sooner than May 9, 2001.

March 7, 2001  
Bonita H. Jacques, Chief  
Office of Legal Affairs

**AMENDATORY SECTION** (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

**WAC 388-96-010 Definitions.** Unless the context indicates otherwise, the following definitions apply in this chapter.

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

- (1) Decision-making;
- (2) Planning;
- (3) Evaluating performance;
- (4) Controlling resources and operations; and
- (5) External financial reporting to investors, creditors, regulatory authorities, and the public.

"**Administration and management**" means activities used to maintain, control, and evaluate the efforts and resources of an organization for the accomplishment of the objectives and policies of that organization.

"**Allowable costs**" means documented costs that are necessary, ordinary, and related to the care of Medicaid recipients, and are not expressly declared nonallowable by this chapter or chapter 74.46 RCW. Costs are ordinary if they are of the nature and magnitude that prudent and cost conscious management would pay.

"**Allowable depreciation costs**" means depreciation costs of tangible assets, whether owned or leased by the contractor, meeting the criteria specified in RCW 74.46.330.

~~("Anticipated resident or patient days" are calculated by multiplying the nursing facility's number of licensed beds on the effective date of the recalculated Medicaid payment rate allocation by the number of calendar days in the cost report period on which the department based the Medicaid payment rate allocation that it is recalculating. Then, the product is multiplied by the greater of either the nursing facility's occupancy percentage for the cost report period on which the department based the Medicaid payment rate that it is recalculating or eighty five percent.~~

~~"Anticipated resident occupancy percentage" is determined by multiplying the number of calendar days in the nursing facility's cost report period on which the department based the Medicaid payment rate that it is recalculating by the number of licensed beds on the effective date of the recalculated Medicaid payment rate allocation. Then, the nursing facility's anticipated resident days are divided by the product. In all determinations that require an anticipated resident occupancy percentage, the department will use the greater of either the nursing facility's anticipated resident occupancy percentage or eighty five percent.)~~

"**Assignment of contract**" means:

- (1) A new nursing facility licensee has elected to care for Medicaid residents;
- (2) The department finds no good cause to object to continuing the Medicaid contract at the facility; and
- (3) The new licensee accepts assignment of the immediately preceding contractor's contract at the facility.

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

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

"**Change of ownership**" means a substitution, elimination, or withdrawal of the individual operator or operating entity contracting with the department to deliver care services to medical care recipients in a nursing facility and ultimately responsible for the daily operational decisions of the nursing facility.

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

(a) Changing the form of legal organization of the contractor, e.g., a sole proprietor forms a partnership or corporation;

(b) Transferring ownership of the nursing facility business enterprise to another party, regardless of whether owner-

ship of some or all of the real property and/or personal property assets of the facility are also transferred;

(c) Dissolving of a partnership;

(d) Dissolving the corporation, merging the corporation with another corporation, which is the survivor, or consolidating with one or more other corporations to form a new corporation;

(e) Transferring, whether by a single transaction or multiple transactions within any continuous twenty-four-month period, fifty percent or more of the stock to one or more:

(i) New or former stockholders; or

(ii) Present stockholders each having held less than five percent of the stock before the initial transaction; ((or))

(f) Substituting of the individual operator or the operating entity by any other event or combination of events that results in a substitution or substitution of control of the individual operator or the operating entity contracting with the department to deliver care services; or

(g) A nursing facility ceases to operate.

(2) Ownership does not change when the following, without more, occurs:

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

(b) The real property or personal property assets of the nursing facility change ownership or are leased, or a lease of them is terminated, without a substitution of individual operator or operating entity and without a substitution of control of the operating entity contracting with the department to deliver care services.

**"Charity allowance"** means a reduction in charges made by the contractor because of the indigence or medical indigence of a patient.

**"Component rate allocation(s)"** means the initial component rate allocation(s) of the rebased rate for a rebase period effective July 1. If a month and a day, other than July 1, with a year precedes "component rate allocation(s)," it means the initial component rate allocation(s) of the rebased rate of the rebase period has been amended or updated effective the date that precedes it, e.g., October 1, 1999 direct care component rate allocation.

**"Contract"** means an agreement between the department and a contractor for the delivery of nursing facility services to medical care recipients.

**"Cost report"** means all schedules of a nursing facility's cost report submitted according to the department's instructions.

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

**"Donated asset"** means an asset the contractor acquired without making any payment for the asset either in cash, property, or services. An asset is not a donated asset if the contractor:

(1) Made even a nominal payment in acquiring the asset;

or

(2) Used donated funds to purchase the asset.

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

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

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

**"Intangible asset"** is an asset that lacks physical substance but possesses economic value.

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

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

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

**"Nonallowable costs"** means the same as **"unallowable costs."**

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

**"Nursing facility occupancy percentage"** is determined by multiplying the number of calendar days for the cost report period by the number of licensed beds for the same cost report period. Then, the nursing facility's actual resident days for the same cost report period is divided by the product. When the nursing facility under chapter 70.38 RCW reinstates or reduces the number of licensed beds, then under WAC 388-96-708 or 388-96-709 the number of licensed beds after reinstatement or reduction will be used. In all determinations that require a nursing facility occupancy percentage, the department will use the greater of either a nursing facility's occupancy percentage or eighty-five percent.

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

**"Prospective daily payment rate"** means the rate assigned by the department to a contractor for providing service to medical care recipients prior to the application of settlement principles.

**"Recipient"** means a Medicaid recipient.

**"Related care"** includes:

(1) The director of nursing services;

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- (2) Activities and social services programs;
- (3) Medical and medical records specialists; and
- (4) Consultation provided by:
  - (a) Medical directors; and
  - (b) Pharmacists.

"Relative" includes:

- (1) Spouse;
- (2) Natural parent, child, or sibling;
- (3) Adopted child or adoptive parent;
- (4) Stepparent, stepchild, stepbrother, stepsister;
- (5) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law;
- (6) Grandparent or grandchild; and
- (7) Uncle, aunt, nephew, niece, or cousin.

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

- (1) Administrative and nursing salaries;
- (2) Utility costs;
- (3) Taxes;
- (4) Insurance;
- (5) Repairs and maintenance; and
- (6) Training costs.

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

"Total rate allocation" means the initial rebased rate for a rebase period effective July 1. If a month and a day, other than July 1, with a year precedes "total rate allocation," it means the initial rebased rate of the rebase period has been amended or updated effective the date that precedes it, e.g., October 1, 1999 direct care component rate allocation.

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

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

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

**AMENDATORY SECTION** (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

**WAC 388-96-218 Proposed, preliminary, and final settlements.** (1) For each component rate, the department shall calculate a settlement at the lower of prospective payment rate or audited allowable costs, except as otherwise provided in this chapter.

(2) As part of the cost report, the proposed settlement report is due in accordance with RCW 74.46.040. In the proposed settlement report, a contractor shall compare the contractor's payment rates during a report period, weighted by the number of resident days reported for the period when each rate was in effect, to the contractor's allowable costs for the reporting period. The contractor shall take into account all authorized shifting, retained savings, and upper limits to rates on a cost center basis.

(a) ~~((Within one hundred twenty days after a proposed settlement report is received, the department shall))~~ The department will:

(i) Review the proposed settlement report for accuracy; and

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

(b) When the department receives the proposed settlement report:

(i) By the due date, it will issue the preliminary settlement report within one hundred twenty days of the due date: or

(ii) After the due date, it will issue the preliminary settlement report within one hundred twenty days of the date received.

(c) In its discretion, the department may designate a date later than the dates specified in subsection (2)(b)(i) and (ii) of this section to issue preliminary settlements.

(d) A contractor shall have twenty-eight days after receipt of a preliminary settlement report to contest such report under WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight-day period, the department shall not review or adjust a preliminary settlement report. Any administrative review of a preliminary settlement shall be limited to calculation of the settlement, to the application of settlement principles and rules, or both, and shall not encompass rate or audit issues.

(3) The department shall issue a final settlement report to the contractor after the completion of the department audit process, including exhaustion or termination of any administrative review and appeal of audit findings or determinations requested by the contractor, but not including judicial review as may be available to and commenced by the contractor.

(a) The department shall prepare a final settlement by cost center and shall fully substantiate disallowed costs, refunds, underpayments, or adjustments to the cost report and financial statements, reports, and schedules submitted by the contractor. The department shall take into account all authorized shifting, savings, and upper limits to rates on a cost center basis. For the final settlement report, the department shall compare:

(i) The payment rate the contractor was paid for the facility in question during the report period, weighted by the number of allowable resident days reported for the period each rate was in effect to the contractor's;

(ii) Audited allowable costs for the reporting period; or

(iii) Reported costs for the nonaudited reporting period.

(b) A contractor shall have twenty-eight days after the receipt of a final settlement report to contest such report pursuant to WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight-day period, the department shall not review a final settlement report. Any administrative review of a final settlement shall be limited to calculation of the settlement, the application of settlement principles and rules, or both, and shall not encompass rate or audit issues.

(c) The department shall reopen a final settlement if it is necessary to make adjustments based upon findings resulting from a department audit performed pursuant to RCW 74.46.100. The department may also reopen a final settlement to recover an industrial insurance dividend or premium discount under RCW 51.16.035 in proportion to a contractor's Medicaid recipients.

(4) In computing a preliminary or final settlement, a contractor may shift savings and/or overpayment in the support services cost center to cover a deficit and/or underpayment in the direct care or therapy cost centers up to the amount of the savings as provided in RCW 74.46.165(4). The provider's payment rate is subject to the provisions of RCW 74.46.421.

(5) If an administrative or judicial remedy sought by the facility is not granted or is granted only in part after exhaustion or mutual termination of all appeals, the facility shall refund all amounts due the department within sixty days after the date of decision or termination plus interest as payment on judgments from the date the review was requested pursuant to WAC 388-96-901 and WAC 388-96-904 to the date the repayment is made.

(6) In determining whether a facility has forfeited unused rate funds in its direct care, therapy care and support services component rates under authority of RCW 74.46.165(3), the following rules shall apply:

(a) Federal or state survey officials shall determine when a facility is not in substantial compliance or is providing substandard care, according to federal and state nursing facility survey regulations;

(b) Correspondence from state or federal survey officials notifying a facility of its compliance status shall be used to determine the beginning and ending dates of any period(s) of noncompliance; and

(c) Forfeiture shall occur if the facility was out of substantial compliance more than ninety days during the settlement period. The ninety-day period need not be continuous if the number of days of noncompliance exceed ninety days during the settlement period regardless of the length of the settlement period. Also, forfeiture shall occur if the nursing facility was determined to have provided substandard quality of care at any time during the settlement period.

(7)(a) For calendar year 1998, the department will calculate two settlements covering the following periods:

- (i) January 1, 1998 through September 30, 1998; and
- (ii) October 1, 1998 through December 31, 1998.

(b) The department will use Medicaid rates weighted by total patient days (i.e., Medicaid and non-Medicaid days) to divide 1998 costs between the two settlement periods identified in subsection (7)(a) of this section.

(c) The department will net the two settlements for 1998 to determine a nursing facility's 1998 settlement.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION** (Amending WSR 83-19-047 (Order 2025), filed 9/16/83)

**WAC 388-96-310 Interest on other excess payments.**

(1) Any contractor obtaining benefits or payments under the

medical assistance program to which such contractor is not entitled or in an amount to which such contractor is not entitled, (~~shall~~) will be liable for such benefits or payments received and for interest at the rate of one percent per month on the amount of benefits or payments from the date (~~of receipt~~) the contractor requests review pursuant to WAC 388-96-901 and 388-96-904 until repayment is made to the department at the rate of one percent per month, unless the contractor establishes the overpayment was the result of errors made by the department.

(2) Interest charged by the department or interest expense incurred by the contractor, from whatever source, in making refund to the department shall not be reimbursable by the department as an allowable cost. The contractor may, by payment of a disputed settlement in whole or in part, stop accrual of interest on the amount paid. Such payment will be without prejudice to obtain review of a settlement determination.

**AMENDATORY SECTION** (Amending Order 3070, filed 9/28/90, effective 10/1/90)

**WAC 388-96-369 The nursing facility shall maintain a subsidiary ledger with an account for each resident for whom the facility holds money.** (1) The facility shall assure a full and complete separate accounting of each resident's personal funds. Each account record and related supporting information and documentation shall:

- (a) Be maintained at the facility;
- (b) Be kept current;
- (c) Be balanced each month; and

(d) Show in writing and in detail, with supporting verification, all moneys received on behalf of the individual resident and the disposition of all moneys so received.

(2) Each account shall be reasonably accessible to the resident or the resident's guardian or legal representative and shall be available for audit and inspection by a department representative. Each account shall be maintained for a minimum of four years. A Medicaid provider shall notify each Title XIX Medicaid recipient or guardian and the home and community services office of the department that serves the area when the amount in the account of any Title XIX Medicaid recipient reaches two hundred dollars less than the applicable dollar resource limit for supplemental security income (SSI) eligibility set forth in Title XVI of the Social Security Act.

(3) When notice is given under subsection (2) of this section, the facility shall notify the recipient or guardian that if the amount in the account, in addition to the value of the recipient's other nonexempt resources, reaches the dollar resource limit determined under Title XVI, the recipient may lose eligibility for SSI medical assistance or benefits under Title XVI.

(4) Accumulation toward the Title XVI limit, after the recipient's admission to the facility, is permitted only from savings from the clothing and personal incidentals allowance and other income which the department specifically designates as exempt income.

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(5) No resident funds may be overdrawn (show a debit balance). If a resident wants to spend an amount greater than the facility is holding for the resident, the home may provide money from its own funds and collect the debt by installments from that portion of the resident's allowance remaining at the end of each month. No interest may be charged to residents for such loans.

(6) The facility may not impose a charge against the personal funds of a Medicare or Medicaid recipient for any item or service for which payment is made under the Title XVIII Medicare program or the Title XIX Medicaid program. In order to ensure that Medicaid recipients are not charged for services provided under the Title XIX program, any charge for medical services otherwise properly made to a recipient's personal funds shall be supported by a written denial from the department.

(a) Mobility aids including walkers, wheelchairs, or crutches requested for the exclusive use by a Medicaid recipient shall have a written denial from the department of social and health services before a recipient's personal funds may be charged.

(b) Requests for medically necessary services and supplies not funded under the provisions of chapter 388-96 WAC or chapter 388-86 WAC (reimbursement rate or coupon system) shall have a written denial from the department before a Medicaid recipient's personal funds may be charged.

(c) A written denial from the department is not required when the pharmacist verifies that a drug is not covered by the program, e.g., items on the FDA list of ineffective or possible effective drugs, nonformulary over-the-counter (OTC) medications. The pharmacist's notation to this effect is sufficient.

**AMENDATORY SECTION** (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

**WAC 388-96-384 Liquidation or transfer of resident personal funds.** (1) Upon the death of a resident, the facility shall promptly convey the resident's personal funds held by the facility with a final accounting of such funds to the department or to the individual or probate jurisdiction administering the resident's estate.

(a) If the deceased resident was a recipient of long-term care services paid for in whole or in part by the state of Washington then the personal funds held by the facility and the final accounting shall be sent to the state of Washington, department of social and health services, office of financial recovery (or successor office).

(b) The personal funds of the deceased resident and final accounting must be conveyed to the individual or probate jurisdiction administering the resident's estate or to the state of Washington, department of social and health services, office of financial recovery (or successor office) no later than the thirtieth day after the date of the resident's death.

(i) When the personal funds of the deceased resident are to be paid to the state of Washington, those funds shall be paid by the facility with a check, money order, certified check or cashier's check made payable to the secretary, department of social and health services, and mailed to the Office of Financial Recovery, Estate Recovery Unit, P.O. Box 9501,

Olympia, Washington 98507-9501, or such address as may be directed by the department in the future.

(ii) The check, money order, certified check or cashier's check or the statement accompanying the payment shall contain the name and social security number of the deceased individual from whose personal funds account the monies are being paid.

(c) The department of social and health services shall establish a release procedure for use of funds necessary for burial expenses.

(2) In situations where the resident leaves the nursing home without authorization and the resident's whereabouts is unknown:

(a) The nursing facility shall make a reasonable attempt to locate the missing resident. This includes contacting:

(i) Friends,

(ii) Relatives,

(iii) Police,

(iv) The guardian, and

(v) The home and community services office in the area.

(b) If the resident cannot be located after ninety days, the nursing facility shall notify the department of revenue of the existence of "abandoned property," outlined in chapter 63.29 RCW. The nursing facility shall deliver to the department of revenue the balance of the resident's personal funds within twenty days following such notification.

(3) Prior to the sale or other transfer of ownership of the nursing facility business, the facility operator shall:

(a) Provide each resident or resident representative with a written accounting of any personal funds held by the facility;

(b) Provide the new operator with a written accounting of all resident funds being transferred; and

(c) Obtain a written receipt for those funds from the new operator.

**AMENDATORY SECTION** (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

**WAC 388-96-559 Cost basis of land and depreciation base.** (1) For all partial or whole rate periods after December 31, 1984 unless otherwise provided or limited by this chapter or by this section, chapter 388-96 WAC or chapter 74.46 RCW, the total depreciation base of depreciable assets and the cost basis of land shall be the lowest of:

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

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

(c) The historical purchase cost of the contractor, or lessor if the assets are leased by the contractor, in acquiring ownership of the asset in an arm's-length transaction, and preparing the asset for use, less goodwill, and less accumulated depreciation, if applicable, incurred during periods the assets have been used in or as a facility by any and all contractors. Such accumulated depreciation is to be measured in accordance with ~~((subsection (5) of this section and))~~ WAC 388-96-561, 388-96-565, ~~((and 388-96-567))~~ chapter 388-96 WAC, and chapter 74.46 RCW. Where the straight-line or

sum-of-the-years digits method of depreciation is used the contractor:

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

(ii) Shall deduct salvage values from historical costs of at least:

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

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

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

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

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

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

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

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

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

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

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

(4) If the land and depreciable assets of a newly constructed nursing facility were never used in or as a nursing facility before being purchased from the builder, the cost basis and the depreciation base shall be the lesser of:

(a) Documented actual cost of the builder; or

(b) The approved amount of the certificate of need issued to the builder.

When the builder is unable or unwilling to document its costs, the cost basis and the depreciation base shall be the approved amount of the certificate of need.

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

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

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

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

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

(7) If a contractor cannot or will not provide the lessor's purchase acquisition cost of assets leased by the contractor and the department is unable to determine historical purchase cost from another source, the appraised asset value of land, building, or equipment, determined by or through the department of general administration shall be adjusted, if necessary, by the department using the *Marshall and Swift Valuation Guide* to reflect the value at the lessor's acquisition date. If an appraisal has been prepared for leased assets and the assets subsequently sell in the first arm's-length transaction since January 1, 1980, under subsection (9) of this section, the *Marshall and Swift Valuation Guide* will be used to adjust, if necessary, the asset value determined by the appraisal to the sale date. If the assets are located in a city for which the *Marshall and Swift Valuation Guide* publishes a specific index, or if the assets are located in a county containing that city, the city-specific index shall be used to adjust the appraised value of the asset. If the assets are located in a city or county for which a specific index is not calculated, the *Western District Index* calculated by Marshall and Swift shall be used.

(8) For new or replacement building construction or for substantial building additions requiring the acquisition of land and which commenced to operate on or after July 1, 1997, the department shall determine allowable land costs of the additional land acquired for the new or replacement construction or for substantial building additions to be the lesser of:

(a) The contractor's or lessor's actual cost per square foot; or

(b) The square foot land value as established by an appraisal that meets the latest publication of the *Uniform Standards of Professional Appraisal Practice (USPAP)* and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The department shall obtain a USPAP appraisal that meets FIRREA first from:

(i) An arms'-length lender that has accepted the ordered appraisal; or

(ii) If the department is unable to obtain from the arms'-length lender a lender-approved appraisal meeting USPAP and FIRREA standards or if the contractor or lessor is unable or unwilling to provide or cause to be provided a lender-approved appraisal meeting USPAP and FIRREA standards, then:

(A) The department shall order such an appraisal; and

(B) The contractor shall immediately reimburse the department for the costs incurred in obtaining the USPAP and FIRREA appraisal.

(9) Except as provided for in subsection (8) of this section, for all rates effective on or after January 1, 1985, if depreciable assets or land are acquired by purchase which were used in the medical care program on or after January 1, 1980, the depreciation base or cost basis of such assets shall not exceed the net book value existing at the time of such acquisition or which would have existed had the assets continued in use under the previous Medicaid contract with the department; except that depreciation shall not be accumulated for periods during which such assets were not used in the medical care program or were not in use in or as a nursing care facility.

(10)(a) Subsection (9) of this section shall not apply to the most recent arm's-length purchase acquisition if it occurs ten years or more after the previous arm's-length transfer of ownership nor shall subsection (9) of this section apply to the first arm's-length purchase acquisition of assets occurring on or after January 1, 1980, for facilities participating in the Medicaid program before January 1, 1980. The depreciation base or cost basis for such acquisitions shall not exceed the lesser of the fair market value as of the date of purchase of the assets determined by an appraisal conducted by or through the department of general administration or the owner's acquisition cost of each asset, land, building, or equipment. An appraisal conducted by or through the department of general administration shall be final unless the appraisal is shown to be arbitrary and capricious. Should a contractor request a revaluation of an asset, the contractor must document ten years have passed since the most recent arm's-length transfer of ownership. As mandated by Section 2314 of the Deficit Reduction Act of 1984 (P.L. 98-369) and state statutory amendments, and under RCW 74.46.840, for all partial or whole rate periods after July 17, 1984, this subsection is inoperative for any transfer of ownership of any asset, including land and all depreciable or nondepreciable assets, occurring on or after July 18, 1984, leaving subsection (9) of this section to apply without exception to acquisitions occurring on or after July 18, 1984, except as provided in subsections (10)(b) and (11) of this section.

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

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

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

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

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

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

(11)(a) In the case of land or depreciable assets leased by the same contractor since January 1, 1980, in an arm's-length lease, and purchased by the lessee/contractor, the lessee/contractor shall have the option to have the:

(i) Provisions of subsection (10) of this section apply to the purchase; or

(ii) Component rate allocations for property and financing allowance calculated under the provisions of chapter 74.46 RCW. Component rate allocations will be based upon provisions of the lease in existence on the date of the purchase, but only if the purchase date meets the criteria of RCW 74.46.360 (6)(c)(ii)(A) through (D).

(b) The lessee/contractor may select the option in subsection (11)(a)(ii) of this section only when the purchase date meets one of the following criteria. The purchase date is:

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

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

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

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

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

**AMENDATORY SECTION** (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

**WAC 388-96-708 Reinstatement of beds previously removed from service under chapter 70.38 RCW—Effect on prospective payment rate.** (1) After removing beds from service (banked) under the provisions of chapter 70.38 RCW, the contractor may bring back into service beds that were previously banked.

(2) When the contractor returns to service beds banked under the provisions of chapter 70.38 RCW, the department will recalculate the contractor's prospective Medicaid payment rate allocations ~~((based on the facility's anticipated resident occupancy level following the increase in licensed bed capacity))~~ using the greater of actual days from the cost report period on which the rate is based or days calculated by multiplying the new number of licensed beds times eighty-five percent times the number of calendar days in the cost report period on which the rate being recalculated is based.

(3) The effective date of the recalculated prospective rate for beds returned to service:

(a) Before the sixteenth of a month, shall be the first of the month in which the banked beds returned to service; or

(b) After the fifteenth of a month, shall be the first of the month following the month in which the banked beds returned to service.

(4) The recalculated prospective payment rate shall comply with all the provisions of rate setting contained in chapter



74.46 RCW or in this chapter, including all lids and maximums unless otherwise specified in this section.

(5) The recalculated prospective Medicaid payment rate shall be subject to adjustment if required by RCW 74.46.421.

(6) After the department recalculates the contractor's prospective Medicaid component rate allocations using the increased number of licensed beds (~~and until the number of licensed beds changes~~), the department will use the (~~contractor's post-unbanking~~) increased number of licensed beds in all post-unbanking rate settings, until under chapter 74.46 RCW and/or this chapter, the post-unbanking number of licensed beds changes.

**AMENDATORY SECTION** (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

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

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

(b) Requests a rate revision.

(2) The revised prospective Medicaid payment rate will comply with all the provisions of rate setting contained in chapter 74.46 RCW and in this chapter, including all lids and maximums, unless otherwise specified in this section.

(3) The revised prospective Medicaid payment rate will be effective the first of a month (~~determined as follows:~~

~~(a))~~ when the contractor complies with subsection (1)(a) and (b) of this section and the effective date of the licensed bed reduction falls:

~~((i))~~ (a) Between the first and the fifteenth of the month, then the revised prospective Medicaid payment rate is effective the first of the month in which the licensed bed reduction occurs; or

~~((ii))~~ (b) Between the sixteenth and the end of the month, then the revised prospective Medicaid payment rate is effective the first of the month following the month in which the licensed bed reduction occurs.

~~((b))~~ (4) The department will (~~revise~~) recalculate a nursing facility's prospective Medicaid payment rate (~~to reflect a reduction in licensed beds as follows:~~

~~(i) The department will use the reduced total number of licensed beds to determine the nursing facility's anticipated resident occupancy percentage used to calculate the direct care, therapy care, support services, operations and variable return component rate allocations. If the actual nursing facility occupancy percentage from the rate base cost report is:~~

~~(A) At or above eighty five percent before the reduction and the anticipated resident occupancy percentage is at or above eighty five percent, the department will recompute the component rate allocations using anticipated resident days;~~

~~(B) Less than eighty five percent before the reduction and the anticipated resident occupancy percentage is at or above eighty five percent, the department will recompute the~~

~~component rate allocations using anticipated resident days resident days; or~~

~~(C) Less than eighty five percent before the reduction and the anticipated residency occupancy percentage is below eighty five percent, the department will recompute the component rate allocations using anticipated resident days.~~

~~(ii) To determine occupancy used to calculate the property and financing allowance rate component allocations, the department will use the facility's anticipated resident occupancy level subsequent to the decrease in licensed bed capacity as long as the occupancy for the reduced number of beds is at or above eighty five percent and in no case shall the department use less than eighty five percent occupancy of the facility's reduced licensed bed capacity.~~

~~(4))~~ allocations using the greater of actual days from the cost report period on which the rate is based or days calculated by multiplying the new number of licensed beds times eighty-five percent times the number of calendar days in the cost report period on which the rate being recalculated is based.

(5) After the department recalculates the contractor's prospective Medicaid component rate allocations using the decreased number of licensed beds (~~and until the number of licensed beds changes~~), the department will use the (~~contractor's post-banking~~) decreased number of licensed beds in all post-banking rate settings, until under chapter 74.46 RCW and/or this chapter, the post-banking number of licensed beds changes.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION** (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

**WAC 388-96-710 Prospective payment rate for new contractors.** (1) The department (~~shall~~) will establish an initial prospective Medicaid payment rate for a new contractor as defined under WAC 388-96-026 within sixty days following the new contractor's application and approval for a license to operate the facility under chapter 18.51 RCW. The rate (~~shall~~) will take effect as of the effective date of the contract, except as provided in this section, and (~~shall~~) will comply with all the provisions of rate setting contained in chapter 74.46 RCW and in this chapter, including all lids and maximums set forth.

(2) Except for quarterly updates per RCW 74.46.501 (7)(c), the rate established for a new contractor as defined in WAC 388-96-026 (1)(a) or (b) (~~shall~~) will remain in effect for the nursing facility until the rate can be reset effective July 1 using the first cost report for that facility under the new contractor's operation containing at least six months' data from the prior calendar year, regardless of whether reported costs for facilities operated by other contractors for the prior calendar year in question will be used to cost rebase their July 1 rates. The new contractor's rate thereafter (~~shall~~) will be cost rebased only as provided in this chapter and chapter 74.46 RCW.

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

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

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

(c) Based on the information for the nursing facilities selected under subsection (3)(b) of this section and available to the department on the day the new contractor began participating in the Medicaid payment rate system at the facility, rank from the highest to the lowest the component rate allocation in direct care, therapy care, support services, and operations cost centers and based on this ranking:

(i) Determine the middle of the ranking and then identify the rate immediately above the median for each cost center identified in subsection (3)(c) of this section. The rate immediately above the median will be known as the "selected rate" for each cost center;

(ii) Set the new contractor's nursing facility component rate allocation for therapy care, support services, and operations at the "selected rate";

(iii) Set the direct care rate using data from the direct care "selected" rate facility identified in (c) of this subsection as follows:

(A) The cost per case mix unit ((shall)) will be the rate base allowable case mixed direct care cost per patient day for the direct care "selected" rate facility, whether or not that facility is held harmless under WAC 388-96-728 and 388-96-729, divided by the facility average case mix index per WAC 388-96-741;

(B) The cost per case mix unit determined under (c)(iii)(A) of this subsection ((shall)) will be multiplied by the Medicaid average case mix index per WAC 388-96-740. The product ((shall)) will be the new contractor's direct care rate under case mix; and

(C) The department ((shall)) will not apply RCW 74.46.506 (5)(k) to any direct care rate established under subsection (5)(e) or (f) of this section. When the department establishes a new ((contractor whose)) contractor's direct care rate ((was established)) under subsection (5)(e) or (f) of this section, the new contractor is not eligible to be paid by a "hold harmless" rate as determined under RCW 74.46.506 (5)(k);

(iv) Set the property rate in accordance with the provisions of this chapter and chapter 74.46 RCW; and

(v) Set the financing allowance and variable return component rate allocations in accordance with the provisions of this chapter and chapter 74.46 RCW. In computing the variable return component rate allocation, the department ((shall)) will use for direct care, therapy care, support ser-

vices and operations rate allocations those set pursuant to subsection (3)(c)(i), (ii) and (iii) of this section.

(d) Any subsequent revisions to the rate component allocations of the sample members will not impact a "selected rate" component allocation of the initial prospective rate established for the new contractor under this subsection.

(4) For the WAC 388-96-026 (1)(a) or (b) new contractor, the department ((shall)) will establish rate component allocations for:

(a) Direct care, therapy care, support services and operations based on the "selected rates" as determined under subsection (3)(c) of this section that are in effect on the date the new contractor began participating in the program;

(b) Property in accordance with the provisions of this chapter and chapter 74.46 RCW using for the new contractor as defined under:

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

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

(c) Variable return in accordance with the provisions of this chapter and chapter 74.46 RCW using the "selected rates" established under subsection (3)(c) of this section that are in effect on the date the new contractor began participating in the program; and

(d) Financing allowance using for the new contractor as defined under:

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

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

(5) The initial prospective payment rate for a new contractor as defined under WAC 388-96-026 (1)(a) or (b) ((shall)) will be established under subsections (3) and (4) of this section. If the WAC 388-96-026 (1)(a) or (b) contractor's initial rate is set:

(a) ~~((Was set before January 1, 1997, and the contractor does not have six months or greater of cost report data for 1996, the October 1, 1998, rate will be set using the contractor's 1997 cost report. Its July 1, 1999, and July 1, 2000, rates will not be cost rebased;~~

~~((b) Was set between January 1, 1997, and June 30, 1997, the October 1, 1998, rate will be set using the contractor's 1997 cost report. Its July 1, 1999, and July 1, 2000, rates will not be cost rebased;~~

~~((c) Was set between July 1, 1997, and June 30, 1998, the October 1, 1998, rate will be the revised initial sample based rate using October 1, 1998, rate data for direct care, therapy care, support services, and operations, and following the~~

steps identified in subsection (3)(c)(i) and (ii) of this section. There will be no change to the facilities identified in the initial rate under subsection (3)(b) of this section. There will be no change to the property rate. The financing allowance will be revised. The contractor's July 1, 1999, rate will be rebased using 1998 cost report data. Its July 1, 2000, rate will not be cost rebased;

(d) Was set between July 1, 1998, and September 30, 1998, the October 1, 1998, rate will be the revised initial sample based rate using October 1, 1998, rate data for direct care, therapy care, support services, and operations, and following the steps identified in subsection (3)(c)(i) and (ii) of this section. There will be no change to the facilities identified in the initial rate under subsection (3)(b) of this section. There will be no change to the property rate. The financing allowance will be revised. The July 1, 1999, rate will be revised in the same manner using July 1, 1999, rate data. The July 1, 2000, rate will be rebased using 1999 cost report data;

(e) Is set between October 1, 1998, and June 30, 1999, the initial rate is set in accordance with subsections (3) and (4) of this section. The July 1, 1999, rate will be the revised initial sample based rate using July 1, 1999, rate data for direct care, therapy care, support services, and operations, and following the steps identified in subsection (3)(c)(i) and (ii) of this section. There will be no change to the facilities identified in the initial rate under subsection (3)(b) of this section. There will be no change to the property and the financing allowance component rate allocations. The department will revise the variable return component rate allocation. The July 1, 2000, rate will be rebased using 1999 cost report data; or

(f) Is set between July 1, 1999, and June 30, 2000, the initial rate is set in accordance with subsections (3) and (4) of this section. The July 1, 2000, rate will be the revised initial sample based rate using July 1, 2000, rate data for direct care, therapy care, support services, and operations, and following the steps identified in subsection (3)(c)(i) and (ii) of this section. There will be no change to the facilities identified in the initial rate under subsection (3)(b) of this section. There will be no change to the property and the financing allowance component rate allocations. The department will revise the variable return component rate allocation)) Between July 1, 2000 and June 30, 2001, the department will set the new contractor's rates for:

(i) July 1, 2001 using the July 1, 2001 rates for direct care, therapy care, support services, and operations of the sample facilities used to set the initial rate under subsections (3) and (4) of this section.

(A) Property and financing allowance component rates will remain the same as set for the initial rate.

(B) Variable return component rate using the rates determined under subsection (5)(a)(i) of this section:

(ii) July 1, 2002 rate using 2001 cost report data; and

(iii) All July 1 rates following July 1, 2002 in accordance with this chapter and chapter 74.46 RCW;

(b) Between July 1, 2001, and June 30, 2002, the department will set the new contractor's rates for:

(i) July 1, 2002 using July 1, 2002 rates for direct care, therapy care, support services, and operation of the sample

facilities used to set the initial rate under subsections (3) and (4) of this section.

(A) Property and financing allowance component rates will remain the same as set for the initial rate.

(B) Variable return component rate using the rates determined under subsection (5)(b)(i) of this section;

(ii) July 1, 2003 rate by rebasing using 2002 cost report data in accordance with this chapter and chapter 74.46 RCW; and

(iii) All July 1 rates following July 1, 2003 in accordance with this chapter and chapter 74.46 RCW; or

(c) Between July 1, 2002, and June 30, 2003, the department will set the contractor's rates for:

(i) July 1, 2003 using July 1, 2003 rates for direct care, therapy care, support services, and operation of the sample facilities used to set the initial rate under subsection (3) and (4) of this section.

(A) Property and financing allowance component rates will remain the same as set for the initial rate.

(B) Variable return component rate using the rates determined under subsection (5)(c)(i) of this section;

(ii) July 1, 2004 by rebasing using 2003 cost report data; and

(iii) All July 1 rates following July 1, 2004 in accordance with this chapter and chapter 74.46 RCW.

(6) For the WAC 388-96-026 (1)(c) new contractor, the initial prospective payment rate ((shaH)) will be the last prospective payment rate the department paid to the Medicaid contractor operating the nursing facility immediately prior to the effective date of the new Medicaid contract or assignment. If the WAC 388-96-026 (1)(c) contractor's initial rate is set:

(a) ((Was set before January 1, 1997, and the new contractor does not have a cost report containing at least six months' data from 1996, its October 1, 1998, rate will be set by using twelve months of cost report data derived from the old contractor's data and the new contractor's data for the 1996 cost report year and its July 1, 1999, and July 1, 2000, rates will not be cost rebased;

(b) Was set between January 1, 1997, and September 30, 1998, its October 1, 1998, rate will be set by using the old contractor's 1996 twelve months' cost report data and its July 1, 1999, and July 1, 2000, rates will not be cost rebased; or

(c) Is set on or after October 1, 1998, its July 1, 1999, and July 1, 2000, rates will not be cost rebased)) Between October 1, 1998 and June 30, 1999, the department will not rebase the contractor's rate for:

(i) July 1, 1999; and

(ii) July 1, 2000;

(b) Between July 1, 1999 and June 30, 2000, the department will for:

(i) July 1, 2000 not rebase the new contractor's rate;

(ii) July 1, 2001 rebase the new contractor's rate using twelve months of cost report data derived from the old contractor's and the new contractor's 1999 cost reports; and

(iii) July 1, 2002 not rebase the new contractor's rate; and

(iv) July 1, 2003 not rebase the new contractor's rate;

(c) Between July 1, 2000 and June 30, 2001, the department will for:

(i) July 1, 2001 rebase the new contractor's rate using the old contractor's 1999 twelve month cost report;

(ii) July 1, 2002 not rebase the new contractor's rate;

(iii) July 1, 2003 not rebase the new contractor's rate; or

(d) Between July 1, 2001 and June 30, 2002, the department will for:

(i) July 1, 2002 not rebase the new contractor's rate;

(ii) July 1, 2003 not rebase the new contractor's rate; and

(iii) July 1, 2004 rebase the new contractor's rate using the new contractor's 2002 cost report containing at least six month's data.

(7) A prospective payment rate set for all new contractors (~~shall~~) will be subject to adjustments for economic trends and conditions as authorized and provided in this chapter and in chapter 74.46 RCW. (~~For the WAC 388-96-026 (1)(a) or (b) new contractor, to adjust the October 1, 1998, payment rate for economic trends and conditions, the department shall apply a 2.96 percent inflation factor to direct care, therapy care, support services, and operations rate components.:~~)

(8) For a WAC 388-96-026 (1)(a), (b) or (c) new contractor, the Medicaid case mix index and facility average case mix index (~~shall~~) will be determined in accordance with this chapter and chapter 74.46 RCW.

**AMENDATORY SECTION** (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

**WAC 388-96-713 Rate determination.** (1) Each nursing facility's Medicaid payment rate for services provided to medical care recipients will be determined, adjusted and updated prospectively as provided in this chapter and in chapter 74.46 RCW. The department will calculate any limit, lid, and/or median only when it rebases each nursing facility's July 1 Medicaid payment rate in accordance with chapter 74.46 RCW and this chapter.

(2) If the contractor participated in the program for less than six months of the prior calendar year, its rates will be determined by procedures set forth in WAC 388-96-710.

(3) Contractors submitting correct and complete cost reports by March 31st, shall be notified of their rates by July 1st, unless circumstances beyond the control of the department interfere.

(4) In setting rates, the department will use the greater of actual days from the cost report period on which the rate is based or days calculated at eighty-five percent occupancy.

**AMENDATORY SECTION** (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

**WAC 388-96-714 Nursing facility Medicaid rate allocations—Economic trends and conditions adjustment factors.** (1)(a) For July 1, 1999, the department will increase the following component rate allocations for each nursing facility by two percent:

- (i) Direct care based on case mix requirements of RCW 74.46.506 (5)(g);
- (ii) Therapy care;
- (iii) Support services; and
- (iv) Operations.

(b) For direct care based on case mix, the department will apply the two percent increase allowed under subsection (1)(a)(i) of this section to the total of the component rate allocations identified in subsection (1)(a) of this section after the direct care component rate allocation is adjusted for case-mix changes and before application of any reductions required by RCW 74.46.421.

(c) For July 1, 1999, the department will increase by one percent the direct care component rate allocation based on the requirements of RCW 74.46.506 (5)(k)(i).

(2) For July 1, 2000, the department will increase each nursing facility's component rate allocations in the same manner as described in subsection (1) of this section. The department will base the direct care component rate allocation of subsection (1)(c) of this section on the requirements of RCW 74.46.506 (5)(k)(ii).

(3)(a) After applying subsection (1) of this section, for rate determinations through March 2000 only, the department will determine whether a nursing facility's July 1 total rate allocation will be adjusted by an additional economic trends and conditions factor. The department will adjust a nursing facility's July 1 total rate allocation set pursuant to this chapter and chapter 74.46 RCW when it is less than its April 1, 1999 total rate allocation adjusted for case mix changes. Whether the April 1, 1999 or July 1 direct care rate allocation is determined by case mix under RCW 74.46.506 (a) through (j) or a hold harmless rate under RCW 74.46.506(k), the department will determine whether the July 1 total rate allocation is less than the April 1, 1999 total rate allocation adjusted for case mix changes by:

(i) Calculating the nursing facility's April 1, 1999 direct care component rate allocation by applying the case mix index (CMI) used to set the nursing facility's July 1 direct care component rate allocation;

(ii) Comparing the April 1, 1999 direct care component rate allocation determined by applying the CMI used to determine the nursing facility's July 1 direct care component rate allocation with its direct care component rate allocation of September 30, 1998.

(iii) Adding the higher of the April 1, 1999 direct care component rate allocation based on the CMI used to set the July 1 direct care component rate allocation or the nursing facility's September 30, 1998 direct care component rate allocation to the remaining April 1, 1999 component rate allocations to establish the April 1, 1999 total rate allocation adjusted for case mix changes;

(iv) Comparing the April 1, 1999 total rate allocation adjusted for case mix changes pursuant to subsection (3)(a)(i), (ii), and (iii) of this section with the July 1 total rate allocation set pursuant to this chapter and chapter 74.46 RCW; and

(v) Determining an additional economic trends and conditions factor for the nursing facility when its April 1, 1999 total rate allocation adjusted for case mix changes pursuant to subsection (3)(a)(i), (ii), and (iii) of this section is greater than the facility's July 1 total rate allocation.

(b) The department will determine the additional economic trends and conditions factor by determining the percentage that the April 1, 1999 total rate allocation determined pursuant to subsection (3)(a)(i), (ii), and (iii) of this section is

greater than the July 1 total rate allocation. The percentage is the additional economic trends and condition factor.

(c) For each nursing facility whose April 1, 1999 total rate allocation adjusted for case mix changes pursuant to subsection (3)(a) of this section is greater than its July 1 total rate allocation, the department will increase each of its July 1 component rate allocations by the nursing facility's additional economic trends and condition factor determined pursuant to subsection (3)(a) and (b) of this section. A nursing facility's additional economic trends and condition factor will be reduced proportionately by the percentage by which total supplemental payments to all nursing facilities would exceed the funds provided for such payments in the biennial appropriations act.

(d) The department will adjust by an additional economic trends and conditions factor determined pursuant to subsection (3)(a) and (b) of this section only the amount of a nursing facility's total rate allocation or its amended or updated total rate allocation that has not resulted from the nursing facility, under WAC 388-96-708, reinstating beds that were previously removed from service (i.e., banked) under chapter 70.38 RCW.

(4) For rate determinations through March 2000 only, after the initial determination under subsection (3) of this section of whether a nursing facility's July 1 total rate allocation will be adjusted by an additional economic trends and conditions factor, the department may amend or update a nursing facility's April 1, 1999 total rate allocation including any or all component rate allocations and/or its July 1 total rate allocation including any or all component rate allocations. If any amendments or updates occur, then the department will apply subsection (3) using the newly amended or updated April 1, 1999 total rate allocation and/or component rate allocation(s) and/or the amended or updated total rate allocation and/or component rate allocation(s).

AMENDATORY SECTION (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

**WAC 388-96-723 How often will the department compare the state-wide weighted average payment rate for the capital and noncapital portions of the rate for all nursing facilities with the state-wide weighted average payment rate for the capital and noncapital portions of the rate identified in the Biennial Appropriations Act?** (1) On a ~~((monthly))~~ quarterly basis, the department will compare the state-wide weighted average payment rate for the capital and noncapital portions of the rate for all nursing facilities with the state-wide weighted average payment rate for the capital and noncapital portions of the rate identified in the biennial appropriations act.

(2) To determine the state-wide weighted average payment rate for the capital and/or noncapital portion of the rate, the department will use total billed Medicaid days incurred in the calendar year immediately preceding the current fiscal year for the purpose of weighting the July 1 capital and/or noncapital rates that have been adjusted, or updated pursuant to chapter 74.46 RCW and this chapter.

#### NEW SECTION

**WAC 388-96-732 How will the department determine whether its notice pursuant to WAC 388-96-724 was timely?** The department will deem the contractor to have received the department's notice five calendar days after the date on the notification letter, unless proof of the date of receipt of the department's notification letter exists, in which case the actual date of receipt will be used to determine timeliness of the notice.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

**WAC 388-96-740 What will the department use as the Medicaid case mix index when a facility does not meet the ninety percent minimum data set (MDS) threshold as identified in RCW 74.46.501?** (1) If the nursing facility is newly Medicaid certified after the quarter which will serve as the basis for the Medicaid case mix index, then the department must use the industry average Medicaid case mix index for the quarter specified in RCW 74.46.501 (7)(c) as the facility's Medicaid average case mix index.

(2) If the nursing facility does not meet the ninety percent MDS threshold for any other reason, then the department ~~((must use the facility's prior quarterly Medicaid case mix index less five percent))~~ will use one as the Medicaid case mix index.

~~((3) For October 1, 1998, through December 31, 1998, when the nursing facility's MDS data for April 1, 1998, through June 30, 1998, used to determine the nursing facility's direct care rate does not meet the ninety percent MDS threshold for any other reason, the department shall use the nursing facility's prior quarterly Medicaid case mix index as the Medicaid case mix index.))~~

AMENDATORY SECTION (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

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

(2) The department shall grant an add-on to a prospective rate for capitalized improvements done under RCW 74.46.431(12); provided, the legislature specifically appropriates funds for capital improvements for the biennium in which the request is made and the net rate effect is ten cents per patient day or greater. Physical plant capital improvements include, but are not limited to, capitalized additions, replacements or renovations made as a result of an approved certificate of need or exemption from the requirements for certificate of need for the replacement of existing nursing facility beds pursuant to RCW 70.38.115 (13)(a) or capitalized additions or renovations for the removal of physical plant waivers.

(3) Rate add-ons granted pursuant to subsection (1) or (2) of this section shall be limited in total amount each fiscal

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year to the total current legislative appropriation, if any, specifically made to fund the Medicaid share of such rate add-ons for the fiscal year. Rate add-ons are subject to the provisions of RCW 74.46.421.

(4) When physical plant improvements made under subsection (1) or (2) of this section are completed in phases, the department shall not grant a rate add-on for any addition, replacement or improvement until each phase is completed and fully utilized for the purpose for which it was intended. The department shall limit rate add-on to only the actual cost of the depreciable tangible assets meeting the criteria of RCW 74.46.330 and as applicable to that specific completed and fully utilized phase.

(5) When the construction class of any portion of a newly constructed building will improve as the result of any addition, replacement or improvement occurring in a later, but not yet completed and fully utilized phase of the project, the most appropriate construction class, as applicable to that completed and fully utilized phase, will be assigned for purposes of calculating the rate add-on. The department shall not revise the rate add-on retroactively after completion of the portion of the project that provides the improved construction class. Rather, the department shall calculate a new rate add-on when the improved construction class phase is completed and fully utilized and the rate add-on will be effective in accordance with subsection (9) of this section using the date the class was improved.

(6) The department shall not add on construction fees as defined in WAC 388-96-747 and other capitalized allowable fees and costs as related to the completion of all phases of the project to the rate until all phases of the entire project are completed and fully utilized for the purpose it was made. At that time, the department shall add on these fees and costs to the rate, effective no earlier than the earliest date a rate add-on was established specifically for any phase of this project. If the fees and costs are incurred in a later phase of the project, the add-on to the rate will be effective on the same date as the rate add-on for the actual cost of the tangible assets for that phase.

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

- (a) A copy of documentation requiring completion of the addition or replacements to maintain licensure or certification for adjustments requested under subsection (1) of this section;
- (b) A copy of the new bed license, whether the number of licensed beds increases or decreases, if applicable;
- (c) All documentation, e.g., copies of paid invoices showing actual final cost of assets and/or service, e.g., labor purchased as part of the capitalized addition or replacements;
- (d) Certification showing the completion date of the capitalized additions or replacements and the date the assets were placed in service per RCW 74.46.360;
- (e) A properly completed depreciation schedule for the capitalized additions or replacement as provided in this chapter;

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

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

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

- (a) The remaining functional life of the facility and the length of time since the facility's last significant improvement;
- (b) The amount and scope of the renovation or remodel to the facility and whether the facility will be better able to serve the needs of its residents;
- (c) Whether the improvement improves the quality of living conditions of the residents;
- (d) Whether the improvement might eliminate life safety, building code, or construction standard waivers;
- (e) Prior survey results; and
- (f) A review of the copy of the approval and description of the project.

(9) ~~((The department shall not grant a rate add-on effective earlier))~~ (a) No rate add-on shall take effect more than sixty days ((prior to the receipt of the initial written request by)) before the office of rates management receives the initial written request and ((not)) no earlier than the ((date)) first of the month in which the physical plant improvements are completed and fully utilized. ((The department shall grant a rate add-on for an approved request as follows:

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

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

(b) The following table indicates the effective date of an approved rate add-on in relation to the month in which the sixtieth day falls and the month that the project is completed and fully utilized:

<u>The sixtieth day before the initial written request falls in:</u>	<u>The project is completed and fully utilized:</u>	<u>The effective date of the approved rate add-on:</u>
<u>(i) Any month before the month in which the project is completed and fully utilized.</u>	<u>In any month following the month in which the sixtieth day falls.</u>	<u>(A) When the project is completed and fully utilized before the sixteenth of the month, the effective date is the first of that month; or (B) When the project is completed and fully utilized after the fifteenth of the month, the effective date is the first of the month following the month in which the project is completed and fully utilized.</u>

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<u>The sixtieth day before the initial written request falls in:</u>	<u>The project is completed and fully utilized:</u>	<u>The effective date of the approved rate add-on:</u>
<u>(ii) Any month after the month in which the project is completed and fully utilized.</u>	<u>In any month before the month in which the sixtieth day falls.</u>	<u>The first of the month following the month in which the sixtieth day falls unless the sixtieth day falls on the first of the month, then apply subsection (9)(b)(i)(A) and (B).</u>
<u>(iii) The same month in which the project is completed and fully utilized.</u>	<u>In the same month in which the sixtieth day falls.</u>	<u>The first of the month following the month in which the sixtieth day and the project completion and utilization falls, unless the sixtieth day falls on the first of the month, then apply subsection (9)(b)(i)(A) and (B).</u>

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

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

- (a) Complete, then the date of the first request may be used when applying subsection (9) of this section; or
- (b) Incomplete, then the date of the subsequent request must be used when applying subsection (9) of this section even though the physical plant improvements may be completed and fully utilized prior to that date.

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

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

(14) When any physical plant improvements made under subsection (1) or (2) of this section results in a change in licensed beds, any rate add-on granted will be subject to the provisions regarding the number of licensed beds, patient days, occupancy, etc., included in this chapter and chapter 74.46 RCW.

(15) All rate components to fund the Medicaid share of nursing facility new construction or refurbishing projects costing in excess of one million two hundred thousand dollars, or projects requiring state or federal certificate of need approval, shall be based upon a minimum facility occupancy

of eighty-five percent for the direct care, therapy care, support services, operations, property, financing allowance, and variable return component rate allocations, during the initial rate period in which the adjustment is granted. These same component rate allocations shall be based upon a minimum facility occupancy of eighty-five percent for all rate periods after the initial rate period.

(16) When a capitalized addition or replacement results in an increased licensed bed capacity during the calendar year following the capitalized addition or replacement:

- (a) The department shall for:
  - (i) Property, use the facility's anticipated resident occupancy level subsequent to the increase in licensed bed capacity; and
  - (ii) The financing allowance, multiply the net invested funds in accordance with WAC 388-96-748(3) and divide by the facility's anticipated resident occupancy level subsequent to the increase in licensed bed capacity; and
- (b) The anticipated resident occupancy for the increased number of beds must be at or above eighty-five percent. In all cases the department shall use at least eighty-five percent occupancy of the facility's increased licensed bed capacity.

**AMENDATORY SECTION** (Amending WSR 94-12-043 (Order 3737), filed 5/26/94, effective 6/26/94)

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

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

- (a) Program changes that the director of ((nursing home)) residential care services, aging and adult services administration determines a rate add-on is necessary to accomplish the purpose of the change and announces same in a written directive to the chief of the office of rates management; or
- (b) Changes in either the state or federal statutes or regulations or directives that the director of management services, aging and adult services administration determines requires a rate add-on to implement and directs in writing the chief of the office of rates management to implement.

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

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

**AMENDATORY SECTION** (Amending WSR 00-12-098, filed 6/7/00, effective 7/8/00)

**WAC 388-96-780 Exceptional therapy care—Covered Medicaid residents.** (1) The department will pay an exceptional therapy care rate to a nursing facility (NF) for a Medicaid resident who:

- (a) Is less than sixty-five years of age;

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- (b) Does not qualify for Medicare;
- (c) Has a functional need associated with a diagnosis of:
- (i) Traumatic brain injury,
  - (ii) Stroke/cerebrovascular accident (CVA),
  - (iii) Paraplegia,
  - (iv) Quadriplegia, or
  - (v) Major multiple fractures;
- (d) Resides in a NF that under WAC 388-96-779 is approved to provide exceptional therapy care; and
- (e) Is assessed by a department case manager to be:
- (i) Medically stable;
  - (ii) Physically and cognitively able to participate in the rehabilitation program;
  - (iii) Willing and able to participate in the rehabilitation program averaging a minimum of two hours per day, five days per week; and
  - (iv) Has an impairment in two or more of the following areas:

- (A) Mobility and strength;
- (B) Self-care/ADLs (activities of daily living);
- (C) Communication;
- (D) Continence-evacuation of bladder and/or bowel;
- (E) Kitchen/food preparation-safety and skill;
- (F) Cognitive/perceptual functioning; or
- (G) Pathfinding skills and safety.

(2)(a) If a NF designated under WAC 388-96-779 wants exceptional therapy care payments for a Medicaid resident, then the NF will submit a request for exceptional therapy care payments on a department-supplied application. A complete exceptional therapy care payment application will include documentation that the Medicaid resident meets the criteria of subsection (1)(a) through (c) of this subsection. The department will:

- (i) Review only complete applications; and
- (ii) Return incomplete applications to the NF within five days of receipt.

(b) The department will respond to a NF requesting exceptional therapy care payments for a resident, in writing, no later than five working days after receipt of a complete application.

(i) If the department approves exceptional therapy care payments for a resident, the department will:

(A) Authorize five days of exceptional therapy care payments for observation of the resident's response to the intensive therapy;

(B) Conduct an on-site review during the five days of observation to determine whether the resident is an appropriate candidate for intensive therapy and that the NF has a viable plan to provide therapy averaging a minimum of two hours a day, five days per week; and

(C) Extend, when the department is unable to complete the on-site review during the five-day observation period, the exceptional therapy care payments until the department is able to complete the on-site review.

(ii) When the department determines a resident is:

(A) An appropriate candidate and the NF has a viable plan to meet the minimum hours and days of therapy, the department will authorize continuing exceptional therapy care payments; or

(B) An inappropriate candidate or the NF lacks a viable plan to meet the minimum hours and days of therapy, the department will discontinue the authorized days of payment per subsection (2)(b)(i) of this section effective the day after the on-site review and deny continuing exceptional therapy care payments beyond the day of the on-site review.

(iii) Before the conclusion of the on-site visit, the department will give the NF written confirmation of approval or denial of continuing exceptional therapy care payments.

(iv) All exceptional therapy care payments are contingent upon the resident being eligible for Medicaid. A NF may provide exceptional therapy care and/or seek approval for exceptional therapy care payments on residents for whom it does not have a Medicaid award letter because the determination of the resident's Medicaid eligibility is pending. If the resident is denied Medicaid coverage, then the department will not pay for any exceptional therapy care, including the authorized days per subsection (2)(b)(i) of this section.

(3)(a) For the Medicaid resident receiving exceptional therapy care, a NF must complete a FIM or department approved functional assessment measure for each exceptional therapy care Medicaid resident within:

(i) Five calendar days of initiation of the exceptional therapy care;

(ii) Fourteen calendar days of initiation of the exceptional therapy care;

(iii) Thirty calendar days of initiation of the exceptional therapy care;

(iv) Sixty calendar days of initiation of the exceptional therapy care;

(v) Ninety calendar days of initiation of the exceptional therapy care; and

(vi) At discharge or termination of the exceptional therapy care.

(b) The department case manager will review the FIM or the department approved functional assessment((s)) measure to determine whether the exceptional therapy care rate continues to be necessary. The department will terminate the exceptional therapy care rate for a Medicaid resident who has:

(i) Made no measurable improvement in rehabilitation as demonstrated by his/her assessments; or

(ii) Not participated in a rehabilitation program averaging a minimum of two hours per day, five days per week.

(c) The NF will notify the department of the date it discontinues exceptional therapy care to the Medicaid resident. If the NF discontinues the exceptional therapy care because it discharged the Medicaid resident, the NF will provide the department with the discharge disposition and date.

(4) The department will pay an exceptional therapy care rate up to a maximum of one hundred calendar days per episode. After one hundred calendar days per episode, the department will pay for any therapy treatment the Medicaid resident may receive under RCW 74.46.511.

#### NEW SECTION

**WAC 388-96-802 May the nursing facility (NF) contractor bill the department for a Medicaid resident's day**



**of death, discharge, or transfer from the NF?** No, the NF contractor may bill the department for the first day of a Medicaid resident's stay but not the last day.

#### NEW SECTION

**WAC 388-96-803 When a nursing facility (NF) contractor becomes aware of a change in the Medicaid resident's income and/or resources, must he or she report it?**

Yes, within seventy-two hours of becoming aware of a change in the Medicaid resident's income and/or resources, the NF contractor will report the change in writing to the home and community services office serving the area in which the NF is located. When reporting the change, the NF contractor will include copies of any available documentation of the change in the Medicaid resident's income and/or resources.

**Reviser's note:** The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION** (Amending WSR 00-12-098, filed 6/7/00, effective 7/8/00)

**WAC 388-96-901 Disputes.** (1) If a contractor wishes to contest the way in which a statute or department rule relating to the nursing facility Medicaid payment system was applied to the contractor by the department, the contractor shall pursue the administrative review process prescribed in WAC 388-96-904.

(a) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW subject to administrative review under WAC 388-96-904 include but are not limited to:

- (i) Determining a nursing facility payment rate;
- (ii) Calculating a nursing facility settlement;
- (iii) Imposing a civil fine on the nursing facility;
- (iv) Suspending payment to a nursing facility;
- (v) Refusing to contract with a nursing facility.

(b) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW not subject to administrative review under WAC 388-96-904 include but are not limited to those taken under the authority of RCW 74.46.421 and sections of this chapter implementing RCW 74.46.421.

(2) The administrative review process prescribed in WAC 388-96-904 shall not be used to contest or review unrelated or ancillary department actions, whether review is sought to obtain a ruling on the merits of a claim or to make a record for subsequent judicial review or other purpose. If an issue is raised that is not subject to review under WAC 388-96-904, the presiding (~~office [officer]~~) officer shall dismiss such issue with prejudice to further review under the provisions of WAC 388-96-904, but without prejudice to other administrative or judicial review as may be provided by law. Unrelated or ancillary actions not eligible for administrative review under WAC 388-96-904 include but are not limited to:

(a) Challenges to the adequacy or validity of the public process followed by department in proposing or making a change to the nursing facility Medicaid payment rate method-

ology, as required by 42 U.S.C. 1396a (a)(13)(A) and WAC 388-96-718;

(b) Challenges to the nursing facility Medicaid payment system that are based in whole or in part on federal laws, regulations, or policies;

(c) Challenges to a contractor's rate that are based in whole or in part of federal laws, regulations, or policies;

(d) Challenges to the legal validity of a statute or regulation;

(e) Issues relating to case mix accuracy review of minimum data set (MDS) nursing facility resident assessments, which shall be limited to separate administrative review under the provisions of WAC 388-96-905;

(f) Quarterly rate updates to reflect changes in a facility's resident case mix;

(g) Issues relating to any action of the department affecting a Medicaid beneficiary or provider that were not commenced by the office of rates management, aging and adult services administration, for example, entitlement to or payment for durable medical equipment or other services; ~~(and)~~

(h) Issues relating to exceptional therapy care and exceptional direct care programs codified at WAC 388-96-779 through 388-96-782; and

(i) Department actions taken under WAC 388-96-218 (2)(c).

(3) If a contractor wishes to challenge the legal validity of a statute or regulation relating to the nursing facility Medicaid payment system, or wishes to bring a challenge based in whole or in part on federal law, it must bring such action de novo in a court of proper jurisdiction as may be provided by law.

**WSR 01-07-052**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Children's Administration)  
 [Filed March 16, 2001, 3:37 p.m.]

Original Notice.

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

Title of Rule: Family child day care minimum licensing requirements, chapter 388-155 WAC.

Purpose: To provide minimum licensing requirements for family child care homes. February 24, 2000, thirty-eight sections of chapter 388-155 WAC were amended. All were changed, in compliance with the governor's order to simplify and clarify, to say "must" instead of "shall." This adoption will change "shall" to "must" in the rest of chapter 388-155 WAC. This will create a smoother and clearer document. Also, the area code needs to be added to WAC 388-155-270 (6)(c).

Other Identifying Information: Change "shall" to "must" throughout the text. Specific numbers are WAC 388-155-020, 388-155-040, 388-155-050, 388-155-060, 388-155-080, 388-155-085, 388-155-090, 388-155-092, 388-155-093, 388-155-094, 388-155-095, 388-155-098, 388-155-160, 388-155-

190, 388-155-330, 388-155-370, 388-155-380, 388-155-420, 388-155-480, 388-155-605, 388-155-610, 388-155-630, 388-155-640, 388-155-650, 388-155-660, 388-155-670 and 388-155-680; and add area code in WAC 388-155-270 (6)(c), which was inadvertently omitted.

Statutory Authority for Adoption: RCW 74.15.030.

Statute Being Implemented: RCW 74.15.030.

Summary: WACs cited above will have the word "shall" changed to "must." This will make the intent more clear throughout the text. Area code that was inadvertently omitted will be added.

Reasons Supporting Proposal: Governor's initiative to clarify and simplify rules.

Name of Agency Personnel Responsible for Drafting: Leslie Edwards-Hill, 14th and Jefferson, Olympia, Washington 98504-5700, (360) 902-8041; Implementation and Enforcement: Rachael Langen, Office of Child Care Policy, (360) 902-8038.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: The word "shall" will be changed to "must" throughout the text, which will clarify the intent of the rule. This is also in conformity with the clear rule-writing style and principles. It will be easier for providers to understand that rules with "must" are mandatory.

An area code that was omitted will be added so that providers can utilize the phone number.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. One was prepared for the other WACs that were changed. This has no economic impact, it is simply a clarification of existing rules.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Blake Office Park (East), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on May 8, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Kelly Cooper, DSHS Rules Coordinator, by May 1, 2001, phone (360) 664-6094, TTY (360) 664-6178, e-mail coopeKD@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, by May 8, 2001.

Date of Intended Adoption: No sooner than May 9, 2001.

March 15, 2001

Charles Hunter, Director

Administrative Services Division

**AMENDATORY SECTION** (Amending Order 3136, filed 2/1/91, effective 3/4/91)

**WAC 388-155-040 Local ordinances and codes.** The department ((shall)) must issue or deny a license on the basis of the applicant's compliance with minimum licensing and

procedural requirements. Local officials ((shall)) must be responsible for enforcing city ordinances and county codes, such as zoning and building regulations.

**AMENDATORY SECTION** (Amending Order 3136, filed 2/1/91, effective 3/4/91)

**WAC 388-155-050 Waivers.** (1) In an individual case, the department, for good cause, may waive a specific requirement and may approve an alternate method of achieving the specific requirement's intent if the:

(a) Licensee or applicant submits to the department a written waiver request fully explaining the circumstances necessitating the waiver; and

(b) Department determines waiver approval will not jeopardize the safety or welfare of the child in care or detract from the quality of services the licensee delivers.

(2) The department may approve a waiver request only for a specific purpose or child and for a specific period of time not exceeding the expiration date of the license.

(3) The department may limit or restrict a license issued in conjunction with a waiver.

(4) The licensee ((shall)) must maintain on the premises a copy of the written waiver approval.

(5) The department's denial of a waiver request ((shall)) must not be subject to appeal under chapter 34.05 RCW.

**AMENDATORY SECTION** (Amending Order 9373, filed 4/26/96, effective 5/27/96)

**WAC 388-155-060 Dual licensure.** The department ((shall)) must not issue a family child care home license to the applicant having a foster family home license or other license involving full-time care or permit simultaneous care for the child and adult on the same premises. An exception may be granted if the applicant or licensee:

(1) Demonstrates evidence that care of one client category will not interfere with the quality of care provided to another category of clients;

(2) Requests and obtains a waiver permitting dual licensure;

(3) Maintains the most stringent maximum capacity limitation for the client categories concerned; and

(4) Where the licensee desires to exceed the most stringent maximum capacity limitation, requests an additional waiver to subsection (3) above. This additional waiver request may be written on one form with the request for dual licensing.

**AMENDATORY SECTION** (Amending WSR 91-04-048 (Order 3136), filed 2/1/91, effective 3/4/91)

**WAC 388-155-080 Issuance of license.** (1) The department ((shall-issue)) issues the applicant or licensee a license for a specific number of children dependent on the:

(a) Department's evaluation of the home's premises and physical accommodations;

(b) Number and skills of the licensee, assistant, and volunteers; and

(c) Ages and characteristics of the children served.

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(2) The department:

- (a) May issue the applicant or licensee a license to care for fewer children than the home's maximum capacity; and
- (b) ((~~shall~~)) Must not issue the applicant or licensee a license for the care of more children than permitted under this chapter.

**AMENDATORY SECTION** (Amending WSR 96-20-095, filed 10/1/96, effective 11/1/96)

**WAC 388-155-085 Initial license.** (1) The department may issue an initial license to an applicant not currently licensed to provide child day care when the applicant:

- (a) Can demonstrate compliance with the rules contained in this chapter pertaining to the health and safety of the child in care; but
- (b) Cannot demonstrate compliance with the rules pertaining to:
  - (i) Provider-child interactions,
  - (ii) Capacity,
  - (iii) Behavior management,
  - (iv) Activity and routines,
  - (v) Child records and information, and
  - (vi) Other rules requiring department observation of the applicant's ability to comply with rules.
- (c) Can provide a plan, acceptable to the department, to comply with rules found in subsection (1)(b) of this section.
- (2) The department may issue an initial license to an applicant for a period not to exceed six months, renewable for a period not to exceed two years.
- (3) The department ((~~shall~~)) must evaluate the applicant's ability to comply with all rules contained in this chapter during the period of initial licensure prior to issuing a full license.
- (4) The department may issue a full license to the applicant demonstrating compliance with all rules contained in this chapter at any time during the period of initial licensure.
- (5) The department ((~~shall~~)) must not issue a full license to the applicant who does not demonstrate the ability to comply with all rules contained in this chapter during the period of initial licensure.

**AMENDATORY SECTION** (Amending Order 3974, filed 4/26/96, effective 5/27/96)

**WAC 388-155-090 License denial, suspension, or revocation.** (1) Before granting a license and as a condition for continuance of a license, the department ((~~shall~~)) must consider the ability of the applicant and licensee to meet the requirements of this chapter. If more than one person is the applicant or licensee, the department:

- (a) ((~~shall~~)) must consider the persons' qualifications separately and jointly; and
- (b) May deny, suspend, revoke, or not renew the license based on the failure of one of the persons to meet the requirements.
- (2) The department ((~~shall~~)) must deny, suspend, revoke, or not renew the license of a person who:
  - (a) Has abused, neglected, or sexually exploited a child as those acts or omissions are defined in RCW 26.44.020 and

WAC 388-15-130, is ineligible to provide care because of a criminal history under chapter 388-330 WAC, or allows such a person on the premises;

- (b) Commits or was convicted of a felony reasonably related to the competency of the person to meet the requirements of this chapter;
- (c) Engages in illegal use of a drug or excessive use of alcohol;
- (d) Commits, permits, aids, or abets the commission of an illegal act on the premises;
- (e) Commits, permits, aids, or abets the abuse, neglect, exploitation, or cruel or indifferent care to a child in care;
- (f) Refuses to permit an authorized representative of the department, state fire marshal, department of health, or state auditor's office to inspect the premises; or
- (g) Refuses to permit an authorized representative of the department, the department of health, or the state auditor's office access to records related to operation of the home or to interview an assistant or a child in care.
- (3) The department may deny, suspend, revoke, or not renew a license of a person who:
  - (a) Seeks to obtain or retain a license by fraudulent means or misrepresentation, including, but not limited to:
    - (i) Making a materially false statement on the application; or
    - (ii) Omitting material information on the application.
  - (b) Provides insufficient staff in relation to the number, ages, or characteristics of children in care;
  - (c) Allows a person unqualified by training, experience, or temperament to care for or be in contact with a child in care;
  - (d) Violates any condition or limitation on licensure including, but not limited to:
    - (i) Permitting more children on the premises than the number for which the home is licensed; or
    - (ii) Permitting on the premises a child of an age different from the ages for which the home is licensed.
  - (e) Fails to provide adequate supervision to a child in care;
  - (f) Demonstrates an inability to exercise fiscal responsibility and accountability with respect to operation of the home;
  - (g) Misappropriates property of a child in care;
  - (h) Knowingly permits on the premises an employee or volunteer who has made a material misrepresentation on an application for employment or volunteer service;
  - (i) Refuses or fails to supply necessary, additional department-requested information; or
  - (j) Fails to comply with any provision of chapter 74.15 RCW or this chapter.
- (4) The department ((~~shall~~)) must not issue a license to a person who has had denied, suspended, revoked, or not renewed a license to operate a facility for the care of children or adults, in this state or elsewhere, unless the person demonstrates by clear, cogent, and convincing evidence the person has undertaken sufficient corrective action or rehabilitation to warrant public trust and to operate the home in accordance with the rules of this chapter.
- (5) The department's notice of a denial, revocation, suspension, or modification of a license and the applicant's or

licensee's right to a hearing ((~~shall~~)) must be governed under RCW 43.20A.205.

**AMENDATORY SECTION** (Amending WSR 96-20-095, filed 10/1/96, effective 11/1/96)

**WAC 388-155-092 Civil penalties.** (1) Before imposing a civil penalty, the department ((~~shall~~)) must provide written notification by personal service, including by the licensor, or certified mail which ((~~shall~~)) must include:

(a) A description of the violation and citation of the applicable requirement or law;

(b) A statement of what is required to achieve compliance;

(c) The date by which the department requires compliance;

(d) The maximum allowable penalty if timely compliance is not achieved;

(e) The means to contact any technical assistance services provided by the department or others; and

(f) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department.

(2) The length of time in which to comply ((~~shall~~)) must depend on:

(a) The seriousness of the violation;

(b) The potential threat to the health, safety and welfare of children in care; or

(c) Previous opportunities to correct the deficiency.

(3) The department may impose a civil penalty based on but not limited to these reasons:

(a) The child care home has previously been subject to an enforcement action for the same or similar type of violation of the same stature or rule; or

(b) The child care home has previously been given notice of the same or similar type of violation of the same statute or rule; or

(c) The violation represents a potential threat to the health, safety, and/or welfare of children in care.

(4) The department may impose a civil penalty in addition to or in conjunction with other disciplinary actions against a child care license including probation, suspension, or other action.

(5) The civil fine ((~~shall~~)) must be payable twenty-eight days after receipt of the notice or later as specified by the department.

(6) The fine may be forgiven if the agency comes into compliance during the notification period.

(7) The center or person against whom the department assesses a civil fine has a right to an adjudicative proceeding as governed by RCW 43.20A.215.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION** (Amending WSR 96-20-095, filed 10/1/96, effective 11/1/96)

**WAC 388-155-093 Civil penalties—Amount of penalty.** Whenever the department imposes a civil monetary pen-

alty per WAC 388-155-092(3), the department ((~~shall~~)) must impose a penalty of seventy-five dollars per violation per day. The department may assess and collect the penalty with interest for each day of noncompliance.

**AMENDATORY SECTION** (Amending WSR 96-20-095, filed 10/1/96, effective 11/1/96)

**WAC 388-155-094 Civil penalty—Posting of notice of penalty.** (1) The licensee ((~~shall~~)) must post the final notice of a civil penalty in a conspicuous place in the facility.

(2) The notice ((~~shall~~)) must remain posted until payment is received by the department.

**AMENDATORY SECTION** (Amending WSR 96-20-095, filed 10/1/96, effective 11/1/96)

**WAC 388-155-095 Civil penalties—Unlicensed programs.** Where the department has determined that an agency is operating without a license, the department ((~~shall~~)) must send written notification by certified mail or other means showing proof of service. This notification ((~~shall~~)) must contain the following:

(1) Advising the agency of the basis of determination of providing child care without a license and the need to be licensed by the department;

(2) The citation of the applicable law;

(3) The assessment of seventy-five dollars per day penalty for each day unlicensed care is provided. The fine would be effective and payable within thirty days of receipt of the notification;

(4) How to contact the office of child care policy;

(5) The need to submit an application to the office of child care policy within thirty days of receipt of the notification;

(6) That the penalty may be forgiven if the agency submits an application within thirty days of the notification; and

(7) The right of an adjudicative proceeding as a result of the assessment of a monetary penalty and the appropriate procedure for requesting an adjudicative proceeding.

**AMENDATORY SECTION** (Amending Order 3136, filed 2/1/91)

**WAC 388-155-160 Off-site trips.** (1) The licensee may transport or permit the off-site travel of the child to attend school, participate in field trips, or engage in other off-site activities only with written parental consent.

(2) The parent's consent may be:

(a) For a specific date and trip; or

(b) A blanket authorization describing the full range of trips the child may take. In such case, the licensee ((~~shall~~)) must notify the parent in advance about the trip.

**AMENDATORY SECTION** (Amending Order 3136, filed 2/1/91, effective 3/4/91)

**WAC 388-155-190 Capacity.** (1) The department ((~~shall~~)) must determine the maximum capacity of the family child care home based on the:

- (a) Licensee's experience and training;
  - (b) Assistant's qualifications;
  - (c) Number, ages, and characteristics of the children cared for;
  - (d) Number and ages of the licensee's own children and other children residing in the home eleven years of age and under;
  - (e) Usable indoor and outdoor space; and
  - (f) Supply of toys and equipment.
- (2) The department may license the family child care home according to the following table:

NUMBER OF PROVIDERS REQUIRED	AGE RANGE IN YEARS	MAXIMUM NUMBER OF CHILDREN UNDER TWO YEARS OF AGE	MAXIMUM NUMBER OF CHILDREN
(a) Licensee	Birth - 11	2	6
(b) Licensee with one year experience	2 - 11	None	8
(c) Licensee with one year experience	5 - 11	None	10
(d) Licensee with one year experience plus assistant	Birth - 11	4	9
(e) Licensee with two years' experience and one early childhood education (ECE) class	3 - 11	None	10
(f) Licensee with two years' experience and one ECE class plus assistant	Birth - 11	4	12

So that the:

- (a) Unassisted licensee may provide care for a maximum of six children, birth through eleven years of age, with two or fewer children under two years of age; or
- (b) Unassisted licensee with one year of experience operating a licensed family child care home or the equivalent experience may provide care for a maximum of eight children, two years through eleven years of age; or
- (c) Unassisted licensee with one year of experience operating a licensed family child care home or the equivalent experience may provide care for a maximum of ten children, five years through eleven years of age; or
- (d) Licensee with one year of experience as a licensed family child care home provider or the equivalent experience and an assistant may provide care for seven through nine children, birth through eleven years of age, with four or fewer children under two years of age; or
- (e) Unassisted licensee with two years of experience operating a licensed family child care home or the equivalent experience and one class in ECE, or the equivalent education, may provide care for a maximum of ten children, three years through eleven years of age; or
- (f) Licensee with two years of experience operating a licensed family child care home or the equivalent experience, one class in ECE or the equivalent education, and a qualified assistant may provide care for a maximum of twelve children, birth through eleven years of age, with four or fewer children under two years of age.

- (3) The licensee ((~~shall~~)) must ensure an assistant is on the premises when:
  - (a) Three or more children under two years of age are in care;
  - (b) Seven or more children are in care and any child in care is under two years of age; or
  - (c) More than ten children are in care.
- (4) The department's determination of capacity shall include all children eleven years of age or under on the premises.
- (5) The licensee ((~~shall~~)) must ensure the assistant is eighteen years of age or older when the assistant is solely responsible for the child in care.

**AMENDATORY SECTION** (Amending WSR 00-06-040, filed 2/28/00, effective 3/30/00)

**WAC 388-155-270 Care of young children.** (1) Diapering and toileting. The licensee must ensure:

- (a) The diaper-changing area is:
  - (i) Separate from food preparation areas; and
  - (ii) Easily accessible to a handwashing sink other than a sink used for food preparation;
  - (iii) Sanitized between use for different children; or
  - (iv) Protected by a disposable covering discarded after each use.
- (b) The diaper-changing area is impervious to moisture and washable.
- (2) The licensee must:
  - (a) Use a nonabsorbent pad large enough for the child's upper body and buttocks;
  - (b) Use reusable diapers, a commercial diaper service, or disposable diapers;
  - (c) Place soiled diapers without rinsing into a separate, cleanable, covered container provided with a waterproof liner before transporting to a laundry, parent, or acceptable disposal;
  - (d) Remove soiled diapers from the home daily or more often unless the licensee uses a commercial diaper service;
  - (e) Use disposable towels or clean, reusable towels laundered between use for different children for cleaning the child; and
  - (f) Wash hands after diapering the child or helping the child with toileting.
- (3) The licensee must:
  - (a) Consult with the child's parent regarding initiating toilet training;
  - (b) Locate potty chairs on washable, nonabsorbent surfaces in appropriate toileting area when in use; and
  - (c) Sanitize toilet training equipment after each use.
- (4) Feeding. The licensee and the infant's parent must agree on a schedule for feedings:
  - (a) The licensee or parent may provide the child's bottle feeding in the following manner:
    - (i) A filled bottle brought from home;
    - (ii) Whole milk or formula in ready-to-feed strength; or
    - (iii) Formula requiring no preparation other than dilution with water, mixed on the premises, following manufacturer's directions.

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(b) The licensee must prepare the child's bottle and nipple in a sanitary manner in an area separate from the diapering area.

(c) The licensee must sanitize the child's bottle and nipple between uses.

(d) The licensee must label the bottle with the child's name and date prepared, if more than one bottle-fed child is in care.

(e) The licensee must refrigerate a filled bottle if the child does not consume the contents immediately and discard the bottle's contents if the child does not consume the contents within twelve hours.

(f) To ensure safety and promote nurturing, the licensee and assistant must:

(i) Hold the child in a semi-sitting position for feeding, if the child is unable to sit in a high chair, unless such is against medical advice;

(ii) Interact with the child;

(iii) Not prop a bottle;

(iv) Not give a bottle to the reclining child; and

(v) Take the bottle from the child when the child finishes feeding.

(g) The licensee must provide semi-solid food for the child, upon consultation with the parent, as recommended by the child's health care provider.

(5) Sleeping equipment. The licensee must furnish the child a single-level crib, infant bed, bassinet, or play pen for napping until such time the parent and licensee agree the child can safely use a mat, cot, or other approved sleep equipment.

(6) The licensee must ensure the young child has a sturdy crib, infant bed, bassinet, or play pen:

(a) Made of wood, metal, or plastic with secure latching devices; and

(b) Constructed with two and three-eighths inches or less space between vertical slats when the crib is used for a child six months of age or younger; and

(c) The licensee must follow the recommendations of the American Academy of Pediatrics (1-800-505-CRIB (~~{1-800-505-CRIB}~~))), placing infants on their backs each time for sleep. The provider may use a different sleep position if the parent requests it in writing.

(7) The licensee must ensure the child's crib mattress, infant bed, bassinet, or play pen mattress is:

(a) Snug fitting, preventing the infant from being caught between the mattress and crib side rails; and

(b) Waterproof, easily sanitized, and in good repair.

(8) Activities and equipment. The licensee must provide the young child a daily opportunity for:

(a) Large and small muscle development;

(b) Crawling and exploring;

(c) Sensory stimulation;

(d) Social interaction;

(e) Development of communication; and

(f) Learning self-help skills.

(9) The licensee must provide safe, noningestible, suitable toys and equipment for the young child's mental and physical development.

AMENDATORY SECTION (Amending Order 3136, filed 2/1/91, effective 3/4/91)

**WAC 388-155-330 Indoor play area.** (1) The home's indoor premises (~~(shall)~~) must contain adequate space for child play and sufficient space to house developmentally appropriate activities for the number and age range of children served. The licensee (~~(shall)~~) must provide a minimum of thirty-five square feet of usable floor space per child, exclusive of a bathroom, hallway, and closet.

(2) The licensee may use and consider the napping area as child care space if mats and cots are removed when not in use. The licensee may consider the kitchen usable space if:

(a) Appliances and utensils do not create a safety hazard;

(b) Toxic or harmful substances are not accessible to the child;

(c) Food preparation and storage sanitation is maintained; and

(d) The space is used safely and appropriately as a child care activity area.

(3) The licensee may use a room for multiple purposes such as playing, dining, napping, and learning activities, provided:

(a) The room is of sufficient size; and

(b) The room's use for one purpose does not interfere with use of the room for another purpose.

AMENDATORY SECTION (Amending Order 3136, filed 2/1/91, effective 3/4/91)

**WAC 388-155-370 Storage.** (1) The licensee (~~(shall)~~) must provide accessible individual space for the child to store clothes and personal possessions.

(2) The licensee (~~(shall)~~) must provide sufficient space to store equipment, supplies, records, files, cots, mats, and bedding.

AMENDATORY SECTION (Amending Order 3136, filed 2/1/91, effective 3/4/91)

**WAC 388-155-380 Home atmosphere.** (1) The licensee (~~(shall)~~) must provide a cheerful learning environment for the child consistent with a family home environment by placing visually stimulating decorations, pictures, or other attractive materials at appropriate heights for the child.

(2) The licensee (~~(shall)~~) must maintain a safe and developmentally appropriate noise level, without inhibiting normal ranges of expression by the child, so provider and child can be clearly heard and understood in normal conversation.

(3) The licensee (~~(shall)~~) must locate light fixtures and provide lighting intensities promoting good visibility and comfort for the child in care.

(4) The licensee (~~(shall)~~) must maintain the temperature within the home at:

(a) Sixty-eight degrees Fahrenheit or more during the child's waking hours; and

(b) Sixty degrees Fahrenheit or more during the child's napping or sleeping hours.

(5) The licensee (~~(shall)~~) must ventilate the home for the health and comfort of the child in care.

AMENDATORY SECTION (Amending Order 3136, filed 2/1/91, effective 3/4/91)

**WAC 388-155-420 Child abuse, neglect, and exploitation.** The licensee and assistant ((~~shall~~)) must protect the child in care from child abuse, neglect, or exploitation as required under chapter 26.44 RCW.

AMENDATORY SECTION (Amending Order 3136, filed 2/1/91, effective 3/4/91)

**WAC 388-155-480 Reporting of death, injury, illness, epidemic, or child abuse.** The licensee ((~~shall~~)) must report immediately:

(1) A death, serious injury requiring medical treatment, or illness requiring hospitalization of a child in care, by telephone and in writing, to the parent, licenser, and child's social worker, if any;

(2) An instance when the licensee or assistant has reason to suspect the occurrence of physical, sexual, or emotional child abuse, child neglect, or child exploitation, as required under chapter 26.44 RCW, by telephone, to child protective services or local law enforcement; or

(3) An occurrence of food poisoning or communicable disease, as required by the state board of health, by telephone, to the local public health department.

AMENDATORY SECTION (Amending Order 9373, filed 4/26/96, effective 5/27/96)

**WAC 388-155-605 Hazardous areas.** Rooms or spaces containing a commercial-type kitchen, boiler, maintenance shop, janitor closet, laundry, woodworking shop, flammable or combustible storage, painting operation, or parking garage ((~~shall~~)) must be separated from the family child day care home or any exits by a fire wall.

AMENDATORY SECTION (Amending Order 9373, filed 4/26/96, effective 5/27/96)

**WAC 388-155-610 Single station smoke detectors.** (1) Smoke detectors ((~~shall~~)) must be located in all sleeping and napping rooms in family child day care homes.

(2) In family child day care homes with more than one story, and in family child day care homes with basements, a smoke detector ((~~shall~~)) must be installed on each story and in the basement.

(3) In family child day care homes where a story or basement is split into two or more levels, the smoke detector ((~~shall~~)) must be installed in the upper level, except that when the lower level contains a sleeping or napping area, a smoke detector ((~~shall~~)) must be located on each level.

(4) When sleeping or napping rooms are on an upper level, the smoke detector ((~~shall~~)) must be placed on the ceiling of the upper level in close proximity to the stairway and in each sleeping/napping room.

(5) In a family child day care home where the ceiling height of a room open to the hallway serving sleeping or napping rooms exceeds that of the hallway by twenty-four inches

or more, smoke detectors ((~~shall~~)) must be installed in both the hallway and the sleeping/napping room.

(6) Smoke detectors ((~~shall~~)) must sound an alarm audible in all areas of the building.

(7) In new construction, required smoke detectors ((~~shall~~)) must receive their primary power from the building wiring when such wiring is served from a commercial source. Wiring ((~~shall~~)) must be permanent and without a disconnecting switch other than those required for overcurrent protection.

(8) Smoke detectors may be battery operated when installed in existing buildings or buildings without commercial power.

(9) Where battery operated smoke detectors are installed, at least one extra battery of the type and size specified for the battery operated smoke detector ((~~shall~~)) must be maintained upon the premises.

(10) Single station smoke detectors ((~~shall~~)) must be tested at monthly intervals or in a manner specified by the manufacturer. Records of such testing shall be maintained upon the premises.

AMENDATORY SECTION (Amending Order 9373, filed 4/26/96, effective 5/27/96)

**WAC 388-155-620 Alternate means of sounding a fire alarm.** In addition to single station smoke detectors, family child day care homes ((~~shall~~)) must provide an alternate means for sounding a fire alarm. A police type whistle or similar device is adequate for meeting this requirement, provided that whatever method is selected is limited to an evacuation emergency only.

AMENDATORY SECTION (Amending Order 9373, filed 4/26/96, effective 5/27/96)

**WAC 388-155-630 Fire extinguisher.** (1) At least one approved 2A, 10B:C rated fire extinguisher ((~~shall~~)) must be provided on each floor level occupied for day care use. Such extinguisher ((~~shall~~)) must be located in the area of the normal path of egress. The maximum travel distance to an extinguisher shall not exceed seventy-five feet.

(2) Fire extinguishers ((~~shall~~)) must be operationally ready for use at all times.

(3) Fire extinguisher ((~~shall~~)) must be kept on a shelf or mounted in the bracket provided for this purpose so that the top of the extinguisher is not more than five feet above the floor.

(4) The licensee ((~~shall~~)) must ensure that fire extinguishers receive annual maintenance certification by a firm specializing in and licensed to do such work. Maintenance means a thorough check of the extinguisher to include examination of:

- (a) Mechanical parts;
- (b) Extinguishing agent; and
- (c) Expelling means.

AMENDATORY SECTION (Amending Order 9373, filed 4/26/96, effective 5/27/96)

**WAC 388-155-640 Fire prevention.** (1) The licensee ((shall)) must ensure that the local fire department is requested to visit the family child day care home to become familiar with the facility and to assist in planning evacuation or emergency procedures. Where a fire department does not provide this service, the licensee ((shall)) must document this contact.

(2) Furnace rooms ((shall)) must be maintained free of lint, grease and rubbish accumulations and other combustibles and suitably isolated, enclosed or protected.

(3) Flammable or combustible materials ((shall)) must be stored away from exits and in areas which are not accessible to children. Combustible rubbish shall not be allowed to accumulate and ((shall)) must be removed from the building or stored in closed, metal containers.

(4) The licensee ((shall)) must keep all areas used for child care clean and neat, making sure that all waste generated daily is removed from the building and disposed of in a safe manner outside the building. All containers used for the disposal of waste material ((shall)) must be of noncombustible materials with tops. Electrical motors shall be kept dust-free.

(5) Open-flame devices capable of igniting clothing ((shall)) must not be left on, unattended or used in a manner which could result in an accidental ignition of children's clothing. Candles ((shall)) must not be used.

(6) A flashlight ((shall)) must be available for use as an emergency power source.

(7) All electrical circuits, devices and appliances ((shall)) must be properly maintained. Circuits ((shall)) must not be overloaded. Extension cords and multi-plug adapters ((shall)) must not be used in lieu of permanent wiring and proper receptacles.

(8) The use of portable space heaters of any kind is prohibited.

(9) Approved numbers or addresses ((shall)) must be placed on all new and existing homes and in the driveway to the house when the house is not visible from the road. The numbers or address ((shall)) must be in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers ((shall)) must contrast with their background.

(10) Fireplaces, woodstoves, similar devices and their connections ((shall)) must be approved by the local building official. If the woodstove is used as a sole source of heat or is used during hours of operation, such devices ((shall)) must be cleaned, maintained and inspected on at least an annual basis by a person or firm specializing in such work and licensed.

Where open flames and/or hot surfaces are accessible, approved barriers ((shall)) must be erected to prevent children from coming in contact with the open flames and/or hot surfaces.

AMENDATORY SECTION (Amending Order 9373, filed 4/26/96, effective 5/27/96)

**WAC 388-155-650 Sprinkler system maintenance.** Sprinkler systems, if installed, ((shall)) must be tested on an annual basis by a person or agency qualified by licensing. The results of the system test ((shall)) must be documented on forms provided by the licensor and maintained at the home for inspection by the licensor.

AMENDATORY SECTION (Amending Order 9373, filed 4/26/96, effective 5/27/96)

**WAC 388-155-660 Fire evacuation plan.** Each home ((shall)) must develop written fire evacuation plans. The evacuation plan ((shall)) must include an evacuation floor plan, identifying exit doors and windows, that ((shall)) must be posted at a point clearly visible to the assistant and parents. Plans ((shall)) must include the following:

- (1) Action to be taken by the person discovering a fire;
- (2) Method to be used for sounding an alarm on the premises;
- (3) Action to be taken for evacuation of the building and assuring accountability of the children; and
- (4) Action to be taken pending arrival of the fire department.

AMENDATORY SECTION (Amending Order 9373, filed 4/26/96, effective 5/27/96)

**WAC 388-155-670 Fire evacuation drill.** A fire evacuation drill ((shall)) must be conducted at least once each month. A written record, the fire safety record and evacuation plan, ((shall)) must be maintained and posted on the premises indicating the date, time and other required entries on the form. Such forms are available from the office of child care policy.

AMENDATORY SECTION (Amending Order 9373, filed 4/26/96, effective 5/27/96)

**WAC 388-155-680 Staff training.** The licensee and each employee or assistant ((shall)) must be familiar with all elements of the fire evacuation plan and must be capable of accomplishing the following:

- (1) Operation of fire extinguisher installed on the premises.
- (2) Testing smoke detectors (single station types).
- (3) Conducting frequent inspections of the home to identify fire hazards and take action to correct any hazards noted during the inspection. Such inspections should be conducted on a monthly basis and records kept on the premises for review by the licensor.



**WSR 01-07-087**  
**PROPOSED RULES**  
**PUGET SOUND**  
**CLEAN AIR AGENCY**  
 [Filed March 21, 2001, 9:28 a.m.]

**Original Notice.**

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule: Adopt Regulation I, Section 6.01.

Revise Regulation I, Sections 1.07, 6.03, 6.04, 6.06, 6.07, 6.09, 6.10, and 9.16.

Purpose: To bring the agency's rules into conformance with the Washington Clean Air Act (chapter 70.94 RCW) and WAC 173-400-171 (public notice), and to reduce the number of permit applications for sources with a de minimis impact on air quality.

Other Identifying Information: Section 1.07 pertains to Definitions; Article 6 pertains to New Source Review; Section 9.16 pertains to Spray-Coating Operations.

Statutory Authority for Adoption: Chapter 70.94 RCW. Statute Being Implemented: RCW 70.94.141.

Summary: Moves pertinent definitions from Section 1.07 into Section 6.01 for better accessibility. Adds a definition for "New Source" to Section 6.01. Brings agency rules into conformance with chapter 70.94 RCW and WAC 173-400-171. Removes references to the Notice of Construction program from Section 9.16.

Reasons Supporting Proposal: RCW 70.94.153 specifies a thirty-day review period for new source review involving the replacement or substantial alteration of control equipment. Section 6.07 presently specifies a sixty-day period for all new source review.

RCW 70.94.153 also deems complete applications for such equipment to be unconditionally approved if not acted on within this thirty-day period. Section 6.07 does not presently specify this.

RCW 70.94.153 allows approval orders for such equipment to prescribe only reasonable operation and maintenance conditions. Section 6.07 presently specifies that all approval orders may contain conditions as are reasonably necessary to ensure the maintenance of compliance with applicable emission standards.

RCW 70.94.152(5) limits the review of modifications to existing sources to those individual sources proposed to be modified and the air contaminants whose emissions would increase as a result of the modification. Section 6.07 does not presently specify this.

RCW 70.94.152(9) requires the agency to notify the applicant within thirty days of receipt of an application either that it is complete or to notify the applicant of all additional information necessary to complete the application. Section 6.03 presently requires notification only for incomplete applications.

RCW 70.94.152 (1) and (11) exempt sources from new source review if they are deemed by the agency to have a de minimis impact on air quality. The agency has reviewed thousands of applications since the current list of exempt equipment was last updated in 1992. The agency has also reviewed the exemptions used by ecology, the Bay Area Air

Quality Management District, and the South Coast Air Quality Management District. The agency has determined that many sources presently subject to review have a de minimis impact on air quality. In addition, the agency has determined that some new sources warrant a notification, but not a review under RCW 70.94.152.

RCW 70.94.085 allows the agency to enter into cost-reimbursement agreements with applicants for review of complex projects (requiring an Environmental Impact Statement). Section 6.04 presently does not specify this.

WAC 173-400-171 requires public notice if a 'significant net increase in emissions' of any pollutant regulated by state or federal law would result. WAC 173-400-030(74) defines a 'significant net increase in emission' to include sources with particulate matter (with an aerodynamic diameter <100 micrometers) emissions >25 tons per year. Section 6.06 presently does not specify a limit for this contaminant. Additionally, the public notice provisions in Section 6.06 pertaining to limits on potential to emit and risk analyses need to be clarified.

Many of the defined terms used in Article 6 are not intuitive. Moving these definitions from Section 1.07 to a new section in Article 6, would make them more accessible. The definition of 'new source' from RCW 70.94.030(16) would be added but no changes are proposed to the existing definitions.

RCW 70.94.152 does not authorize the agency to require a Notice of Construction for existing sources of air contaminants. Section 9.16(d) presently requires all outdoor spray-coating operations to be approved under a Notice of Construction.

Name of Agency Personnel Responsible for Drafting: Gerry Pade, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4065; Implementation: Dave Kircher, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4050; and Enforcement: Neal Shulman, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4078.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The state implementation plan will be updated to reflect these amendments.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These changes would bring the agency rules into conformance with the Washington Clean Air Act (chapter 70.94 RCW) and the public notice provisions of WAC 173-400-171, and they would reduce the number of permit applications for sources with a de minimis impact on air quality. This would allow facilities to make changes more quickly and at less cost. It would also enable the agency to spend more effort on those permits needing more time, including operating permits.

The provisions of RCW 70.94.152 would be implemented for review of new sources including limiting review of modifications of existing sources to those pollutants that increase as a result of the modification, and the provision to notify applicants when their applications are complete. Specific references to the Notice of Construction program found

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in Regulation I, Section 9.16 (spray-coating operations) would be removed.

The provisions of RCW 70.94.153 would be implemented for review of the replacement or substantial alteration of control equipment - including the shorter review period, the default unconditional approval, and the provisions for conditioning approvals of such permits.

The authority under RCW 70.94.085 would also be implemented allowing the agency to enter into cost-reimbursement agreements with applicants for review of complex projects (requiring an EIS).

Proposal Changes the Following Existing Rules: Pertinent definitions from Section 1.07 would be deleted and moved to Article 6. The definition of New Source would be added to Article 6. References to the Notice of Construction program in Section 9.16 would be removed. Changes would be made to Article 6 as listed above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

RCW 34.05.328 does not apply to this rule adoption. Pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Puget Sound Clean Air Agency Offices, 110 Union Street, #500, Seattle, WA 98101, on May 10, 2001, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by May 3, 2001, TDD (800) 833-6388, or (800) 833-6385 (Braille).

Submit Written Comments to: Dennis McLerran, Puget Sound Clean Air Agency, 110 Union Street, #500, Seattle, WA 98101, fax (206) 343-7522, by April 30, 2001.

Date of Intended Adoption: May 10, 2001.

March 20, 2001

Gerald S. Pade

Engineer II

## AMENDATORY SECTION

### SECTION 1.07 DEFINITIONS

When used herein:

~~((a)) ACTUAL EMISSIONS means the average rate at which the source actually emitted air contaminants during the 2-year period preceding a specific date, and which is representative of normal source operations. To account for unusual circumstances such as strikes, the Control Officer may approve or require the use of another time period that is more representative of normal operations than is the immediately preceding 2-year period.))~~

(a) ((b)) AGENCY means the Puget Sound Clean Air Agency.

(b) ((c)) AIR CONTAMINANT means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.

(c) ((d)) AIR POLLUTION means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal

life, or property, or which unreasonably interferes with enjoyment of life and property. Air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

~~((e)) ALLOWABLE EMISSIONS means the emission rate calculated using the maximum rated capacity of the source (unless the source is subject to a federally enforceable permit that limits the operating rate, or hours of operation, or both) and the most stringent of the following:~~

~~(1) Any applicable standard under 40 CFR Parts 60, 61, and 63;~~

~~(2) Any applicable emission standard under Regulation I, II, or III;~~

~~(3) Any applicable State Implementation Plan emission standard, including those with a future compliance date; or~~

~~(4) Any applicable emission standard specified in an Order of Approval or operating permit, including those with a future compliance date.))~~

(d) ((f)) AMBIENT AIR means the portion of the atmosphere, external to buildings, to which the general public has access.

~~((g)) BEST AVAILABLE CONTROL TECHNOLOGY means technology that will result in an emission standard, including a visible emission standard, based on the maximum degree of reduction which the Agency, on a case-by-case basis, taking into account energy, environmental, and economic impacts, and other costs, determines is achievable for such source through application of production processes, available methods, systems, and techniques, including fuel cleaning or treatment, clean fuels, or innovative fuel combustion techniques for control of each air contaminant. In no event shall application of the best available control technology result in emissions of any air contaminant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. The Agency may prescribe a design, equipment, work practice, or operational standard, or combination thereof, to meet the requirements of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means that achieve equivalent results.))~~

(e) ((h)) BOARD means the Board of Directors of the Puget Sound Clean Air Agency.

(f) ((i)) COMBUSTIBLE REFUSE means solid or liquid combustible waste material.

~~((j)) COMMENCED CONSTRUCTION means that the owner or operator has all the necessary preconstruction approvals or permits and either has begun, or has caused to begin, a continuous program of actual on-site construction of the source or has entered into binding agreements or contractual obligations to undertake construction of the source which cannot be canceled or modified without substantial loss to the owner or operator.))~~

(g) ((k)) CONTROL EQUIPMENT means any device which prevents or controls the emission of any air contaminant.

~~(h) ((#))~~ **CONTROL OFFICER** means the Air Pollution Control Officer of the Puget Sound Clean Air Agency.

~~(i) ((#))~~ **EMISSION** means a direct or indirect release of any air contaminant into the ambient air.

~~(j) ((#))~~ **EMISSION STANDARD** means a requirement established under the Federal Clean Air Act (FCAA) or chapter 70.94 RCW that limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice, or operational standard promulgated under the FCAA or chapter 70.94 RCW.

~~(k) ((#))~~ **EQUIPMENT** means any stationary or portable device or any part thereof that emits or may emit any air contaminant into the atmosphere.

~~(l) ((#))~~ **FACILITY** means the sum total of all of the pollutant emitting activities that belong to the same industrial grouping (as defined by major groups in the Standard Industrial Classification Manual, NTIS Order No. PB 87-100012), are located on one or more contiguous or adjacent properties, and are owned or operated by the same person or persons under common control.

~~(m) ((#))~~ **FUEL BURNING EQUIPMENT** means equipment that produces hot air, hot water, steam, or other heated fluids by external combustion of fuel.

~~(n) ((#))~~ **FUGITIVE DUST** means particulate matter or any visible air contaminant other than uncombined water that is not collected by a capture system and emitted from a stack, but is released to the atmosphere at the point of generation.

~~((s))~~ **FUGITIVE EMISSION** means an emission that does not pass and that could not reasonably pass through a stack, chimney, or other functionally equivalent opening.))

~~(o) ((#))~~ **GASOLINE** means a volatile organic compound having a true vapor pressure greater than 1.5 pounds per square inch (10.3 kPa) at 68°F (20°C), that is a liquid at a temperature of 68°F (20°C) and a barometric pressure of 29.92 inches of mercury (101.325 kPa), and is used as a fuel for internal combustion engines.

~~(p) ((#))~~ **GASOLINE STATION** means any site dispensing gasoline into fuel tanks of motor vehicles, marine vessels, or aircraft from stationary storage tanks.

~~((v))~~ **HAZARDOUS AIR POLLUTANT** means any air pollutant listed in or pursuant to section 112(b) of the federal Clean Air Act, 42 U.S.C. §7412.

~~(w)~~ **INSTALLATION** means the placement, assemblage, or construction of equipment or control equipment at the premises where the equipment or control equipment will be used, and includes all preparatory work at such premises.

~~(x)~~ **LOWEST ACHIEVABLE EMISSION RATE** means that rate of emissions that reflects either the most stringent emission standard that is contained in the implementation plan of any state for such class or category of source unless the owner or operator of the proposed source demonstrates that such emission standards are not achievable, or the most stringent emission standard that is achieved in practice by such class or category of source, whichever is more stringent.

~~(y)~~ **MAJOR MODIFICATION** means a modification of a major source that would increase the actual emissions of any

air contaminant for which the area is designated nonattainment by more than the following:

Air Contaminant	Tons/Year
Carbon Monoxide	100.0
Volatile Organic Compounds	40.0
Nitrogen Oxides	40.0
PM <sub>10</sub>	15.0
Sulfur Dioxide	40.0
Lead	0.6

In determining whether the thresholds defining a major modification have been exceeded, the emissions permitted under Orders of Approval issued to the facility since the designation of nonattainment that were not major modifications, and all fugitive emission increases that can be reasonably quantified shall be included. Any emission reduction credits banked by the facility since the designation of nonattainment may be subtracted from this amount provided that any credits so applied are then considered to have been used. For modifications of an individual piece of equipment, the baseline shall be the source's actual emissions or allowable emissions, whichever is smaller. (Note: volatile organic compounds and nitrogen oxides are the air contaminants for which an area is designated nonattainment for ozone.)

~~(z)~~ **MAJOR SOURCE** means a facility that emits or has the potential to emit 100 tons per year or more of any air contaminant subject to regulation under the federal Clean Air Act. In determining whether the threshold defining a major source has been exceeded all fugitive emissions that can be reasonably quantified shall be included. Any emission reduction credits banked by the facility may be subtracted from this amount provided that any credits so applied are then considered to have been used.

~~((a))~~ **MAJOR SOURCE OF HAZARDOUS AIR POLLUTANTS** means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the U.S. EPA Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.

~~((b))~~ **MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY EMISSION LIMITATION FOR NEW SOURCES** means the emission limitation that is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and that reflects the maximum degree of reduction in emissions that the Agency, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source.

~~((c))~~ **MODIFICATION** means any physical change in, or change in the method of operation of, a source, except an increase in the hours of operation or production rates (not otherwise prohibited) or the use of an alternative fuel or raw material that the source is approved to use under an Order of Approval or operating permit, that increases the amount of

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~~any air contaminant emitted or that results in the emission of any air contaminant not previously emitted.))~~

~~(q) ((dd))~~ **MOTOR VEHICLE** means any operating vehicle or one capable of being operated that has its own self-contained sources of motive power, is designed for the transportation of people or property, and is of the type for which a license is required for operation on a highway.

~~(r) ((ee))~~ **MULTIPLE CHAMBER INCINERATOR** means a furnace for the destruction of waste consisting of three or more refractory-lined combustion chambers in series, physically separated by refractory walls, interconnected by gas passage ports or ducts, and employing adequate design parameters necessary for maximum combustion of the material to be burned.

~~((ff) NONATTAINMENT AREA means a geographic area designated by the United States Environmental Protection Agency that violates a primary or secondary national ambient air quality standard.))~~

~~(s) ((gg))~~ **OWNER OR OPERATOR** means the person who owns, leases, supervises, or operates the equipment or control equipment.

~~(t) ((hh))~~ **PARTICULATE MATTER** means any material, except water in an uncombined form, that is, has been, or is likely to become airborne and exists as a liquid or a solid at a temperature of 68°F (20°C) and a barometric pressure of 29.92 inches of mercury (101.325 kPa).

~~(u) ((ii))~~ **PERSON** means and includes any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or governmental agency.

~~(v) ((jj))~~ **PM10** means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

~~((kk) POTENTIAL TO EMIT means the maximum capacity of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the facility to emit an air contaminant, including control equipment and restrictions on the hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable.))~~

~~(w) ((H))~~ **REASONABLY AVAILABLE CONTROL TECHNOLOGY** means the lowest emission standard that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. Reasonably available control technology is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls.

~~(x) ((mm))~~ **REFUSE BURNING EQUIPMENT** means equipment employed to burn any solid or liquid combustible refuse.

~~(y) ((nn))~~ **SOURCE** means a building, structure, equipment, control equipment, or facility that emits or may emit any air contaminant into the atmosphere.

~~((oo) STANDARD CONDITIONS means a temperature of 68°F and a barometric pressure of 29.92 inches of mercury.~~

~~(pp) TOTAL ALLOWABLE EMISSIONS means allowable emissions, including the emissions from all Orders of Approval issued to the facility since the designation of nonattainment that were not major modifications, and all fugitive emissions that can be reasonably quantified.))~~

~~(z) ((qq))~~ **TOXIC AIR CONTAMINANT** or **TAC** means an air contaminant listed in Appendix A of Regulation III.

~~(aa) ((rr))~~ **TRUE VAPOR PRESSURE** means the equilibrium partial pressure of an organic liquid (determined by methods described in American Petroleum Institute Bulletin 2517, "Evaporative Loss from External Floating Roof Tanks", May 1996).

~~(bb) ((ss))~~ **URBANIZED AREA** means those portions of King, Pierce, Kitsap, and Snohomish Counties designated as urbanized areas by the U.S. Department of Commerce, Bureau of the Census.

~~(cc) ((tt))~~ **VOLATILE ORGANIC COMPOUND** or **VOC** means an organic compound that participates in atmospheric photochemical reactions. This excludes all compounds determined to have negligible photochemical reactivity by the U.S. Environmental Protection Agency and listed in 40 CFR 51.100(s) in effect July 1, 1998.

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Puget Sound Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## NEW SECTION

### REGULATION I SECTION 6.01 DEFINITIONS

In addition to the definitions in Section 1.07 of this regulation, as used herein:

(a) **ACTUAL EMISSIONS** means the average rate at which the source actually emitted air contaminants during the 2-year period preceding a specific date, and which is representative of normal source operations. To account for unusual circumstances such as strikes, the Control Officer may approve or require the use of another time period that is more representative of normal operations than is the immediately preceding 2-year period.

(b) **ALLOWABLE EMISSIONS** means the emission rate calculated using the maximum rated capacity of the source (unless the source is subject to a federally enforceable permit that limits the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) Any applicable standard under 40 CFR Parts 60, 61, and 63;

(2) Any applicable emission standard under Regulation I, II, or III;

(3) Any applicable State Implementation Plan emission standard, including those with a future compliance date; or

(4) Any applicable emission standard specified in an Order of Approval or operating permit, including those with a future compliance date.

(c) **BEST AVAILABLE CONTROL TECHNOLOGY** means technology that will result in an emission standard, including a visible emission standard, based on the maximum degree of reduction which the Agency, on a case-by-case basis, taking into account energy, environmental, and economic impacts, and other costs, determines is achievable for such source through application of production processes, available methods, systems, and techniques, including fuel cleaning or treatment, clean fuels, or innovative fuel combustion techniques for control of each air contaminant. In no event shall application of the best available control technology result in emissions of any air contaminant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. The Agency may prescribe a design, equipment, work practice, or operational standard, or combination thereof, to meet the requirements of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means that achieve equivalent results.

(d) **COMMENCED CONSTRUCTION** means that the owner or operator has all the necessary preconstruction approvals or permits and either has begun, or has caused to begin, a continuous program of actual on-site construction of the source or has entered into binding agreements or contractual obligations to undertake construction of the source which cannot be canceled or modified without substantial loss to the owner or operator.

(e) **CONTROL EQUIPMENT** means any device which prevents or controls the emission of any air contaminant.

(f) **EQUIPMENT** means any stationary or portable device or any part thereof that emits or may emit any air contaminant into the atmosphere.

(g) **FUGITIVE EMISSION** means an emission that does not pass and that could not reasonably pass through a stack, chimney, or other functionally equivalent opening.

(h) **HAZARDOUS AIR POLLUTANT** means any air pollutant listed in or pursuant to section 112(b) of the federal Clean Air Act, 42 U.S.C. §7412.

(i) **LOWEST ACHIEVABLE EMISSION RATE** means that rate of emissions that reflects either the most stringent emission standard that is contained in the implementation plan of any state for such class or category of source unless the owner or operator of the proposed source demonstrates that such emission standards are not achievable, or the most stringent emission standard that is achieved in practice by such class or category of source, whichever is more stringent.

(j) **MAJOR MODIFICATION** means a modification of a major source that would increase the actual emissions of any air contaminant for which the area is designated nonattainment by more than the following:

Air Contaminant	Tons/Year
Carbon Monoxide	100((-θ))
Volatile Organic Compounds	40((-θ))
Nitrogen Oxides	40((-θ))
PM <sub>10</sub>	15((-θ))
Sulfur Dioxide	40((-θ))
Lead	0.6

In determining whether the thresholds defining a major modification have been exceeded, the emissions permitted under Orders of Approval issued to the facility since the designation of nonattainment that were not major modifications, and all fugitive emission increases that can be reasonably quantified shall be included. Any emission reduction credits banked by the facility since the designation of nonattainment may be subtracted from this amount provided that any credits so applied are then considered to have been used. For modifications of an individual piece of equipment, the baseline shall be the source's actual emissions or allowable emissions, whichever is smaller. (Note: volatile organic compounds and nitrogen oxides are the air contaminants for which an area is designated nonattainment for ozone.)

(k) **MAJOR SOURCE** means a facility that emits or has the potential to emit 100 tons per year or more of any air contaminant subject to regulation under the federal Clean Air Act. In determining whether the threshold defining a major source has been exceeded all fugitive emissions that can be reasonably quantified shall be included. Any emission reduction credits banked by the facility may be subtracted from this amount provided that any credits so applied are then considered to have been used.

(l) **MAJOR SOURCE OF HAZARDOUS AIR POLLUTANTS** means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the U.S. EPA Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.

(m) **MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY EMISSION LIMITATION FOR NEW SOURCES** means the emission limitation that is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and that reflects the maximum degree of reduction in emissions that the Agency, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source.

(n) **MODIFICATION** means any physical change in, or change in the method of operation of, a source, except an increase in the hours of operation or production rates (not otherwise prohibited) or the use of an alternative fuel or raw material that the source is approved to use under an Order of Approval or operating permit, that increases the amount of any air contaminant emitted or that results in the emission of any air contaminant not previously emitted.

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(o) **NEW SOURCE** means the construction or modification of a source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted, and any other project that constitutes a new source under the federal Clean Air Act.

(p) **NONATTAINMENT AREA** means a geographic area designated by the United States Environmental Protection Agency that violates a primary or secondary national ambient air quality standard.

(q) **POTENTIAL TO EMIT** means the maximum capacity of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the facility to emit an air contaminant, including control equipment and restrictions on the hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable.

(r) **REASONABLY AVAILABLE CONTROL TECHNOLOGY** means the lowest emission standard that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. Reasonably available control technology is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls.

(s) **SOURCE** means a building, structure, equipment, control equipment, or facility that emits or may emit any air contaminant into the atmosphere.

(t) **TOTAL ALLOWABLE EMISSIONS** means allowable emissions, including the emissions from all Orders of Approval issued to the facility since the designation of nonattainment that were not major modifications, and all fugitive emissions that can be reasonably quantified.

## AMENDATORY SECTION

### **REGULATION I SECTION 6.03 NOTICE OF CONSTRUCTION**

(a) It shall be unlawful for any person to cause or allow the ~~((construction, installation,))~~ establishment ~~((, or modification))~~ of ~~((an air contaminant))~~ a new source, or the replacement or substantial alteration of control equipment installed on an existing source, ~~((except those sources that are excluded in Section 6.03(b),))~~ unless a "Notice of Construction ~~((and Application for Approval))~~" has been filed ~~((with and approved by the Agency,))~~ and an "Order of Approval" has been issued under Section 6.07 of this regulation. The exemptions in Sections 6.03 (b) and (c) of this regulation shall not apply to:

(1) Any project that qualifies as construction, reconstruction, or modification of an affected facility within the meaning of 40 CFR Part 60 (New Source Performance Standards), except for Subpart AAA (New Residential Wood Heaters), Subpart BB (Kraft Pulp Mills), Subpart S (Primary Alumi-

num Reduction Plants), and Subpart JJJ (Petroleum Dry Cleaners); and for relocation of affected facilities under Subpart I (Hot Mix Asphalt Facilities) and Subpart OOO (Non-metallic Mineral Processing Plants) for which an Order of Approval has been previously issued by the Agency;

(2) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants) except for asbestos demolition and renovation projects subject to 40 CFR 61.145;

(3) Any new source as defined under 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants), except for Subpart M (National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities), and Subpart LL (Primary Aluminum Reduction Plants);

(4) Any new major source, even if a combination of exempt equipment;

(5) Any new major source of hazardous air pollutants;

(6) Any major modification of a major source, including those subject to the Prevention of Significant Deterioration requirements under WAC 173-400-113;

(7) Any Phase II acid rain facility; and

(8) Any source previously exempted from review that is cited by the Agency for causing a public nuisance under Section 9.11 of this regulation.

(b) Prior Notification is required; however a Notice of Construction and an Order of Approval are not required for the following sources:

#### **Liquid Storage and Transfer**

(1) Storage tanks used exclusively for:

(A) Gasoline and having a rated capacity of 1,000-20,000 gallons, PROVIDED THAT they are installed in accordance with the California Air Resources Board Executive Orders;

(B) Organic liquids with a true vapor pressure of 2.2-4.0 psia and having a rated capacity of 20,000-40,000 gallons; or

(C) Organic liquids with a true vapor pressure of 0.5-0.75 psia and having a rated capacity  $\geq$ 40,000 gallons.

(2) Loading and unloading equipment used exclusively for the storage tanks exempted above, including gasoline dispensers at gasoline stations.

#### **Relocation of Portable Batch Plants**

(3) Relocation of the following portable facilities: asphalt batch plants, nonmetallic mineral processing plants, rock (or concrete) crushers, and concrete batch plants for which an Order of Approval has been previously issued by the Agency. A copy of the Order of Approval is required in order to use this exemption.

#### **Dry Cleaning**

(4) Unvented, dry-to-dry, dry-cleaning equipment that is equipped with refrigerated condensers to recover the cleaning solvent.

#### **Printing**

(5) Non-heatset, web offset presses and wholesale, sheet-fed offset presses (lithographic or letterpress) using exclusively soy-based or kerosene-like oil-based inks, fountain solutions with  $\leq$ 6% VOC by volume or  $\leq$ 8.5% if refrig-

erated to <60°F, and cleaning solvents with a vapor pressure ≤25mm Hg or a VOC content ≤30% by volume.

### Water Treatment

(6) Industrial and commercial wastewater evaporators (except flame impingement) used exclusively for wastewater generated on-site that meets all discharge limits for disposal into the local municipal sewer system (including metals, cyanide, fats/oils/grease, pH, flammable or explosive materials, organic compounds, hydrogen sulfide, solids, and food waste). A letter from the local sewer district documenting compliance is required in order to use this exemption.

### Sanding Equipment

(7) Sanding equipment controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of <3.5:1 (for mechanical or manual cleaning) or <12:1 (for pulse-jet cleaning).

### Ventilation and Control Equipment

(8) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of <3.5:1 (for mechanical or manual cleaning) or <12:1 (for pulse-jet cleaning).

### Miscellaneous

(9) Any source that has been determined through review by the Control Officer not to warrant a Notice of Construction because it has a de minimis impact on air quality and does not pose a threat to human health or the environment.

(c) A Notice of Construction is not required for the following sources (provided that sufficient records are kept to document the exemption):

### Combustion

(10) Fuel burning equipment (except when combusting pollutants generated by a non-exempt source) having a rated capacity:

(A) <10 million Btu per hour heat input burning exclusively distillate fuel oil, natural gas, propane, butane (or any combination thereof);

(B) <0.5 million Btu per hour heat output burning waste-derived fuel (including fuel oil not meeting the specifications in Section 9.08 of this regulation); or

(C) <1 million Btu per hour heat input burning any other fuel.

(11) All stationary gas turbines with a rated heat input <10 million Btu per hour.

(12) Stationary internal combustion engines having a rated capacity:

(A) <50 horsepower output;

(B) Used solely for instructional purposes at research, teaching, or educational facilities; or

(C) Portable or standby units operated <200 hours per year (plus an additional 100 hours per year for maintenance and testing), PROVIDED THAT they are not operated at a facility with a power supply contract that offers a lower rate in exchange for the power supplier's ability to curtail energy consumption with prior notice.

(13) Relocation of portable, stationary internal combustion engines or gas turbines for which an Order of Approval has been previously issued by the Agency.

(14) All nonroad compression ignition engines subject to 40 CFR Part 89.

### Metallurgy

(15) Crucible furnaces, pot furnaces, or induction furnaces with a capacity ≤1,000 pounds, PROVIDED THAT no sweating or distilling is conducted, and PROVIDED THAT only precious metals, or an alloy containing >50% aluminum, magnesium, tin, zinc, or copper is melted.

(16) Crucible furnaces or pot furnaces with a capacity ≤450 cubic inches of any molten metal.

(17) Ladles used in pouring molten metals.

(18) Foundry sand-mold forming equipment.

(19) Shell core and shell-mold manufacturing machines.

(20) Molds used for the casting of metals.

(21) Die casting machines with a rated capacity ≤1,000 pounds that are not used for copper alloys.

(22) Equipment used for heating metals immediately prior to forging, pressing, rolling, or drawing, if any combustion equipment is also exempt.

(23) Forming equipment used exclusively for forging, rolling, or drawing of metals, if any combustion equipment is also exempt.

(24) Heat treatment equipment used exclusively for metals, if any combustion equipment is also exempt.

(25) Equipment used exclusively for case hardening, carburizing, cyaniding, nitriding, carbonitriding, siliconizing, or diffusion treating of metals, if any combustion equipment is also exempt.

(26) Atmosphere generators used in connection with metal heat-treating processes.

(27) Sintering equipment used exclusively for metals other than lead, PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

(28) Welding equipment and oxygen/gaseous fuel cutting equipment.

(29) Soldering or brazing, or equipment, including brazing ovens.

(30) Equipment used exclusively for surface preparation, passivation, deoxidation, and/or stripping that uses materials containing ≤50 grams of VOC per liter, or containing exclusively formic acid, acetic acid, phosphoric acid, sulfuric acid, ≤12% hydrochloric acid, alkaline oxidizing agents, hydrogen peroxide, salt solutions, sodium hydroxide, and/or water and associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment. (This exemption does not include anodizing, hard anodizing, chemical milling, circuit board etching using ammonia-based etchant, electrocleaning, or the stripping of chromium, except sulfuric acid and/or boric acid anodizing with a total bath concentration of ≤20% by weight and using ≤10,000 amp-hours per day, or phosphoric acid anodizing with a bath concentration of ≤15% by weight of phosphoric acid and using ≤20,000 amp-hours per day.)

(31) Equipment used exclusively for electrolytic plating (except the use of chromic and/or hydrochloric acid) or elec-

rolytic stripping (except the use of chromic, hydrochloric, nitric, or sulfuric acid) of brass, bronze, copper, iron, tin, zinc, precious metals, and associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment.

### **Ceramics and Glass**

(32) Kilns used for firing ceramic-ware or artwork, if any combustion equipment is also exempt.

(33) Porcelain enameling furnaces, porcelain enameling drying ovens, vitreous enameling furnaces, or vitreous enameling drying ovens, if any combustion equipment is also exempt.

(34) Hand glass melting furnaces, electric furnaces, and pot furnaces with a capacity  $\leq 1,000$  pounds of glass.

(35) Heat-treatment equipment used exclusively for glass, if any combustion equipment is also exempt.

(36) Sintering equipment used exclusively for glass PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

### **Plastics and Rubber and Composites**

(37) Equipment used exclusively for conveying and storing plastic pellets.

(38) Extrusion equipment used exclusively for extruding rubber or plastics where no organic plasticizer is present, or for pelletizing polystyrene foam scrap.

(39) Equipment used for extrusion, compression molding, and injection molding of plastics, PROVIDED THAT the VOC content of all mold release products or lubricants is  $\leq 1\%$  by weight.

(40) Injection or blow-molding equipment for rubber or plastics, PROVIDED THAT no blowing agent other than compressed air, water, or carbon dioxide is used.

(41) Presses or molds used for curing, post-curing, or forming composite products and plastic products, PROVIDED THAT no VOC or chlorinated blowing agent is present.

(42) Presses or molds used for curing or forming rubber products and composite rubber products with a ram diameter  $\leq 26$  inches, PROVIDED THAT it is operated at  $\leq 400^\circ\text{F}$ .

(43) Ovens used exclusively for the forming of plastics or composite products, where no foam-forming or expanding process is involved, if any combustion equipment is also exempt.

(44) Ovens used exclusively for the curing of vinyl plastisols by the closed-mold curing process, if any combustion equipment is also exempt.

(45) Equipment used exclusively for softening or annealing plastics, if any combustion equipment is also exempt.

(46) Hot wire cutting of expanded polystyrene foam and woven polyester film.

(47) Mixers, roll mills, and calendars for rubber or plastics where no material in powder form is added and no organic solvents, diluents, or thinners are used.

### **Material Working and Handling**

(48) Equipment used for buffing (except tire buffers), polishing, carving, cutting, drilling, grinding, machining, planing, pressing, routing, sawing, stamping, or turning of wood, ceramic artwork, ceramic precision parts, leather, met-

als, plastics, rubber, fiberboard, masonry, glass, silicon, semiconductor wafers, carbon, or graphite.

(49) Hand-held sanding equipment.

(50) Sanding equipment controlled by a fabric filter with an airflow of  $< 2000$  cfm.

(51) Equipment used exclusively for shredding of wood (e.g., tub grinders, hammermills, hoggers), or for extruding, pressing, handling, or storage of wood chips, sawdust, or wood shavings.

(52) Paper shredding and associated conveying systems and baling equipment.

(53) Hammermills used exclusively to process aluminum and/or tin cans.

(54) Tumblers used for the cleaning or deburring of metal products without abrasive blasting.

### **Abrasive Blasting**

(55) Portable abrasive blasting equipment used at a temporary location to clean bridges, water towers, buildings, or similar structures, PROVIDED THAT any blasting with sand (or silica) is performed with  $\geq 66\%$  by volume water.

(56) Portable vacuum blasting equipment using steel shot and vented to a fabric filter.

(57) Hydroblasting equipment using exclusively water as the abrasive.

(58) Abrasive blasting cabinets vented to a fabric filter, PROVIDED THAT the total internal volume of the cabinet is  $\leq 100$  cubic feet.

(59) Shot peening operations, PROVIDED THAT no surface material is removed.

### **Cleaning**

(60) Non-refillable, hand-held aerosol spray cans of solvent.

(61) Steam-cleaning equipment.

(62) Unheated liquid solvent tanks used for cleaning or drying parts:

(A) With a solvent capacity  $\leq 2$  gallons;

(B) Using a solvent with a true vapor pressure  $\leq 0.6$  psi containing  $\leq 5\%$  by weight perchloroethylene, methylene chloride, carbon tetrachloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof; or

(C) With a remote reservoir and using a solvent containing  $\leq 5\%$  by weight perchloroethylene, methylene chloride, carbon tetra-chloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof.

### **Coating, Resin, and Adhesive Application**

(63) Powder-coating equipment.

(64) Portable coating equipment and pavement stripers used exclusively for the field application of architectural coatings and industrial maintenance coatings to stationary structures and their appurtenances or to pavements and curbs.

(65) High-volume low-pressure (HVLP) spray-coating equipment having a cup capacity  $\leq 8$  fluid ounces, PROVIDED THAT it is not used to coat  $> 9$  square feet per day and is not used to coat motor vehicles or aerospace components.

(66) Airbrushes having a cup capacity  $\leq 2$  fluid ounces and an airflow of 0.5-2.0 cfm.



(67) Hand-held aerosol spray cans having a capacity of ≤1 quart of coating.

(68) Spray-coating equipment used exclusively for application of automotive undercoating materials with a flash point >100°F.

(69) Ovens associated with an exempt coating source, if any combustion equipment is also exempt.

(70) Radiation-curing equipment using ultraviolet or electron beam energy to initiate a chemical reaction forming a polymer network in a coating.

(71) Hand lay, brush, and roll-up resins equipment and operations.

(72) Equipment used exclusively for melting or applying of waxes or natural and synthetic resins.

(73) Hot-melt adhesive equipment.

(74) Any adhesive application equipment that exclusively uses materials containing <1% VOC by weight and <0.1% HAP.

(75) Equipment used exclusively for bonding of linings to brake shoes, where no organic solvents are used.

### **Printing**

(76) Retail, sheet-fed, non-heatset offset presses (lithographic or letter-press).

(77) Presses using exclusively UV-curable inks.

(78) Presses using exclusively plastisols.

(79) Presses using exclusively water-based inks (<1.5 lb VOC per gallon, excluding water, or <10% VOC by volume) and cleaning solvents without VOC.

(80) Presses used exclusively for making proofs.

(81) Electrostatic, ink jet, laser jet, and thermal printing equipment.

(82) Ovens used exclusively for exempt printing presses, if any combustion equipment is also exempt.

### **Photography**

(83) Photographic process equipment by which an image is reproduced upon material sensitized by radiant energy, excluding equipment using perchloroethylene.

### **Liquid Storage and Transfer**

(84) Storage tanks permanently attached to a motor vehicle.

(85) Storage tanks used exclusively for:

(A) Liquefied gases, including any tanks designed to operate in excess of 29.7 psia without emissions;

(B) Asphalt at a facility other than an asphalt roofing plant, asphalt processing plant, or petroleum refinery;

(C) Any liquids (other than asphalt) that also have a rated capacity <1,000 gallons;

(D) Organic liquids (other than gasoline or asphalt) that also have a rated capacity <20,000 gallons;

(E) Organic liquids (other than asphalt) with a true vapor pressure <2.2 psia (e.g., ASTM spec. fuel oils and lubricating oils) that also have a rated capacity <40,000 gallons;

(F) Organic liquids (other than asphalt) with a true vapor pressure <0.5 psia that also have a rated capacity ≥40,000 gallons;

(G) Sulfuric acid or phosphoric acid with an acid strength ≤99% by weight;

(H) Nitric acid with an acid strength ≤70% by weight;

(I) Hydrochloric acid or hydrofluoric acid tanks with an acid strength ≤30% by weight;

(J) Aqueous solutions of sodium hydroxide, sodium hypochlorite, or salts, PROVIDED THAT the surface of the solution contains ≤1% VOC by weight;

(K) Liquid soaps, liquid detergents, vegetable oils, fatty acids, fatty esters, fatty alcohols, waxes, and wax emulsions;

(L) Tallow or edible animal fats intended for human consumption and of sufficient quality to be certifiable for United States markets;

(M) Water emulsion intermediates and products, including latex, with a VOC content ≤5% by volume or a VOC composite partial pressure of ≤0.1 psi or less at 68°F; or

(N) Wine, beer, or other alcoholic beverages.

(86) Loading and unloading equipment used exclusively for the storage tanks exempted above.

(87) Loading and unloading equipment used exclusively for transferring liquids or compressed gases into containers having a rated capacity <60 gallons, except equipment transferring >1,000 gallons per day of liquid with a true vapor pressure >0.5 psia.

(88) Equipment used exclusively for the packaging of sodium hypochlorite-based household cleaning or pool products.

### **Mixing**

(89) Mixing equipment, PROVIDED THAT no material in powder form is added and the mixture contains <1% VOC by weight.

(90) Equipment used exclusively for the mixing and blending of materials at ambient temperature to make water-based adhesives.

(91) Equipment used exclusively for the manufacture of water emulsions of waxes, greases, or oils.

(92) Equipment used exclusively for the mixing and packaging of lubricants or greases.

(93) Equipment used exclusively for manufacturing soap or detergent bars, including mixing tanks, roll mills, plodders, cutters, wrappers, where no heating, drying, or chemical reactions occur.

(94) Equipment used exclusively to mill or grind coatings and molding compounds in a paste form, PROVIDED THAT the solution contains <1% VOC by weight.

(95) Batch mixers with a rated working capacity ≤55 gallons.

(96) Batch mixers used exclusively for the manufacture of paints, varnishes, lacquers, enamels, shellacs, printing inks, or sealers, PROVIDED THAT the mixer is equipped with a lid that contacts ≥90% of the rim.

### **Water Treatment**

(97) Oil/water separators, except those at petroleum refineries.

(98) Water cooling towers and water cooling ponds not used for evaporative cooling of process water, or not used for evaporative cooling of water from barometric jets or from barometric condensers, and in which no chromium compounds are contained.

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(99) Equipment used exclusively to generate ozone and associated ozone destruction equipment for the treatment of cooling tower water or for water treatment processes.

(100) Municipal sewer systems, including wastewater treatment plants and lagoons, PROVIDED THAT they do not use anaerobic digesters or chlorine sterilization. This exemption does not include sewage sludge incinerators.

(101) Soil and groundwater remediation projects involving <15 pounds per year of benzene or vinyl chloride, and <500 pounds per year of perchloroethylene.

#### **Landfills and Composting**

(102) Passive aeration of soil, PROVIDED THAT the soil is not being used as a cover material at a landfill.

(103) Closed landfills that do not have an operating, active landfill gas collection system.

(104) Non-commercial composting.

#### **Agriculture, Food, and Drugs**

(105) Equipment used in agricultural operations, in the growing of crops, or the raising of fowl or animals.

(106) Insecticide, pesticide, or fertilizer spray equipment.

(107) Equipment used in retail establishments to dry, cook, fry, bake, or grill food for human consumption, including charbroilers, smokehouses, barbecue units, deep fat fryers, cocoa and nut roasters, but not including coffee roasters.

(108) Cooking kettles (other than deep frying equipment) and confection cookers where all the product in the kettle is edible and intended for human consumption.

(109) Bakery ovens with a total production of yeast leavened bread products <10,000 pounds per operating day, if any combustion equipment is also exempt.

(110) Equipment used to dry, mill, grind, blend, or package <1000 tons per year of dry food products such as seeds, grains, corn, meal, flour, sugar, and starch.

(111) Equipment used to convey, transfer, clean, or separate <1000 tons per year of dry food products or waste from food production operations.

(112) Storage equipment or facilities containing dry food products that are not vented to the outside atmosphere, or that handle <1000 tons per year.

(113) Equipment used exclusively to grind, blend, package, or store tea, cocoa, spices, coffee, flavor, fragrance extraction, dried flowers, or spices, PROVIDED THAT no organic solvents are used in the process.

(114) Equipment used to convey or process materials in bakeries or used to produce noodles, macaroni, pasta, food mixes, and drink mixes where products are edible and intended for human consumption, PROVIDED THAT no organic solvents are used in the process. This exemption does not include storage bins located outside buildings.

(115) Brewing operations at facilities producing <3 million gallons per year of beer.

(116) Fermentation tanks for wine (excluding tanks used for the commercial production of yeast for sale).

(117) Equipment used exclusively for tableting, or coating vitamins, herbs, or dietary supplements, PROVIDED THAT no organic solvents are used in the process.

(118) Equipment used exclusively for tableting or packaging pharmaceuticals and cosmetics, or coating pharmaceutical tablets, provided no organic solvents are used.

#### **Quarries, Nonmetallic Mineral Processing Plants, and Concrete and Asphalt Batch Plants**

(119) Portable sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers ≤150 tons per hour.

(120) Fixed sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers ≤25 tons per hour.

(121) Common clay plants and pumice plants with a cumulative rated capacity of all initial crushers of ≤10 tons per hour.

(122) Mixers and other ancillary sources at concrete batch plants (or aggregate product production facilities) with a rated capacity <15 cubic yards per hour.

(123) Concrete mixers with a rated working capacity of ≤1 cubic yard.

(124) Drilling or blasting.

(125) Asphaltic concrete crushing/recycling equipment with a throughput <5000 tons per year.

#### **Construction**

(126) Asphalt paving application.

(127) Asphalt (hot-tar) roofing application.

(128) Building construction or demolition, except that notification of demolitions is required under Section 4.03 of Regulation III.

#### **Ventilation and Control Equipment**

(129) Comfort air-conditioning systems, or ventilating systems (forced or natural draft), PROVIDED THAT they are not designed or used to remove air contaminants generated by, or released from, sources subject to Notice of Construction.

(130) Refrigeration units, except those used as, or in conjunction with, air pollution control equipment.

(131) Refrigerant recovery and/or recycling units, excluding refrigerant reclaiming facilities.

(132) Emergency ventilation systems used exclusively to contain and control emissions resulting from the failure of a compressed gas storage system.

(133) Emergency ventilation systems used exclusively to scrub ammonia from refrigeration systems during process upsets or equipment breakdowns.

(134) Negative air machines equipped with HEPA filters used to control asbestos emissions from demolition/renovation activities.

(135) Portable control equipment used exclusively for storage tank degassing.

(136) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow <2000 cfm.

(137) Control equipment used exclusively for sources that are exempt from Notice of Construction under Section 6.03(c).

(138) Routine maintenance, repair, or similar parts replacement of control equipment.

**Testing and Research**

(139) Laboratory testing and quality assurance/control testing equipment used exclusively for chemical and physical analysis, teaching, or experimentation, including non-production bench scale research equipment.

**Miscellaneous**

(140) Single-family and duplex dwellings.

(141) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment, if any combustion equipment used to power such equipment is also exempt.

(142) Equipment, including dryers, used exclusively for dyeing, stripping, or bleaching of textiles where no organic solvents, diluents, or thinners are used, if any combustion equipment used to power such equipment is also exempt.

(143) Chemical vapor sterilization equipment where no ethylene oxide is used, and with a chamber volume of  $\leq 2$  cubic feet used by healthcare facilities.

(144) Ozone generators that produce  $< 1$  pound per day of ozone.

(145) Fire extinguishing equipment.

(d) Each Notice of Construction and Section 6.03(b) Notification shall be submitted on forms provided by the Agency and shall be accompanied by the appropriate fee as required by Section 6.04 of this regulation. Each Notice of Construction shall also include any additional information required to demonstrate that the source will meet the requirements of Section 6.07 of this regulation. Each Notice of Construction for which the Agency is the lead agency under the State Environmental Policy Act (Chapter 197-11 WAC) shall include an environmental checklist and any additional information required to make a threshold determination. Each Notice of Construction for which another agency is the lead agency under SEPA shall include their final Determination of Nonsignificance or Final Environmental Impact Statement.

(e) Within 30 days of receipt of a Notice of Construction or Section 6.03(b) Notification, the Agency shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application.

((b) Except when part of a new major source or major modification in a nonattainment area, or when constructing or reconstructing a major source of hazardous air pollutants, the following air contaminant sources do not need a "Notice of Construction and Application for Approval" approved by the Agency prior to construction, installation, establishment, or modification:

(1) Ventilating systems, including fume hoods, not designed to prevent or reduce air contaminant emissions.

(2) Fuel burning equipment that has a maximum input rate of:

(A) less than 0.5 million Btu per hour (0.15 million joules per second) burning waste derived fuel; or

(B) less than 10 million Btu per hour (3 million joules per second) burning natural gas, propane, or butane; or

(C) less than 1 million Btu per hour (0.3 million joules per second) burning any other fuel.

(3) Insecticide, pesticide, or fertilizer spray equipment.

(4) Internal combustion engines less than the size thresholds of the proposed United States Environmental Protection

Agency (EPA) New Source Performance Standards (NSPS) 40 CFR Part 60 Subpart FF (Stationary Internal Combustion Engines, 44 FR 43152 7/23/79) or the promulgated EPA NSPS 40 CFR Part 60 Subpart GG (Stationary Gas Turbines).

(5) Laboratory equipment used exclusively for chemical or physical analyses.

(6) Laundry dryers without control equipment.

(7) Dryers or ovens used solely to accelerate evaporation.

(8) Routing, turning, carving, cutting, and drilling equipment used for metal, wood, plastics, rubber, leather, or ceramics which does not release air contaminants to the ambient air.

(9) Storage tanks:

(A) that do not store substances capable of emitting air contaminants; or

(B) with a rated capacity of 1,000 gallons (3,780 liters) or less used for storage of gasoline; or

(C) with a rated capacity of less than 10,000 gallons (38,000 liters) used for storage of volatile organic compounds; or

(D) with a rated capacity of less than 40,000 gallons (150,000 liters) used for storage of volatile organic compounds with a true vapor pressure less than 0.01 kPa (0.002 psia).

(10) Sanitary or storm drainage systems.

(11) Welding, brazing, or soldering equipment.

(12) Asphalt roofing and laying equipment (not including manufacturing or storage).

(13) Restaurants and other retail food preparing establishments.

(14) Cold solvent cleaners using a solvent with a true vapor pressure less than or equal to 4.2 kPa (0.6 psia).

(15) Retail printing operations (not including web presses).

(16) Blasting equipment used at a temporary location to clean bridges, water towers, buildings, or similar structures.

(17) Spray coating operations exempt under Section 9.16 (b)(1), (3), (4), (5), and (6) of this regulation.

(18) Any source that has been determined through review by the Control Officer not to warrant a "Notice of Construction and Application for Approval", due to the minimal amount and nature of air contaminants produced and potential to contribute to air pollution, with special reference to effects on health, economic and social factors, and physical effects on property. The owner or operator shall submit to the Control Officer, the information necessary to make this determination. The Control Officer shall notify the owner or operator in writing whether a "Notice of Construction and Application for Approval" is required for the source.

(e) Each Notice of Construction and Application for Approval shall be submitted on forms provided by the Agency and shall be accompanied by a set of plans that fully describes the proposed source, the means for prevention or control of the emissions of air contaminants, the appropriate fee as required by Section 6.04, and any additional information required by the Board or Control Officer to demonstrate that the proposed source will meet the requirements of Section 6.07.

~~(d) Within 30 days of receipt of a Notice of Construction and Application for Approval, the Agency shall notify the applicant in writing if any additional information is necessary to complete the application.)~~

**AMENDATORY SECTION**

**SECTION 6.04 NOTICE OF CONSTRUCTION ((REVIEW)) FEES**

~~(a) A Notice of Construction ((and Application for Approval)) is incomplete until the Agency has received a fee as shown below:~~

General (not classified below) for each Piece	
of Equipment or Control Equipment . . . . .	\$500
Section 6.03(b) Notification . . . . .	\$100
<del>((Minor NOC Change . . . . .</del>	<del>\$500</del>
NOC Applicability Determination . . . . .	\$200
Relocation of Previously Permitted Portable Source to a New Address, except soil thermal desorption units . . . . .	\$500
Asphalt Concrete Plant . . . . .	\$1,000
Coffee Roaster . . . . .	\$1,000))
Composting Facility . . . . .	\$2,500
<del>((Dry Cleaner (per machine) . . . . .</del>	<del>\$300</del>
Gasoline Station . . . . .	\$500))
Landfill Gas System . . . . .	\$2,500
Refuse Burning Equipment: (rated capacity)	
12 tons per day or less . . . . .	\$5,000
greater than 12 tons per day but less than 250 tons per day . . . . .	\$20,000
250 tons per day or greater . . . . .	\$50,000
<del>((Spray Painting Operation (per booth) . . . . .</del>	<del>\$500</del>
Storage Tanks excluding those at gasoline stations: (gallons)	
less than 20,000 . . . . .	\$300
20,000 or more . . . . .	\$1,000))
Soil Thermal Desorption Unit (initial) . . . . .	\$3,000
Relocation of Approved Desorption Unit to New Address . . . . .	\$1,000
Additional Charges:	
SEPA Threshold Determination . . . . .	\$250
Air Toxics Review (under Regulation III, Section 2.07 (c)(2)) . . . . .	\$500
Air Toxics Review (under Regulation III, Section 2.07 (c)(3)) . . . . .	\$5,000
Major Source, Major Modification, or Emis- sion Increases greater than Prevention of Signifi- cant Deterioration Thresholds (see Regulation I, Section 6.07(d)) . . . . .	\$5,000
Construction or Reconstruction of a Major Source of Hazardous Air Pollutants (see Regula- tion I, Section 6.07(f)) . . . . .	\$2,500
Opacity/Grain Loading Correlation . . . . .	\$5,000
Emissions Units Subject to an NSPS or NESHAP (except residential wood heaters, asbestos renovation or demolition, and perchloroethylene dry cleaning). . . . .	\$1,000
Public Notice (plus publication fees) . . . . .	\$500

(b) The Control Officer is authorized to enter into a written cost-reimbursement agreement with an applicant for review of complex projects, as provided in 70.94.085 RCW.

**AMENDATORY SECTION**

**SECTION 6.06 PUBLIC NOTICE**

(a) The Agency shall provide public notice for any proposed Order of Approval if:

(1) The proposed installation or modification would increase the emissions of any air contaminant by more than the following:

Air Contaminant	Tons/Year
Carbon Monoxide . . . . .	100((-0))
VOC . . . . .	40((-0))
Nitrogen Oxides . . . . .	40((-0))
Particulate Matter . . . . .	25
PM <sub>10</sub> . . . . .	15((-0))
Sulfur Dioxide . . . . .	40((-0))
Lead . . . . .	0.6
Fluorides . . . . .	3((-0))
Sulfuric Acid . . . . .	7((-0))
Total Reduced Sulfur . . . . .	10((-0))

(2) The applicant requests a limit on the potential to emit to avoid the requirements under Article 7 of this regulation;

(3) The applicant requests to bank emission reduction credits;

(4) The applicant requests approval of a risk analysis under Section 6.07 (e)(2) of this regulation;

(5) The ~~((proposed installation or modification is))~~ proposal involves construction or reconstruction of a major source of hazardous air pollutants subject to the requirements in Section 6.07(f) of this regulation;

(6) The proposed ~~((installation or modification))~~ new source involves refuse burning equipment; or

(7) The Control Officer determines that there may be substantial public interest in the proposal.

(b) Public notice shall be published in a newspaper of general circulation in the area of the proposed project and shall include the following:

(1) The name and address of the owner or operator and the facility;

(2) A brief description of the proposal;

(3) The locations at which copies of the preliminary determination and a summary of information considered in making such preliminary determination are available for public inspection;

(4) The deadline for submitting written comment; and

(5) That a public hearing may be held if the Agency determines within a 30-day period that significant public interest exists.

(c) Notice shall also be sent to the U.S. Environmental Protection Agency Regional Administrator.

(d) The cost of providing public notice shall be borne by the applicant.

(e) The Agency shall not make a final decision on any application until the public comment period has ended and

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any comments received have been considered. Unless a public hearing is held, the public comment period shall be the 30-day period for written comment published as provided above. If a public hearing is held, the public comment period shall extend through the hearing date.

(f) The applicant, any interested governmental entity, any group, or any person may request a public hearing within the 30-day period published as provided above. Any such request shall indicate the interest of the entity filing it and why a hearing is warranted. The Agency may, at its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held upon such notice and at a time and place as the Agency deems reasonable. The Agency shall provide at least 30 days prior notice of any hearing.

## AMENDATORY SECTION

### **SECTION 6.07 ORDER OF APPROVAL - ORDER TO PREVENT CONSTRUCTION**

(a) Within 60 days of receipt of a complete Notice of Construction (~~(and Application for Approval)~~) for a new source, or within 30 days for replacement or substantial alteration of control equipment, or as promptly as possible after the close of the public comment period if subject to the public notice requirements of Section 6.06 of this Regulation, the (~~Board or Control Officer~~) Agency shall issue an Order of Approval or notify the applicant of an intent to disapprove the application in accordance with Section 6.07(h). Any Notice of Construction application for the replacement or substantial alteration of control equipment shall be deemed to be approved without conditions if the Agency takes no action within 30 days of receipt of a complete application. A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required by Article 7 of this Regulation provided that any such application shall be processed in accordance with the operating permit program procedures and deadlines.

(b) An Order of Approval for a new source may provide such conditions (~~(of operation)~~) as are reasonably necessary to (~~(assure)~~) ensure the maintenance of compliance with chapter 70.94 RCW and the (~~(all)~~) applicable (~~(emission standards)~~) rules and regulations adopted under that chapter. New source review of a modification shall be limited to the individual sources proposed to be modified and the air contaminants whose emissions would increase as a result of the modification. An Order of Approval for replacement or substantial alteration of control equipment may prescribe reasonable operation and maintenance conditions.

(c) No Order of Approval shall be issued unless the Notice of Construction (~~(and Application for Approval)~~) demonstrates to the Board or Control Officer that:

(1) The operation of the source at the location proposed will not cause or contribute to a violation of an ambient air quality standard;

(2) The source will meet the requirements of all applicable emission standards;

(3) Best available control technology is employed for the installation of new sources and the modification of existing sources; and

(4) Reasonably available control technology is employed for the replacement or substantial alteration of existing control equipment.

(d) No Order of Approval shall be issued for a new major source in a nonattainment area or a major modification in a nonattainment area unless the Notice of Construction (~~(and Application for Approval)~~) also demonstrates to the Board or Control Officer that:

(1) For those air contaminants for which the area is designated nonattainment, lowest achievable emission rate is employed for each new source at a new major source, and each new or modified source involved in a major modification;

(2) All existing major sources owned or operated by the applicant in the state of Washington are in compliance with all applicable emission standards under the federal Clean Air Act or are on an approved compliance schedule;

(3) Offsets in the form of emission reduction credits (banked pursuant to Section 6.08 of this Regulation) in an amount greater than or equal to 1.10 times the proposed total allowable emissions from the new major source, or the increase from current actual emissions to the proposed total allowable emissions for a major modification, have been obtained from sources in the same nonattainment area and occur by the time the new major source or major modification begins operation; and

(4) The benefits of the proposed new major source or major modification significantly outweigh the environmental and social costs imposed as a result of its location, installation, or modification. (This demonstration, which shall include an analysis of alternative sites, sizes, production processes, and environmental control techniques, may be in the form of an environmental impact statement prepared under the State Environmental Policy Act or the National Environmental Policy Act.)

(e) No Order of Approval shall be issued for a new or modified source of toxic air contaminants, except for sources exempted by Section 2.01 of Regulation III, unless the Notice of Construction (~~(and Application for Approval)~~) demonstrates to the Board or Control Officer that:

(1) The toxic air contaminant emissions from the source will not result in the exceedance of any acceptable source impact level listed in Appendix A of Regulation III; or

(2) The emissions from the source will not cause air pollution. This demonstration shall be performed in accordance with Section 2.07 of Regulation III and requires approval from the Department of Ecology.

(f) No Order of Approval shall be issued for the construction or reconstruction (as defined in 40 CFR section 63.41) of a major source of hazardous air pollutants, excluding sources listed below in Section 6.07 (f)(1) and (2), unless the Notice of Construction (~~(and Application for Approval)~~) demonstrates to the Board or Control Officer that the maximum achievable control technology emission limitation for new sources is employed. Maximum achievable control technology shall be determined in accordance with principles in 40 CFR section 63.43(d).

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(1) Major sources of hazardous air pollutants specifically regulated or exempted under a standard issued pursuant to sections 112 (d), (h), or (j) of the federal Clean Air Act and incorporated in 40 CFR Part 63; or

(2) Major sources listed in 40 CFR sections 63.40 (c), (e), or (f).

(g) An Order of Approval shall expire unless the owner or operator has commenced construction of the source within 18 months of the date of its issuance or if construction is discontinued for a period of more than 18 months.

(h) An Intent to Disapprove an Application and any subsequent Order to Prevent Construction shall set forth the grounds on which the Intent to Disapprove or Order is based with references to the provisions of this Regulation that would not be met. A final Order to Prevent Construction shall be issued unless, no later than 60 days after the date the Intent to Disapprove is served, the applicant petitions for reconsideration of the Intent to Disapprove, setting forth the reasons for the reconsideration. The Control Officer shall consider the petition, and shall within 30 days of receipt of the petition, issue an Order of Approval or final Order to Prevent Construction, setting forth the reasons for disapproval.

## AMENDATORY SECTION

### SECTION 6.09 NOTICE OF COMPLETION

Within 30 days of completion of the installation or modification of an air contaminant source subject to the provisions of Section ~~((6.03))~~ 6.07 of this regulation, the owner or operator or applicant shall file a Notice of Completion with the Agency. Each Notice of Completion shall be submitted on a form provided by the Agency, and shall specify the date upon which operation of the source has commenced or will commence.

## AMENDATORY SECTION

### SECTION 6.10 WORK DONE WITHOUT AN APPROVAL

Where work for which ~~((a Notice of Construction))~~ an Order of Approval is required is commenced or performed prior to making application and receiving approval, the Control Officer may conduct an investigation as part of the Notice of Construction review. In such a case, an investigation fee, in addition to the fees of Section 6.04, shall be assessed in an amount equal to 3 times the fees of Section 6.04. Payment of the fees does not relieve any person from the requirement to comply with the regulations nor from any penalties for failure to comply.

## AMENDATORY SECTION

### SECTION 9.16 SPRAY-COATING OPERATIONS

(a) Applicability. This section applies to spray-coating operations at facilities subject to Article 5 (Registration)~~((; Article 6 (New Source Review);))~~ or Article 7 (Operating Permits) of this regulation, where a coating that protects or beautifies a surface is applied with spray-coating equipment.

(b) Exemptions. The following activities are exempt from the provisions of Sections 9.16 (c) and (d) of this regulation. Persons claiming any of the following spray-coating exemptions shall have the burden of demonstrating compliance with the claimed exemption.

(1) Application of architectural or maintenance coatings to stationary structures (e.g., bridges, water towers, buildings, stationary machinery, or similar structures);

(2) Aerospace coating operations subject to 40 CFR Part 63, Subpart GG. This includes all activities and materials listed in 40 CFR 63.741(f);

(3) Use of high-volume, low-pressure (HVLP) spray guns when:

(A) spray-coating operations do not involve motor vehicles or motor vehicle components;

(B) the gun cup capacity is 8 fluid ounces or less;

(C) the spray gun is used to spray-coat less than 9 square feet per day per facility;

(D) coatings are purchased in containers of 1 quart or less; and

(E) spray-coating is allowed by fire department, fire marshal, or other government agency requirements.

(4) Use of air-brush spray equipment with 0.5 to 2.0 CFM airflow and a maximum cup capacity of 2 fluid ounces;

(5) Use of hand-held aerosol spray cans with a capacity of 1 quart or less; or

(6) Indoor application of automotive undercoating materials using organic solvents having a flash point in excess of 100°F.

(c) General Requirements for Indoor Spray-Coating Operations. It shall be unlawful for any person subject to the provisions of this section to cause or allow spray-coating inside a structure, or spray-coating of any motor vehicles or motor vehicle components, unless the spray-coating is conducted inside an enclosed spray area. The enclosed spray area shall employ either properly seated paint arresters, or water-wash curtains with a continuous water curtain to control the overspray. All emissions from the spray-coating operation shall be vented to the atmosphere through an unobstructed vertical exhaust vent.

(d) General Requirements for Outdoor Spray-Coating Operations. ~~((After January 1, 2000, it))~~ It shall be unlawful for any person subject to the provisions of this section to cause or allow spray-coating outside an enclosed structure unless reasonable precautions are employed to minimize the overspray. Reasonable precautions include, but are not limited to the use of ~~((such spray-coating operations are approved in a notice of construction permit issued in accordance with Article 6 of this regulation. The following minimum requirements for outdoor spray-coating operations will be included in all such notice of construction permits))~~:

(1) Enclosures and curtailment during high winds ~~((Reasonable methods to confine overspray to the property where the spray coating is being conducted shall be used (e.g., tarps, shrink wrap, mobile enclosure, or similar methods for control of overspray)))~~; and

(2) ~~((High-transfer efficiency spray equipment that minimizes overspray shall be used (e.g., HVLP, low volume, low pressure (LVLP), electrostatic, or air assisted airless)))~~

High-volume low-pressure (HVLP), low-volume low-pressure (LVLP), electrostatic, or air-assisted airless spray equipment. Airless spray equipment may be used where low viscosity and high solid coatings preclude the use of higher-transfer efficiency spray equipment.

(e) Compliance with Other Regulations. Compliance with this regulation does not exempt any person from compliance with Regulation I, Section((s)) 9.11 (~~and 9.15~~) and all other applicable regulations including those of other agencies.

**WSR 01-07-088**  
**PROPOSED RULES**  
**PUGET SOUND**  
**CLEAN AIR AGENCY**  
 [Filed March 21, 2001, 9:30 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule: Adopt Regulation I, Article 2.

Purpose: To more effectively implement the State Environmental Policy Act (SEPA).

Other Identifying Information: Article 2 pertains to SEPA rules.

Statutory Authority for Adoption: Chapters 70.94 and 43.21C RCW.

Statute Being Implemented: Chapter 43.21C RCW.

Summary: The agency desires to update its SEPA policies to reflect agency values, and to state its SEPA policies in rule rather than resolution.

Reasons Supporting Proposal: This change will more effectively and comprehensively implement SEPA, resulting in better quality decisions regarding environmental impacts in the Puget Sound region.

Name of Agency Personnel Responsible for Drafting: Laurie Halvorson, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4030; Implementation: Dave Kircher, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4050; and Enforcement: Neal Shulman, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4078.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The agency desires to update its SEPA policies to reflect agency values. The agency also desires to state its SEPA policies in rule rather than resolution.

The intent of the proposed rule change is to more effectively implement SEPA. The agency currently implements SEPA through Agency Board Resolution #565, adopted September 13, 1984. This resolution has not been updated and does not reflect current agency policies and priorities. It is also difficult for the public to access because it is available only by requesting a hard copy from the agency.

The anticipated effects are better quality decisions with respect to environmental impacts in the Puget Sound region,

more effective and comprehensive SEPA implementation, increased opportunity for public notice and comment, and more accessible agency SEPA policies.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

RCW 34.05.328 does not apply to this rule adoption. Pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Puget Sound Clean Air Agency Offices, 110 Union Street, #500, Seattle, WA 98101, on May 10, 2001, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by May 3, 2001, TDD (800) 833-6388, or (800) 833-6385 (Braille).

Submit Written Comments to: Dennis McLerran, Puget Sound Clean Air Agency, 110 Union Street, #500, Seattle, WA 98101, fax (206) 343-7522, by April 30, 2001.

Date of Intended Adoption: May 10, 2001.

March 20, 2001  
 Laurie Halvorson  
 General Counsel

**NEW SECTION**

**REGULATION I ARTICLE 2: STATE ENVIRONMENTAL POLICY ACT**

**REGULATION I SECTION 2.01 AUTHORITY**

The Agency adopts this regulation under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904. This regulation contains this Agency's SEPA procedures and policies. The SEPA rules must be used in conjunction with this regulation. The SEPA rules mean chapter 197-11 of the Washington Administrative Code (WAC).

**NEW SECTION**

**REGULATION I SECTION 2.02 ADOPTION BY REFERENCE**

The Agency adopts the following sections of chapter 197-11 WAC by reference:

- 197-11-040 Definitions.
- 197-11-050 Lead agency.
- 197-11-055 Timing of the SEPA process.
- 197-11-060 Content of environmental review.
- 197-11-070 Limitations on actions during SEPA process.
- 197-11-080 Incomplete or unavailable information.
- 197-11-090 Supporting documents.
- 197-11-100 Information required of applicants.
- 197-11-158 GMA project review—Reliance on existing plans, laws, and regulations.
- 197-11-250 SEPA/Model Toxics Control Act integration.
- 197-11-253 SEPA lead agency for MTCA actions.

**PROPOSED**

197-11-256	Preliminary evaluation.	197-11-660	Substantive authority and mitigation.
197-11-259	Determination of nonsignificance for MTCA remedial actions.	197-11-680	Appeals.
197-11-262	Determination of significance and EIS for MTCA remedial actions.	197-11-700	Definitions.
197-11-265	Early scoping for MTCA remedial actions.	197-11-702	Act.
197-11-268	MTCA interim actions.	197-11-704	Action.
197-11-300	Purpose of this part.	197-11-706	Addendum.
197-11-305	Categorical exemptions.	197-11-708	Adoption.
197-11-310	Threshold determination required.	197-11-710	Affected tribe.
197-11-315	Environmental checklist.	197-11-712	Affecting.
197-11-330	Threshold determination process.	197-11-714	Agency.
197-11-335	Additional information.	197-11-716	Applicant.
197-11-340	Determination of nonsignificance (DNS).	197-11-718	Built environment.
197-11-350	Mitigated DNS.	197-11-720	Categorical exemption.
197-11-355	Optional DNS process.	197-11-721	Closed record appeal.
197-11-360	Determination of significance (DS)/initiation of scoping.	197-11-722	Consolidated appeal.
197-11-390	Effect of threshold determination.	197-11-724	Consulted agency.
197-11-400	Purpose of EIS.	197-11-726	Cost-benefit analysis.
197-11-402	General requirements.	197-11-728	County/city.
197-11-405	EIS types.	197-11-730	Decision maker.
197-11-406	EIS timing.	197-11-732	Department.
197-11-408	Scoping.	197-11-734	Determination of nonsignificance (DNS).
197-11-410	Expanded scoping.	197-11-736	Determination of significance (DS).
197-11-420	EIS preparation.	197-11-738	EIS.
197-11-425	Style and size.	197-11-740	Environment.
197-11-430	Format.	197-11-742	Environmental checklist.
197-11-435	Cover letter or memo.	197-11-744	Environmental document.
197-11-440	EIS contents.	197-11-746	Environmental review.
197-11-442	Contents of EIS on nonproject proposals.	197-11-750	Expanded scoping.
197-11-443	EIS contents when prior nonproject EIS.	197-11-752	Impacts.
197-11-444	Elements of the environment.	197-11-754	Incorporation by reference.
197-11-448	Relationship of EIS to other considerations.	197-11-756	Lands covered by water.
197-11-450	Cost-benefit analysis.	197-11-758	Lead agency.
197-11-455	Issuance of DEIS.	197-11-760	License.
197-11-460	Issuance of FEIS.	197-11-762	Local agency.
197-11-500	Purpose of this part.	197-11-764	Major action.
197-11-502	Inviting comment.	197-11-766	Mitigated DNS.
197-11-504	Availability and cost of environmental documents.	197-11-768	Mitigation.
197-11-508	SEPA register.	197-11-770	Natural environment.
197-11-510	Public notice.	197-11-772	NEPA.
197-11-535	Public hearings and meetings.	197-11-774	Nonproject.
197-11-545	Effect of no comment.	197-11-775	Open record hearing.
197-11-550	Specificity of comments.	197-11-776	Phased review.
197-11-560	FEIS response to comments.	197-11-778	Preparation.
197-11-570	Consulted agency costs to assist lead agency.	197-11-780	Private project.
197-11-600	When to use existing environmental documents.	197-11-782	Probable.
197-11-610	Use of NEPA documents.	197-11-784	Proposal.
197-11-620	Supplemental environmental impact statement—Procedures.	197-11-786	Reasonable alternative.
197-11-625	Addenda—Procedures.	197-11-788	Responsible official.
197-11-630	Adoption—Procedures.	197-11-790	SEPA.
197-11-635	Incorporation by reference—Procedures.	197-11-792	Scope.
197-11-640	Combining documents.	197-11-793	Scoping.
197-11-650	Purpose of this part.	197-11-794	Significant.
197-11-655	Implementation.	197-11-796	State agency.
		197-11-797	Threshold determination.
		197-11-799	Underlying governmental action.
		197-11-800	Categorical exemptions.
		197-11-880	Emergencies.
		197-11-890	Petitioning DOE to change exemptions.
		197-11-900	Purpose of this part.
		197-11-902	Agency SEPA policies.
		197-11-916	Application to ongoing actions.



197-11-920	Agencies with environmental expertise.
197-11-922	Lead agency rules.
197-11-924	Determining the lead agency.
197-11-926	Lead agency for governmental proposals.
197-11-928	Lead agency for public and private proposals.
197-11-930	Lead agency for private projects with one agency with jurisdiction.
197-11-932	Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
197-11-934	Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
197-11-936	Lead agency for private projects requiring licenses from more than one state agency.
197-11-938	Lead agencies for specific proposals.
197-11-940	Transfer of lead agency status to a state agency.
197-11-942	Agreements on lead agency status.
197-11-944	Agreements on division of lead agency duties.
197-11-946	DOE resolution of lead agency disputes.
197-11-948	Assumption of lead agency status.
197-11-960	Environmental checklist.
197-11-965	Adoption notice.
197-11-970	Determination of nonsignificance (DNS).
197-11-980	Determination of significance and scoping notice (DS).
197-11-985	Notice of assumption of lead agency status.
197-11-990	Notice of action.

### **NEW SECTION**

#### **REGULATION I SECTION 2.03 DESIGNATION OF RESPONSIBLE OFFICIAL**

(a) For proposals for which the Agency is the lead agency, the responsible official shall be the Control Officer or Agency employee designated by the Control Officer.

(b) For all proposals for which the Agency is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules adopted by reference in Section 2.02.

(c) The Agency shall retain all documents required by the SEPA rules (chapter 197-11 WAC) and make them available in accordance with chapter 42.17 RCW.

### **NEW SECTION**

#### **REGULATION I SECTION 2.04 LEAD AGENCY DETERMINATION AND RESPONSIBILITIES**

(a) When the Agency receives an application for or initiates a proposal that involves a nonexempt action, the Agency shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940; unless the lead agency has been previ-

ously determined or the Agency is aware that another agency is in the process of determining the lead agency. When the Agency is the lead agency for a proposal, the responsible official shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.

(b) When the Agency is not the lead agency for a proposal, the Agency shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. The Agency shall not prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the Agency may conduct supplemental environmental review under WAC 197-11-600.

(c) If the Agency receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within 15 days of receipt of the determination, or the Agency must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the 15-day time period. Any such petition on behalf of the Agency may be initiated by the Control Officer.

(d) The Agency may make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944.

(e) When the Agency makes a lead agency determination for a private project, the Agency shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal.

### **NEW SECTION**

#### **REGULATION I SECTION 2.05 TRANSFER OF LEAD AGENCY STATUS TO A STATE AGENCY**

For any proposal for a private project where the Agency would be the lead agency and for which one or more state agencies have jurisdiction, the responsible official may elect to transfer the lead agency duties to a state agency. The state agency with jurisdiction appearing first on the priority listing in WAC 197-11-936 shall be the lead agency and the Agency shall be an agency with jurisdiction. To transfer lead agency duties, the responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal.

### **NEW SECTION**

#### **REGULATION I SECTION 2.06 USE OF EXEMPTIONS**

(a) When the Agency receives an application for a permit or, in the case of governmental proposals, the Agency initiates the proposal, the Agency shall determine whether the permit and/or the proposal is exempt. The Agency's determination that a permit or proposal is exempt shall be final and

not subject to administrative review. If a permit or proposal is exempt, none of the procedural requirements of this regulation apply to the proposal. The Agency shall not require completion of an environmental checklist for an exempt permit or proposal.

(b) In determining whether or not a proposal is exempt, the Agency shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and non-exempt actions, the Agency shall determine the lead agency, even if the license application that triggers the Agency's consideration is exempt.

(c) If a proposal includes both exempt and nonexempt actions, the Agency may authorize exempt actions prior to compliance with the procedural requirements of this regulation, except that:

(1) The Agency shall not give authorization for:

(A) Any nonexempt action;

(B) Any action that would have an adverse environmental impact; or

(C) Any action that would limit the choice of alternatives.

(2) The Agency may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and

(3) The Agency may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

## NEW SECTION

### **REGULATION I SECTION 2.07 ENVIRONMENTAL CHECKLIST**

(a) A completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this regulation; except, a checklist is not needed if the Agency and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The Agency shall use the environmental checklist to determine the lead agency and, if the Agency is the lead agency, for determining the responsible official and for making the threshold determination.

(b) For private proposals, the Agency will require the applicant to complete the environmental checklist, providing assistance as necessary. For Agency proposals, the Agency shall complete the environmental checklist. The Agency may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

(1) The Agency has technical information on a question or questions that is unavailable to the private applicant; or

(2) The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

## NEW SECTION

### **REGULATION I SECTION 2.08 MITIGATED DNS**

(a) As provided in this section and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

(b) An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. "Early notice" means the Agency's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal. The request must:

(1) Follow submission of a complete permit application and environmental checklist for a nonexempt proposal for which the Agency is lead agency; and

(2) Precede the Agency's actual threshold determination for the proposal.

(c) The responsible official shall respond to the request for early notice within 30 working days. The response shall:

(1) Be written;

(2) State whether the Agency currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading the Agency to consider a DS; and

(3) State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

(d) As much as possible, the Agency should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

(e) When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, the Agency shall base its threshold determination on the changed or clarified proposal and shall make the determination within 15 days of receiving the changed or clarified proposal:

(1) If the Agency indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the Agency shall issue and circulate a DNS under WAC 197-11-340(2).

(2) If the Agency indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the Agency shall make the threshold determination, issuing a DNS or DS as appropriate.

(3) The applicant's proposed mitigation measures (clarifications, changes, or conditions) must be in writing and must be specific.

(4) Mitigation measures that justify issuance of a mitigated DNS may be incorporated in the DNS by reference to Agency staff reports, studies, or other documents

(f) A mitigated DNS is issued under either WAC 197-11-340(2), requiring a 14-day comment period and public notice, or WAC 197-11-355, which may require no additional comment period beyond the comment period on the notice of application.

(g) Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the Agency.

(h) If the Agency's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the Agency should evaluate the threshold determination to ensure consistency with WAC 197-11-340 (3)(a) (withdrawal of DNS).

(i) The Agency's written response under Section 2.08(c) of this regulation shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the Agency to consider the clarifications or changes in its threshold determination.

#### **NEW SECTION**

#### **REGULATION I SECTION 2.09 PREPARATION OF EIS - ADDITIONAL CONSIDERATIONS**

(a) Preparing a draft and final EIS (DEIS and FEIS) and draft and final supplemental EIS (SEIS) is the responsibility of the responsible official. Before the Agency issues an EIS, the responsible official shall be satisfied that it complies with this regulation and chapter 197-11 WAC.

(b) The DEIS and FEIS or draft and final SEIS shall be prepared by Agency staff or by a consultant selected by the Agency. The Agency retains sole authority to select persons or firms to author, co-author, provide special services, or otherwise participate in preparing required environmental documents. If the responsible official requires an EIS for a proposal and determines that someone other than the Agency will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the Agency's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

(c) The Agency may require an applicant to provide information the Agency does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this regulation or that is being requested from another agency. (This does not apply to information the Agency may request under another regulation or statute.)

#### **NEW SECTION**

#### **REGULATION I SECTION 2.10 ADDITIONAL ELEMENTS TO BE COVERED IN AN EIS**

The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determination or perform any other function or purpose under this regulation:

- (a) Economy
- (b) Social policy analysis
- (c) Cost-benefit analysis

#### **NEW SECTION**

#### **REGULATION I SECTION 2.11 PUBLIC NOTICE**

(a) Whenever the Agency issues a DNS under WAC 197-11-340(b) or a DS under WAC 197-11-360(c), the Agency shall give public notice as follows:

(1) If public notice is required for a nonexempt license, the notice shall state whether a DS or DNS has been issued and when comments are due.

(2) If no public notice is required for the permit or approval, the Agency shall give notice of the DNS or DS by:

(A) Notifying public or private groups that have expressed interest in a certain proposal or in the type of proposal being considered, and

(B) Posting notice on the Agency website.

(3) Whenever the Agency issues a DS under WAC 197-11-360(3), the Agency shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

(b) Whenever the Agency issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

(1) Indicating the availability of the DEIS in any public notice required for a nonexempt license; and at least one of the following methods:

(2) Posting the property, for site-specific proposals;

(3) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;

(4) Notifying public or private groups that have expressed interest in a certain proposal or in the type of proposal being considered;

(5) Notifying the news media;

(6) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals;

(7) Publishing notice in Agency newsletters and/or sending notice to Agency mailing lists (general lists or specific lists for proposals or subject areas); and/or

(8) Posting notice on the Agency website.

(c) Whenever possible, the Agency shall integrate the public notice required under this section with existing notice procedures for the Agency's nonexempt permit(s) or approval(s) required for the proposal.

(d) The Agency may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

#### **NEW SECTION**

#### **REGULATION I SECTION 2.12 DESIGNATION OF OFFICIAL TO PERFORM CONSULTED AGENCY RESPONSIBILITIES FOR THE AGENCY**

(a) The Control Officer shall be responsible for preparing written comments for the Agency in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.

(b) The Control Officer shall be responsible for the Agency's compliance with WAC 197-11-550 whenever the Agency is a consulted agency and is authorized to develop

operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from the Agency.

## **NEW SECTION**

### **REGULATION I SECTION 2.13 SEPA SUBSTANTIVE AUTHORITY**

(a) The policies and goals set forth in this section supplement those in the existing authority of the Agency.

(b) Any governmental action on public or private proposals that are not exempt may be conditioned or denied under SEPA to mitigate the environmental impact, subject to the following limitations:

(1) Mitigation measures or denials shall be based on policies, plans, rules, or regulations designated in this article as a basis for the exercise of substantive authority and in effect when the DNS or DEIS is issued. The responsible official shall cite the Agency's SEPA policy that is the basis of any condition or denial under this regulation (for proposals of applicants).

(2) Mitigation measures shall be related to specific, adverse environmental impacts clearly identified in an environmental document on the proposal and shall be stated in writing by the responsible official. Such document may be the permit itself, or may be combined with other Agency documents, or may reference relevant portions of environmental documents.

(3) Mitigation measures shall be reasonable and capable of being accomplished.

(4) Responsibility for implementing mitigation measures may be imposed upon an applicant only to the extent attributable to the identified adverse impacts of its proposal. Voluntary additional mitigation may occur.

(5) The Agency shall consider whether local, state, or federal requirements and enforcement would mitigate an identified significant impact.

(6) To deny a proposal under SEPA, the Agency must find that:

(A) The proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental EIS prepared pursuant to this regulation; and

(B) Reasonable mitigation measures are insufficient to mitigate the identified impact.

(c) The Agency designates and adopts by reference the following policies, plans, rules, and regulations as the potential bases for the Agency's exercise of substantive authority under SEPA, pursuant to this section:

(1) The Agency shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(A) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(B) Ensure for all people of Washington, safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(C) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(D) Preserve important historic, cultural, and natural aspects of our national heritage;

(E) Maintain, wherever possible, an environment that supports diversity and variety of individual choice;

(F) Achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and

(G) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(2) The Agency recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(3) The Agency adopts by reference the policies in the following laws and Agency resolutions, regulations, and plans:

(A) Federal and state Clean Air Acts, and regulations adopted thereunder.

(B) Agency Regulations I, II, and III.

(C) Resolutions adopted by the Agency Board of Directors.

(D) Maintenance plans.

(E) Washington State Implementation Plan.

(F) Final Report of the Agency PM2.5 Stakeholder Group, dated October 15, 1999.

(4) The Agency establishes the following additional policies:

(A) Air quality

(i) Policy Background

(a) Air pollution can be damaging to human health, plants and animals, visibility, aesthetics, and the overall quality of life.

(b) The Agency is responsible for monitoring air quality in the Puget Sound area, setting standards, and regulating development to achieve regional air quality standards.

(c) Federal, state, and regional regulations and programs cannot always anticipate or adequately mitigate adverse air quality impacts.

(ii) Policies

(a) To minimize or prevent adverse air quality impacts.

(b) To secure and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and to property, foster the comfort and convenience of its inhabitants, seek public participation in policy planning and implementation, promote the economic and social development of the Puget Sound area, and facilitate the enjoyment of the natural attractions of the Puget Sound area.

(c) To eliminate emissions of ozone-depleting chlorofluorocarbons, in the interests of national and global environmental protection; and to consider energy efficiency and conservation to reduce greenhouse gases.

(d) To reduce woodstove emissions by educating the public about the effects of woodstove emissions, other heating alternatives, and the desirability of achieving better emission performance and heating efficiency from woodstoves

pursuant to standards adopted by the Department of Ecology; and to encourage replacing uncertified woodstoves with cleaner sources of heat.

(e) To reduce outdoor burning to the greatest extent practical.

(f) To develop and adopt strategies for effectively reducing or eliminating impacts from toxic air contaminants.

(g) To control volatile organic compound (VOC) emissions in order to maintain the National Ambient Air Quality Standard for ozone.

(h) If the responsible official makes a written finding that the applicable federal, state, and/or regional regulations did not anticipate or are inadequate to address the particular impact(s) of a project, the responsible official may condition or deny the proposal to mitigate its adverse impacts.

**(B) Land Use**

**(i) Policy background**

(a) Adverse land use impacts may result when a proposed project or land use policy includes uses that may be consistent with applicable zoning requirements but inconsistent with air quality regulations.

(b) Adverse cumulative land use impacts may result when particular uses permitted under the zoning code occur in an area to such an extent that they expose sensitive populations to air quality related health and environmental adverse impacts.

**(ii) Policies**

(a) To ensure that proposed uses in projects are reasonably compatible with surrounding uses and are consistent with applicable air quality regulations.

(b) To reduce regional air pollution emissions associated with land uses by promoting clean alternative forms of domestic use fuels, including natural gas, in new single and multifamily housing developments within urban growth areas. In addition, to discourage wood as a source of heat for residential development in low-lying areas susceptible to pollution accumulations.

(c) To encourage municipal curbside solid and yard waste collection services at reasonable costs.

**(C) Transportation**

**(i) Policy Background**

(a) Excessive traffic can adversely affect regional air quality.

(b) Substantial traffic volumes associated with major projects may adversely impact air quality in surrounding areas.

**(ii) Policies**

(a) To minimize or prevent adverse traffic impacts that would undermine the air quality of a neighborhood or surrounding areas.

(b) To promote transportation demand and systems management actions designed to reduce vehicle emissions by reducing the use of single occupancy vehicles, reducing traffic congestion, and increasing public transportation services.

(c) To encourage integrating land use and transportation planning.

(d) To emphasize the importance of air quality conformity determinations required for proposed transportation plans, programs, and projects.

(e) To pursue and support alternative and clean fuels projects and programs.

(f) To promote and support land use plans and projects designed to reduce vehicle emissions by reducing the use of single occupant vehicles, number of vehicle miles traveled, and traffic congestion; and supporting the use of public transportation.

(g) In determining the necessary air quality impact mitigation, the responsible official will examine the mitigation proposed by the local jurisdiction.

**(D) Cumulative Effects**

(i) The analysis of cumulative effects shall include a reasonable assessment of:

(a) The capacity of natural systems, such as air, water, light, and land, to absorb the direct and reasonably anticipated indirect impacts of the proposal, and

(b) The demand upon facilities, services, and natural systems of present, simultaneous, and known future development in the area of the project or action.

(ii) An action or project may be conditioned or denied to lessen or eliminate its cumulative effects on the environment:

(a) When considered together with prior, simultaneous, or induced future development; or

(b) When, taking into account known future development under established zoning or other regulations, it is determined that a project will use more than its share of present and planned facilities, services, and natural systems.

**NEW SECTION**

**REGULATION I SECTION 2.14 NOTICE/STATUTE OF LIMITATIONS**

(a) The Agency, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

(b) The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the city clerk or county auditor, applicant, or proponent pursuant to RCW 43.21C.080.

**NEW SECTION**

**REGULATION I SECTION 2.15 FEES**

In addition to the fees set forth in Article 6, the following fees apply:

**(a) Threshold Determination**

The Agency may contract directly with a consultant for preparation of an environmental checklist or other information needed for the Agency to make a threshold determination, and may bill such costs and expenses directly to the applicant. The Agency may require the applicant to post bond or otherwise ensure payment of such costs and expenses. In addition, the Agency may charge and collect a reasonable fee from any applicant to cover the costs incurred by the Agency in preparing an environmental checklist or other information needed for the Agency to make a threshold determination.

**(b) Environmental Impact Statement**

(1) When the Agency is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of the Agency, the Agency may charge and collect a reasonable fee from any applicant to cover costs incurred by the Agency in preparing the EIS. The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.

(2) The responsible official may determine that the Agency will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than the Agency and may bill such costs and expenses directly to the applicant. The Agency may require the applicant to post bond or otherwise ensure payment of such costs.

(3) If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under Section 2.15 (a) or (b) of this regulation that remain after incurred costs are paid.

(c) The Agency may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this regulation relating to the applicant's proposal.

(d) The Agency shall not collect a fee for performing its duties as a consulted agency, except as provided in WAC 197-11-570.

(e) The Agency may charge any person for copies of any document prepared under this ordinance, and for mailing the document, in a manner provided by chapter 42.17 RCW.

### WSR 01-08-031

#### WITHDRAWAL OF PROPOSED RULES WESTERN WASHINGTON UNIVERSITY

[Filed March 29, 2001, 1:59 p.m.]

WAC 516-60-001 and 516-60-002 were not repealed under WSR 01-01-137 and thus remain in effect.

If you have any questions, please contact (360) 650-3968.

Gloria McDonald  
Rules Coordinator

### WSR 01-08-034

#### PROPOSED RULES DEPARTMENT OF REVENUE

[Filed March 29, 2001, 3:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-22-091.

Title of Rule: WAC 458-20-24001 Sales and use tax deferral—Manufacturing and research/development facilities in distressed areas—Applications filed after July 31, 1999 and 458-20-24001A Sales and use tax deferral—Manufactur-

ing and research/development activities in distressed areas—Applications filed prior to August 1, 1999.

Purpose: These rules explain the sales and use tax deferral program for manufacturers and research and development facilities located in distressed areas as provided by chapter 82.60 RCW.

Statutory Authority for Adoption: RCW 82.32.300.

Statute Being Implemented: Chapter 82.60 RCW.

Summary: These rules explain the sales and use tax deferral program's eligible area criteria, hiring requirements, reporting and monitoring procedures, and tax repayment requirements. They also explain the application procedure and review process, how the deferral certificate is to be used, and the record-keeping requirements of the deferral program.

Reasons Supporting Proposal: To incorporate the statutory changes reflected in chapter 25, Laws of 1993 1st sp. s.; chapter 1, Laws of 1994 1st sp. s.; chapter 7, Laws of 1994 1st sp. s.; chapter 3, Laws of 1995 1st sp. s.; chapter 289, Laws of 1996; chapter 164, Laws of 1999; chapter 311, Laws of 1999; chapter 9, Laws of 1999 1st sp. s.; and chapter 106, Laws of 2000.

Name of Agency Personnel Responsible for Drafting and Implementation: Claire Hesselholt, 1025 East Union Avenue, Suite #400, Olympia, WA, (360) 570-6124; and Enforcement: Russell Brubaker, 1025 East Union Avenue, Suite #400, Olympia, WA, (360) 570-6131.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These rules explain the sales and use tax deferral program provided by chapter 82.60 RCW for manufacturers and research and development facilities located in distressed areas. This program was enacted in 1985 and the legislature revised the program criteria in 1993, 1994, 1995, 1996, and 1999, specifically to the definitions of "eligible area," "eligible investment project," and "qualified building." Each revision created additional criteria for prospective applicants.

The proposed revision of WAC 458-20-24001 explains the current program criteria, requirements, and procedures, which have been in effect for applications filed after July 31, 1999. The rule draft being proposed reflects an entire strike-out of the existing language, and an underlining of all language proposed for this rule. This approach has been used to make it easier for the reader to identify and understand the language that is actually being proposed.

The proposed new WAC 458-20-24001A explains the program criteria, requirements, and procedures that apply to previous periods. This proposed new rule provides the information in three separate parts, each based on the period application for the deferral program was made. Part I provides the pertinent information for applications filed during the period of July 1, 1995, through July 31, 1999. Parts II and III provide the information for the periods of July 1, 1994, through June 30, 1995, and July 1, 1992, through June 30, 1994, respectively. The parts are drafted to stand on their own so that the reader need only read the part that applies to the period during which application was made to find all pertinent information.

Proposal Changes the Following Existing Rules: The department is proposing to revise WAC 458-20-24001, as explained above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because the rules and the proposed amendments do not impose any requirements or burdens upon small businesses that are not already specifically required by statute.

RCW 34.05.328 does not apply to this rule adoption. These are interpretive rules as defined in RCW 34.05.328.

Hearing Location: Capital Plaza Building, 4th Floor, Large Conference Room, 1025 East Union Avenue, Olympia, WA, on May 9, 2001, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Barb Vane no later than ten days before the hearing date, TDD 1-800-451-7985, or (360) 570-6182.

Submit Written Comments to: Cindy Evans, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, fax (360) 664-0693, e-mail cindyev@dor.wa.gov, by May 9, 2001.

Date of Intended Adoption: May 16, 2001.

March 29, 2001

Russell W. Brubaker

Assistant Director

Legislation and Policy Division

AMENDATORY SECTION (Amending Order 88-5, filed 8/16/88)

**WAC 458-20-24001 Sales and use tax deferral—Manufacturing and research/development ((facilities)) activities in distressed areas—Applications filed after July 31, 1999.** ((1) Introduction. Chapter 82.60 RCW establishes a sales and use tax deferral program. The purpose of the program is to promote economic stimulation, create employment opportunities, and reduce poverty in certain distressed areas of the state. Thus, the legislature established this tax deferral program to be effective solely in those distressed areas and under circumstances where the deferred tax payments are for investments or costs that result in the creation of a specified minimum number of jobs. In general, the deferral applies to sales and use taxes on materials, labor, and services rendered in the construction of qualified buildings, machinery, and equipment.

(2) In addition to the tax deferral benefits of this program, the department of employment security administers economic incentives and funding programs which encourage "first source contract" hiring of unemployed persons and state public assistance recipients. The employment security department should be contacted directly for information concerning such nontax related programs.

(3) Definition of terms. For purposes of this section:

(a) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(b) "Person" has the meaning given in RCW 82.04.030. It means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, busi-

ness trust, municipal corporation, political subdivision of the state of Washington, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof. For purposes of this section the relationship of landlord and tenant between separate persons, at arms length, shall not be considered as any of the types of relationships which are identified above as "persons."

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Recipient" means a person who has been granted a tax deferral under this program.

(e) "Department" means the department of revenue.

(f) "Eligible area" means:

(i) A county in which the average level of unemployment for the three calendar years preceding the year in which an application is filed exceeds the average state unemployment for those years by twenty percent; or

(ii) A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under this chapter exceeds the average state unemployment for such calendar year by twenty percent. Applications under this subsection shall be filed by April 30, 1989. For the purpose of (f)(i) of this subsection, the average unemployment rate for the county must be twenty percent above the average unemployment rate for the state in the preceding three calendar years. In determining an eligible area under this subsection the department may compare the county's average unemployment rate in the prior three years to one hundred twenty percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security.

(g) "Eligible investment project" means that portion of an investment project which:

(i) Is directly utilized to create at least one new full time qualified employment position for each three hundred thousand dollars of investment on which a deferral is requested; and

(ii) Either initiates a new operation or expands or diversifies a current operation by expanding or renovating an existing building, machinery and equipment, with costs in excess of twenty five percent of the true and fair value of the plant complex prior to the improvement. (See the definition of "improvement" in (h)(iii) of this subsection.)

(h) For the purposes of the above paragraph the following definitions will apply:

(i) "Qualified employment position" means a permanent, full time employee employed in the eligible investment project during the entire tax year following the operational completion of the project. In the event an employee is either voluntarily or involuntarily separated from employment the employment position will be considered filled if the employer is either training or actively recruiting a replacement employee so long as the position is not actually vacant for any period in excess of thirty consecutive days.

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(ii) The requirement for employment during the "entire tax year," for purposes of this tax deferral program, will be satisfied if the full time position is filled for a period of twelve consecutive months.

(iii) An "improvement" shall mean the physical alteration by significant expansion, modernization, or renovation of an existing plant complex, excluding land, where the cost of such expansion, etc., exceeds twenty five percent of the true and fair value of the existing plant complex prior to the initiation of the expansion or renovation. The term "improvement" is further defined to include those portions of an existing building which do not increase the usable floor space, but is limited to the renovation, modernization, or any other form of alteration or addition and the equipment and machinery installed therein during the course of construction. The twenty five percent test may be satisfied by considering the value of both the building and machinery and equipment; however, at least forty percent of the total renovation costs must be attributable to the physical renovation of the building structure alone.

(iv) "True and fair value" means the value listed on the assessment rolls as determined by the county assessor for the land, buildings, or equipment for ad valorem property tax purposes at the time of application.

(v) "Plant complex" shall mean land, machinery, and buildings adapted to industrial, computer, warehouse, or research and development use as a single functional or operational unit for the designing, assembling, processing, or manufacturing of finished or partially finished products from raw materials or fabricated parts.

(vi) "Eligible investment project" does not include either an investment project undertaken by a light and power business as defined in RCW 82.16.010(5), or investment projects which have already received deferrals under chapter 82.60 RCW.

(i) "Investment project" means an investment in qualified buildings and qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. A person who does not build or remodel its own building, but leases from a third party, is eligible for sales and use tax deferral provided that an investment in qualified machinery and equipment is made by such person and a new structure used to house the manufacturing activities is constructed. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, and equipment vests in the same persons.

(j) "Manufacturing" has the meaning given in RCW 82.04.110 and WAC 458-20-136 now and as hereafter amended. Manufacturing, for purposes of this section, shall also include computer programming, the production of computer related service, and the activities performed by research and development laboratories and commercial testing laboratories.

(k) "Qualified buildings" means new structures used to house manufacturing activities as defined above and includes plant offices, warehouses, or other facilities for the storage of raw material and finished goods if such facilities are essential or an integral part of a manufacturing operation. The term also includes parking lots, landscaping, sewage disposal sys-

tems, cafeterias, and the like, which are attendant to the initial construction of an eligible investment project. The term "new structures" means either a newly constructed building or a building newly purchased by the certificate holder. A pre-owned or existing building is eligible for deferral provided that the certificate holder expands, modernizes, renovates, or remodels the pre-owned or existing building by physical alteration thereof.

(l) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation, as defined above. "Qualified machinery and equipment" includes, but is not limited to, computers, software, data processing equipment, laboratory equipment, manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a long or short term lease by the recipient. The tax deferral applies to equipment purchased outright by the recipient (or the transfer of machinery and equipment into the state of Washington) and leased equipment. Acquisition of spare parts for machinery, equipment, etc., in excess of normal operating levels shall not be eligible for deferral.

(m) "New machinery and equipment" means either new to the taxing jurisdiction of the state or new to the certificate holder. Used equipment is eligible for deferral provided that the certificate holder either brings the machinery or equipment into Washington for the first time or purchases it at retail in Washington.

(n) "Initiation of construction," for purposes of applying for the investment tax deferral relating to the construction of new buildings, shall mean the date upon which on-site construction work commences.

(o) "Initiation of construction," for purposes of applying for the investment tax deferral relating to a major improvement of existing buildings, shall mean the date upon which the new construction by renovation, modernization, or expansion, by physical alteration, begins.

(p) "Operationally complete" means the eligible investment project is constructed or improved to the point of being fully and functionally useable for its intended purpose as described in the application.

(4) Application procedure. An application for sales and use tax deferral under this program must be made prior to the initiation of construction, as defined above. However, any application by a metropolitan statistical area defined as an "eligible area" in subsection (3)(f)(ii) of this section must be filed by April 30, 1989. Application forms will be supplied to the applicant by the department upon request. The completed application is to be sent in duplicate to the following address:

State of Washington  
Department of Revenue  
Audit Procedures & Review  
Olympia, WA 98504  
Mail Stop AX-02

(5) The department will verify the information contained in the application and either approve or disapprove the appli-



ation within sixty days. If approved, a tax deferral certificate shall be issued effective as of the date the application was received by the department. If disapproved, the department shall notify the applicant as to the reason(s) for disapproval. The applicant may seek administrative review of the department's refusal to issue a certificate pursuant to the provisions of WAC 458-20-100, within twenty days from the date of notice of the department's refusal, or within any extension of such time granted by the department.

(6) For purposes of making application for tax deferral and of approving such applications, the state-wide and county unemployment statistics last published by the department will be used to determine eligible areas. The department will publish a list of eligible areas by county, on May 1 of each year.

(7) Use of the certificate. A tax deferral certificate issued under this program shall be for the use of the recipient thereof for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings and qualified machinery and equipment as defined in this section. Thus, sales and use taxes cannot be deferred on items which do not become part of the qualified buildings, machinery, and equipment.

(8) The tax deferral certificate shall be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102. The certificate holder shall provide its vendors with a copy of the tax deferral certificate at the time goods or services are purchased. The seller or vendor shall be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller or vendor shall retain a copy of the certificate as part of its permanent records. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller or vendor is liable for reporting business and occupation tax on all tax deferral sales.

(9) Audit procedure. An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a sales and use tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate. At that time the certificate holder may not utilize the certificate further. If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may apply for a supplemental certificate stating a revised amount upon which the deferral of sales and use taxes is requested. The certificate holder shall amend the original application to account for the additional costs. The department will grant or deny the amended application on the same basis as original applications.

(10) The certificate holder shall notify the department in writing when the construction project is operationally complete. Upon receipt of such notification or other information, the department shall conduct a final audit of the investment project. The certificate holder shall open its books and records to the department and make available the final cost figures for the investment project. The department may

request reasonable supporting documentation and other proof to justify the final cost of the project.

(11) Upon completion of the audit the department shall certify the amount of sales and use taxes subject to deferral and the date on which the project was operationally complete. The recipient shall be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes shall be paid, and any reports required to be submitted in the subsequent years. If the department disallows all or any portion of the amount of sales and use taxes requested for deferral, the recipient may seek administrative review of the department's action pursuant to the provisions of WAC 458-20-100, within twenty days from the date of the notice of disallowance.

(12) The department shall keep a running total of all deferral certificates granted during each fiscal biennium.

(13) The deferral is allowable only in respect to investment in the construction of a new plant complex or the enlargement or improvement of an existing plant complex directly used in manufacturing activities, as defined above. Where a plant complex is used partly for manufacturing and partly for purposes which do not qualify for deferral under this section and it is not possible to identify the nonqualifying items through separate accounting, the applicable tax deferral shall be determined by apportionment according to the ratio which the construction cost per square foot of that portion of the plant complex directly used for manufacturing purposes bears to the construction cost per square foot of the total plant complex.

(14) The amount of tax deferral allowable for leased equipment shall be calculated upon that amount of the consideration paid by the lessee/recipient to the lessor:

(a) Over the initial term of the lease, excluding any period of extension or option to renew, where the lease term ends on or before the last date for repayment of the deferred taxes; or

(b) Over that portion of the lease term to the last date for repayment of deferred taxes as provided hereinafter, where the lease term, excluding any period of extension or option to renew extends beyond such repayment date.

(15) After that date the lessee/recipient shall pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(16) No taxes may be deferred under this section prior to July 1, 1985. No applications for deferral of taxes will be accepted after May 1, 1994 nor will sales or use tax deferral certificates be issued on or after July 1, 1994. See subsection (4) of this section for application deadline for any metropolitan statistical area. In tabulating the total amount of deferrals granted under this law there shall be considered a total of three fiscal biennia within which applications shall be accepted.

(17) Reporting and monitoring procedure. Each recipient of sales and use tax deferral shall submit a report to the department on December 31st of each year during the repayment period until all taxes are repaid. The first report shall be submitted in the third year after the date on which the construction project has been operationally complete to coincide with the first payment of deferred taxes. The report shall contain information from which the department may determine

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whether the recipient is meeting the requirements of the deferral law.

(18) The report shall be made to the department in a form and manner prescribed by the department. The report shall contain information regarding the recipient's average employment in the state for the prior three years, the actual employment related to the project, the actual wages of the employees related to the project, and any other information required by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately assessed and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(19) The department shall notify the department of employment security of the names of all recipients of tax deferrals under this program. On or before December 31st of each year a deferral is in effect, the department shall request information on each recipient's employment in the state for that year, including employment related to the deferral project, and the wages of such employees. The department of employment security shall make, and certify to the department, all determinations of employment and wages required under this subsection.

(20) If, on the basis of the recipient's annual report or other information including that submitted by the department of employment security, the department finds that an investment project is not eligible for tax deferral, the department will (a) declare the amount of deferred taxes outstanding to be immediately due or (b) assess interest on the deferred taxes for the project.

(21) If the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the department shall assess interest, but not penalties, on the deferred taxes. The interest shall be assessed at the rate of nine percent per annum, shall be assessed retroactively to the date of deferral, and shall accrue until the deferred taxes are paid. A recipient of deferred taxes shall have from the date on which the construction project was certified as operationally complete to December 31st of the first year of repayment in which to create the required number of employment positions under this law.

(22) If the department finds that the investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the amount of deferred taxes outstanding for the project shall be immediately due. The reasons for disqualification include, but are not limited to, the following:

- (a) The facility is not used for a manufacturing, warehouse, computer, or research and development operations;
- (b) The recipient has not made an investment in qualified buildings, machinery, and equipment.

(23) Any action taken by the department to assess interest or disqualify a recipient for tax deferral shall be subject to administrative review pursuant to the provisions of WAC 458-20-100.

(24) The law expressly excuses the obligation for repayment of sales or use tax upon the value of labor directly

applied in the construction of an investment project for which deferral has been granted. Provided:

(a) That deferral has been granted after June 11, 1986; and

(b) That eligibility for the granted tax deferral has been perfected by actually meeting all of the eligibility requirements, based upon the recipient's annual December 31 reports and any other information available to the department.

(25) The recipient must establish, by clear and convincing evidence, the value of all construction and installation labor for which repayment of sales tax is sought to be excused. Such evidence must include, but is not limited to: A written, signed, and dated itemized billing from construction/installation contractors or independent third party labor providers which states the value of labor charged separately from the value of materials.

(26) The above information must be maintained in the recipient's permanent records for the department's review and verification at the time of the final audit of the investment project.

(27) In the absence of such itemized billings in its permanent records, no recipient may be excused from repayment of sales tax on the value of labor in an amount exceeding thirty percent of its gross construction or installation contract charges.

(28) The value of labor for which an excuse from repayment of sales or use tax may be received will not exceed the value which is subject to such taxes under the general provisions of chapters 82.08 and 82.12 RCW.

(29) Payment procedures. The recipient of sales and use tax deferral under this program shall begin paying the deferred taxes in the third year after the date certified by the department as the date on which the construction project was operationally complete. The first payment will be due on December 31st of the third calendar year after such certified date, with subsequent annual payments due on December 31st of the following four years, with amounts of payment scheduled as follows:

Repayment Year	Percentage of Deferred Tax Repaid
1	10%
2	15%
3	20%
4	25%
5	30%

(30) The department may authorize an accelerated repayment schedule upon request of the recipient. Interest shall not be charged on any taxes deferred under this rule during the period of deferral, although other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for any delinquent payments during the repayment period pursuant to chapter 82.32 RCW. The debt for deferred taxes shall not be extinguished by insolvency or other failure of the recipient nor shall the debt for the deferred taxes be extinguished by the sale, exchange, or other disposition of the recipient's business. Any person who becomes a successor

(see WAC 458-20-216) to such investment project shall be liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(31) Disclosure of information. The law provides that information contained in applications, reports, and other information received by the department in connection with this tax deferral program shall not be confidential and shall be subject to disclosure.)) (1) **Introduction.** Chapter 82.60 RCW establishes a sales and use tax deferral program. The purpose of the program is to promote economic stimulation, create employment opportunities, and reduce poverty in certain areas of the state. The legislature established this program to be effective solely in those areas and under circumstances where the deferral is for investments that result in the creation of a specified minimum number of jobs or investment for a qualifying project.

(a) This deferral program applies to taxes imposed on the construction of qualified buildings or acquisition of qualified machinery and equipment and requires the recipient of the deferral to maintain the manufacturing or research and development activity for an eight-year period. This rule does not address RCW 82.08.02565 and 82.12.02565, which provide a statewide sales and use tax exemption for machinery and equipment used directly in a manufacturing operation. Refer to WAC 458-20-13601 for more information regarding the statewide exemption.

(b) This program was first enacted in 1985. The legislature made major revisions to program criteria in 1993, 1994, 1995, 1996, and 1999, specifically to the definitions of "eligible area," "eligible investment project," and "qualified building." Each revision created additional criteria for prospective applicants. This rule sets forth the requirements for applications made after July 31, 1999. For applications made prior to August 1, 1999, see WAC 458-20-24001A.

(c) The employment security department and the department of community, trade, and economic development administer programs for distressed areas and job training and should be contacted directly for information concerning these programs.

(2) **Definitions.** The following definitions apply to applications made after July 31, 1999.

(a) "Acquisition of equipment or machinery" means the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hard-

ware before they are approved for sale to the consumer are considered computer-related services.

(e) "Department" means the department of revenue.

(f) "Eligible area" means:

(i) Rural county. A rural county is a county with fewer than one hundred persons per square mile as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th; or

(ii) Community empowerment zone (CEZ). A "community empowerment zone" means an area meeting the requirements of RCW 43.31C.020 and officially designated by the director or a county containing a CEZ.

(g) "Eligible investment project" means an investment project in an eligible area. "Eligible investment project" does not include an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. It also does not include an investment project that has already received a deferral under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of on-site construction work. Land clearing prior to excavation of the building site does not commence construction nor does planning commence construction.

(j) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. When an application for sales and use tax is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify.

(k) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing also includes computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(l) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(m) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(n) "Qualified buildings" means construction of new structures and expansion or renovation of existing structures

for the purpose of increasing floor space or production capacity, used for manufacturing and research and development activities.

"Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential to or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means buildings or facilities used for the storage of raw materials or finished goods.

(o) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. Full-time means at least thirty-five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty hours a year.

(p) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes computers, desks, filing cabinets, photocopiers, printers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(q) "Recipient" means a person receiving a tax deferral under this program.

(r) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(s) "Resident" means the person who fills the qualified employment position makes his or her home in the CEZ. A mailing address alone is insufficient to establish that a person is a resident.

(3) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

(4) **Eligible investment amount.** There may or may not be a hiring requirement, depending on the location of the project.

(a) **No hiring requirements.** There are no hiring requirements for qualifying projects located in counties with fewer than one hundred persons per square mile. Monitoring and reporting procedures are explained in subsection (12) of this rule. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (5) of this rule explains the procedure for apportionment.

(b) **Hiring requirements.** There are hiring requirements for qualifying projects located in CEZs or in counties containing CEZs. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired based on the following formula:

$$\frac{\text{Number of qualified employment positions to be hired}}{\$750,000} = \text{amount of investment eligible for deferral}$$

Applicants must make good faith estimates of hiring.

The recipient must fill the positions by persons who at the time of hire are residents of the CEZ. A recipient must fill the qualified employment positions by the end of the calendar year following the year in which the project is certified as operationally complete and retain the position during the entire tax year. If the recipient does not fill the qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

(5) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development, and commercial testing laboratories.

(a) Where a building(s) is used partly for manufacturing or research and development and partly for purposes that do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio the construction cost per square foot of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the construction cost per square foot of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

Total square feet of building(s)

$$\text{Percent Eligible} \times \text{Total Project Costs} = \text{Eligible Costs.}$$

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

$$\text{Eligible Tax Deferred} = \text{Eligible Cost} \times \text{Tax Rate.}$$

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(b) Qualified machinery and equipment is not subject to apportionment.

(6) Leased equipment. The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(7) Application procedure and review process. An application for sales and use tax deferral under this program must be made prior to the initiation of construction, prior to the acquisition of machinery and equipment, and prior to the filling of qualified employment positions. Persons who apply after construction is initiated or finished or after acquisition of machinery and equipment are not eligible for the program. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by FAX to (360) 586-2163 or mailed to the following address:

State of Washington  
Department of Revenue  
Special Programs  
P.O. Box 448  
Olympia, WA 98507-0448

Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

(b) The department will verify the information contained in the application and approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or FAX date will be used as the date of application.

(c) The applicant may seek administrative review of the department's disapproval of an application within thirty days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(8) Program termination. No applications for deferral of taxes will be accepted after June 30, 2004.

(9) Eligible area criteria. The office of financial management will determine annually the counties with fewer than one hundred persons per square mile. The department will update and distribute the list each year. The list will be effective on July 1 of each year.

If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect. For exam-

ple, on October 1, 1999, the city of Yakima qualifies as a CEZ, and the entire county of Yakima has fewer than one hundred persons per square mile. The CEZ requirements are more restrictive than counties containing fewer than one hundred persons per square mile. The department will assign the project to the "fewer than one hundred persons per square mile designation" unless the applicant elects to be bound by the CEZ requirements.

(10) Use of the certificate. A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified building or qualified machinery and equipment as defined in this rule. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

The tax deferral certificate is to be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(11) Project operationally complete. An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral taxes are requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project is operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(12) Reporting and monitoring procedure. Requirement to submit annual reports. Each recipient of a tax deferral under chapter 82.60 RCW must submit a report on December 31st of the year in which the investment project is certified by the department as having been operationally completed and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the depart-

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ment. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(13) Repayment of deferred taxes. Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection.

(a) Repayment of tax deferred under chapter 82.60 RCW is not required, and interest and penalties under RCW 82.60.070 will not be imposed, on machinery and equipment that qualifies for exemption under RCW 82.08.02565 or 82.12.02565.

(b) The following subsections describe the various circumstances under which repayment of the deferral may occur. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year.

<u>Repayment Year</u>	<u>Percentage of Deferred Tax Waived</u>
<u>1</u> <u>(Year operationally complete)</u>	<u>0%</u>
<u>2</u>	<u>0%</u>
<u>3</u>	<u>0%</u>
<u>4</u>	<u>10%</u>
<u>5</u>	<u>15%</u>
<u>6</u>	<u>20%</u>
<u>7</u>	<u>25%</u>
<u>8</u>	<u>30%</u>

Any action taken by the department to disqualify a recipient for tax deferral or assess interest will be subject to administrative review pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(c) Failure of investment project to satisfy general conditions. If, on the basis of the recipient's annual report or other information, including that submitted by the employment security department, the department of revenue finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. An example of a disqualification under this section is a facility not being used for a manufacturing or research and development operation.

(d) Failure of investment project to satisfy required employment positions conditions. If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the amount of taxes deferred will be immediately due. The department will assess interest at the rate and as provided for delinquent excise taxes under RCW 82.32.050 (retroactively to the date the application was filed). There is no proration of the

amount owed under this subsection. No penalties will be assessed.

(14) Debt not extinguished because of insolvency or sale. Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of chapter 82.60 RCW, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient of the deferral.

(15) Disclosure of information. Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

NEW SECTION

**WAC 458-20-24001A Sales and use tax deferral—Manufacturing and research/development activities in distressed areas—Applications filed prior to August 1, 1999. Introduction.** Chapter 82.60 RCW establishes a sales and use tax deferral program. The purpose of the program is to promote economic stimulation, create employment opportunities, and reduce poverty in certain areas of the state. The legislature established this program to be effective solely in those areas and for those circumstances where the deferral is for investments that result in the creation of a specified minimum number of jobs or investment for a qualifying project.

The program applies to sales and use taxes on materials and labor and services rendered in the construction of qualified buildings or acquisition of qualified machinery and equipment and requires the recipient of the deferral to maintain the manufacturing or research and development activity for an eight-year period. This rule does not address RCW 82.08.02565 and 82.12.02565, which provide a statewide sales and use tax exemption for machinery and equipment used directly in a manufacturing operation. Refer to WAC 458-20-13601 for more information regarding the statewide exemption.

This program was enacted in 1985. The legislature made major revisions to program criteria in 1993, 1994, 1995, 1996, and 1999, specifically to the definitions of "eligible area," "eligible investment project," and "qualified building." Each revision created additional criteria for prospective applicants. This rule is written in three parts and covers applications made prior to July 31, 1999. Each part sets forth the requirements on the basis of the period of time in which application is made. Refer to the year during which application was made for information on an individual application. For applications made after July 31, 1999, see WAC 458-20-24001.

The employment security department and the department of community, trade, and economic development administer additional programs for distressed areas and job

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training and should be contacted directly for information concerning these programs.

## PART I

### Applications after July 1, 1995, to July 31, 1999

(1) **Definitions.** For the purposes of this part, the following definitions apply for applications made on and after July 1, 1995, and before August 1, 1999:

(a) "Acquisition of equipment or machinery" means the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services.

(e) "Department" means the department of revenue.

(f) "Eligible area" means one of the areas designated according to the following classifications:

(i) Unemployment county. A county in which the average level of unemployment for the three calendar years preceding the year in which an application is filed exceeds the average state unemployment for those years by twenty percent. In making this calculation, the department will compare the county's average unemployment rate in the prior three years to one hundred twenty percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) Median income county. On and after June 6, 1996, a county that has a median household income that is less than seventy-five percent of the state median income for the previous three years;

(iii) MSA. A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under chapter 82.60 RCW exceeds the average state unemployment for such calendar year by twenty percent;

(iv) CEZ and county containing a CEZ. A designated community empowerment zone (CEZ) approved under RCW 43.63A.700 or a county containing such a community empowerment zone;

(v) Timber impact area towns. A town with a population of less than twelve hundred persons that is located in a county that is a timber impact area, as defined in RCW 43.31.601, but that is not an unemployment county as defined in Part I;

(vi) Governor's designation county. A county designated by the governor as an eligible area under RCW 82.60.047; or

(vii) Contiguous county. A county that is contiguous to an unemployment county or a governor's designation county.

(g)(i) "Eligible investment project" means:

(A) An investment project in an unemployment county, a median income county, an MSA, a timber impact area town, or a governor's designation county; or

(B) That portion of an investment project in a CEZ, a county containing a CEZ, or a contiguous county, that is directly utilized to create at least one new full-time qualified employment position for each seven hundred fifty thousand dollars of investment.

(ii) "Eligible investment project" does not include an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. It also does not include an investment project that has already received a deferral under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of on-site construction work. Land clearing prior to excavation of the building site does not commence construction nor does planning commence construction.

(j) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify.

(k) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program, also includes computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(l) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(m) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of RCW 82.60. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests exclusively in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(n) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing and research and development activities.

"Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

(o) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. "Full time" means at least 35 hours a week, 455 hours a quarter, or 1,820 hours a year.

(p) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes computers, desks, filing cabinets, photocopiers, printers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(q) "Recipient" means a person receiving a tax deferral under this program.

(r) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(2) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

(3) **Eligible investment amount.** There may or may not be a hiring requirement, depending on the location of the project.

(a) **No hiring requirements.** There are no hiring requirements for qualifying projects located in distressed counties, MSAs, median income counties, governor-designated

counties, or timber impact towns. Monitoring and reporting procedures are explained in subsection (10) of this rule. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (4) of this rule explains the procedure for apportionment.

(b) **Hiring requirements.** There are hiring requirements for qualifying projects located in CEZs, in counties containing CEZs, or in contiguous counties. Total qualifying project costs, including any part of the project that would qualify under RCW 82.08.02565 and 82.12.02565, must be examined to determine the number of positions associated with the project. An applicant who knows at the time of application that he or she will not fill the required qualified employment positions is not eligible for the deferral. Applicants must make good faith estimates of hiring. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired. The investment must include the amount of machinery and equipment eligible for the exemption under RCW 82.08.02565 and 82.12.02565. An applicant can amend the number of persons hired until completion of the project. The qualified employment positions filled by December 31 of the year of completion are the benchmark to be used during the next seven years in determining hiring compliance.

(i) Total qualifying project costs are divided by seven hundred fifty thousand, the result being the qualified employment positions.

(ii) In addition, the number of qualified employment positions created by an investment project will be reduced by the number of full-time employment positions maintained by the recipient in any other community in this state that are displaced as a result of the investment project. This reduction requires a reexamination of whether the seventy-five percent hiring requirement (as explained below) is met.

(iii) This number, which is the result of (i) and (ii) of this subsection, is the number of positions used as the benchmark over the life of the deferral. For recipients locating in a CEZ or a county containing a CEZ, seventy-five percent of the new positions must be filled by residents of a CEZ located in the county where the project is located. For recipients located in a contiguous county, residents of an adjacent unemployment or governor-designated county must fill seventy-five percent of the new positions.

(iv) The qualified employment positions are reviewed each year, beginning December 31st of the year the project is operationally complete and each year for seven years. If the recipient has failed to create the requisite number of positions, the department will issue an assessment as explained under subsection (11) of this rule.

(v) In addition to the hiring requirements for new positions under (b) of this subsection, the recipient of a deferral for an expansion or diversification of an existing facility must ensure that he or she maintains the same percentage of employment positions filled by residents of the contiguous county or the CEZ that existed prior to the application being made. This percentage must be maintained for seven years.

(vi) Qualified employment positions do not include those positions filled by persons hired in excess of the ratio of



one employee per required dollar of investment for which a deferral is granted. In the event an employee is either voluntarily or involuntarily separated from employment, the employment position will be considered filled if the employer is either training or actively recruiting a replacement employee, so long as the position is not actually vacant for any period in excess of thirty consecutive days.

(4) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing and research and development.

(a) Where a building(s) is used partly for manufacturing or research and development and partly for purposes that do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio the construction cost per square foot of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the construction cost per square foot of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

$$\text{Percent Eligible} \times \text{Total Project Costs} = \text{Eligible Costs.}$$

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

$$\text{Eligible Tax Deferred} = \text{Eligible Cost} \times \text{Tax Rate.}$$

(b) Qualified machinery and equipment is not subject to apportionment.

(5) **Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(6) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of machinery and equipment. Persons who apply after construction is initiated or after acquisition of machinery and equipment are not eligible for the program. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by FAX to (360) 586-2163 or mailed to the following address:

State of Washington  
Department of Revenue  
Special Programs  
P.O. Box 448  
Olympia, WA 98507-0448

(b) The department will verify the information contained in the application and approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or FAX date will be used as the date of application.

(c) The applicant may seek administrative review of the department's disapproval of an application within thirty days from the date of notice of disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(7) **Eligible area criteria.** The statewide and county unemployment statistics last published by the department will be used to determine eligible areas based on unemployment. Median income county designation is based on data produced by the office of financial management and made available to the department on November 1 of each year. The timber impact town designation is based on information provided by the department of employment security.

If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect. For example, on May 1, 1998, the city of Yakima qualifies as a CEZ, and the entire county of Yakima qualifies as an unemployment county. The CEZ requirements are more restrictive than the unemployment county requirements. The department will assign the project to the distressed area eligible area unless the applicant elected to be bound by the CEZ requirements.

(8) **Use of the certificate.** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified building or qualified machinery and equipment as defined in Part I. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

The tax deferral certificate is used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller is relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of

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at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(9) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(10) **Reporting and monitoring procedure.** Requirement to submit annual reports. Each recipient of a deferral granted after July 1, 1995, must submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment related to the project and any other information required by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(11) **Repayment of deferred taxes.** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection, on an investment project for which a deferral has been granted under chapter 82.60 RCW after June 30, 1994.

(a) Taxes deferred under this chapter need not be repaid on machinery and equipment for lumber and wood product industries, and sales of or charges made for labor and services, of the type which qualified for exemption under RCW 82.08.02565 or 82.12.02565.

(b) The following describes the various circumstances under which repayment of the deferral may be required. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year.

Repayment Year		Percentage of Deferred Tax Waived
1	(Year operationally complete)	0%
2		0%

Repayment Year	Percentage of Deferred Tax Waived
3	0%
4	10%
5	15%
6	20%
7	25%
8	30%

Any action taken by the department to disqualify a recipient for tax deferral or require payment of all or part of deferred taxes is subject to administrative review pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action. See subsection (d) for repayment and waiver for deferrals with hiring requirements.

(c) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the department of employment security, the department finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be that the facilities are not used for a manufacturing or research and development operation.

(d) **Failure of investment project to satisfy required employment positions conditions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the amount of taxes deferred will be immediately due. The department will assess interest at the rate and as provided for delinquent excise taxes under RCW 82.32.050 (retroactively to the date the application was filed). There is no proration of the amount owed under this subsection. No penalties will be assessed.

(e) **Failure of investment project to satisfy employee residency requirements.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project under RCW 82.60.040 (1)(b) or (c) has failed to comply with any requirement of RCW 82.60.045 for any calendar year for which reports are required under this subsection, twelve and one-half percent of the amount of deferred taxes will be immediately due. For each year a deferral's requirements are met twelve and one-half percent of the amount of deferred taxes will be waived. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date the application was filed. Each year the employment requirement is met, twelve and one-half percent of the deferred tax will be waived, if all other program requirements are met. No penalties will be assessed.

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(f) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection.

(12) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(13) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

## PART II

### Applications from July 1, 1994, to June 30, 1995

(14) **Definitions.** For the purposes of this part, the following definitions apply for applications made on and after July 1, 1994 and before July 1, 1995.

(a) "Acquisition of equipment or machinery" means the date the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, and upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services in this instance.

(e) "Department" means the department of revenue.

(f) "Eligible area" means:

(i) Unemployment county. A county in which the average level of unemployment for the three calendar years preceding the year in which an application is filed exceeds the average state unemployment for those years by twenty percent. The department may compare the county's average unemployment rate in the prior three years to one hundred twenty percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) MSA. A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level

of unemployment for the calendar year immediately preceding the year in which an application is filed under chapter 82.60 RCW exceeds the average state unemployment for such calendar year by twenty percent;

(iii) CEZ. A designated community empowerment zone approved under RCW 43.63A.700;

(iv) Timber impact area towns. A town with a population of less than twelve hundred persons that is located in a county that is a timber impact area, as defined in RCW 43.31.601, but that is not an unemployment county as defined in this subsection;

(v) Contiguous county. A county that is contiguous to an unemployment county or a governor's designation county; or

(vi) Governor's designation county. A county designated by the governor as an eligible area under RCW 82.60.047.

(g)(i) "Eligible investment project" means that portion of an investment project which:

(A) Is directly utilized to create at least one new full-time qualified employment position for each seven hundred fifty thousand dollars of investment on which a deferral is requested; and

(B) Either initiates a new operation, or expands or diversifies a current operation by expanding, equipping, or renovating an existing facility with costs in excess of twenty-five percent of the true and fair value of the facility prior to improvement. "Improvement" means the physical alteration by significant expansion, modernization, or renovation of an existing facility, excluding land, where the cost of such expansion, etc., exceeds twenty-five percent of the true and fair value of the existing facility prior to the initiation of the expansion or renovation. The term "improvement" is further defined to include those portions of an existing facility which do not increase the usable floor space, but is limited to the renovation, modernization, or any other form of alteration or addition and the equipment and machinery installed therein during the course of construction. The twenty-five percent test may be satisfied by considering the value of both the building and machinery and equipment; however, at least forty percent of the total renovation costs must be attributable to the physical renovation of the building structure alone. "True and fair value" means the value listed on the assessment rolls as determined by the county assessor for the buildings or equipment for ad valorem property tax purposes at the time of application.

(ii) "Eligible investment project" does not include either an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than cogeneration projects that are both an integral part of a manufacturing facility and owned at least fifty percent by the manufacturer, or investment projects that have already received deferrals under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, cranes, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction of new buildings, means the commencement of on-site construction work.

(j) "Initiation of construction," in regards to the construction of expanding or renovating existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development, means the commencement of the new construction by renovation, modernization, or expansion, by physical alteration.

(k) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. A person who does not build or remodel his or her own building, but leases from a third party, is eligible for sales and use tax deferral on the machinery and equipment provided that an investment in qualified machinery and equipment is made by such person and a new structure used to house the manufacturing activities is constructed.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program, also includes computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(m) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of RCW 82.60. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests exclusively in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(o) "Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

(p) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. "Full time" means at least 35 hours per week, 455 hours a quarter, or 1,820 hours a year.

(q) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facil-

ities that are an integral and necessary part of a manufacturing operation or research and development operation. "Qualified machinery and equipment" includes: Computers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(r) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(s) "Recipient" means a person receiving a tax deferral under this program.

(15) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

**(16) Eligible investment amount.**

(a) Projects located in unemployment counties, MSAs, governor-designated counties, or timber impact towns are eligible for a deferral on the portion of the investment project that represents one new qualified employment position for each seven hundred fifty thousand dollars of investment. The eligible amount is computed by dividing the total qualifying project costs by seven hundred fifty thousand, the result being the qualified employment positions. In addition, the number of qualified employment positions created by an investment project will be reduced by the number of full-time employment positions maintained by the recipient in any other community in this state that are displaced as a result of the investment project. This is the number of positions used as the hiring benchmark. The qualified employment positions must be filled by the end of year three. Monitoring and reporting procedures are set forth in subsection (23) of this rule. In addition, buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (17) of this rule explains the procedure for appointment.

(b) Projects located in CEZs, counties containing CEZs, or counties contiguous to an eligible county, are eligible for a deferral if the project meets specific hiring requirements. The recipient is eligible for a deferral on the portion of the investment project that represents one new qualified employment position for each seven hundred fifty thousand dollars of investment. The eligible amount is computed by dividing the total qualifying project costs by seven hundred fifty thousand, the result being the qualified employment positions. This is the number of positions used as the hiring benchmark

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over the life of the deferral. The qualified employment positions are reviewed each year, beginning December 31st of the year the project is operationally complete and each year for seven years. Monitoring and reporting procedures are set forth in subsection (23) of this rule. In addition, buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (17) of this rule explains the procedure for apportionment.

(c) In addition to the hiring requirements for new positions under (b) of this subsection, the recipient of a deferral for an expansion or diversification of an existing facility must ensure that he or she maintains the same percentage of employment positions filled by residents of the contiguous county or the CEZ that existed prior to the application being made. This percentage must be maintained for seven years.

(d) Qualified employment positions does not include those persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. In the event an employee is either voluntarily or involuntarily separated from employment, the employment position will be considered filled if the employer is either training or actively recruiting a replacement employee so long as the position is not actually vacant for any period in excess of thirty consecutive days.

**(17) Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development.

(a) Where a building(s) is used partly for manufacturing or research and development and partly for purposes which do not qualify for deferral under this rule the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio the construction cost per square foot of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the construction cost per square foot of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

$$\text{Percent Eligible} \times \text{Total Project Costs} = \text{Eligible Costs.}$$

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

$$\text{Eligible Tax Deferred} = \text{Eligible Cost} \times \text{Tax Rate.}$$

(b) Qualified machinery and equipment is not subject to apportionment.

**(18) Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consider-

ation paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

**(19) Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of machinery and equipment. Persons who apply after construction is initiated or after acquisition of machinery and equipment are not eligible for the program.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by FAX to (360) 586-2163 or mailed to the following address:

State of Washington  
 Department of Revenue  
 Special Programs  
 P.O. Box 448  
 Olympia, WA 98507-0448

(b) The department will verify the information contained in the application and approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or FAX date will be used as the date of application.

(c) The applicant may seek administrative review of the department's disapproval of an application within thirty days from the date of notice of disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

**(20) Eligible area criteria.** The department will use the statewide and county unemployment statistics as last published by the department. Timber impact town designation is based on information provided by the department of employment security. The department will update the list of eligible areas by county, annually.

**(21) Use of the certificate.** A tax deferral certificate issued under this program will be for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings or qualified machinery and equipment as defined in Part II. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient. The tax deferral certificate is used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket cer-

tificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(22) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral of sales and use taxes is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(c) The recipient will be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes must be paid, and any reports required to be submitted in the subsequent years. If the department disallows any portion of the amount of sales and use taxes requested for deferral, the recipient may seek administrative review of the department's action within thirty days from the date of the notice of disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(23) **Reporting and monitoring procedure.** Requirement to submit annual reports. Each recipient of a sales and use tax deferral must submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment related to the project and any other information required by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(24) **Repayment of deferred taxes.** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection on an investment project for which a deferral has been granted under chapter 82.60 RCW after June 30, 1994.

(a) The following describes the various circumstances under which repayment of the deferral may be required. Outstanding taxes are determined by reference to the following

table. The table presumes the taxpayer maintained eligibility for the entire year. See subsection (c) for repayment and waiver for deferrals with hiring requirements.

Repayment Year	Percentage of Deferred Tax Waived
1 (Year operationally complete)	0%
2	0%
3	0%
4	10%
5	15%
6	20%
7	25%
8	30%

Any action taken by the department to disqualify a recipient for tax deferral or require payment of all or part of deferred taxes is subject to administrative review pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(b) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the department of employment security, the department finds that an investment project is not eligible for tax deferral, other than failure to create the required number of positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be that the facility is not used for manufacturing or research and development operations.

(c) **Failure of investment project to satisfy employment positions conditions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the amount of taxes deferred will be immediately due. The department will assess interest at the rate and as provided for delinquent excise taxes under RCW 82.32.050 (retroactively to the date of deferral). No penalties will be assessed.

(d) **Failure of investment project to satisfy employee residency requirements.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project under RCW 82.60.040 (1)(b) or (c) has failed to comply with the special hiring requirements of RCW 82.60.045 for any calendar year for which reports are required under this subsection, twelve and one-half percent of the amount of deferred taxes will be immediately due. For each year a deferral's requirements are met twelve and one-half percent of the amount of deferred taxes will be waived. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date of deferral. No penalties will be assessed.

(e) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection, per request.

(25) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(26) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

### PART III

#### Applications from July 1, 1992, to June 30, 1994

(27) **Definitions.** For the purposes of this part, the following definitions apply for applications made after July 1, 1992, but before July 1, 1994:

(a) "Acquisition of equipment or machinery" means the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, and upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services in this instance.

(e) "Department" means the department of revenue.

(f) "Eligible area" means:

(i) **Unemployment county.** A county in which the average level of unemployment for the three calendar years preceding the year in which an application is filed exceeds the average state unemployment for those years by twenty percent. The department may compare the county's average unemployment rate in the prior three years to one hundred twenty percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) **MSA.** A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under chapter

82.60 RCW exceeds the average state unemployment for such calendar year by twenty percent; or

(iii) **CEZ.** Beginning July 1, 1993, a designated community empowerment zone approved under RCW 43.63A.700.

(g)(i) "Eligible investment project" means that portion of an investment project which:

(A) Is directly utilized to create at least one new full-time qualified employment position for each three hundred thousand dollars of investment on which a deferral is requested; and

(B) Either initiates a new operation, or expands or diversifies a current operation by expanding, or renovating an existing building with costs in excess of twenty-five percent of the true and fair value of the plant complex prior to improvement. "Improvement" means the physical alteration by significant expansion, modernization, or renovation of an existing plant complex, excluding land, where the cost of such expansion, etc., exceeds twenty-five percent of the true and fair value of the existing plant complex prior to the initiation of the expansion or renovation. The term "improvement" is further defined to include those portions of an existing building which do not increase the usable floor space, but is limited to the renovation, modernization, or any other form of alteration or addition and the equipment and machinery installed therein during the course of construction. The twenty-five percent test may be satisfied by considering the value of both the building and machinery and equipment; however, at least forty percent of the total renovation costs must be attributable to the physical renovation of the building structure alone. "True and fair value" means the value listed on the assessment roles as determined by the county assessor for the land, buildings, or equipment for ad valorem property tax purposes at the time of application; or

(C) Acquires machinery and equipment to be used for either manufacturing or research and development. The lessor/owner of the structure is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person.

(ii) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010 or investment projects that have already received deferrals under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction of new buildings, means the commencement of on-site construction work.

(j) "Initiation of construction," in regards to the construction of expanding or renovating structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development, means the commencement of new construction by renovation, modernization, or expansion, by physical alteration.

(k) "Investment project" means an investment in qualified buildings and qualified machinery and equipment,

including labor and services rendered in the planning, installation, and construction of the project.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program, also includes computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(m) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of this chapter. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(o) "Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building, its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

(p) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of twelve consecutive months. "Full time" means at least 35 hours a week, 455 hours a quarter, or 1,820 hours a year.

(q) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation or research and development operation. "Qualified machinery and equipment" includes: Computers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a long- or short-term lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(r) "Recipient" means a person receiving a tax deferral under this program.

(s) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales"

excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(28) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much deferral is taken.

(29) **Eligible investment amount.** Recipients are eligible for a deferral on investment used to create employment positions.

(a) Total qualifying project costs must be examined to determine the number of positions associated with the project. Total qualifying project costs are divided by three hundred thousand, the result being the qualified employment positions. This is the number of positions used as the hiring benchmark at the end of year three. The qualified employment positions are reviewed in the third year, following December 31st of the year the project is operationally complete. If the recipient has failed to create the requisite number of positions, the department will issue an assessment under subsection (37) of this rule. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (30) of this rule explains the procedure for apportionment.

(b) Qualified employment positions does not include those persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. In the event an employee is either voluntarily or involuntarily separated from employment, the employment position will be considered filled if the employer is either training or actively recruiting a replacement employee so long as the position is not actually vacant for any period in excess of thirty consecutive days.

(30) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings directly used in manufacturing activities, and directly used in the activities performed by research and development laboratories.

(a) Where a building(s) is used partly for manufacturing or research and development and partly for purposes, which do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio the construction cost per square foot of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the construction cost per square foot of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

$$\text{Percent Eligible} \times \text{Total Project Costs} = \text{Eligible Costs.}$$



"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Tax Deferred = Eligible Cost x Tax Rate.

(b) Qualified machinery and equipment is not subject to apportionment.

(31) **Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(32) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of equipment or machinery. Persons who apply after construction is initiated or finished or after acquisition of machinery and equipment are not eligible for the program.

(a) Application forms will be supplied to the applicant by the department upon request. The completed application may be sent by FAX to (360) 586-2163 or mailed to the following address:

State of Washington  
Department of Revenue  
Special Programs  
P.O. Box 448  
Olympia, WA 98507-0448

(b) The department will verify the information contained in the application and either approve or disapprove the application within sixty days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or FAX date will be used as the date of application.

(c) The applicant may seek administrative review of the department's refusal to issue a certificate pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements, within thirty days from the date of notice of the department's refusal, or within any extension of such time granted by the department. The filing of a petition for review with the department starts a review of departmental action.

(33) **Unemployment criteria.** For purposes of making application for tax deferral and of approving such applications, the statewide and county unemployment statistics last published by the department will be used to determine eligible areas. The department will update the list of eligible areas by county, on an annual basis.

(34) **Use of the certificate.** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in quali-

fied buildings or qualified machinery and equipment as defined in Part III. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment.

The tax deferral certificate is to be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales. The deferral certificate is to defer the taxes of the recipient. For example, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

(35) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral of sales and use taxes is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(c) The recipient will be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes must be paid, and any reports required to be submitted in the subsequent years. If the department disallows all or any portion of the amount of sales and use taxes requested for deferral, the recipient may seek administrative review of the department's action pursuant to the provisions of WAC 458-20-100, within thirty days from the date of the notice of disallowance.

(36) **Reporting and monitoring procedure.** Requirement to submit annual reports. Each recipient of a sales and use tax deferral must submit a report to the department on December 31st of each year during the repayment period until the tax deferral is repaid. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment related to the project and any other information required by the department. If the recipient fails

to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately assessed and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(37) **Repayment of deferred taxes.** The recipient must begin paying the deferred taxes in the third year after the date certified by the department as the date on which the construction project has been operationally completed.

(a) The first payment will be due on December 31st of the third calendar year after such certified date, with subsequent annual payments due on December 31st of the following four years, with amounts of payment scheduled as follows:

Repayment Year	Percentage of Deferred Tax Repaid
1 (Year certified operationally complete)	0%
2	0%
3	0%
4	10%
5	15%
6	20%
7	25%
8	30%

(b) The department may authorize an accelerated repayment schedule upon request of the recipient. Interest will not be charged on any taxes deferred under this part during the period of deferral, although other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for any delinquent payments during the repayment period pursuant to chapter 82.32 RCW.

(c) Taxes deferred on the sale or use of labor directly applied in the construction of an investment project for which deferral has been granted need not be repaid, provided eligibility for the granted tax deferral has been perfected by meeting all of the eligibility requirements, based upon the recipient's annual December 31 reports and any other information available to the department. The recipient must establish, by clear and convincing evidence, the value of all construction and installation labor for which repayment of sales tax is sought to be excused. Such evidence must include, but is not limited to: A written, signed, and dated itemized billing from construction/installation contractors or independent third party labor providers which states the value of labor charged separately from the value of materials. This information must be maintained in the recipient's permanent records for the department's review and verification. In the absence of such itemized billings in its permanent records, no recipient may be excused from repayment of sales tax on the value of labor in an amount exceeding thirty percent of its gross construction or installation contract charges. The value of labor for which an excuse from repayment of sales or use tax may be received will not exceed the value which is subject to such taxes under the general provisions of chapters 82.08 and 82.12 RCW.

(d) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the department of employment security, the department finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be the facility is not used for a manufacturing or research and development operation.

(e) **Failure of investment project to satisfy required employment positions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the department will assess interest but not penalties, on the deferred taxes for the project. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date of the date of deferral. No penalties will be assessed.

(f) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection, per request.

(g) Any action taken by the department to assess interest or disqualify a recipient for tax deferral will be subject to administrative review pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements. The filing of a petition for review with the department starts a review of departmental action.

(38) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project will be liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(39) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

WSR 01-08-037

PROPOSED RULES

LOTTERY COMMISSION

[Filed March 30, 2001, 12:42 p.m.]

Supplemental Notice to WSR 00-20-008.

Preproposal statement of inquiry was filed as WSR 00-16-092.

PROPOSED

Title of Rule: WAC 315-04-085 Accessibility for persons with disabilities.

Purpose: To require retailer compliance with state and federal laws prohibiting discrimination against persons with disabilities. Replaces proposed rule published WSR 00-20-008.

Statutory Authority for Adoption: RCW 67.70.040.

Statute Being Implemented: RCW 67.70.040.

Summary: See Purpose above.

Reasons Supporting Proposal: See Explanation of Rule below.

Name of Agency Personnel Responsible for Drafting: Mary Jane Ferguson, Rules Coordinator, Olympia, (360) 664-4833; Implementation and Enforcement: Robert C. Benson, Jr., Acting Director, Olympia, (360) 664-4800.

Name of Proponent: Washington State Lottery Commission, governmental.

Rule is necessary because of federal law, the Americans with Disabilities Act of 1990.

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 315-04-085 will require lottery retailers to comply with state and federal laws prohibiting discrimination against persons with disabilities.

Proposal Changes the Following Existing Rules: The new rule specifies compliance as a licensing requirement.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The Americans with Disabilities Act of 1990 (42 U.S.C. sec. 12101-213 and 47 U.S.C. sec. 225 and sec. 611).

The rule will enable the lottery through its retailers to improve the accessibility of lottery products for persons with disabilities.

RCW 34.05.328 does not apply to this rule adoption. Said section does not apply to this proposed rule because it is not proposed by one of the listed agencies and because the proposed rule incorporates a federal statute, the Americans with Disabilities Act of 1990 (42 U.S.C. sec. 12101-213 and 47 U.S.C. sec. 225 and sec. 611), and the state law against discrimination (chapter 49.60 RCW).

Hearing Location: M. J. Murdock Executive Plaza Building, 703 Broadway, Vancouver, WA, on May 18, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Mary Jane Ferguson by May 15, 2001, TDD (360) 586-0933, or (360) 664-4833.

Submit Written Comments to: Mary Jane Ferguson, Lottery, fax (360) 586-6586, by May 15, 2001.

Date of Intended Adoption: May 18, 2001.

March 30, 2001

Mary Jane Ferguson  
Rules Coordinator

Disabilities Act of 1990 and chapter 49.60 RCW. Prior to any sale of lottery tickets, new lottery retailers must certify that they comply with state and federal laws or must submit a plan that ensures that they will comply within a reasonable amount of time. Within time limits specified by the lottery, retailers who hold lottery licenses at the time this rule takes effect must certify that they comply with state and federal laws or must submit a plan that ensures that they will comply within a reasonable amount of time.

### WSR 01-08-038

#### PROPOSED RULES

#### LOTTERY COMMISSION

[Filed March 30, 2001, 12:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-04-040.

Title of Rule: WAC 315-06-040.

Purpose: To clarify the publishing of the probability of purchasing a winning lottery ticket on lottery advertising and other materials.

Statutory Authority for Adoption: RCW 67.70.040.

Statute Being Implemented: RCW 67.70.040.

Summary: See Purpose above.

Reasons Supporting Proposal: See Explanation of Rule below.

Name of Agency Personnel Responsible for Drafting: Mary Jane Ferguson, Rules Coordinator, Olympia, (360) 664-4833; Implementation and Enforcement: Robert C. Benson, Jr., Acting Director, Olympia, (360) 664-4800.

Name of Proponent: Washington State Lottery Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The amended rule clarifies where the lottery should publish the probability of purchasing a winning ticket and where the lottery should publish the probability of purchasing a winning ticket for every category of prize in a given game.

Proposal Changes the Following Existing Rules: This amendment makes the following changes to the existing WAC 315-06-040:

- Adds requirement that all brochures, placards, point of sale materials, billboards, and posters carry the average probability of winning the specific game advertised.
- Adds specific requirement that the "How to Play" brochure (distributed to players describing the lottery's on-line games) include the probability of winning for each category of prize for each specific game described.
- Deletes requirement that all brochures, billboards, placards, point of sale materials, and posters carry the probability of winning for each category of prize for the specific game advertised.
- Adds the requirement that radio and television commercials communicate the average probability of winning the specific game advertised.

### NEW SECTION

**WAC 315-04-085 Accessibility for persons with disabilities.** Pursuant to lottery rules and policy, lottery retailers shall comply with state and federal laws prohibiting discrimination against and requiring accessibility for persons with disabilities, including, but not limited to, the Americans with

No small business economic impact statement has been prepared under chapter 19.85 RCW. The lottery has considered whether these rules are subject to the Regulatory Fairness Act, chapter 19.85 RCW, and has determined that they are not for the following reasons: (1) The rules have no economic impact on business' cost of equipment, supplies, labor and administrative costs. The rules are designed to establish rules and procedures for the lottery and (2) the rules will have a negligible impact, if any, on business. They have been promulgated for the purpose of stating policy, procedure and practice and do not include requirement for forms, fees, appearances or other actions by business.

RCW 34.05.328 does not apply to this rule adoption. Said section does not apply to these proposed rules because they are not proposed by one of the listed agencies. As the rules are merely interpretive for policy, the lottery does not voluntarily apply this section.

Hearing Location: M. J. Murdock Executive Plaza Building, 703 Broadway, Vancouver, WA, on May 18, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Mary Jane Ferguson by May 15, 2001, TDD (360) 586-0933, or (360) 664-4833.

Submit Written Comments to: Mary Jane Ferguson, Lottery, fax (360) 664-4833 [586-5686], by May 15, 2001.

Date of Intended Adoption: May 18, 2001.

March 30, 2001  
Mary Jane Ferguson  
Rules Coordinator

**AMENDATORY SECTION** (Amending Order 83, filed 12/16/85)

**WAC 315-06-040 Disclosure of probability of purchasing a winning ticket.** (1) The estimated average probability of purchasing a winning ticket shall be conspicuously displayed on:

~~(a) The back of tickets for a specific game (The estimated average probability of purchasing a winning ticket for each category of prize in a specific game shall be conspicuously displayed on:~~

~~(a));~~

~~(b) All printed promotional and advertising materials for a specific game, including but not limited to, brochures, posters, billboards, placards, and point-of-sale displays (and~~

~~(b) Instructions to lottery retailers for the conduct of a specific game)).~~

(2) The estimated average probability of purchasing a winning ticket shall be communicated in television and radio commercials for a specific game.

~~((2))~~ (3) The estimated average probability of purchasing a winning ticket for each category of prize in a specific game shall be conspicuously displayed as part of:

(a) The "how-to-play" brochure which explains the procedures for the lottery's on-line games; and

(b) The brochures of instructions to lottery retailers for the conduct of specific scratch games.

(4) The disclosure required by this section shall not apply to generic promotional and advertising materials publi-

cizing the Washington state lottery which do not promote a specific game.

**WSR 01-08-044**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed March 30, 2001, 4:33 p.m.]

Original Notice.

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

Title of Rule: WAC 388-450-0125 Allocating the income of the father of the unborn child to a pregnant woman and 388-478-0015 Need standards for cash assistance.

Purpose: We are repealing WAC 388-450-0125 as it is obsolete. We are also eliminating references to the 185% of need standard in WAC 388-478-0015 as this standard was eliminated during program simplification.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.200.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.200.

Summary: Repealing WAC 388-450-0125. Also eliminating the references to the 185% of need standards from WAC 388-478-0015.

Reasons Supporting Proposal: WAC 388-450-0125 is being repealed as we no longer allocate the income of the father of an unborn child if the father is not married to the mother of the unborn. If the father is married to the mother of the unborn, his income is allocated according to the rules in WAC 388-450-0115. Program simplification legislation eliminated the 185% of need standards which needs to be removed from WAC 388-478-0015.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Vicky T. Robinson, Division of Assistance Programs, (360) 413-3031.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: Repealing WAC 388-450-0125 as it is obsolete. Eliminating references to the 185% of need standards in WAC 388-478-0015 due to program simplification.

Proposal Changes the Following Existing Rules: WAC 388-450-0125 is being repealed as we no longer allocate the income of the father of an unborn child if the father is not married to the mother of the unborn. If the father is married to the mother of the unborn, his income is allocated according to the rules in WAC 388-450-0115. Program simplification legislation eliminated the 185% of need standards which needs to be removed from WAC 388-478-0015.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Small businesses are not impacted by these changes.

RCW 34.05.328 does not apply to this rule adoption. Neither rule meets the definition of a significant legislative rule.

Hearing Location: Blake Office Park (behind Goodyear Courtesy Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on May 8, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Kelly Cooper, DSHS Rules Coordinator, by May 1, 2001, phone (360) 664-6094, TTY (360) 664-6178, e-mail coo-peKD@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, by May 8, 2001.

Date of Intended Adoption: No sooner than May 9, 2001.

March 26, 2001  
Susan Bush  
for Bonita H. Jacques, Chief  
Office of Legal Affairs

**AMENDATORY SECTION** (Amending WSR 99-04-056, filed 1/29/99, effective 3/1/99)

**WAC 388-478-0015 Need standards for cash assistance.** The need standards (~~and one hundred eighty five percent of the need standards~~) for cash assistance units are:

(1) For assistance units with obligation to pay shelter costs:

Assistance Unit Size	Need Standard	<del>((185% of Need))</del>
1	\$ 797	<del>((1,474))</del>
2	1,008	<del>((1,864))</del>
3	1,247	<del>((2,307))</del>
4	1,467	<del>((2,714))</del>
5	1,690	<del>((3,127))</del>
6	1,918	<del>((3,549))</del>
7	2,215	<del>((4,098))</del>
8	2,452	<del>((4,536))</del>
9	2,693	<del>((4,982))</del>
10 or more	2,926	<del>((5,413))</del>

(2) For assistance units with shelter provided at no cost:

Assistance Unit Size	Need Standard	<del>((185% of Need))</del>
1	\$ 480	<del>((888))</del>
2	607	<del>((1,122))</del>
3	752	<del>((1,391))</del>
4	884	<del>((1,635))</del>
5	1,019	<del>((1,885))</del>
6	1,156	<del>((2,138))</del>
7	1,335	<del>((2,469))</del>
8	1,478	<del>((2,746))</del>

9	1,623	<del>((3,002))</del>
10 or more	1,764	<del>((3,263))</del>

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 388-450-0125 Allocating the income of the father of the unborn child to a pregnant woman.

**WSR 01-08-050**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**  
[Filed April 2, 2001, 8:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-24-115.

Title of Rule: Chapter 308-94A WAC, General provisions for registration for vehicles.

Purpose: 1. To meet the criteria set forth in Governor Locke's Executive Order 97-02.

2. To clarify rules and help make them more comprehensible.

Statutory Authority for Adoption: RCW 46.01.110.

Summary: Amending WAC 308-94A-005 Certificate of ownership and registration, 308-94A-010 Annual off-road/nonhighway vehicle use permit, 308-94A-015 Off-road/nonhighway vehicle use permit (registration) not required—When, 308-94A-020 Display of off-road/nonhighway vehicle use permit decals and validation tabs, 308-94A-025 Temporary off-road/nonhighway vehicle use permit application, and 308-94A-030 Off-road vehicle dealer plate—Cost.

Reasons Supporting Proposal: Meet criteria supporting Governor Locke's Executive Order 97-02.

Name of Agency Personnel Responsible for Drafting: Katherine Iyall Vasquez, 1125 Washington Street S.E., Olympia, (360) 902-3718; Implementation and Enforcement: Eric Andersen, 1125 Washington Street S.E., Olympia, (360) 902-4045.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The anticipated effects will be a clarification of the above mentioned requirements.

Proposal Changes the Following Existing Rules: Clarify sections needed and repeal those no longer required.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in an industry.

RCW 34.05.328 does not apply to this rule adoption. The contents of the proposed rules are explicitly and specifically dictated by statute.

PROPOSED

Hearing Location: Highways-Licenses Building, Conference Room 107, 1125 Washington Street S.E., Olympia, WA 98507, on May 9, 2001, at 10:30 a.m.

Assistance for Persons with Disabilities: Contact Katherine Iyall Vasquez by May 8, 2001, TTY (360) 664-8885, or (360) 902-3718.

Submit Written Comments to: Katherine Iyall Vasquez, Rules Manager, Title and Registration Services, P.O. Box 2957, Olympia, WA 98507-2957, fax (360) 664-0831, by May 8, 2001.

Date of Intended Adoption: June 8, 2001.

March 30, 2001

Deborah McCurley, Administrator  
Title and Registration Services  
by Fran Lukes

AMENDATORY SECTION (Amending WSR 99-24-013, filed 11/22/99, effective 12/23/99)

**WAC 308-94A-005 Certificates of ownership and registration.** (1) **May I apply for a certificate of ownership for my off-road/nonhighway vehicle?** Yes, you may apply for a certificate of ownership at your ~~((local))~~ Washington vehicle licensing office or through the department. If the vehicle is not eligible for road use, the certificate of ownership will show not eligible for road use.

(2) **Do I have to purchase registration ~~((at the time of))~~ when applying for certificate of ownership?** No, if you choose not to purchase registration ~~((at the time of))~~ when titling~~((;))~~ your vehicle, the record will be established without a road or off-road/nonhighway vehicle registration.

(3) **What are the different ways I may register my off-road/nonhighway vehicle?** You may register your off-road/nonhighway vehicle in one of the following ways:

(a) ~~((You may purchase registration for off road/nonhighway use if the manufacturer's statement of origin or certificate of ownership indicates the vehicle is not eligible for road use.))~~ If the manufacturer's statement of origin or certificate of ownership indicates the vehicle is not eligible for road use, you may only purchase an off-road use permit (registration);

(b) If your vehicle ~~((qualifies))~~ is eligible for road use~~((;))~~ under chapter 46.16 RCW you ~~((can))~~ may purchase registration for road use ~~((on the road as a motorcycle, passenger vehicle, truck, etc.))~~ off-road use or both; or

(c) If ~~((you are going to operate your vehicle where an off road vehicle use permit or license is required, and))~~ your vehicle is not licensed for off-road use, (then) you may purchase a temporary off-road vehicle permit ~~((for sixty days or annual off road vehicle use permit (registration) and license without invalidating your regular road license. You are required to carry registrations on your person or on the vehicle and display license plate(s) with validating tabs assigned to those plates, and the decals with assigned validating tabs on the vehicle. The registrations may or may not expire at the same time)).~~

(4) **What information does the department require I apply for an off-road/nonhighway vehicle use permit?** An

application for an off-road/nonhighway vehicle use permit must include the following:

(a) Name and address of the applicant;

(b) Off-road or nonhighway vehicle plate or registration number if registered in another state;

(c) Make and year of vehicle;

(d) Expiration date of the foreign state registration;

(e) Vehicle identification number;

(f) Appropriate fees; and

(g) Signature of the registered owner(s).

(5) Where do I carry the temporary or annual off-road/nonhighway ~~((temporary or annual vehicle))~~ use permit? ~~((The off road/nonhighway temporary or annual vehicle use permit must be carried on the vehicle on which it was assigned at all times.))~~ The permit may be carried by the operator ~~((on his or her person))~~ or in a moisture proof protective case attached to the vehicle. The use permit must be made available at all times for inspection by any person having the authority to enforce the provisions of the Off-Road and Nonhighway Vehicle Act.

~~((5))~~ (6) May I operate my off-road/nonhighway vehicle using a temporary or annual vehicle use permit on any dirt or gravel road, or trail in Washington? It is recommended you check with local, state, or federal authorities in the areas you intend to operate to insure you are operating in accordance with their requirements.

AMENDATORY SECTION (Amending WSR 99-24-013, filed 11/22/99, effective 12/23/99)

**WAC 308-94A-010 Annual off-road/nonhighway vehicle use permit (registration) period.** (1) **How long is ~~((my annual))~~ an off-road/nonhighway vehicle use permit (registration) valid?** The registration year of the off-road/nonhighway ~~((annual use permit starts))~~ use permit (registration) begins the day it is issued ~~((for the first time))~~ and expires the same day of the following year ~~((and is renewable annually on that date)).~~

(2) **Under what circumstances will the registration expiration date be changed?** The ~~((registration))~~ expiration date ~~((shall))~~ of the off-road use permit will change when:

(a) It has been expired for more than one year ~~((and there is no change in ownership));~~

(b) The registration is expired at the time ownership is transferred and the new owner ~~((applies for an off road/nonhighway annual use permit))~~ renews the registration;

(c) The registered owner requests a change of registration expiration month. This can only be done at the time of renewal and requires the registered owner to purchase more than twelve months of registration, limited to the vehicle field system constraints and tab availability; or

(d) The vehicle has subsequently been registered in another jurisdiction and:

(i) No change in ownership has occurred; and

(ii) The off-road/nonhighway vehicle is being registered again in Washington; ~~((or))~~ and

(iii) The previous Washington registration has expired ~~((for more than one year)).~~

(3) **Can I get a refund for ~~((my))~~ the unused portion of my off-road/nonhighway ~~((annual))~~ use permit (registration)?** No, there is no refund for the unused portion.

**AMENDATORY SECTION** (Amending WSR 99-24-013, filed 11/22/99, effective 12/23/99)

**WAC 308-94A-015 Off-road/nonhighway vehicle use permit (registration) not required—When. When ~~((is an))~~ are off-road/nonhighway vehicle(s) ~~((use permit))~~ not required to be registered? ~~((A vehicle used exclusively within the exceptions set forth))~~ Vehicles exempted in RCW 46.09.050 ~~((+))~~ are not required to obtain ~~((an))~~ off-road/nonhighway vehicle use permit (registration). ~~((Owners of off-road/nonhighway vehicles, which have been converted to, and registered as snowmobiles shall not be required to obtain off-road/nonhighway vehicle use permits.))~~**

**AMENDATORY SECTION** (Amending WSR 99-24-013, filed 11/22/99, effective 12/23/99)

**WAC 308-94A-020 Display of off-road/nonhighway vehicle use permit decals and validation tabs. (1) How do I display the ~~((assigned))~~ off-road/nonhighway vehicle use permit number and validation tabs on my vehicle? ~~((The))~~ Display off-road/nonhighway use permit number and validation tabs ~~((shall be displayed))~~ by:**

(a) Affixing the decals provided by the department to the right and left side or on the ~~((front and))~~ rear of the off-road vehicle. The decals ~~((shall))~~ must be visible at all times; or

(b) Painting the vehicle use permit number in a manner that is readily legible and visible at all times. The characters must be at least one-inch high with a minimum of one-eighth inch stroke and in a color contrasting with the background; and

(c) Reading from left to right; and

(d) Affixing the validation month tab issued by the department no more than two inches in front of the beginning of the annual use permit decal number; and

(e) Affixing the validation year tab no more than two inches following the last digit in the annual use permit decal number.

(2) ~~((If my off-road/nonhighway vehicle is registered for dual use, is the license plate required to be displayed?))~~ Is a license plate required if my off-road/nonhighway vehicle is registered for dual use? Yes, the license plate must be displayed in the same manner as required for highway use.

**AMENDATORY SECTION** (Amending WSR 99-24-013, filed 11/22/99, effective 12/23/99)

**WAC 308-94A-025 Temporary off-road/nonhighway vehicle use permit application. What information does the department require when I apply for a temporary off-road/nonhighway vehicle use permit?** An application

for a temporary off-road/nonhighway vehicle use permit ~~((may))~~ must include the following:

- (1) Name and address of the applicant;
- (2) Off-road or nonhighway vehicle plate or registration number if registered in another state;
- (3) Make and year of vehicle;
- (4) Expiration date of the foreign state registration;
- (5) Vehicle identification number; ~~((and))~~
- (6) Appropriate fees; and
- (7) Signature of registered owner(s).

**AMENDATORY SECTION** (Amending WSR 99-24-013, filed 11/22/99, effective 12/23/99)

**WAC 308-94A-030 Off-road vehicle dealer plate—Cost. What is the cost of an off-road vehicle dealer's plate?** An off-road vehicle dealer ~~((shall))~~ must pay three dollars and fifty cents, plus the reflectorization fee ~~((;))~~ of fifty cents for each dealer plate ordered from the department.

## WSR 01-08-051

### PROPOSED RULES

### DEPARTMENT OF LICENSING

[Filed April 2, 2001, 8:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-06-001.

Title of Rule: Chapter 308-57 WAC, Motor vehicle excise tax, chapter 308-96A WAC, Vehicle licenses, and chapter 308-97 WAC, Vehicle license interstate and intrastate permits.

Purpose: 1. To meet the criteria set forth in Governor Locke's Executive Order 97-02.

2. To clarify rules and help make them more comprehensible.

Statutory Authority for Adoption: RCW 46.01.110, chapter 82.44 RCW.

Summary: Amending WAC 308-57-005, 308-57-010, 308-57-020, 308-57-030, 308-57-110, 308-57-140, 308-57-210, 308-57-230, 308-57-240, 308-96A-099, 308-96A-135 Fixed load vehicles, 308-96A-145 Cab and chassis, 308-96A-180 Registration of rental cars, 308-96A-202 Power units towing trailers with permanent registrations, 308-96A-203 Permanent trailer registrations, 308-96A-400 Excise tax exemption—Indians and 308-97-230 Appointment of vehicle trip permit agents; and repealing WAC 308-57-120, 308-57-130, 308-57-135, 308-57-500, and 308-96A-410 Study fee.

Reasons Supporting Proposal: Meet criteria supporting Governor Locke's Executive Order 97-02.

Name of Agency Personnel Responsible for Drafting: Katherine Iyall Vasquez, 1125 Washington Street S.E., Olympia, (360) 902-3718; Implementation and Enforcement: Eric Andersen, 1125 Washington Street S.E., Olympia, (360) 902-4045.

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

PROPOSED

Explanation of Rule, its Purpose, and Anticipated Effects: This rule implements the requirements of RCW 88.42.022. It clarifies what personal use vehicles qualify and how the credit applies.

The anticipated effects will be a clarification of the above mentioned requirements.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in an industry.

RCW 34.05.328 does not apply to this rule adoption. The contents of the proposed rules are explicitly and specifically dictated by statute.

Hearing Location: Highways-Licenses Building, Conference Room 107, 1125 Washington Street S.E., Olympia, WA 98507, on May 15, 2001, at 11:00 a.m.

Assistance for Persons with Disabilities: Contact Katherine Iyall Vasquez by May 14, 2001, TTY (360) 664-8885, or (360) 902-3718.

Submit Written Comments to: Katherine Iyall Vasquez, Rules Manager, Title and Registration Services, P.O. Box 2957, Olympia, WA 98507-2957, fax (360) 664-0831, by May 14, 2001.

Date of Intended Adoption: June 6, 2001.

March 30, 2001

Deborah McCurley, Administrator  
Title and Registration Services  
by Fran Lukes

**AMENDATORY SECTION** (Amending WSR 97-12-015, filed 5/28/97, effective 6/28/97)

**WAC 308-57-005 Definitions.** The following definitions apply to the terminology used in this chapter:

(1) ~~("Excise tax fee schedule one" means the depreciation table described in RCW 82.44.041 (3)(b).~~

(2) ~~"Excise tax fee schedule two" means the depreciation table described in RCW 82.44.041(1).~~

(3) ~~"Excise tax fee schedule three" means the depreciation table described in RCW 82.50.425(2).~~

(4) ~~"Excise tax fee schedule four" means the depreciation table established for power units towing trailers with permanent plates issued in accordance with RCW 46.16.068.~~

(5) ~~"RTA excise tax fee schedule five" means the depreciation table described in RCW 82.44.041 (3)(b) for use in the Central Puget Sound Regional Transit Authority area.~~

(6) ~~"RTA excise tax ((fee)) schedule ((six))" means the value depreciation table described in RCW 82.44.041(1) for use in the Central Puget Sound Regional Transit Authority area.~~

~~((7)) (2) "Fleet" means any person with ((fifteen)) five or more vehicles registered in the same name.~~

~~((8)) (3) "Light duty truck" means a truck which is smaller than a truck type power unit. The empty scale weight is six thousand pounds or less. It includes vehicles such as pickup trucks, vans, and utility vehicles.~~

~~((9)) (4) "MSRP" means the base manufacturer's suggested retail price as defined in RCW 82.44.041(3) and 82.50.425.~~

~~((10)) (5) "Purchase price" means the selling price of the vehicle before deducting for trade-in value or adding sales/use tax.~~

~~((11)) (6) "Registered within a county" means the county which the vehicle registered owner indicates as their resident address.~~

~~((12)) (7) "Tax code" means a two-digit alpha, numeric, or alpha-numeric representation of a value assigned by the department of revenue to passenger vehicles, light duty trucks, and motor homes prior to vehicle model year 1986. This value represents the value of the vehicle when first offered for sale. In 1986 and thereafter, the MSRP is used to represent the value of the vehicle.~~

~~((13)) (8) "Truck type power unit" means trucks as defined in RCW 82.44.010(3). This includes vehicles with FIX (fixed load), or TOW (tow truck) use classes, regardless of scale weight; CMB (combination), COM (commercial), FAR (farm), FCB (farm combination), F/H (for hire), LOG (logging trucks), STA (stage), and TRK (trucks whose empty scale weights exceed six thousand pounds and whose declared gross weight does not exceed twelve thousand pounds) use class.~~

~~((14)) (9) "Truck type trailing unit" means trailers as defined in RCW 82.44.010(3). This includes trailers with CMB (combination), LOG (logging), and COM (commercial) use classes.~~

~~((15)) (10) "Value code" means the value which is used to calculate the excise tax. In determining the value code, it may be a tax code, purchase price, assessor's appraisal, or MSRP.~~

~~((16)) (11) "Regional Transit Authority" or "(RTA)" means the Central Puget Sound Regional Transit Authority or Sound Transit.~~

**AMENDATORY SECTION** (Amending WSR 97-12-015, filed 5/28/97, effective 6/28/97)

**WAC 308-57-010 Premise for assessing RTA excise tax.** ~~((Truck type power units and trailing units))~~ All trailers and all vehicles where MSRP is not available are taxed according to the most recent purchase price and purchase year and the depreciation rates in the RTA excise tax fee schedule((s two, four or six)). All other vehicles as noted on the first MSRP, the year of service or value year are taxed using the value of the vehicle ~~((when it was first offered for sale))~~ and the ~~((appropriate))~~ RTA excise tax fee schedule. Current physical condition, mileage, or monetary value of a particular vehicle is not used to determine excise tax.

**AMENDATORY SECTION** (Amending WSR 97-12-015, filed 5/28/97, effective 6/28/97)

**WAC 308-57-020 Modified vehicles.** All new or unused vehicles modified by a licensed manufacturer, ~~((including but not limited to, van conversions, sport utility vehicles, and limousines,))~~ shall be taxed according to the MSRP provided by the modifying manufacturer plus the cost



involved in converting the vehicle. Modified vehicles include, but are not limited to, vans, pickups, utility vehicles and limousines, incomplete vehicles and kits. If the vehicle is modified by someone other than a licensed manufacturer, the original MSRP issued for the vehicle prior to the modifications plus the costs of the modifications shall be used.

AMENDATORY SECTION (Amending WSR 97-12-015, filed 5/28/97, effective 6/28/97)

**WAC 308-57-030 Declaration of value.** If there is no ~~((tax))~~ value code for a model year 1985 or older model vehicle and there is no MSRP information available for a model year 1986 or newer model vehicle, the owner may be required to provide a certified declaration of original value and supporting documentation to be used as the basis for assessing the RTA excise tax.

AMENDATORY SECTION (Amending WSR 97-12-015, filed 5/28/97, effective 6/28/97)

**WAC 308-57-110 RTA excise tax fee schedule**~~((s one and five))~~. Vehicles with the following use classes are ~~((taxed according to))~~ assessed RTA excise tax ~~((fee schedule one and when applicable, schedule five))~~ as defined in RCW 81.104.160:

- CAB (taxicab)
- COM (commercial) (if powered and the scale weight is six thousand pounds or less)
- CYC (motorcycle)
- ~~((FAR (farm) (if powered and the scale weight is six thousand pounds or less)))~~
- F/H (for hire) (if six or fewer seats or if more than six seats and the scale weight is six thousand pounds or less)
- LOG (if powered and under six thousand pounds scale weight or if nonpowered)
- MH (motor home)
- PAS (passenger)
- PER (nonpowered personal use trailer)
- STA (stage) (if six or fewer seats or if more than six seats and the scale weight is six thousand pounds or less)
- TLR (nonpowered trailer)
- TRK (if the scale weight is six thousand pounds or less)

AMENDATORY SECTION (Amending WSR 97-12-015, filed 5/28/97, effective 6/28/97)

**WAC 308-57-140 RTA excise tax exemptions.** The following vehicles are exempt from RTA excise taxes imposed in chapter~~((s 82.44 and 82.50))~~ 81.104 RCW:

- (1) Vehicles with tax code 95 (vehicles taxed as personal property, such as mobile homes);
- (2) Vehicles with the following use classes:
  - C/G (converter gear),
  - CMB (combination),
  - CMP (campers),
  - COM (commercial if powered over 6,000 pounds scale weight or commercial nonpowered),
  - EX (exempt),
  - FAR (farm),

- FCB (farm combination),
- FED (federally owned),
- FEX (farm exempt),
- F/H (for hire if over 6,000 pounds scale weight and more than six seats),
- FIX (fixed load),
- H/C (horseless carriage),
- H/D (house moving dolly),
- LOG (if powered and over 6,000 pounds scale weight),
- MOB (mobile home),
- PED (moped),
- ORV (off road vehicle),
- RES (restored),
- SCH (private school),
- SNO (snowmobile), or
- SNX (exempt snowmobile),
- STA (stage if over 6,000 pounds scale weight and more than six seats),
- TOW (tow trucks),
- TRK (if over 6,000 pounds scale weight and 12,000 pounds or less gross weight),
- TVL (travel trailer);
- (3) Vehicles registered ~~((pursuant to))~~ under WAC 308-96A-050, (nonresident members of the armed forces);
- (4) Vehicles registered ~~((pursuant to))~~ under WAC 308-96A-400, (Indian tribes and tribal members);
- (5) Vehicles registered ~~((pursuant to))~~ under WAC 308-96A-046, ~~((veteran's free license))~~ (disabled American veterans or former prisoner of war);
- (6) Vehicles registered ~~((pursuant to))~~ under WAC 308-96A-180, (rental cars);
- (7) Passenger motor vehicles registered ~~((pursuant to))~~ under WAC 308-96A-175 and 308-96A-176, (ride-sharing and transportation needs ride-sharing vehicles; ~~((and))~~);
- (8) Vehicles registered ~~((pursuant to))~~ under WAC 308-96A-063, (Foreign organization special license plate);
- (9) Vehicles registered under RCW 46.16.305, Medal of Honor recipients.

AMENDATORY SECTION (Amending WSR 97-12-015, filed 5/28/97, effective 6/28/97)

**WAC 308-57-210 RTA excise tax in even dollars.** ~~((Individual vehicle))~~ RTA excise taxes are rounded to the nearest whole dollar.

AMENDATORY SECTION (Amending WSR 97-12-015, filed 5/28/97, effective 6/28/97)

**WAC 308-57-230 Fleet abatement.** A fleet vehicle, which is required to have a December registration expiration date, ~~((shall))~~ will be charged RTA excise tax based on the current depreciation rate for the number of months required to license through December 31 of the current year. If the number of months to December 31 is fewer than four, an additional twelve months RTA excise tax will be charged at the current depreciation rate.

**AMENDATORY SECTION** (Amending WSR 97-12-015, filed 5/28/97, effective 6/28/97)

WAC 308-57-500

Personal use motor vehicle excise tax credit—Qualifications.

**WAC 308-57-240 Nonfleet abatement.** With department approval, the owner of a nonfleet vehicle may change the vehicle's registration expiration date. The owner ((shall)) will be assessed RTA excise tax based on the current depreciation rate for the number of months from the current expiration to the requested expiration date. The new expiration date must be greater than twelve months but not more than eighteen months from the current registration expiration date. New expiration dates may only be granted when validation tabs for the desired month and year are available.

**AMENDATORY SECTION** (Amending WSR 99-06-029, filed 2/24/99, effective 3/27/99)

**WAC 308-96A-099 Use class descriptions.** (1) **Why does the department assign use classes to vehicles?**

The department assigns use classes to:

- (a) Assess the proper license fees and ((excise tax)) taxes for vehicles;
- (b) Assign special brands on subsequent owner's certificate of ownership;
- (c) Apply certain restrictions on the use of the vehicles, which prints on the vehicle registrations;
- (d) Assign the proper license plates.

(2) **Under what authority does the department assign use classes to vehicles?**

The department assigns use classes under the authority of RCW 46.16.040.

(3) **What use classes does the department assign and when do they apply?**

The use classes the department assigns are described below:

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 308-57-120 Excise tax fee schedules two and six.
- WAC 308-57-130 Excise tax fee schedule three.
- WAC 308-57-135 Excise tax fee schedule four.

PROPOSED

ABBREVIATION	TRANSLATION	DESCRIPTION
CAB	TAXI CAB	Vehicle is used for carrying passengers between two points for compensation for an on-demand trip rather than a scheduled route. A vehicle with this use class may not carry any luggage or commodities that do not belong to a passenger being carried at the same time. In other words, the vehicle cannot just carry cargo between two points.
C/G	CONVERTER GEAR	Vehicle is an axle that is used to convert a semi-trailer to a full trailer. A converter gear may be titled but may not be licensed.
CMB	COMBINATION	Vehicle is either (1) a power unit with a declared gross weight of 42,000 pounds or more and towing a trailer; or (2) a trailing unit with permanent plates. The trailer may be towed only by a power unit with a CMB use class, or FCB depending on what is being hauled.
CMP	CAMPER	Vehicle is a slide-in pickup camper (not a canopy) as defined in RCW 46.04.085. Even if the owner has chosen to permanently attach the camper to the pickup, the units need to be titled and licensed separately.
COM	COMMERCIAL	Vehicle is either (1) a power unit that does <b>not</b> pull a trailer or that pulls a trailer but the gross weight for the truck and trailer does not exceed 40,000 pounds; or (2) a trailing unit that is titled in a business name (including the name of a farm). A commercial trailer may be towed by a vehicle with PAS, TRK, COM, CMB, FAR or FCB use classes. If the trailer is being towed by a vehicle with FAR or FCB use class, the use of the trailer (items carried, etc..) must meet the farm use class requirements.
CYC	MOTORCYCLE	Vehicle is a motorcycle, motor driven cycle or scooter. A moped does not qualify to be licensed as a motorcycle as defined in RCW 46.04.330 and 46.04.332.

ABBREVIATION	TRANSLATION	DESCRIPTION
EX	EXEMPT	Vehicle can be any type of vehicle, which is owned by a city, county or state government agency or federally recognized Indian tribe located in the state of Washington. This includes school buses, which are owned or leased by school districts. If the school district contracts a company to provide total bus service, such as the bus, the driver and the maintenance, and the vehicle is registered in the name of the school district as registered owner, the vehicle qualifies for exempt license plates.
FAR	FARM	Vehicle is a truck (or tractor) used to transport the farmer's own farm, orchard or dairy products as defined in RCW 46.16.090, or aquatic products as defined in RCW 15.85.020, from point of production to market or warehouse. The vehicle may also be used to transport the farmer's own farm supplies.
FCB	FARM COMBINATION	Vehicle is (1) a power unit (not a trailer) with a declared gross weight of 42,000 pounds or more and towing a trailer; and (2) meets the criteria of FAR use class above.
FED	FEDERAL	Vehicle is owned by the federal government of the United States. Like exempt vehicles, this could be any type of vehicle. This does not include vehicles displaying license plates issued by the federal government.
FEX	FARM EXEMPT	Vehicle is used exclusively in agricultural pursuits on farms as defined in RCW 46.16.010(3) and 46.04.181. The vehicle is usually a truck, but it could also be a bus, a motorcycle or off-road cycle.
FIX	FIXED LOAD	Vehicle as defined in RCW 46.16.070(1). These vehicles have a unique use class because they are exempt from the law, which requires vehicles with a scale weight of more than six thousand pounds to have a declared gross weight of at least 150 percent of the scale weight. The basic license fee is based on the declared gross weight, or the next two thousand pound increment above the scale weight, or the next two thousand pound increment above the legal maximum gross weight as determined by the Washington state patrol or department of transportation. Fixed load vehicles are the only ones whose gross weight may actually be less than their scale weight, depending on their legal maximum gross weight. An oversize permit is required in addition to the registration in these cases.
F/H	FOR HIRE	Vehicle is used to transport people and/or commodities for compensation as defined in RCW 46.72.010. A for hire permit from business and professions division (BPD) is required.
H/C	HORSELESS CARRIAGE	Vehicle is a motorized vehicle over 40 years old with limited used as defined in RCW 46.16.307. The vehicle may not be used for normal transportation to and from work, to go to the store and pick up groceries, and so on.
H/D	HOUSE DOLLY	Vehicle constructed and used exclusively to move buildings or homes.
LOG	LOGGING	Vehicle is a truck or trailer used exclusively for hauling logs.
MH	MOTOR HOME	Motorized vehicle designed for human habitation and defined in RCW 46.04.305
MOB	MOBILE HOME	Vehicle is a manufactured home as defined in RCW 46.04.302. Mobile homes are titled but generally not registered because of their size. Manufactured homes are taxed by the county, either as personal property or real property.
ORV	OFF-ROAD VEHICLE	Vehicle is used off-road. A vehicle licensed only as an ORV may not be operated on public roadways or ocean beaches.

PROPOSED

PROPOSED

ABBREVIATION	TRANSLATION	DESCRIPTION
PAS	PASSENGER	Vehicle is used to transport passengers as defined in RCW 46.04.382. Typically passenger cars, utility or multipurpose vehicles, passenger vans, and private busses are licensed as passenger vehicles.
PED	MOPED	Vehicle as defined in RCW 46.04.304 and subject to the restrictions in RCW 46.61.710.
PER	PERSONAL	Vehicle is a personal use trailer as defined in RCW 46.16.065. Trailers owned by businesses or used for commercial purposes do not qualify for this use class.
RES	RESTORED	Vehicle is a motorized collector vehicle over 30 years old with limited use as defined in RCW 46.16.307. The vehicle may display either a collector vehicle license plate provided by the department or a license plate, which must have been first issued, for use the year the vehicle was manufactured. The vehicle must be currently registered in order to be assigned this use class and receive a special collector license plate or authority to use a restored license plate.
SCH	SCHOOL	Vehicle is owned and operated by a private school meeting the accreditation requirements of RCW 28A.195.010. The vehicle is used to transport children to and from school or in connection with school activities.
SNO	SNOWMOBILE	Vehicle is a snowmobile as defined in RCW 46.10.020(2).
SNX	EXEMPT SNOWMOBILE	Vehicle is a snowmobile as defined in RCW 46.10.010(2) and owned by a city, county or state agency.
STA	STAGE	Vehicle is used as an auto stage as defined in RCW 46.04.050.
TLR	TRAILER	Vehicle is a personal use trailer as defined in RCW 46.04.620 but does not meet the size criteria for a PER use class. Trailers used by businesses or others for commercial purposes do not qualify for this use class.
TOW	TOW	Vehicle is a tow truck as defined in RCW 46.16.079 and 46.55.010(8). If the vehicle carries other vehicles, it does not qualify for the TOW use class and must be licensed as COM.
TRK	TRUCK	Vehicle is a personal use, light duty truck, with a declared gross weight of twelve thousand pounds or less. Trucks used for business or commercial purposes do not qualify for the TRK use class.
TVL	TRAVEL TRAILER	Vehicle is a travel trailer as defined in RCW 46.04.623, which includes park models of four hundred square feet or less and camp/tent trailers. It is designed and manufactured for temporary habitation.

**(4) What use classes may the department assign to specific types of vehicles?**

Use classes are assigned as listed below:

VEHICLE TYPE	USE CLASS	SPECIAL REQUIREMENTS
PASSENGER CARS	CAB, COM, EX, FED, F/H, H/C, PAS, RES, ORV, FEX, STA	COM-Scale weight( <del>(, Statement of use)</del> ) <u>seating capacity required for F/H and STA-Scale weight, ((Number of)) if more than six seats</u>
LIGHT DUTY TRUCKS (INCLUDING SMALL VANS)	COM, EX, FAR, FED, FEX, H/C, RES, STA, TOW, TRK, FIX, F/H, ORV	F/H and STA-Number of seats All use classes-Scale weight
MEDIUM/HEAVY DUTY TRUCKS (INCLUDING BUSES)	CMB, COM, EX, FAR, FCB, FEX, FIX, LOG, SCH, TOW, TRK, FED, H/C, RES, F/H	F/H and STA-Number of seats All use classes-Scale weight
TRAILERS	C/G, CMB, COM, EX, FEX, LOG, PER, TLR, FED	PER-Number of wheels All use classes-Scale weight
CYCLES		
MOTORCYCLES	CYC, EX, FED, FEX, H/C, ORV, RES	

VEHICLE TYPE	USE CLASS	SPECIAL REQUIREMENTS
MOPEDS	EX, FED, FEX, ORV, PED	
SNOWMOBILES	SNO, SNX	
UTILITY/MULTIPURPOSE VEHICLES	CAB, COM, EX, FED, F/H, PAS, STA, TRK, FAR, FEX, H/C, ORV, RES, SCH	COM, F/H, STA, TRK, FAR and FEX- Scale weight F/H and STA-Number of seats
RECREATION VEHICLES		
TRAVEL TRAILERS (INCLUDING CAMP AND TENT TRAILERS)	EX, FED, TVL	
CAMPERS	CMP, EX, FED	
MOTOR HOMES	EX, FED, MH	
NOTE: Gross weight and seat requirements per RCW 46.16.040.		

**(5) Do all powered three-wheeled vehicles need to be licensed as motorcycles?**

No. If the vehicle qualifies as a motorcycle as defined in RCW 46.04.330 or 46.04.332, it will be licensed as a motorcycle for street use. However, if the vehicle has a bench seat and a steering wheel as defined in RCW 46.04.330 or 46.04.332, it will be licensed as a passenger vehicle or truck.

**(6) What license plates and use class will be assigned to my for hire vehicle?**

The license plates and use class assigned to your for hire vehicle depends upon how you use your vehicle. All for hire vehicles transport passengers and commodities for compensation. For hire vehicles include cabulances, limousines, taxi cabs, and busses hauling passengers for compensation in addition to transporting school children. There are two use classes and license plate combinations assigned to for hire vehicles:

(a) CAB use class vehicles are assigned passenger license plates. These vehicles are used exclusively for transporting passengers and their possessions; and

(b) F/H use class vehicles are assigned truck license plates. These vehicles not only transport passengers for compensation, but also transport commodities, without passengers, for compensation.

**(7) When may truck license plates be assigned to my passenger vehicle?**

Truck license plates may be assigned to your passenger vehicle whenever the vehicle is used to transport commodities, produce, freight or animals for commercial purposes. The use class would be COM instead of PAS. This would require a title application, a scale weight slip and a certified/notarized statement of use describing how the vehicle will be used commercially.

**(8) When may passenger license plates be assigned to my pick-up truck?**

Passenger license plates may only be assigned to your pick-up truck if it has been modified to qualify as a passenger vehicle. The department requires confirmation from the Washington state patrol that the vehicle has been modified to qualify for passenger use.

**(9) What use classes and license plates will be assigned to school buses?**

(a) EX use class and county exempt license plates will be assigned to a school bus owned or leased by an exempt agency (school district);

(b) SCH use class and passenger license plates will be assigned to a school bus owned or leased by an accredited private school; or

(c) F/H use class and truck license plates will be assigned to school buses used for transporting passengers for compensation and not used exclusively for transporting school children to and from school or school related activities.

**(10) May I license my motorcycle or any other motor vehicle for both road and off road use?**

Yes, you may license your motorcycle or any other motor vehicle for both uses as long as the vehicle qualifies for road use. You will receive two registration certificates showing the vehicle is licensed for both uses. However, the certificate of ownership will show the use class associated with the road use.

**(11) May I license my amphibious vehicle as a vehicle and a vessel?**

Yes, you may license your amphibious vehicle for both uses as long as it qualifies for both uses. You will receive two registration certificates showing the vehicle is licensed for both uses. However, the certificate of ownership will show the use class associated with the road use.

**(12) May I license my truck, truck tractor or tractor as a motor home?**

Yes, you may license your truck, truck tractor or tractor as a motor home if:

(a) The vehicle meets the definition of a motor home in RCW 46.04.305; and

(b) You provide a Washington state patrol inspection confirming your vehicle may be licensed as a motor home; and

(c) You certify the vehicle will be used exclusively as a motor home and is not used for commercial use.

**(13) Is my truck, truck tractor or tractor which I use exclusively for towing my travel trailer licensed differently than any other like truck?**

No. Your truck, truck tractor or tractor used exclusively for towing your travel trailer must be licensed in accordance with RCW 46.16.070. Depending on scale weight the use class will be TRK or COM.

PROPOSED

AMENDATORY SECTION (Amending WSR 99-06-029, filed 2/24/99, effective 3/27/99)

**WAC 308-96A-145 Cab and chassis. (1) What is a cab and chassis?**

A cab and chassis is an incomplete truck shipped from the manufacturer. The customer chooses the type of bed to be installed.

**(2) Will the department issue a certificate of ownership for my cab and chassis?**

Yes. However, because the cab and chassis is an incomplete vehicle, when the body or special equipment has been installed you must apply for a new certificate of ownership to reflect the correct series and body type, scale weight and the completed vehicle's new value.

**(3) Will the department issue a certificate of registration for my cab and chassis?**

Yes, if you intend to use the vehicle on the public highways. The gross weight will be limited to one hundred fifty percent of the scale weight. Gross weight is rounded up to the nearest two thousand pound increment and may not be increased until the certificate of ownership is corrected to reflect the completed vehicle information.

**(4) What do I need to provide the department when my cab and chassis has been converted to a complete vehicle and I am applying for a new license and certificate of ownership?**

Whether you titled the cab and chassis or waited until the vehicle was completed before titling, you need to provide the department with the following before you use the completed vehicle on the public highways:

- (a) Proof of ownership for the cab and chassis;
- (b) Proof of ownership for the equipment installed to make it a complete vehicle;
- (c) A weight slip from a certified scale;
- (d) Proof or payment of sales or use tax on the equipment installed to make a complete vehicle; and
- (e) Applicable fees and ~~((excise tax))~~ taxes for any increased value of the completed vehicle.

AMENDATORY SECTION (Amending WSR 99-01-133, filed 12/21/98, effective 1/21/99)

**WAC 308-96A-202 Power units towing trailers with permanent registrations. (1) What determines if I pay the higher gross weight fees (~~((and additional excise tax on my power unit))~~)?**

If the declared gross weight of the power unit exceeds forty thousand((s)) pounds AND the power unit will be towing a trailer, the power unit must be licensed with a combination (CMB) or farm combination (FCB) use class. This results in higher gross weight fees (~~((and excise tax))~~).

**(2) How do I change to a CMB or FCB use class during the registration year?**

If you choose to change the use class of your power unit during the registration year, you will need to:

- (a) ~~((Pay the additional excise tax for the remaining months of the registration year;~~

~~((b)))~~ Pay the additional gross weight fees for the remaining months of the gross weight license period currently in effect; and

~~((e)))~~ (b) Immediately attach the combination decals between the lower boltholes on the front and rear license plates.

If the license plates were issued prior to January 1, 1987, new plates are required.

**(3) What if I change to a CMB or FCB use class at renewal time?**

If you change use class at renewal time, you will pay the ~~((additional excise tax and))~~ gross weight fees for the new registration year. Fees are not due for the remainder of the current registration year. If the plates were issued prior to January 1, 1987, new plates are required. The combination decals assigned may not be attached to the license plates until the first day of the new registration year, when the new use class is effective.

**(4) What if I change from CMB or FCB to COM or FAR?**

If you change from CMB or FCB to COM or FAR, you will need to purchase new plates. ~~((If you change use class during the registration year, you would forfeit the higher amount of excise tax paid.))~~ Excess gross weight fees may be used to purchase additional months of gross weight to the end of the current registration year.

**(5) If I sell the power unit with a CMB or FCB use class, will the new owner need to purchase new plates?**

If the new owner retains the CMB or FCB use class, new plates are not required. If the use class is changed to commercial (COM) or farm (FAR), new plates are required.

**(6) If new plates are required because of the change of use class or because they were issued prior to January 1, 1987, am I required to pay replacement plate fees?**

No, you would only pay the reflectorization fee in RCW 46.16.237 and plate fee in RCW 46.16.650.

AMENDATORY SECTION (Amending WSR 99-01-133, filed 12/21/98, effective 1/21/99)

**WAC 308-96A-203 Permanent trailer registrations. (1) Do I have an option of purchasing a permanent registration for my trailer to offset the higher fees on my power unit?**

Yes, if the power unit towing the trailer is properly licensed to tow a trailer with a permanent registration.

**(2) How does the power unit need to be licensed to tow a trailer with a permanent registration?**

The power unit must have a combination (CMB) or farm combination (FCB) use class.

**(3) How does the power unit qualify for the CMB or FCB use class?**

The declared gross weight of the power unit must exceed forty thousand pounds. The CMB and FCB use classes require a ~~((higher excise tax rate and))~~ higher gross weight fees to offset the annual revenue loss of the permanently licensed trailer(s) the power unit is towing.

**(4) If I am not required to renew the permanent trailer registration each year, how is my registration kept updated?**

Your registration will show an expiration date of "PERM." Your vehicle record will show a current expiration date, which is updated annually. And your trailer plate will have a permanent trailer validation tab assigned to it.

**(5) Are there any restrictions on the use of the trailer with permanent plates?**

Yes, there is a restriction printed on the registration stating that the vehicle must be towed by a power unit with a CMB or FCB use class and gross weight in excess of forty thousand pounds.

**(6) How long is the permanent registration valid?**

The permanent registration is valid until ownership in the trailer changes. For purposes of this section, the following are not considered changes of ownership:

- (a) Addition or deletion of spouse or co-owner; or
- (b) Change of lessee with the same lessor.

**(7) What do I do if I want to cancel the permanent registration and register the trailer as commercial?**

You may change from CMB to COM use class at any time. You will need to pay all fees and taxes from the date of application to the expiration date shown on the vehicle record. A partial month requires a full month's fees.

**(8) What type of plates do I display on a trailer with a permanent registration?**

A regular trailer plate, including a permanent trailer tab and combination decal, must be displayed on the trailer. The trailer may not display personalized or other special plates in this case.

**(9) How is the expiration date established for a permanent trailer registration?**

If the vehicle is unlicensed at the time of application, an expiration date is established based on the date of application as defined in WAC 308-96A-260. The permanent trailer plate fee is charged. If the vehicle is currently registered, either as COM or CMB, the permanent trailer plate fee is charged and the expiration date remains the same.

**(10) Do I need to get a new plate when I get a permanent trailer registration?**

If the vehicle is new, is currently registered to another owner with CMB use class, or the plate was issued prior to January 1, 1987, a new plate must be issued. If the vehicle is currently registered with a COM use class, and the plate has been issued since January 1, 1987, the permanent trailer tab and combination decal may be attached to the existing plate.

**(11) If the trailer has a permanent registration and I no longer wish to use the trailer, or I sell the trailer and the new owner does not wish to license the trailer, may a title purpose only title be issued?**

Yes, however, a title purpose only title will not eliminate the requirement for license fees to be paid. As soon as the vehicle is no longer used as a CMB trailer, license fees are due. The owner has the choice of:

- (a) Paying to change the use class to COM, in which case the registration would not need to be renewed the following year if it is not being used; or

- (b) Paying the permanent trailer registration fee one time and having the vehicle be licensed.

**(12) If I need to purchase new plates because of changing the use class or because the plates were issued prior to January 1, 1987, do I need to pay replacement plate fees?**

No. You would only pay the reflectorization fee in RCW 46.16.237 and the plate fee in RCW 46.16.650.

AMENDATORY SECTION (Amending WSR 99-19-026, filed 9/8/99, effective 10/9/99)

**WAC 308-96A-400 Excise tax exemption—Indians.**

**(1) What definitions does the department apply to this section?** For purposes of this rule, the following words and terms have the following meanings:

(a) "Indian (~~(reservation))~~ country" means all lands, notwithstanding the issuance of any patent, within the exterior boundaries set aside by the United States for the use and occupancy of Indian tribes by treaty, law or executive order and which are areas currently recognized as "Indian (~~(reservations))~~ country" by the United States Department of the Interior as referenced in 18 U.S.C. 1151 and C.F.R. 25.

(b) "Indian tribe" means an Indian nation, tribe, band, or community recognized as an "Indian tribe" by the United States Department of the Interior.

(c) "Indian" means a person on the tribal rolls of the Indian tribe occupying ~~(an)~~ Indian (~~(reservation))~~ country.

**(2) What Indian (~~(reservations))~~ country tribes in Washington are recognized by the United States Department of the Interior?** The ~~(following are the))~~ only Washington "Indian (~~(reservations))~~ tribes" are those currently recognized as such by the United States Department of the Interior (~~(Chehalis Confederated tribes, Colville Confederated tribes, Hoh tribe, Jamestown S'Klallam tribe, Kalispell tribe, Lower Elwha Klallam tribe, Lummi Nation, Makah tribe, Muckleshoot tribe, Nisqually tribe, Nooksack tribe, Port Gamble S'Klallam tribe, Puyallup tribe, Quileute tribe, Quinault Nation, Samish Nation, Sauk Suiattle tribe, Shoalwater Bay tribe, Skokomish tribe, Spokane tribe, Squaxin Island tribe, Stillaguamish tribe, Suquamish tribe, Swinomish tribe, Tulalip tribes, Upper Skagit tribe, Yakama Nation)).~~ As of the effective date of this rule, there are twenty-eight federally recognized tribes in the state of Washington. You may contact the governor's office of Indian affairs for an up-to-date list of federally recognized Indian tribes in the state of Washington at its website [www.goia.wa.gov](http://www.goia.wa.gov) or at:

Governor's Office of Indian Affairs

531 15th Ave. S.E.

P.O. Box 40909

Olympia, WA 98504-0909

360-753-2411

**(3) How does an Indian qualify for a motor vehicle excise tax exemption?** To qualify for ~~((a motor vehicle))~~ an RTA excise tax exemption, an Indian shall:

- (a) Be enrolled as a tribal member of a recognized Washington tribe;

- (b) Have their principal residence within the boundaries of ~~((the))~~ Indian (~~(reservation))~~ country of the tribe of which

they are a member (~~(-- Mobile homes, travel trailers and campers owned by Indians having their principal residence within the recognized Indian reservation, for the tribe in which they are duly registered on the tribal rolls, are exempt from payment of the mobile home, travel trailer and camper excise tax imposed by chapter 82.50 RCW));~~ and

(c) Be a registered owner of the vehicle for which the exemption is requested.

(4) **Are vehicles owned or leased by a governing body of an Indian tribe subject to RTA excise tax?** No. Vehicles owned or leased by a governing body of an Indian tribe are not subject to ~~((motor vehicle))~~ the RTA excise tax as provided in RCW 46.16.020 and 46.16.022. ~~((Mobile homes, travel trailers and campers owned by Indian tribes located on recognized Washington Indian reservations are exempt from payment of the mobile home, travel trailer and camper excise tax imposed by chapter 82.50 RCW.))~~

(5) **What documentation does the department require from a tribal member to qualify for an RTA excise tax exemption?** The department requires a properly completed affidavit of exemption on a form supplied or approved by the department. An affidavit for each vehicle must be submitted at the time the exemption is established and at the time of renewal if there is a change of address and the new address is located inside the RTA boundary. The department may require such other proof of qualification for exemption, as it deems necessary.

(6) **What information must be contained within the affidavit of exemption described in subsection (5) of this section?** At the minimum, the affidavit of exemption must include the following:

(a) Description of the vehicle including the year and make and either the license plate number or the vehicle identification number;

(b) The registered owner's name, tribe, ~~((reservation))~~ address of the Indian country registered owner as will be shown on the vehicle registration certificate; and enrollment or Bureau of Indian Affairs number;

(c) ~~((The principal address of the registered owner as will be shown on the vehicle registration certificate;~~

~~((d)))~~ Signature of the registered owner;

~~((e)))~~ (d) A certification of an authorized tribal authority representing the Indian ~~((reservation of the))~~ tribe of which the registered owner is a member. The position or title of the tribal authority, their telephone number and their signature must appear on the certification. The certification must include a statement that the registered owner is an enrolled tribal member and that the address provided by the registered owner is within the boundaries of their ~~((reservation))~~ Indian country;

~~((f)))~~ (e) The position or title of the tribal authority, their telephone number and their signature.

(7) **Are there any types of vehicles for which the Indian RTA excise tax exemption does not apply?** No, the Indian RTA excise tax exemption applies to all types of vehicles for which RTA excise tax is due.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-96A-410 Study fee.

AMENDATORY SECTION (Amending WSR 99-06-029, filed 2/24/99, effective 3/27/99)

**WAC 308-96A-135 Fixed load vehicles. ~~((+))~~ What is a fixed load vehicle?**

A fixed load vehicle is specified in RCW 46.16.070 and described in WAC 308-96A-099.

~~((2))~~ **Am I required to pay excise tax when I license my fixed load vehicle?**

~~Washington law requires vehicles used on the public highways to be assessed excise tax. If your fixed load vehicle is used incidentally on the public highways and its primary purpose is not transportation, you may be eligible to place your vehicle on the county personal property tax rolls. If you provide the department with proof that your vehicle is listed on the county personal property tax rolls, you will pay personal property tax in lieu of excise tax.)~~

**WSR 01-08-052**

**PROPOSED RULES**

**DEPARTMENT OF LICENSING**

[Filed April 2, 2001, 8:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-05-076.

Title of Rule: Chapter 308-93 WAC, Vessel registration and certificates of title.

Purpose: 1. To meet the criteria set forth in Governor Locke's Executive Order 97-02.

2. To clarify rules and help make them more comprehensible.

Statutory Authority for Adoption: RCW 88.01.070, 88.02.100.

Summary: Amending WAC 308-93-145 Vessel registration numbers—Display, size, color.

Reasons Supporting Proposal: Meet criteria supporting Governor Locke's Executive Order 97-02.

Name of Agency Personnel Responsible for Drafting: Katherine Iyall Vasquez, 1125 Washington Street S.E., Olympia, (360) 902-3718; Implementation and Enforcement: Eric Andersen, 1125 Washington Street S.E., Olympia, (360) 902-4045.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The anticipated effects will be a clarification of the above mentioned requirements.

Proposal Changes the Following Existing Rules: Clarify sections needed and repeal those no longer required.

PROPOSED



No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in an industry.

RCW 34.05.328 does not apply to this rule adoption. The contents of the proposed rules are explicitly and specifically dictated by statute.

Hearing Location: Highways-Licenses Building, Conference Room 107, 1125 Washington Street S.E., Olympia, WA 98507, on May 8, 2001, at 11:00 a.m.

Assistance for Persons with Disabilities: Contact Katherine Iyall Vasquez by May 7, 2001, TTY (360) 664-8885, or (360) 902-3718.

Submit Written Comments to: Katherine Iyall Vasquez, Rules Manager, Title and Registration Services, P.O. Box 2957, Olympia, WA 98507-2957, fax (360) 664-0831, by May 7, 2001.

Date of Intended Adoption: May 18, 2001.

March 30, 2001

Deborah McCurley, Administrator  
Title and Registration Services  
by Fran Lukes

**AMENDATORY SECTION** (Amending WSR 00-23-094, filed 11/21/00, effective 12/22/00)

**WAC 308-93-145 Vessel registration numbers—Display, size, color.** (1) **What vessels are required to display a vessel registration number?** All vessels registered under chapter 88.02 RCW are required to display the vessel registration numbers. Vessels documented by the United States Coast Guard are prohibited from displaying the registration number.

(2) **What are vessel registration numbers?** Vessel registration numbers are configured in accordance with 33 CFR 174.23 and:

(a) Uniquely identify a vessel (the same way license plate numbers identify a vehicle);

(b) Are assigned by the department when you apply for initial registration for your vessel or when a vessel owner is retaining the registration number issued by the United States Coast Guard prior to July 1984;

(c) Are printed on your registration certificate and certificate of ownership;

(3) **How do I display the assigned vessel registration number on my vessel?** The registration number assigned must:

(a) Be painted on or permanently attached to each side of the forward half of the vessel and easily visible for law enforcement except as allowed by subsection (6) of this section or required by subsection (9) of this section and must be on a vertical surface;

(b) Be in plain vertical block characters of not less than three inches in height;

(c) Contrast with the color of the background and be distinctly visible and legible;

(d) Have spaces or hyphens that are equal to the width of a letter other than "I" or a number other than "1" between the

letter and number groupings (example: WN 5678 EF or WN-5678-EF); and

(e) Read from left to right.

(4) **Are vessel registration numbers transferable from vessel to vessel?** Vessel registration numbers are not transferable between vessels. Once assigned, a vessel registration number cannot be reassigned to another vessel.

(5) **Does a Washington licensed dealer need to display registration numbers and decals when demonstrating or testing a vessel held for sale?** Washington licensed vessel dealers must display dealer registration numbers and decals assigned and issued by the department. Dealer registration numbers and decals must be displayed in the following manner:

(a) The department assigned dealer vessel registration number must be permanently attached to a backing plate;

(b) The department issued decal must be affixed within six inches aft of and directly on line with the dealer registration number as provided by WAC 308-90-070(1); and

(c) The backing plate must be attached to the forward half of the vessel so that the number is visible from each side of the vessel when observed from outside the vessel.

(6) **How do I display my vessel registration number if my vessel's hull or superstructure is configured so that the vessel registration number would not be easily visible?** In this case, the vessel registration number must be painted on or permanently attached to backing plates that are attached to the forward half of the vessel so that the number is visible from the outside of the vessel.

(7) **Are any numbers other than those issued by an issuing authority allowed on the front half of my vessel?** No person may use a vessel on the waters of this state that has any number that is not issued by an issuing authority for that vessel on its forward half.

(8) **Are there any letters that may not be used in the configuration of a vessel registration number?** Yes, the letters I, O, and Q. Registration numbers that currently contain I, O, and Q will be reassigned by the department upon registration renewal due on or after July 1, ((2000)) 2004.

(9) **Is a tender as described in chapter 88.02 RCW required to display a vessel registration number?** Vessels used as a tender, while exempt from registration under RCW 88.02.030, must display the numbers of the parent vessel with an additional number following the letter of the vessel registration number. (Example a) WN 5678 EF 1 or WN-5678-EF-1. The second tender vessel registration number will be the next consecutive number. (Example b) WN 5678 EF 2 or WN-5678-EF-2.

**WSR 01-08-058**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed April 2, 2001, 3:38 p.m.]

Original Notice.

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

Title of Rule: WAC 388-416-0005 How long can I get food assistance?

Purpose: Updated text of WAC to clarify what a certification period is, how long a certification period can be based on a household's circumstances, and to incorporate when a certification period can be changed.

Statutory Authority for Adoption: RCW 74.08.090 and 74.04.510.

Statute Being Implemented: RCW 74.08.090 and 74.04.510.

Summary: Updated WAC to reflect when a certification can be shortened or lengthened and when we terminate a certification period.

Reasons Supporting Proposal: Due to a change in federal regulations we can only shorten or lengthen a certification period to match a cash or medical assistance end date unless the food assistance household has already received the maximum certification allowable under law. We can end a certification only when we have proof of a change that makes a household ineligible or if we get information that makes the household ineligible and the household does not cooperate in verifying its circumstances.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Vicky T. Robinson, Division of Assistance Programs, (360) 413-3031.

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

Rule is necessary because of federal law, 7 C.F.R. 273.10 (f)(4) and (5).

Explanation of Rule, its Purpose, and Anticipated Effects: Federal regulations require that we can only shorten or lengthen a certification period to match a cash or medical assistance end date unless the food assistance household has already received the maximum certification allowable under law. We can end a certification only when we have proof of a change that makes a household ineligible or if we get information that makes the household ineligible and the household does not cooperate in verifying its circumstances.

Proposal Changes the Following Existing Rules: Updates WAC to reflect when a certification can be shortened or lengthened and when we terminate a certification period.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Small businesses are not affected by this change in rule.

RCW 34.05.328 does not apply to this rule adoption. This does not meet the definition of a significant legislative rule.

Hearing Location: Blake Office Park (behind Goodyear Courtesy Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on May 8, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Kelly Cooper, DSHS Rules Coordinator, by May 1, 2001, phone (360) 664-6094, TTY (360) 664-6178, e-mail coo-peKD@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, by May 8, 2001.

Date of Intended Adoption: No sooner than May 9, 2001.

March 30, 2001

Susan Bush

for Bonita H. Jacques, Chief  
Office of Legal Affairs

AMENDATORY SECTION (Amending WSR 99-16-024, filed 7/26/99, effective 9/1/99)

**WAC 388-416-0005 ((Certification periods for)) How long can I get food assistance((r))? ((A certification period is the specified amount)) The length of time the department determines your assistance unit (AU) is ((determined)) eligible((Assistance units are certified for the following periods)) to get food assistance is called a certification period. The department (we) may certify your AU for up to:**

(1) ~~((Not more than))~~ Twenty-four months ((for assistance units without)) if everyone in your AU is elderly and no one in your AU has earned income or cash assistance ((when all members are elderly));

(2) ~~((Not more than))~~ Twelve months ((for assistance units with no)) if everyone in your AU is disabled or elderly and no one in your AU has earned income ((and all household members are disabled or elderly)).

(3) ~~((Not more than))~~ Six months ((for assistance units) if your AU has:

(a) ~~((Receiving))~~ Cash assistance; or

(b) ~~((With))~~ Earned income ((and required to report monthly)); or

(c) ~~((With recent work history and required to report monthly; or~~

~~(d))~~ Income, household circumstances, and deductions that are not likely to ((have any changes)) change.

(4) ~~((Not more than))~~ Three months for ((assistance units)) all other AUs, including AUs with:

(a) ~~((Consisting of))~~ A migrant or seasonal farmworker((s));

(b) ~~((Containing))~~ An able-bodied adult without dependents (ABAWD);

(c) ~~((Without any))~~ No income ((and not receiving)) or cash assistance;

(d) ~~((With))~~ Expenses that ((exceed income received)) are more than the income the AU gets;

(e) ~~((That are))~~ Homeless individuals or AU members staying in an emergency or ((battered spouse)) family violence shelter:

PROPOSED

(f) ~~((That are))~~ An AU member who is staying in a non-ADATSA drug and alcohol treatment center ~~((or (g) Not identified in this section))~~.

(5) We may shorten or lengthen your certification period to match your cash or medical assistance end date unless you have already received the maximum certification allowable for your AU.

(6) We terminate your certification period when:

(a) We get proof of a change that makes your AU ineligible; or

(b) We get information that your AU is ineligible; and

(c) You do not provide needed information to verify your AU's circumstances.

### WSR 01-08-059

#### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

(Division of Employment and Assistance Programs)

[Filed April 2, 2001, 3:38 p.m.]

Supplemental Notice to WSR 00-21-066.

Preproposal statement of inquiry was filed as WSR 00-16-051.

Title of Rule: WAC 388-418-0005 What types of changes must I report for cash, food, and medical assistance? and 388-418-0007 When do I have to report changes in my circumstances?

Purpose: Clarifies what changes have to be reported and when clients must report them.

Statutory Authority for Adoption: RCW 74.08.090 and 74.04.510.

Statute Being Implemented: RCW 74.08.090 and 74.04.510.

Summary: Amending WAC 388-418-0005 to specify what types of changes must be reported based on the type of benefit a client gets. Separates when a client must report changes into new WAC 388-418-0007.

Reasons Supporting Proposal: To clarify existing policy by assembling by program type the types of changes clients must report and when they must report them.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Vicky T. Robinson, Division of Employment and Assistance Programs, (360) 413-3031.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: Amends WAC 388-418-0005 to specify what types of changes must be reported based on the type of benefit a client receives. Separates when a client must report changes into new WAC 388-418-0007.

Proposal Changes the Following Existing Rules: Gives greater detail as to the types of changes a client must report and clarifies when those changes must be reported.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Small businesses are not impacted by this change.

RCW 34.05.328 does not apply to this rule adoption. These rule changes are not significant legislative changes.

Hearing Location: Blake Office Park (behind Goodyear Courtesy Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on May 8, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Kelly Cooper, DSHS Rules Coordinator, by May 1, 2001, phone (360) 664-6094, TTY (360) 664-6178, e-mail coopKD@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, by May 8, 2001.

Date of Intended Adoption: No earlier than May 9, 2001.

March 30, 2001

Susan Bush

for Bonita H. Jacques, Chief  
Office of Legal Affairs

AMENDATORY SECTION (Amending WSR 99-23-034, filed 11/10/99, effective 1/1/00)

WAC 388-418-0005 ((Clients)) What type of changes must I report ((certain changes to the department within specified time limits.)) for cash, food, and medical assistance? ((1)) Clients who receive cash or food assistance must report the following changes about everyone in the assistance unit. The client must report these changes within ten days of when they learn about the change. Clients must report:

(a) The gross monthly amount of unearned income they receive when:

(i) They start receiving money from any new source.

(ii) The amount received from a previously reported source changes by more than twenty five dollars.

(b) When someone, including a newborn child, moves in or out, even if the change is temporary.

(c) The marriage or divorce of any assistance unit member.

(d) A new residence, including any change in shelter expenses because of the move.

(e) Obtaining a vehicle.

(f) The end of a temporary disability when the temporary disability is the reason for excluding a vehicle.

(g) When the assistance unit's countable resources exceed the resource limits described in chapter 388-470 WAC.

(h) Any of the following changes related to employment:

(i) A new job or different employer.

(ii) A change in wage rate or pay scale.

(iii) An employment status change from part time to full time. The employer determines when an employee has full-time employment status.

(2) Clients who receive only children or pregnant women's medical assistance must report the following changes. The client must report these changes within twenty

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days of when they learn about the change. Clients must report:

(a) When someone, including a newborn child, moves in or out, even if the change is temporary.

(b) When a pregnancy begins or ends.

(c) A new residence.

(3) Clients who receive any other medical assistance must report the following changes. Clients must report these changes about themselves, their spouses or any dependents. The client must report these changes within twenty days of when they learn about the change. Clients must report:

(a) When someone, including a newborn child, moves in or out, even if the change is temporary.

(b) When an assistance unit member gets married, divorced or separated.

(c) When a pregnancy begins or ends.

(d) A new residence or address.

(e) Any change in the amount of income received from any new or previously reported source.

(f) Any change in the amount of expenses paid for shelter.

(g) Any change in the amount of expenses paid for medical care.

(h) Changes in resources.

(4) For TANF/SFA, a caretaker relative must report within five days when they learn that the temporary absence of a child will exceed ninety days. When the relative fails to report timely, the relative:

(a) Is not eligible for one month; and

(b) The relative's countable income is considered available to the remaining members of the assistance unit.

(5) When a change is reported late, the client may receive the wrong amount or the wrong type of assistance. When benefits are overpaid, the client must repay the assistance as described in chapter 388-410 WAC.))For purposes of this section, an "assistance unit" or "AU" is a group of people who live together and whose income or resources we count to decide what benefits the AU gets. Even if someone in your AU is not eligible to get a benefit, we still count that person's income or resources if they are financially responsible for you or someone in your AU, such as a common child. If you are a parent of a child who gets long-term care benefits, you need only report changes in income or resources that are actually contributed to the child. Tables one, two and three below show the types of changes you must report based on the type of assistance you get. Use table one to see if you must report a change for cash or food assistance. Use table two to see if you must report a change for children's, pregnant women's, or family medical assistance. Use table three to see if you must report a change for SSI-related medical or long-term care medical assistance.

<b><u>Type of change to report when you or anyone in your assistance unit AU):</u></b>	<b><u>Do I have to report this change for cash assistance?</u></b>	<b><u>Do I have to report this change for food assistance?</u></b>
(1) Starts to get money from a new source;	Yes	Yes
(2) Has unearned income that changed by more than twenty-five dollars from amount we budgeted;	Yes	Yes
(3) Moves into or out of your home, including newborns or if an AU member dies. This also includes when someone temporarily moves in or out;	Yes	Yes
(4) Moves to a new residence;	Yes	Yes
(5) Has a change in shelter costs;	Yes, but only if you went from having no shelter costs to having a shelter cost, or from having shelter costs to not having to pay anything. You don't have to report a change in the amount you pay.	Yes, report the change at your recertification. If your shelter costs go up, you could get more food assistance benefits. Report the change sooner to see if you will get more benefits.
(6) Gets married, divorced, or separated;	Yes	Yes
(7) Gets a vehicle;	Yes	Yes
(8) Has a disability that ends;	Yes	Yes
(9) Has countable resources that are more than the resource limits under WAC 388-470-0005;	Yes	Yes

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**Table 1 - Cash Assistance and Food Assistance**

<u>Type of change to report when you or anyone in your assistance unit AU):</u>	<u>Do I have to report this change for cash assistance?</u>	<u>Do I have to report this change for food assistance?</u>
(10) Gets a job or changes employers;	Yes	Yes
(11) Changes from part-time to full-time or full-time to part-time work. We use your employer's definition of part-time and full-time work;	Yes	Yes
(12) Has a change in hourly wage rate or salary;	Yes	Yes
(13) Stops working;	Yes	Yes
(14) Has a pregnancy that begins or ends;	Yes	No
(15) Has a change in uncovered medical expenses;	No	Yes, report this change only at your next eligibility review. If you are elderly or disabled and you have an increase in uncovered medical expenses, report this change sooner as you may be eligible to get more benefits.

**Table 2 - Medical Assistance**

<u>Type of change to report when you or anyone in your assistance unit (AU):</u>	<u>Do I have to report this change for family medical assistance (i.e., TANF/SFA-related)?</u>	<u>Do I have to report this change for children's medical and/or pregnancy medical?</u>
(17) Has unearned income that changed;	Yes	No
(18) Moves into or out of your home, including newborns or if an AU member dies. This also includes when someone temporarily moves in or out;	Yes	Yes
(19) Moves to a new residence;	Yes	Yes
(20) Has a change in shelter costs;	No	No
(21) Gets married, divorced, or separated;	Yes	No
(22) Gets a vehicle;	No	No
(23) Has a disability that ends;	No	No
(24) Has countable resources that are more than the resource limits under WAC 388-470-0005;	No	No
(25) Gets a job or changes employers;	Yes	No
(26) Changes from part-time to full-time or full-time to part-time work. We use your employer's definition of part-time and full-time work;	Yes	No
(27) Has a change in hourly wage rate or salary;	Yes	No

**Table 2 - Medical Assistance**

<u>Type of change to report when you or anyone in your assistance unit (AU):</u>	<u>Do I have to report this change for family medical assistance (i.e., TANF/SFA-related)?</u>	<u>Do I have to report this change for children's medical and/or pregnancy medical?</u>
(16) Starts to get money from a new source;	Yes	No

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**Table 2 - Medical Assistance**

<u>Type of change to report when you or anyone in your assistance unit (AU):</u>	<u>Do I have to report this change for family medical assistance (i.e., TANF/SFA-related)?</u>	<u>Do I have to report this change for children's medical and/or pregnancy medical?</u>
(28) Stops working;	Yes	No
(29) Has a pregnancy that begins or ends;	Yes	Yes
(30) Has a change in uncovered medical expenses.	No	Yes, but only if an AU member has a spenddown.

**Table 3 - SSI-Related Medical Assistance and Long-Term Care**

<u>Type of change to report when you or anyone in your assistance unit (AU):</u>	<u>Do I have to report this change for SSI-related medical assistance?</u>	<u>Do I have to report this change for long-term care (i.e., COPES, CAP, or nursing home)</u>
(31) Starts to get money from a new source;	Yes	Yes
(32) Has unearned income that changed;	Yes	Yes
(33) Has a change in earnings or stops working	Yes	Yes
(34) Moves into or out of your home, including newborns or if an AU member dies. This also includes when someone temporarily moves in or out;	Yes	Yes
(35) Moves to a new residence;	Yes	Yes
(36) Has a change in shelter costs;	No, unless you went from paying rent to not paying any rent. You do not need to report if your rent amount changes.	Yes, if client or community spouse live in their own home

**Table 3 - SSI-Related Medical Assistance and Long-Term Care**

<u>Type of change to report when you or anyone in your assistance unit (AU):</u>	<u>Do I have to report this change for SSI-related medical assistance?</u>	<u>Do I have to report this change for long-term care (i.e., COPES, CAP, or nursing home)</u>
(37) Gets married, divorced, or separated;	Yes	Yes
(38) Gets a vehicle;	Yes, but only if that person or their spouse gets SSI-related medical	Yes, but only if that person gets long-term care
(39) Has a disability that ends;	Yes	Yes
(40) Has countable resources that are more than the resource limits, under WAC 388-470-0005 or 388-513-1350;	Yes, but only if that person or their spouse get SSI-related medical	Yes, but only if that person gets long-term care
(41) Has a change in uncovered medical expenses.	Yes, but only if an AU member has a spenddown.	Yes.

**NEW SECTION**

**WAC 388-418-0007 When do I have to report changes in my circumstances?** (1) If you are applying for cash and/or food assistance and have had a change:

(a) After the date you applied but before your interview, you must report the change at the time of your interview; or

(b) After you have been interviewed, you must report the change within ten days of the date of your approval notice.

(2) If you get TANF/SFA, you must report within five calendar days from the day you learn that a child in the AU will be gone from your home longer than ninety days. If you do not report this within five days:

(a) You are not eligible for cash benefits for one month; and

(b) All of your countable income as described in WAC 388-450-0162 is budgeted against the cash benefits for the remaining AU members.

(3) If you receive cash and/or food assistance, all other changes described in WAC 388-417-0005 must be reported within ten days from the day you become aware of the change.

(4) If you receive medical assistance you must report the changes described in WAC 388-418-0005 within twenty days from the day you become aware of the change.

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(5) If you report changes late, you may get the wrong amount or wrong type of benefits. If you get more benefits than you are eligible for, you may have to pay them back as described in chapter 388-410 WAC.

Date of Intended Adoption: May 8, 2001.

April 2, 2001

Eugene Matt

Secretary

**WSR 01-08-062**

**PROPOSED RULES**

**PERSONNEL RESOURCES BOARD**

[Filed April 3, 2001, 11:33 a.m.]

Original Notice.

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

Title of Rule: WAC 356-46-150 Return to work initiative program and 356-30-331 Reduction in force—Transition pool program.

Purpose: These rules pertain to a return to work initiative program and the reduction in force (RIF) transition pool.

Statutory Authority for Adoption: Chapter 41.06 RCW. Statute Being Implemented: RCW 41.06.150.

Summary: The new rule will allow agencies to participate in the return [to] work initiative program. The modifications to the RIF transition pool are needed to address the return to work initiative program.

Name of Agency Personnel Responsible for Drafting: Sharon Whitehead, 521 Capitol Way South, Olympia, WA, (360) 664-6348; Implementation and Enforcement: Department of Personnel.

Name of Proponent: Department of Personnel, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The return to work initiative program has operated as a pilot for two biennia. The Department of Personnel has now agreed to continue the project on a permanent basis. The new rule is needed for the ongoing administration of the program. The modifications to the RIF transition pool rule are needed to address the return to work initiative program.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. These rules relate to internal government operations that are not subject to violation by a nongovernmental party. Therefore, pursuant to RCW 34.05.328 [(5)](b)(ii), section 201 does not apply.

Hearing Location: Department of Personnel, 521 Capitol Way South, Olympia, WA, on May 8, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Department of Personnel by May 1, 2001, TDD (360) 753-4107, or (360) 586-8260.

Submit Written Comments to: Sharon Whitehead, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by May 4, 2001.

NEW SECTION

**WAC 356-46-150 Return to work initiative program.**

The department of personnel is responsible for administering the return to work initiative program. The director shall develop and implement appropriate operating procedures to facilitate this program.

(1) The program applies to permanent employees who have been disability separated or who are at risk of disability separation due to an accepted industrial injury condition, and meet the following criteria for participation in the program:

(a) The employee must be employed by an agency participating in the program; and

(b) The agency must approve the participation of the employee to be in the program; and

(c) The employee must be permanently unable to return to the job of injury due to the effects of the industrial injury; however, the employee must be capable of return to some form of gainful employment; and

(d) The employee must have an open industrial insurance claim for which the employee is receiving current time loss compensation benefits; and

(e) The department of personnel must be able to secure authorization from the department of labor and industries to bill for return to work services against the industrial insurance claim.

(2) Permanent employees participating in the program may request placement on the reduction in force transition pool list to fill funded vacant positions for which there are no available candidates on reduction in force registers.

(3) Agencies, including those agencies with local list authority, who participate in the program shall adhere to the operating procedures established by the director.

AMENDATORY SECTION (Amending WSR 00-11-122, filed 5/22/00, effective 7/1/00)

**WAC 356-30-331 Reduction in force—Transition pool program.** The department of personnel is responsible for administering the reduction in force transition pool program. The director shall develop and implement appropriate operating procedures to facilitate this program.

(1) To administer the program, the director or designee may waive provisions of Title 356 WAC that:

(a) Require employees seeking transfer and voluntary demotion in lieu of reduction in force to meet approved minimum qualifications;

(b) Authorize only the director to waive minimum qualifications; and

(c) Allow qualifying examinations for transfers or voluntary demotions(~~and~~).

(2) The program applies to:

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(a) All permanent employees separated by reduction in force or notified by the agency personnel representative that they are at risk of reduction in force; and

(b) Return to work employees in those agencies that are participating in the return to work (~~((pilot))~~) initiative program.

(3) Agencies, including those agencies with local list authority, shall adhere to the operating procedures established by the director.

(4) Employees participating in the reduction in force transition pool program shall have no right of appeal within this program.

Submit Written Comments to: Sharon Whitehead, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by May 4, 2001.

Date of Intended Adoption: May 8, 2001.

April 2, 2001

Eugene Matt

Secretary

AMENDATORY SECTION (Amending WSR 90-01-007, filed 12/7/89, effective 1/7/90)

**WAC 251-01-415 Temporary appointment.** (1) Work performed in the absence of an employee on leave for more than six consecutive months in accordance with WAC 251-19-120(2); or

(2) Performance of work which does not exceed one thousand fifty hours in any twelve consecutive month period from the original date of hire or October 1, 1989, whichever is later, in accordance with WAC 251-04-040(~~((5))~~) (6); or

(3) Formal assignment of the duties and responsibilities of a higher level class for a period of less than six consecutive months.

AMENDATORY SECTION (Amending WSR 98-19-035, filed 9/10/98, effective 10/12/98)

**WAC 251-12-600 Remedial action.** (1) The director may take remedial action when it is determined that the following conditions exist.

(a) The hiring institution has made an appointment that does not comply with higher education personnel rules.

(b) The employee has worked in one or more positions for more than one thousand fifty hours in any twelve consecutive month period since the original hire date or October 1, 1989, whichever is later. (These hours do not include overtime or work time as described in WAC 251-04-040(~~((2))~~) (3.)

(c) The position or positions are subject to civil service.

(d) The employee has not taken part in any willful failure to comply with these rules.

(2) Remedial action includes the power to confer permanent status, set salary, establish seniority, and determine benefits accrued from the seniority date. Remedial action also includes other actions the director may require to meet the highest personnel standards.

(3) If the institution has complied with WAC 251-19-122, the employee must:

(a) Submit any request for remedial action in writing; and

(b) File the request within thirty calendar days after the effective date of the alleged violation of the conditions of employment which are to be specified in the written notification of temporary appointment.

(4) The director's order for remedial action shall be final and binding unless exceptions are filed with the personnel appeals board within thirty calendar days of the date of service of the order. Exceptions must state the specific items of the order to which exception is taken. The personnel appeals

**PROPOSED**

**WSR 01-08-063**  
**PROPOSED RULES**  
**PERSONNEL RESOURCES BOARD**

[Filed April 3, 2001, 11:34 a.m.]

Original Notice.

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

Title of Rule: WAC 251-01-415 Temporary appointment and 251-12-600 Remedial action.

Purpose: The purpose of these rules is to define temporary appointment and provide conditions that constitute remedial action.

Statutory Authority for Adoption: Chapter 41.06 RCW. Statute Being Implemented: RCW 41.06.150.

Summary: These are housekeeping changes that reflect the appropriate subsections.

Name of Agency Personnel Responsible for Drafting: Sharon Whitehead, 521 Capitol Way South, Olympia, WA, (360) 664-6348; Implementation and Enforcement: Department of Personnel.

Name of Proponent: Department of Personnel, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These rules define temporary appointment and provide conditions that constitute remedial action. Housekeeping changes made several years ago changed the numbering of subsections. Changes to these rules were inadvertently omitted.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. These rules relate to internal government operations that are not subject to violation by a nongovernmental party. Therefore, pursuant to RCW 34.05.328 [(5)](b)(ii), section 201 does not apply.

Hearing Location: Department of Personnel, 521 Capitol Way South, Olympia, WA, on May 8, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Department of Personnel by May 1, 2001, TDD (360) 753-4107, or (360) 586-8260.



board will review the exceptions and may hold a hearing prior to modifying or affirming the director's order.

**WSR 01-08-064**

**WITHDRAWAL OF PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(By the Code Reviser's Office)

[Filed April 3, 2001, 12:29 p.m.]

Chapters 388-73 and 388-148 WAC, proposed by the Department of Social and Health Services in WSR 00-17-133, appearing in issue 00-19 of the State Register, which was distributed on October 4, 2000, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 01-08-065**

**WITHDRAWAL OF PROPOSED RULES  
STATE BOARD OF EDUCATION**

(By the Code Reviser's Office)

[Filed April 3, 2001, 12:29 p.m.]

WAC 180-50-115 and 180-50-117, proposed by the State Board of Education in WSR 00-19-013 appearing in issue 00-19 of the State Register, which was distributed on October 4, 2000, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 01-08-066**

**WITHDRAWAL OF PROPOSED RULES  
STATE BOARD OF EDUCATION**

(By the Code Reviser's Office)

[Filed April 3, 2001, 12:30 p.m.]

WAC 180-82-135, proposed by the State Board of Education in WSR 00-19-014 appearing in issue 00-19 of the State Register, which was distributed on October 4, 2000, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 01-08-067**

**WITHDRAWAL OF PROPOSED RULES  
DEPARTMENT OF  
FINANCIAL INSTITUTIONS**

(By the Code Reviser's Office)

[Filed April 3, 2001, 12:30 p.m.]

WAC 308-680D-100 and 208-680E-011, proposed by the Department of Financial Institutions in WSR 00-19-051 appearing in issue 00-19 of the State Register, which was distributed on October 4, 2000, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 01-08-068**

**PROPOSED RULES  
DEPARTMENT OF AGRICULTURE**

[Filed April 3, 2001, 1:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-04-093.

Title of Rule: Chapter 16-403 WAC, Standards for apples marketed within the state of Washington. (1) Establish annual harvest release dates for Golden Delicious and Granny Smith varieties of apples, and (2) require that the harvest year be marked on all containers of apples harvested in the previous crop season.

Purpose: WAC 16-403-141, to establish a permanent general harvest release date for Golden Delicious varieties of apples; WAC 16-403-143, to establish a permanent general harvest release date for Granny Smith variety of apples; and WAC 16-403-220, to establish a crop year marking requirement on all apple cartons.

Statutory Authority for Adoption: Chapter 15.17 RCW. Statute Being Implemented: RCW 15.17.130.

Reasons Supporting Proposal: Industry request.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jim Quigley, Olympia, Washington, (360) 902-1833.

Name of Proponent: Washington State Horticulture Association Grade and Pack Committee, public.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This proposal is at the request of the Washington Horticulture Association Grade and Pack Committee. The department will be working with the association, other stakeholders and interested parties in the development of these rules.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule will:

(1) Establish a permanent general release date of September 20 for Golden Delicious apple varieties and a release

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date of October 10 for Granny Smith apple varieties. The Delicious Maturity Committee of the Washington State Horticultural Association has established the general harvest release dates for these two varieties annually. The committee establishes the release date after determining that the apples are at the stage of maturity that will ensure the apples will be marketable. The data gathered by the committee has established that by these proposed permanent dates, these varieties of apples are at the stage of maturity to ensure marketability. The establishment of permanent harvest release dates will also avoid confusion in determining the official harvest release dates for these varieties.

(2) Beginning on October 1 of each year (at the time of shipment), require the marking of the harvest year on all apple cartons containing apples harvested the previous year. This requirement will assist shippers with their inventory controls and also the compilation of marketing data for the various traffic associations.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The financial impact, if any, will be minimal and does not represent a disproportionate cost to small businesses.

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

Hearing Location: Yakima Ag Center, 21 North 1st Avenue, Yakima, WA, on May 16, 2001, at 1:00 p.m.; and at the Washington Apple Commission, 2900 Euclid Avenue, Wenatchee, WA, on May 17, 2001, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Jodi Jones by May 15, 2001, TDD (360) 902-1976, or (360) 902-1996.

Submit Written Comments to: Jim Quigley, Program Manager, Washington State Department of Agriculture, Fruit and Vegetable Inspection Program, P.O. Box 42560, Olympia, WA 98504-2560, fax (360) 902-2085, by May 16, 2001.

Date of Intended Adoption: June 1, 2001.

April 3, 2001

Robert W. Gore  
Assistant Director

**AMENDATORY SECTION** [(Amending WSR 99-14-036, filed 6/29/99)]

**WAC 16-403-141 Red Delicious, Delicious, Golden Delicious—Minimum soluble solids.** For harvest of the crop of the current growing season, apples of the Red Delicious and Delicious varieties cannot be shipped prior to October 1, unless they have at least ten percent soluble solids as determined by refractometer. Apples of the Golden Delicious varieties, cannot be shipped prior to ~~((the general release as established by the Delicious maturity committee of the Washington state horticultural association))~~ September 20 unless they have at least ten and one-half percent soluble solids as determined by refractometer.

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

**AMENDATORY SECTION** [(Amending WSR 92-15-056, filed 7/13/92)]

**WAC 16-403-143 Granny Smith—Starch-iodine requirements.** ~~((Prior to the general release date for))~~ For harvest of the crop of the current growing season, ~~((as established by the Delicious maturity committee of the Washington state horticultural association, shipment shall not be allowed of))~~ apples of the Granny Smith variety ~~((which fail to))~~ cannot be shipped prior to October 10 unless they meet the stage of maturity as indicated by starch-iodine rating of 1.2 on the Cascade Analytical Inc. chart: Provided, That any such lot of apples may be shipped if not more than ten percent of the apples tested fail to meet the 1.2 rating.

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

**AMENDATORY SECTION** [(Amending Order 5005, filed 8/30/93)]

**WAC 16-403-220 Marking requirements—Open or closed containers.** (1) The containers shall bear the correct name of the variety or "variety unknown," the name of the grower, packer, or distributor, and his address, the grade, the numerical count or the minimum diameter of apples packed in a closed container, and the net contents either in terms of dry measure or weight. The minimum weight of individual apples within the container may be stated in lieu of, in combination with, or in addition to, minimum diameter as a declaration of size. All open containers and consumer packages must bear statement of net weight or volume.

(a) When the numerical count is not shown, the minimum diameter or minimum weight of individual apples shall be plainly stamped, stenciled, or otherwise marked on the container in terms of whole inches, or whole inches and not less than eight inch fractions thereof or in terms of whole grams.

(b) When used in combination with minimum diameter as a size designation, the following minimum fruit weights shall be used:

Red Delicious	Golden Delicious
2 1/8 in. or 65 grams	63 grams
2 1/4 in. or 75 grams	70 grams
2 3/8 in. or 84 grams	82 grams
2 1/2 in. or 100 grams	95 grams
2 5/8 in. or 115 grams	109 grams
2 3/4 in. or 139 grams	134 grams

(c) The word "minimum," or its abbreviation, when following a diameter size or weight size marking, means that the apples are of the size marked or larger.

(2) Over-wrapped consumer units may be marked with count, if all specimens can be counted.

(3) Any of these marks may be placed on either the end or side of the container. (California requires end markings.)

(4) When containers are marked as to number, each container shall contain the correct number of apples designated by the markings.

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(5) Grade markings on consumer-type packages must be at least one-fourth inch in height.

(6) Apples which were produced outside of the state of Washington and which are graded, packed, or repacked in the state of Washington, shall be correctly labeled as to the state or country of origin, e.g., "Product of Oregon," "Grown in Oregon," "Produced in Canada."

Such marking shall be placed on the same end or side panel of the container as other markings related to grade, variety, net contents, and name and address of the grower, packer, or distributor, and shall be of similar print size. Consumer type packages shall not be required to bear a statement as to origin when such marking has been placed on the master shipping container.

**NEW**

(7) Containers shall be marked with the harvest year beginning on October 1 of each year and be applied only to apples harvested in the previous year; that this marking shall occur at the time of shipment; and be displayed on the principle display panel with letters of a minimum of one-half inch in height.

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

**WSR 01-08-074**

**PROPOSED RULES**

**UNIVERSITY OF WASHINGTON**

[Filed April 3, 2001, 1:26 p.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 00-22-069.

Title of Rule: Chapter 478-116 WAC, Parking and traffic rules of the University of Washington.

Statutory Authority for Adoption: RCW 28B.10.560 and 28B.20.130.

Statute Being Implemented: RCW 28B.10.560 and 28B.20.130.

Summary: The proposed amendments to chapter 478-116 WAC, Parking and traffic rules of the University of Washington, are needed to clarify the change in scope for these rules, add a new type of permit, and amend the fine schedule.

Reasons Supporting Proposal: These rules support the University of Washington's parking, police and transportation organizations and are being amended to reflect current practices as well as proposed amendments.

Name of Agency Personnel Responsible for Drafting: Diana Perey Carter, Director for Transportation Services, 1127 N.E. Boat Street, University of Washington, Seattle, WA, (206) 685-1567; Implementation: Weldon E. Ihrig, Executive Vice-President, 306 Gerberding Hall, University of Washington, Seattle, WA, (206) 543-6410; and Enforcement: Vicky Peltzer, Police Chief, 1117 N.E. Boat Street, University of Washington, Seattle, WA, (206) 543-0521 and Carl Root, Parking Services Manager, 3901 University Way N.E., University of Washington, Seattle, WA, (206) 543-5571.

Name of Proponent: University of Washington, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The University of Washington's parking, police and transportation organizations propose amending chapter 478-116 WAC to clarify the scope of these rules, add a new type of parking permit, and amend the schedule of motor vehicle fines. These rules have not undergone rule making since 1997 and the changes listed above are necessary to reflect current practices, make needed changes, and anticipate rules currently under development.

Proposal Changes the Following Existing Rules: The proposed rules will amend WAC 478-116-010, 478-116-051, 478-116-101, 478-116-111, 478-116-114, 478-116-121, 478-116-145, 478-116-151, 478-116-163, 478-116-201, 478-116-211, 478-116-245, 478-116-255, 478-116-291, 478-116-301, 478-116-311, 478-116-411 and 478-116-605; and repeal WAC 478-116-040 and 478-116-046.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 478-116 WAC does not impose a disproportionate impact on small businesses.

RCW 34.05.328 does not apply to this rule adoption. Chapter 478-116 WAC is not considered a significant legislative rule by the University of Washington.

Hearing Location: Room 309, Husky Union Building (HUB), University of Washington, Seattle, Washington, on May 24, 2001, at 12:00 noon.

Assistance for Persons with Disabilities: Contact UW Disability Services Office by May 14, 2001, TDD (206) 543-6452, or (206) 543-6450.

Submit Written Comments to: Rebecca Goodwin Deardorff, Director, Administrative Procedures Office via U.S. mail: University of Washington, 4014 University Way N.E., Seattle, WA 98105-6203; campus mail: Box 355509; e-mail adminpro@u.washington.edu; or fax (206) 616-6294, by May 24, 2001.

Date of Intended Adoption: June 8, 2001.

March 30, 2001

Rebecca Goodwin Deardorff, Director  
Administrative Procedures Office

AMENDATORY SECTION (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-010 Preamble.** Pursuant to the authority granted by RCW 28B.10.560 and 28B.20.130, the board of regents of the University of Washington establishes the following rules to govern vehicle traffic and parking upon public lands and facilities of the University of Washington in Seattle, Washington.

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**AMENDATORY SECTION** (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-051 Definitions.** (1) Allowed meter time. The maximum time allowed on a pay meter at any one time.

(2) Assign/assignment. Areas designated for a person to park.

(3) Bicycle. Any device defined as a bicycle in chapter 46.04 RCW.

(4) Campus. The state lands located in Seattle, Washington devoted mainly to the activities of the University of Washington.

(5) Designate/designated. Parking area assignment for person to park per WAC 478-116-261.

(6) Fee. A charge for the use of the permit issued.

(7) Hours of operation. The hours of operation assigned by parking services to a particular parking area, parking lot, or parking space (~~((by parking services))~~).

(8) Impoundment. The removal of the vehicle to a storage facility either by an officer or authorized agent of the University of Washington police department.

(9) Key card. A plastic card which actuates the automatic gate arms controlling certain parking areas, and is issued by parking services.

(10) Legal owner. Person(s) having a security interest in a vehicle perfected in accordance with chapter 46.12 RCW or the registered owner of a vehicle unencumbered by a security interest.

(11) Motorcycles and scooters. A motor vehicle designed to travel on not more than three wheels in contact with the ground, on which the driver rides astride the motor unit or power train and is designed to be steered with a handle bar. For the purposes of these rules, motorcycles, motorized bicycles, and scooters are considered to be motor vehicles and are subject to all traffic and parking rules controlling other motor vehicles.

(12) Motorhome. A motor vehicle or portable vehicle with facilities for human habitation which include lodging and cooking and garbage disposal.

(13) Nonmotor/nonmotorized vehicle. A device other than a motor vehicle used to transport persons. Nonmotor vehicles include, but are not limited to, bicycles, skateboards, and roller-skates.

(14) Operator or driver. Every person who drives or is in actual physical control of a motor vehicle or nonmotor vehicle.

(15) Parking space. A space designated for parking one motor vehicle by lines painted on either side of the space, at the rear of the space, a concrete block positioned in the front of the space, a sign or signs, or other markings.

(16) Pedestrian. Any person afoot, as defined in chapter 46.04 RCW.

(17) Permit. A document issued by parking services that authorizes a person to park.

(18) Register/registration. The listing of any motor vehicle with parking services, for the purposes of obtaining a parking permit for the university.

(19) Registered owner. The person whose lawful right of possession of a vehicle has most recently been recorded with any state department of licensing.

(20) Reissue. The replacement of a permit when the original has been stolen, lost, or following a change of parking lot designation, or vehicle(s).

(21) Renewal/renew. The replacement of an expired parking permit at the end of the permit's effective period.

(22) Reserved. Area for individuals who have been assigned a "reserved" designator.

(23) Roller-skate. A device used to attach a wheel or wheels to the foot or feet of a person.

(24) Skateboard. Any oblong board of whatever composition, with a pair of small wheels at each end, which device may be ridden by a person.

(25) Traffic. Vehicular and nonvehicular modes of transportation defined in chapter 46.04 RCW.

(26) University. The University of Washington.

(27) University vehicle. A state of Washington-owned, university-operated motor vehicle.

(28) Vehicle. Any motor vehicle or nonmotor vehicle.

**AMENDATORY SECTION** (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-101 Numbering of parking areas, parking allocation and issuance of permits.** (1) Parking services shall designate and mark the various parking areas on the campus with numbers and/or letters and their hours of operation by the posting of signs in those areas.

(2) Parking services shall allocate parking spaces and hours of operation (~~((on campus))~~) in a manner that will best satisfy the objectives of these rules.

(3) Parking services is authorized to issue permits to park (~~((upon campus))~~).

(4) Permits issued by parking services shall be accompanied by small area designators specifying the area or areas of parking for which the permit is valid. Parking services may change area assignments in a manner which will promote the objectives of these rules.

(5) All outstanding campus parking violation penalties associated with the permit or motor vehicle registered (or to be registered) under the permit must be satisfactorily settled before a parking permit may be issued, reissued, or renewed.

**AMENDATORY SECTION** (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-111 Valid permit.** A valid permit is one of the following:

(1) An unexpired and unrecalled vehicle permit and area designator properly registered and displayed on a vehicle in accordance with WAC 478-116-223.

(2) A temporary permit authorized by parking services and displayed in accordance with instructions on the permit.

(3) A parking permit issued by a gate attendant, which shall be displayed face up on the vehicle (~~((in accordance with instructions on the permit))~~) dashboard and shall be fully visible from the exterior of the motor vehicle.

AMENDATORY SECTION (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-114 Transferable permits.** (1) Permit holders may transfer one permit between motor vehicles when used by the permit holder. Improper transfer of a permit shall include, but not be limited by, the wrongful sale, lending, or bad faith transfer of a parking permit.

(2) Permits displaying license plate numbers shall only be used in the vehicles whose license number is written on the permit. ~~((Only one vehicle may display and use the permit at any time while parked on campus.))~~

AMENDATORY SECTION (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-121 Visitor parking.** (1) No permit shall be required for the following motor vehicles:

(a) Public safety and emergency vehicles while performing services ~~((on campus))~~;

(b) Marked taxis, tow trucks, commercial delivery and media vehicles which have agreed to comply with university guidelines and received prior written approval of parking services; and

(c) School buses and tour buses parking in designated locations.

(2) Permits shall be provided during parking service's hours of operation at no cost to the driver for the following:

(a) Commercial delivery motor vehicles under contract to the university, for limited time periods;

(b) Vehicles operated by members of the nonuniversity press presenting recognized credentials, while pursuing a story;

(c) Properly identified persons retired from the university but not reemployed by the university shall be provided complimentary parking. Their parking fee shall be recharged to the appropriate university department;

(d) Persons who drop off and pick up children enrolled in established university programs for limited time periods;

(e) Utility meter readers and other city, county or state agencies making inspections; and

(f) Contractors hired by the university for a particular job parked inside approved fenced construction sites or peripheral contractor parking areas approved in advance by parking services.

(3) University departments may pay parking services directly for the parking fees of their guests. The rate charged will be that of the "departmental commuter ticket." Parking services may establish mechanisms to allow departments to pay for all or part of the parking fee of sponsor department's guests based on the established fee schedule.

(4) University departments may pay parking services directly for the parking fees of their department's employees not stationed on campus who are required to occasionally come to campus. The rate charged will be that of the "departmental commuter ticket."

AMENDATORY SECTION (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-145 Evening and swing permits.** (1) ~~((Evening, annual, or quarterly permits will allow parking during the period of time printed on the permit, as well as on Saturday mornings in assigned areas.))~~ Evening and swing, annual, or quarterly permits are allowed parking during the period of time printed on the permit. Parking on Saturday is allowed in unrestricted areas unless otherwise reserved for event parking as authorized by parking services.

(2) Gate-issued or machine-issued evening permits are valid only until 7:30 a.m. of the following day.

(3) Evening permit holders, who purchase parking weekdays between 7:30 a.m. - 4:00 p.m., will be charged the appropriate gatehouse entry parking fee.

AMENDATORY SECTION (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-151 Parking of state of Washington-owned university-operated motor vehicles.** (1) Parking services may exempt university vehicles from the permit requirement set forth in WAC 478-116-201 and the requirement that motor vehicles must be parked in designated parking areas as set forth in WAC 478-116-261.

(2) Unless express permission is given by parking services, university vehicles shall abide by the rules set forth in WAC 478-116-253 and 478-116-255.

(3) Unless express permission is given by parking services, university vehicles may park in pay-by-space numbered spaces, timed load/unload zones, and metered spaces only for the maximum time posted.

(4) The operator of a university vehicle is personally liable for any citation issued to the motor vehicle under these rules.

AMENDATORY SECTION (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-163 Fee schedule.** Fees for parking and the effective date thereof shall be submitted to the board of regents for approval by motion. Prior to approval by the board of regents, the university shall, after notice, hold a hearing on the proposed schedule. The hearing shall be open to the public, and shall be presided over by a presiding officer who shall prepare a memorandum for consideration by the university, summarizing the contents of the presentations made at the hearing. Approved fee schedules shall be available in the public area of the parking services offices and ~~((in))~~ on the University of Washington ((Operations Manual, D-53.4, Attachment B)) website.

AMENDATORY SECTION (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-201 Permits required for motor vehicles parked ~~((on campus))~~ during hours of operation—Assigned parking areas.** (1) Except as provided in WAC 478-116-121 and 478-116-151, no person shall park or leave

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any motor vehicle unattended by a licensed driver upon the campus during the hours of operation without a valid permit issued by parking services.

(2) Permission to park (~~on campus~~) shall be shown by display of a valid permit. Possession of a gate key card does not, in itself, constitute permission to park in a designated parking area.

**AMENDATORY SECTION** (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-211 Metered parking.** (1) Except as provided in subsections (2) and (3) of this section, any vehicle, other than a university vehicle, which occupies a metered space is subject to payment of the meter fee in accordance with the hours posted, even though the vehicle may display a valid permit.

(2) Vehicles displaying a disability permit or disability license issued by a state department of licensing shall not be subject to payment of the meter fee during the allowed meter time limit.

(3) Parking services may designate and post certain meters to allow valid permit holders to park at the meter for the allowed meter time without payment.

(4) Motor vehicles parked after the maximum time shall be subject to citation for parking over the posted time limit.

**AMENDATORY SECTION** (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-245 Obstructing traffic and pedestrian movement prohibited.** No person shall stop, stand or park any motor vehicle so as to obstruct traffic along or upon any street nor to obstruct pedestrian movement on any plaza, path, or sidewalk.

**AMENDATORY SECTION** (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-255 Prohibited parking—Space designated for a disability or wheelchair.** No motor vehicle shall be parked in a disability, wheelchair (~~or reserved parking space~~;) area(~~;~~) or lot without an appropriate permit.

**AMENDATORY SECTION** (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-291 Impoundment of motor vehicles.** Any motor vehicle parked (~~upon campus~~) may be subject to impoundment for cause as specified under WAC 478-116-401, 478-116-411 and 478-116-421. The university and its officers, employees and agents shall not be liable for loss or damage of any kind resulting from such impoundment.

**AMENDATORY SECTION** (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-301 Citation for motor vehicle violations.** (1) The university police department may issue a citation for a violation of these rules. The citation shall set forth

the date, approximate time, locality, and nature of the violation. The citation shall be served upon the person charged with the violation by delivery, mail, or placement upon the vehicle involved.

(2) The following information shall be printed on the parking citation:

(a) The fine schedule and instructions for payment;

(b) Instruction for contesting the citation, including where to obtain petitions; and

(c) Notice that failure to pay fines or contest the citation within the time specified in (~~theses~~) these rules can result in the sanctions set forth in WAC 478-116-561.

**AMENDATORY SECTION** (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-311 Motor vehicle fines and penalties.** The following schedule of fines for violation of the rules listed below is hereby established:

OFFENSE	MAXIMUM FINE
01 Obstructing traffic <u>or pedestrian movements</u> . . . . .	\$ <del>((25.00))</del>
WAC 478-116-245	<u>30.00</u>
02 Enter/exit without paying . . . . .	<del>((20.00))</del>
WAC 478-116-251	<u>25.00</u>
03 Failure to lock ignition and/or set brakes . . . . .	<del>((5.00))</del>
WAC 478-116-281	<u>10.00</u>
04 Improper display of vehicle permit. . . . .	<del>((3.00))</del>
WAC 478-116-223	<u>7.00</u>
05 Permit not registered to this vehicle . . . . .	5.00
WAC 478-116-227	
06 Occupying more than one stall or space . . . . .	10.00
WAC 478-116-271	
07 Parking in restricted parking area . . . . .	<del>((25.00))</del>
WAC 478-116-251	<u>30.00</u>
08 Parking in prohibited area . . . . .	<del>((25.00))</del>
WAC 478-116-253	<u>30.00</u>
09 Parking on planted areas . . . . .	<del>((16.00))</del>
WAC 478-116-261	<u>25.00</u>
10 Parking out of assigned area . . . . .	<del>((5.00))</del>
WAC 478-116-261	<u>10.00</u>
11 Parking over posted time limit . . . . .	<del>((16.00))</del>
WAC 478-116-251	<u>25.00</u>
12 Parking with no valid permit displayed . . . . .	25.00
WAC 478-116-201	
13 Parking at expired meter . . . . .	<del>((16.00))</del>
WAC 478-116-211	<u>25.00</u>
14 Parking outside cycle area . . . . .	<del>((5.00))</del>
WAC 478-116-221	<u>10.00</u>
15 Parking in space/area not designated for parking. . . . .	<del>((12.00))</del>
WAC 478-116-261	<u>25.00</u>

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OFFENSE	MAXIMUM FINE
16 Parking while privilege suspended . . . . . WAC 478-116-184	(( <del>50.00</del> )) <u>100.00</u>
17 Use of forged/stolen vehicle permit . . . . . WAC 478-116-184 and 478-116-227	(( <del>100.00</del> )) <u>250.00</u>
18 Use of revoked permit. . . . . WAC 478-116-231	(( <del>50.00</del> )) <u>100.00</u>
19 Unauthorized overnight parking of a motorhome . . . . . WAC 478-116-125	50.00
20 Impound . . . . . WAC 478-116-291	At cost
21 Other violations of the university parking and traffic rules . . . . .	25.00
22 (( <del>Failure to transfer a valid permit (upon application to the parking violations division the fine may be waived for the first offense in a twelve month period)</del> . . . . . WAC 478-116-223	<del>3.00</del>
23)) Parking in space designated for <u>disability or</u> wheelchair . . . . . WAC 478-116-255	(( <del>50.00</del> )) <u>250.00</u>

**AMENDATORY SECTION** (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-411 Impoundment without prior notice.** A vehicle may be impounded without reasonable attempt having been made to notify the owner of the possibility of this action only in the following circumstances:

- (1) When in the judgment of a university police officer or parking enforcement officer the vehicle is obstructing or may impede the flow of traffic, or is parked unattended in a posted fire lane; or
- (2) When in the judgment of a university police officer or parking enforcement officer the vehicle poses an immediate threat to public safety; or
- (3) When a university police officer has probable cause to believe the vehicle is stolen; or
- (4) When a university police officer has probable cause to believe that the vehicle contains or constitutes evidence of a crime, and in the police officer's judgment impoundment is necessary to obtain or preserve such evidence; or
- (5) When a driver is arrested and/or deprived of the right to leave with the driver's vehicle, and the university police are responsible for the "safekeeping" of the vehicle.

**AMENDATORY SECTION** (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-605 Bicycle parking and traffic rules.**

(1) The primary aim of the bicycle control program is safety. This aim will be achieved by keeping bicycles out of buildings, away from building exits, and parking them off paths and sidewalks. All bicycle owners are encouraged to register their bicycles at the university police department.

(2) Bicycles may be ridden any place where vehicles are permitted. They may be ridden on most sidewalks, though pedestrians always have the right of way. It shall be a violation of this section for any bicycle rider to fail to yield to pedestrians, or to ride a bicycle on paths, sidewalks or streets where signs indicate such is prohibited. An audible signal or warning must be given by the bicyclist whenever there is any appreciable risk of injury to a pedestrian not otherwise aware of the presence of the bicycle.

(3) Bicycles operated on ((~~campus~~)) paths, sidewalks and roadways shall be subject to all relevant state statutes regulating bicycle use. Violation of those statutes shall be considered a violation of this section.

(4) Bicycles shall be operated in a safe manner at all times on ((~~campus~~)) paths, sidewalks and roadways. Riding at speeds too fast for conditions, weaving in and out of vehicular or pedestrian traffic or similar unsafe actions shall be considered "negligent riding." Negligent riding shall be a violation of this section.

(5) Bicycles shall be parked only in bicycle racks. All bicycle owners are encouraged to secure their bicycles with a secure lock. At no time shall a bicycle be parked in a building, except where bicycle storage rooms are provided, near a building exit, on a path or sidewalk, in planted areas nor chained or otherwise secured to trees, lamp standards, railings, or sign posts.

(6) Moving a bicycle into any unauthorized area such as a building or construction zone is prohibited.

(7) Bicycle racks in campus areas are for parking and shall not be used for overnight storage, except for those racks adjacent to residence halls which may be used for storage when the owner/operator is a current resident of that hall.

(8) Impoundment for illegal parking.

(a) Bicycles parked in violation of subsections (5), (6) and (7) of this section will be subject to seizure and impoundment by the university.

(b) Except as provided by subsection (7) of this section, a bicycle abandoned or parked on university land for ((~~twenty one~~)) fourteen consecutive days or longer is presumed abandoned and is subject to seizure and impoundment by the university. A bicycle will not be considered abandoned when the owner/operator is unable to remove it and so notifies the university police department. A bicycle that has been obviously stripped or vandalized may be immediately impounded.

(c) Impounded bicycles will be stored at the university police department. Bicycles will be released at specified times and upon presentation of proof of ownership and payment of a ten-dollar fine. Owners of impounded bicycles, if identifiable, will be notified as soon as reasonably possible after impoundment and must reclaim their bicycle within fifteen consecutive days. Bicycles unclaimed after sixty consecutive days will be subject to sale at a public auction conducted by the university surplus property department.

(d) The university and its officers, agents and employees shall not be liable for loss or damage of any kind resulting from impoundment, storage, or sale of any item under this section.

(e) Impoundment or sale of any bicycle under this section shall not substitute for, nor release any person from lia-

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bility for damage to persons or property caused by the use of a bicycle (~~on campus~~).

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 478-116-040	Authority of university police officers.
WAC 478-116-046	Directions issued by university police officers.

**WSR 01-08-076**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**  
 [Filed April 3, 2001, 3:07 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 01-04-028.

Title of Rule: WAC 415-630-025 May I change or revoke the terms of my salary reduction agreement (SRA) during the plan year? and 415-630-030 What constitutes a qualifying change in status?

Purpose: On February 1, 2001, the Department of Retirement Systems (DRS) adopted an emergency change to WAC 415-630-030 to comply with a change in Internal Revenue Service tax regulations which provided more flexibility to the department care assistance salary reduction plan (DCAP) program. DRS is now proposing a permanent rule. Besides complying with the IRS code, DRS has broken the rule into two rules and made several other changes in an attempt to make the provisions more clear and easier to understand.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 41.04.600 - 41.04.645, U.S.C. 125, 26 C.F.R. Part 1 (Tax Treatment of Cafeteria Plans).

Summary: WAC 415-630-025 and 415-630-030 explain if and when a DCAP participant may change a salary reduction agreement, and what constitutes a qualifying change.

Reasons Supporting Proposal: IRS tax code change and DRS' interest in converting rules to "Plain English."

Name of Agency Personnel Responsible for Drafting: Merry A. Kogut, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation and Enforcement: Anne Holdren, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7009.

Name of Proponent: Department of Retirement Systems, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: On February 1, 2001, DRS adopted an emergency change to WAC 415-630-030 to comply with a change in Internal Revenue Service tax regulations which provided

more flexibility to the dependent care assistance salary reduction plan (DCAP) program. DRS is now proposing a permanent rule. Besides complying with the IRS code, DRS has broken the rule into two rules and made several other changes in an attempt to make the provisions more clear and easier to understand.

Proposal Changes the Following Existing Rules: [No information supplied by agency.]

No small business economic impact statement has been prepared under chapter 19.85 RCW. These amendments have no effect on businesses.

RCW 34.05.328 does not apply to this rule adoption. The Department of Retirement Systems is not one of the named departments in this section (RCW 34.05.328).

Hearing Location: Department of Retirement Systems, 6835 Capitol Boulevard, Boardroom 3rd Floor, Tumwater, WA, on May 8, 2001, at 11:00 a.m.

Assistance for Persons with Disabilities: Contact Rules Coordinator by seven days before hearing, if possible, phone (360) 644-7291, TTY (360) 586-5450, e-mail mer-ryk@drs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, Merry A. Kogut, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail Merryk@drs.wa.gov, fax (360) 753-3166, by 5:00 p.m. May 8, 2001.

Date of Intended Adoption: No sooner than May 9, 2001.

April 3, 2001  
 Merry A. Kogut  
 Rules Coordinator

### NEW SECTION

**WAC 415-630-025 May I change or revoke the terms of my salary reduction agreement (SRA) during the plan year?** The SRA is irrevocable during the plan year unless you have a qualifying change in status as defined in WAC 415-630-030. If you have experienced a qualifying change in status and need to change or revoke your SRA, you must fill out a new SRA form and submit it to the department. Such changes require approval by the department. An explanation of the requested change may be required.

AMENDATORY SECTION (Amending WSR 96-16-020, filed 7/29/96, effective 7/29/96)

**WAC 415-630-030 What constitutes a qualifying change(s) in ((family)) status((s))?** ~~((A participant is permitted to revoke a salary reduction agreement after the period of coverage has commenced and to enter a new salary reduction agreement regarding the remainder of the plan year if both the revocation and new election are on account of and consistent with any of the following changes in family status:))~~ The following are qualifying changes in status for purposes of DCAP:

- (1) Marriage;
- (2) Divorce or legal separation;
- (3) Death of a spouse or dependent;



(4) Addition of a dependent to the eligible employee's household, such as the birth or adoption of a child ((or addition of a dependent to the eligible employee's household));

(5) Termination of spouse's employment ((of a spouse));

(6) Employment of an unemployed spouse; and

(7) A change in the ((eligible employee's or eligible employee's spouse's working hours which significantly alters the need for dependent care; example: A shift from full time to part time, part time to full time, or a change to or from leave without pay status.

(8) Such other events that the department determines will permit a change or revocation of an election during a plan year under regulations and rulings of the Internal Revenue Service.

An eligible employee may also become a participant in the plan on the basis of a change in family status)) work hours of the eligible employee or spouse that alters the need for dependent care.

(8) A change in dependent care provider;

(9) A change in dependent care provider cost; or

(10) No longer use dependent care services.

**WSR 01-08-077**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Finance Division)

[Filed April 3, 2001, 3:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-01-068.

Title of Rule: New chapter 388-05 WAC, Contractor billing requirements—General.

Purpose: To limit the time vendors and providers can submit billing invoices to DSHS for payment. Vendors and providers would have no more than twelve months from the time a good or service was provided in which to bill the department.

Statutory Authority for Adoption: RCW 43.17.060.

Statute Being Implemented: Chapter 43.88 RCW.

Summary: This rule would limit the amount of time a vendor or provider would have to submit billing invoices to DSHS for payment. Vendors and providers would have no more than twelve months from the time a good or service was provided in which to bill the department.

Reasons Supporting Proposal: Many DSHS programs have been accepting invoices for services that were provided more than twelve months before the invoice was submitted. Late invoices create difficulty in building the agency's budget. In some cases, current budget dollars are being used to pay for services that were received in a prior budget period, or in other cases, no authority was set aside as an outstanding liability in a previous budget period to pay these outstanding bills. Some DSHS systems have difficulty in determining how an outdated bill should be paid, so staff are required to perform a significant amount of research in order to ensure a payment is accounted for properly. It also becomes more dif-

ficult to ensure a duplicate payment is not made the older an invoice becomes. A rule on this subject would help ensure programs are receiving invoices in a timely manner so that the conditions about [above] would be mitigated. This rule would also have a beneficial effect on the cash flow of our service providers and vendors.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jay Minton, Finance Division, Accounting Services, 664-5713.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule will enhance the working relationship DSHS shares with vendors and providers. It will also significantly reduce the difficulties and complexities the department experiences in budgeting as well as accounting for payment of goods and services.

Proposal Changes the Following Existing Rules: There currently is no rule limiting the time in which vendors or providers can submit billing invoices to the department.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule would not impact or reduce competition, innovation, employment, opportunities, or threaten the existence of small businesses. The rule would positively affect the cash flow of business from timelier payment from bills owed to them by the department.

RCW 34.05.328 does not apply to this rule adoption. This proposed rule does not meet the definition of a significant legislative rule.

Hearing Location: Blake Office Park (behind Goodyear Courtesy Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on May 8, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Kelly Cooper, DSHS Rules Coordinator, by May 1, 2001, phone (360) 664-6094, TTY (360) 664-6178, e-mail coopeKD@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, by May 8, 2001.

Date of Intended Adoption: No sooner than May 9, 2001.

March 30, 2001

Susan Bush

for Bonita H. Jacques, Chief  
Office of Legal Affairs

**Chapter 388-05 WAC**

**CONTRACTOR BILLING  
REQUIREMENTS—GENERAL**

NEW SECTION

**WAC 388-05-0001 What is the purpose of this chapter?** The purpose of this chapter is to establish general proce-

dures for contractors to follow when submitting claims for payment to the department of social and health services. Additional requirements may also apply.

**NEW SECTION**

**WAC 388-05-0005 What contracts does this chapter apply to?** This chapter applies to all contracts for personal or client services as defined in chapter 39.29 RCW and to all interlocal agreements governed by chapter 39.34 RCW.

**NEW SECTION**

**WAC 388-05-0010 How soon does a contractor have to submit claims for payment to the department after the services are rendered?** Each contractor who is rendering authorized services to the department or its clients shall submit claims for payment, as agreed upon between the department and the contractor, no later than twelve months after the calendar month in which the services were performed. If the claims for payment are not presented within the twelve-month period there shall not be a charge against the state. The twelve-month period may be shortened by contract or regulation. The twelve-month period may be extended by contract or regulation, but only if required by applicable state or federal law or regulation. This provision shall apply to all claims for payment submitted on or after the effective date.

**WSR 01-08-080  
PROPOSED RULES  
EXECUTIVE ETHICS BOARD**

[Filed April 3, 2001, 4:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-23-042 and 00-23-043.

Title of Rule: Chapter 292-100 WAC, Procedural rules, chapter 292-110 WAC, Agency substantive rules, and chapter 292-130 WAC, Agency organization—Public records.

Purpose: To provide rules implementing RCW 42.52.425, 34.05.220 and 42.17.250 through 42.17.320 for the Executive Ethics Board.

WAC Section	Purpose
292-100-007	To change board staff titles.
292-100-010	To change in board staff titles.
292-100-020	To add language regarding staff dismissal of complaints. (This section implements RCW 42.52.425).
292-100-030	To simplify the right to have counsel sign a compliant and reduce some unnecessary legal requirements.
292-100-040	To add a complaint acceptance and provide for a preliminary review by EEB staff of complaints prior to initiation of an investigation.

292-100-041	To add a new section that combines existing language regarding the conduct of investigations. To allow board staff to release a summary of certain complaints to the respondent rather than redacting information from complaints that request nondisclosure.
292-100-042	To add a new section that consolidates existing language regarding staff referrals of an investigation to an agency or law enforcement and uses more general language when referencing appropriate law enforcement authorities.
292-100-045	To add a new section that authorizes the executive director to dismiss complaints if they are inadvertent and minor; cured, not withing the jurisdiction of the EEB; or clearly unfounded. (This section implements RCW 42.52.425).
292-100-046	To add a new section that provides a review procedure and a standard of review when the complainant or the EEB requests a review of the executive director dismissal of a complaint. (This section implements RCW 42.52.425).
292-100-050	To make housekeeping changes.
292-100-060	To simplify the requirement that a respondent must elect certain rights after a finding of reasonable cause.
292-100-070	To move to section addressing disclosure of investigation materials files to chapter 292-130 WAC, Public records.
292-100-080	To make housekeeping changes and provide subpoena authority for the executive director - similar to existing authority in the reasonable cause prehearing phase.
292-100-100	To add a provision for a scheduling order to the prehearing conference.
292-100-110	To make housekeeping changes and move the authority for discovery issues to the presiding officer.
292-100-130	To move the authority for discovery issues to the presiding officer.
292-100-140	To move the authority for discovery issues to the presiding officer.
292-100-150	To simplify evidence production and discovery and provide for the exchange of evidence by fax.
292-100-160	To move the authority for drafting final orders to the EEB.

PROPOSED

292-100-170	To extend the initial order review timeline so that the EEB can act at the next regular meeting.
292-100-180	To adopt the brief adjudicative proceeding (BAP) process under chapter 34.05 RCW.
292-100-190	To adopt the BAP process under chapter 34.05 RCW.
292-100-200	To adopt the BAP process under chapter 34.05 RCW.
292-100-210	To adopt a simplified reconsideration process and limit reconsideration to final orders.
292-110-050	To make housekeeping changes and change board staff titles.
292-110-060	To make housekeeping changes and change board staff titles.
292-130-020	To make housekeeping changes.
292-130-030	To indicate that the EEB meetings schedule is published by the code reviser.
292-130-040	To make housekeeping changes and change board staff titles.
292-130-060	To make housekeeping changes.
292-130-065	To add a new section that describes the current indexing system for EEB records.
292-130-070	To change board staff titles.
292-130-080	To make housekeeping changes.
292-130-130	To move investigation material disclosure exemption from WAC 292-100-070.

Statutory Authority for Adoption: RCW 42.52.360 (2)(b).

Statute Being Implemented: Chapter 42.52 RCW.

Summary: To establish procedures to allow the board staff to dismiss certain complaints and for complainants to request a review of the board staff's dismissal. To provide guidance to state officials and state employees regarding the function and organization of the office, operations and procedures, and public records information.

Reasons Supporting Proposal: Establishing a board staff dismissal, with an appeal process, will allow the board to more effectively enforce chapter 42.52 RCW.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Brian R. Malarky, 1125 Washington Street S.E., Olympia, WA, (360) 664-0871.

Name of Proponent: Executive Ethics Board, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: New rules WAC 292-100-041, 292-100-042, 292-100-045, and 292-100-046. This rule will establish a procedure under which the board staff may dismiss certain complaints. The procedure also allows complainants, or board

members, to request a review of the executive director's decision to dismiss a complaint.

Proposal Changes the Following Existing Rules: This rule change clarifies the functions and organization of the office and board, which includes: Office hours, office address, meeting information, duties of the executive director, public record availability, office index and other public record information. Amendments will describe a new public records index, and clarify which documents are releasable to the public during an investigation.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business impact statement was prepared because this rule is limited to the Executive Ethics Board.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. Pursuant to RCW 34.05.328(5) the Executive Ethics Board is not an agency subject to the provision of RCW 34.05.328 (1)-(4). In addition, under RCW 34.05.328 (5)(b)(ii), these rules relate to internal governmental operations that are not subject to violation by a nongovernmental party.

Hearing Location: AGO Conference Center, 4224 6th Avenue, Building 1, Lacey, WA, 98504, on May 11, 2001, at 10:30 a.m.

Assistance for Persons with Disabilities: Contact Debbie O'Dell by May 3, 2001, (360) 586-3265.

Submit Written Comments to: Executive Ethics Board, P.O. Box 40100, Olympia, WA 98504-0100, fax (360) 664-0542, by May 3, 2001.

Date of Intended Adoption: June 8, 2001.

April 3, 2001

Brian R. Malarky  
Executive Director

AMENDATORY SECTION (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

**WAC 292-100-007 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board staff" shall include the executive (~~secretary~~) director, the investigator, attorneys who bring cases before the board, and the (~~board clerk~~) training and information specialist.

(2) "Complainant" means a person who has filed a complaint with the board.

(3) "Employing agency" means the former or current state agency of the respondent during the time the alleged violation occurred.

(4) "Party" includes the board staff and the respondent. The respondent may be represented in any matter filed under chapter 42.52 RCW by an attorney or an exclusive bargaining representative. If the respondent is represented by a person who is not an attorney, the representation shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington.

(5) "Preliminary investigation" refers to the confidential fact-finding investigation that occurs before the board's determination of reasonable cause.

(6) "Presiding officer" refers to the board chair, vice chair, a board member designated as presiding officer by the chair or vice chair, or an administrative law judge.

(7) "Respondent" means a current or former state officer or state employee alleged to have violated chapter 42.52 RCW by a complainant.

**AMENDATORY SECTION** (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

**WAC 292-100-010 Initiation of complaint.** (1) A complaint alleging a violation of chapter 42.52 RCW may be filed by:

- (a) Any person; or
- (b) The board((;)).

(2) If a member of the board or the board's staff files a complaint in his or her individual capacity, the board member or staff member shall be disqualified from acting in his or her official capacity with regard to the disposition of that complaint.

(3) Other agencies may refer information about possible violations of chapter 42.52 RCW to the board for consideration. The board may file a complaint if appropriate.

(4) Complaints initiated by the board will be signed on behalf of the board by the executive ((secretary)) director.

**AMENDATORY SECTION** (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

**WAC 292-100-020 Complaint procedures—Status of complainant and others.** (1) When a complaint has been filed with the board, neither the complainant, if other than board, nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the board. The complainant is not a party to an ethics case for any purpose; however, the board staff will give notice to the complainant and the employing agency of any open board hearings on the matter.

(2) This section does affect the right to request a review of a board staff decision to dismiss complaint, pursuant to RCW 42.52.425 and WAC 292-100-045.

(3) The person or persons alleged in a complaint to have violated chapter 42.52 RCW, are respondents as to that complaint.

**AMENDATORY SECTION** (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

**WAC 292-100-030 Procedures for filing complaints.** (1) A complaint filed with the board shall be in writing on a form provided by the board, or in an appropriate written form that includes the information in subsection (2) of this section, and signed by the complainant(~~—A complaint signed by the complainant may also be filed~~) or by the complainant's ((attorney)) counsel.

(2) A complaint shall include:

(a) The complainant's name; except that the board may choose to issue a complaint based upon information provided by a person who refuses to be identified;

(b) A statement of the nature of the alleged violation(s) ~~((or violations, date, time and place of each occurrence))~~ and the name of person(s) ((or persons)) responsible and the complaint should also include the date, time, and place of each alleged violation; and

(c) All available documentation and other evidence including any witnesses to the violation which the complainant is able to supply to demonstrate a reason for believing that a violation of chapter 42.52 RCW, or the rules adopted under it has occurred.

(3) A complaint which is incomplete, or does not contain enough information to allege a violation of chapter 42.52 RCW, will not be accepted for filing.

(4) The board will not consider allegations in a properly filed complaint that fall outside the jurisdiction of the board. The board or its staff may refer such allegations to an appropriate agency with jurisdiction.

**AMENDATORY SECTION** (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

**WAC 292-100-040 ((Investigation)) Acceptance and preliminary review of complaints.** (1) Upon ~~((acceptance of))~~ receiving a complaint, the board staff shall ~~((conduct an investigation.~~

~~((2) If board staff determine that a complaint alleges conduct which may violate a criminal statute, the staff may refer the complaint to the appropriate prosecuting attorney or the Washington State Patrol and if referred, will suspend their investigation until the prosecuting attorney or the Washington State Patrol responds as to whether criminal charges will be filed. If the prosecuting attorney elects to file criminal charges, no further action will be taken while the criminal case is pending. If the prosecuting attorney elects not to file criminal charges, board staff shall complete their investigation and follow the procedures set forth in these rules.~~

~~((3) During the course of the preliminary investigation, the board staff will give the respondent(s) a copy of the complaint and an opportunity to present such information as the respondent may desire, provided that if a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information will be deleted from the complaint.~~

~~((4) It is the intent of the board that board staff who are investigating a complaint will work with the respondent's employing agency, unless in the judgment of the investigator it will impede the investigation. During the course of the investigation, the board staff will provide the employing agency with a copy of the complaint. If a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information will be deleted from the complaint.~~

~~((5) The board staff may refer a complaint to the employing agency for investigation and recommendation of resolution. The referral will include a copy of the complaint and all supporting documentation and shall include a date for submission of the report and recommendation allowing at least 30 days. The agency receiving the referral may request additional time, if needed. During the course of the agency's investigation, the agency shall contact the respondent and~~

~~provide the respondent with a copy of the complaint. If a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information will be deleted from the complaint. The agency will provide the respondent with an opportunity to present such information as the respondent may desire)) review the complaint for completeness. If a complaint is complete, it will be accepted for filing. If a complaint is incomplete, the complaint shall be returned to the complainant with a statement of the reasons the complaint has not been accepted.~~

~~(2) Once a complaint has been accepted, board staff will review the complaint, determine the extent of investigation required and determine whether the complaint may be dismissed pursuant to RCW 42.52.425 and WAC 292-100-045.~~

#### NEW SECTION

**WAC 292-100-041 Investigation of complaints.** (1) If board staff determines that a complaint should not be dismissed pursuant to RCW 42.52.425 and WAC 292-100-045, the board staff shall conduct a preliminary investigation.

(2) During the course of the preliminary investigation, the board staff will give the respondent(s) a copy of the complaint or a summary thereof, and an opportunity to present such information as the respondent may desire, provided that if a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information shall be deleted from the complaint.

(3) It is the intent of the board that board staff who are investigating a complaint will work with the respondent's employing agency, unless in the judgment of the investigator it will impede the investigation. During the course of the investigation, the board staff shall provide the employing agency with a copy of the complaint or a summary thereof. If a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information shall be deleted from the complaint.

(4) The board staff shall reduce the results of a preliminary review or investigation to writing.

#### NEW SECTION

**WAC 292-100-042 Board staff referral of allegations.**

(1) The board staff may refer a complaint or a summary thereof to the employing agency for investigation and recommendation of resolution. The referral will include a copy of the complaint and all supporting documentation and shall include a date for submission of the report and recommendation allowing at least thirty days. If a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information shall be deleted from the complaint. The agency receiving the referral may request additional time, if needed. During the course of the agency's investigation, the agency shall contact the respondent and provide the respondent with a copy of the complaint. The agency will provide the respondent with an opportunity to present such information as the respondent may desire.

(2) If board staff determine that a complaint alleges conduct which may violate a criminal statute, the staff may refer the complaint to the appropriate law enforcement authority

and if referred, will suspend their investigation until the law enforcement authority responds as to whether criminal charges will be filed. If the law enforcement authority elects to file criminal charges, no further action will be taken while the criminal case is pending. If the law enforcement authority elects not to file criminal charges, board staff shall complete their investigation and follow the procedures set forth in these rules.

#### NEW SECTION

**WAC 292-100-045 Executive director's dismissal of complaints.** (1) If after a preliminary review or investigation the board staff determines that:

(a) Any alleged violation that may have occurred is not within the jurisdiction of the board;

(b) The complaint is obviously unfounded or frivolous; or

(c) The complaint presents a violation of chapter 42.52 RCW, but any violation that may have occurred does not constitute a material violation because it was inadvertent and minor, or has been cured, and, after consideration of all of the circumstances, further proceedings would not serve the purposes of this chapter, the executive director may dismiss the complaint by issuing an order of dismissal.

(2) The preliminary review or investigation report and a written notice of the executive director's order of dismissal shall be provided to the complainant, respondent, and the board.

#### NEW SECTION

**WAC 292-100-046 Complainant's request for review of executive director's dismissal order.** (1) Upon the written request of the complainant, the executive director's order of dismissal will be reviewed by the board.

(2) A request for review must be received at the board's administrative office no later than twenty days after the date the order of dismissal is mailed to the complainant.

(3) A request for review shall state the grounds therefor.

(4) When a request for review is received, the board staff shall prepare a record for the board's review and serve notice upon the respondent that a review has been requested. The record will consist of:

(a) The complaint;

(b) The preliminary review or investigation report, as applicable;

(c) The order of dismissal;

(d) The complainant's request for review;

(e) The executive director's response to the request for review; and

(f) Any additional material requested by the chair.

(5) The board shall review the record and deliberate in closed session, without oral argument, and act on the request at the next meeting at which it may be practicable by:

(a) Affirming the dismissal;

(b) Directing board staff to conduct further investigation;

or

(c) Issuing a determination that there is reasonable cause to believe that a violation has been or is being committed.

PROPOSED

(6) In reviewing the executive director's order of dismissal, the board shall base its review on whether the executive director had a rational basis for the decision. The board only shall reverse a decision to the extent that a rational basis is lacking.

(7) The board's decision shall be reduced to writing and provided to the complainant and the respondent.

#### NEW SECTION

**WAC 292-100-047 Board member's request for review of executive director's dismissal order.** (1) Upon the written request of a board member, the executive director's order of dismissal will be reviewed by the board.

(2) The preliminary review or investigation report and a written notice of the executive director's order of dismissal shall be provided to the board at the next regular meeting.

(3) A request for review by a board member must be received by the executive director no later than twenty days after the date the order of dismissal is provided to the board.

(4) When a request for review is received, the board staff shall prepare a record for the board's review and serve notice upon the respondent that a review has been requested. The record will consist of:

(a) The complaint;

(b) The preliminary review or investigation report, as applicable;

(c) The order of dismissal;

(d) Any additional material requested by the chair or the board member who requested the review.

(5) The board shall review the record, consider the request in executive session, and act on the request at the next meeting at which it may be practicable by:

(a) Affirming the dismissal;

(b) Directing board staff to conduct further investigation; or

(c) Issuing a determination that there is reasonable cause to believe that a violation has been or is being committed.

(6) The board's decision shall be reduced to writing and provided to the complainant and the respondent.

AMENDATORY SECTION (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

**WAC 292-100-050 Determination on reasonable cause.** (1) Following the preliminary investigation, the board staff shall prepare a written investigation report and make a recommendation to the board on whether to find reasonable cause, including a recommendation as to whether the penalty may be greater than \$500.

(2) Upon receipt of the board staff's investigation report and recommendation, the board shall determine whether or not there is reasonable cause to believe that a violation of chapter 42.52 RCW has occurred.

(3) The board's reasonable cause determination shall be done in closed session.

(4) If the board finds reasonable cause, the board shall consider whether the penalty and costs for the alleged violation may be greater than \$500. If the board ~~((concludes that the potential))~~ may wish to impose penalty and costs ~~((may~~

~~be))~~ greater than \$500, the respondent shall be given the option to have an administrative law judge conduct the hearing and rule on procedural and evidentiary matters. If the respondent is not given that option, the board may not impose ~~((a))~~ penalty ~~((or))~~ and costs greater than \$500. The board may, on its own initiative, choose to retain an administrative law judge to conduct any hearing.

(5) Upon receipt of an investigation report and recommendation on a complaint referred to the employing agency for investigation, the board shall either:

(a) Reject the report and recommendation and initiate its own investigation; or

(b) Concur with the report and recommendation and either initiate a hearing if the recommended penalty is a monetary fine or refer the matter to the employing agency for implementation of the recommendation if the recommendation is within the agency's authority to implement. The agency shall report implementation to the board and the board shall dismiss the complaint; or

(c) Concur with the report and recommendation, enter a finding of no reasonable cause and dismiss the complaint; or

(d) Concur with the report and recommendation, consider the report an investigative report, enter a finding of reasonable cause, and proceed under this section.

AMENDATORY SECTION (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

**WAC 292-100-060** ~~((Filing of answer—))~~ **Notice of hearing—Filing of answer.** (1) Following the board's determination on reasonable cause, the board shall provide the complainant, the respondent and the employing agency with a copy of the written determination on reasonable cause~~((;))~~ and a copy of the board staff's written investigation report~~((; and a copy of the complaint. If a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information will be deleted))~~. If reasonable cause is found, the determination of reasonable cause shall include a statement of the alleged violations. Prior to scheduling a public hearing, the board shall provide the respondent with an explanation of the option to request that the hearing be conducted by an administrative law judge if the penalty and costs for the alleged violation may be greater than \$500.

(2) Within 30 days of service of the written determination on reasonable cause, the respondent shall file an answer to the written determination on reasonable cause which shall state his/her response to the alleged violations. The answer shall include either a request for or a waiver of the right to request an administrative law judge if the penalty and costs for the alleged violation may be greater than \$500.

(3) Failure to file an answer to the written determination on reasonable cause within 30 days of service constitutes a default, and the board may proceed to resolve the case without further notice to, or hearing for the benefit of, the respondent.

(4) Within 10 days after service of a default order under subsection (3) of this section, the respondent may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a

party may file a written motion under this subsection, the board chair or a designated board member may adjourn further proceedings or conduct them without the participation of the respondent.

(5) Within 30 days of service of the written determination on reasonable cause, the respondent shall ~~((file a request for hearing. The request shall include either a request for or a waiver of))~~ have the right to request an administrative law judge if the penalty and costs for the alleged violation may be greater than \$500. If the respondent fails to request an administrative law judge within 30 days, the right to have the matter presided over by an administrative law judge is waived. If the respondent does not request an administrative law judge within 30 days and has not defaulted pursuant to this section, the board staff may, at its option, commence an adjudicative proceeding to resolve the matter.

(6) The respondent shall be notified of the date of the hearing no later than ~~((30))~~ 20 days before the hearing date.

AMENDATORY SECTION (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

**WAC 292-100-080 Investigation procedures—Subpoenas.** (1) During the course of an investigation, the board, ~~((or any))~~ a board member, or the executive director, may issue a subpoena directed to any person who is likely to possess information which is relevant and material to the investigation. The subpoena shall:

- (a) Specifically describe the information which is sought, and
- (b) Require the production of information at a reasonable place and time, but no later than ten days from the date it is served, and
- (c) Notify the person that if the information is not produced, the board will apply to the superior court for an appropriate order or other remedy. The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(2) The board may issue a subpoena under RCW 42.52.390 to compel persons to appear and give testimony and may require the production of any books, papers, correspondence, memorandums or other documents which the board deems relevant and material.

AMENDATORY SECTION (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

**WAC 292-100-100 Prehearing conference—Rule.** (1) In any proceeding, the presiding officer upon his/her own motion or upon request by board staff or the respondent or their counsel, may direct the board staff or respondent to appear at a specified time and place for a conference to consider:

- (a) Simplification of issues;
- (b) The necessity of amendments to the hearing notice;
- (c) The possibility of obtaining stipulations, admissions of facts and of documents;
- (d) Limitation on the number of witnesses;
- (e) Authorizing discovery by any party; ~~((and))~~
- (f) Scheduling order; and

(g) Procedural and such other matters as may aid in the disposition of the proceeding.

(2) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.

(3) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken and decisions made at the conference. If no objection to the order is filed with the presiding officer within seven days after the date the order is mailed, the order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

AMENDATORY SECTION (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

**WAC 292-100-110 Hearings—Discovery—Subpoenas.** (1) The board, a board member, or the executive ~~((secretary))~~ director may issue subpoenas for discovery, subpoenas to persons to appear and give testimony, and may require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material and the board or presiding officer may issue protective orders as appropriate. Any party may issue subpoenas. All subpoenas for hearings must be filed with the ~~((board))~~ presiding officer, together with proof of proper service, at least five days prior to the date of the hearing for which they are issued. All subpoenas will be issued and may be enforced in the form and manner set forth in RCW 34.05.446 and WAC 10-08-120.

(2) The ~~((board))~~ presiding officer, upon motion and before the time specified in the subpoena for compliance therewith, may:

- (a) Quash or modify the subpoena if it is unreasonable and oppressive; or
- (b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(3) The attendance of witnesses and such production of evidence may be required from any place within the state of Washington to any location where a hearing is being conducted.

AMENDATORY SECTION (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

**WAC 292-100-130 Hearings—Discovery—Depositions and interrogatories—Notice.** A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than five ~~((business))~~ days in writing to the presiding officer and all parties. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. On motion of a party to whom the notice is served, the presiding officer may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

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AMENDATORY SECTION (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

**WAC 292-100-140 Depositions and interrogatories in hearings—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 presiding officer may 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 the ~~((board))~~ presiding officer 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 the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the presiding officer may order the party conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed only upon the order of the ~~((board))~~ presiding officer. 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.

AMENDATORY SECTION (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

**WAC 292-100-150 Discovery—Production of documents and use at hearing.** (1) Upon request by either party, copies of all materials to be presented at the hearing shall be provided to the requester within seven days of the request but, for good cause shown, not less than three business days prior to the date of the hearing.

(2) When documents are to be offered into evidence at the hearing, the one offering the exhibit shall provide a minimum of ten copies ~~((, for the opposing party, members of the board, the board's legal counsel, and board staff)).~~

(3) If documentary evidence has not been exchanged prior to the hearing, the parties shall arrive at the hearing location or make documents available in sufficient time before the time scheduled for the hearing for the purpose of exchanging and making copies of exhibits to be introduced.

AMENDATORY SECTION (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

**WAC 292-100-160 Conduct of hearings.** (1) A hearing shall be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW) and its supporting regulations (chapter 10-08 WAC), shall be followed unless modified by chapter 292-100 WAC.

(2) A hearing shall be conducted either by the board or by an administrative law judge. If an administrative law judge participates, either by request of a respondent or by request of the board, the board may choose to sit with the administrative law judge to hear the matter and to enter a final order at the conclusions of the proceedings; or to have the administrative law judge hear the matter alone and prepare an initial order for review by the board. If an administrative law judge sits with the board, he or she shall rule on procedural and evidentiary matters.

(3) After the hearing the board may ~~((find))~~ conclude that:

(a) The respondent(s) did not violate the act, as alleged, and dismiss the case; or

(b) The respondent(s) has (have) violated chapter 42.52 RCW; or

(c) The respondent(s) is (are) in violation of chapter 42.52 RCW, the board's remedy would be inadequate and the matter should be referred to the appropriate law enforcement agency as provided in RCW 42.52.470.

(4) Following a hearing in which the board participates, the board:

(a) Shall set forth in writing its findings of fact, conclusions of law and decision on the merits of the case; and

(b) Shall serve each party, the complainant and the employing agency, a copy of the findings of fact, conclusions of law and decision.

(5) Following a hearing in which the board does not participate, the administrative law judge shall:

(a) Set forth written findings of fact, conclusions of law and decision on the merits of the case in an initial order;

(b) Shall serve each party and board staff a copy of the findings of fact, conclusions of law and decision, including a statement of the right to request review of the initial order by the board.

AMENDATORY SECTION (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

**WAC 292-100-170 Review of initial orders by an administrative law judge.** (1) An initial order by an administrative law judge shall become the final order of the board within ~~((twenty))~~ forty-five days of the initial order unless:

(a) ~~((The board, upon its own motion,))~~ A board member determines that the initial order should be reviewed as provided in WAC 292-100-175;

(b) A party files a petition for review of the initial order within ~~((twenty))~~ thirty days of the entry of the initial order.

(2) The petition for review will specify the portions of the initial order to which exception is taken and will refer to the evidence of record relied upon to support the petition.

(3) Petitions for review shall be filed with the executive ~~((secretary))~~ director and served on all other parties. The party not filing the petition for review shall have twenty days to reply to the petition for review. The reply shall be filed with the executive ~~((secretary))~~ director and copies of the reply shall be served on all other parties or their counsel at the time the reply is filed, and may cross-petition for review. If the reply contains a cross-petition, it shall specify portions of the initial order to which exception is taken by the replying



party, and shall refer to the evidence of the record relied upon to support the reply.

(4) The board shall personally consider the whole record or such portions of it as may be cited by the parties.

(a) The board shall afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument.

(b) The board shall enter a final order disposing of the proceeding.

(c) The board shall serve copies of the final order on all parties, the complainant, and the employing agency.

#### NEW SECTION

**WAC 292-100-175 A board member's request for review of initial orders.** (1) Five days after receiving an initial order by an administrative law judge the executive director shall serve a copy of the initial order upon each board member.

(2) A board member who is requesting review of an initial order shall provide written notice to the executive director within thirty days of service on the board member.

(3) Upon receipt of a board member's notice of review the executive director shall serve the notice of review on all other parties.

(4) The board shall personally consider the whole record or such portions of it as may be required for its deliberation.

(a) The board may afford each party an opportunity to present written argument or afford each party an opportunity to present oral argument.

(b) The board shall enter a final order disposing of the proceeding.

(c) The board shall serve copies of the final order on all parties, the complainant, and the employing agency.

AMENDATORY SECTION (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

**WAC 292-100-180 Brief (~~(enforcement hearing)~~) adjudicative proceeding—Authority.** Pursuant to RCW 34.05.482 through 34.05.494, after a finding of reasonable cause and notwithstanding the provision of WAC 292-100-050 through 292-100-170, the board may provide a brief (~~(enforcement hearing for)~~) adjudicative proceeding as set forth in WAC 292-100-190 for alleged violations of provisions in chapter 42.52 RCW in which the facts are undisputed, the violations appear to be relatively minor in nature, and (~~(a)~~) the penalty and costs no greater than \$500 will be assessed for the violations.

AMENDATORY SECTION (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

**WAC 292-100-190 Brief (~~(enforcement hearing)~~) adjudicative proceeding—Procedure.** (1) A brief (~~(enforcement hearing)~~) adjudicative proceeding may be presided over by the chair, or a member of the board designated by the chair.

(2) When a violation is alleged, before taking action, the executive (~~(secretary)~~) director shall send the alleged violator notice, which shall include:

(a) (~~(Alleged violation);~~) The determination of reasonable cause and the investigative report;

(b) The maximum amount of the penalty and costs which can be imposed at the hearing (~~(and the amount of any proposed fine)~~); and

(c) Person's right to respond, within (~~(ten)~~) twenty days, either in writing or in person to explain his/her view of the matter.

(3) At the time of the hearing if the presiding officer believes alleged violations (~~(are of such magnitude as to merit penalties and costs greater than \$500)~~) no longer meet the criteria in WAC 292-100-180, the presiding officer shall immediately adjourn the (~~(hearing)~~) brief adjudicative proceeding and direct the matter to be scheduled for (~~(an enforcement)~~) a public hearing by the full board or an administrative law judge.

(4) At the time any unfavorable action is taken, the presiding officer shall serve upon each party a written statement describing the violation, the reasons for the decision, the penalty and costs imposed and their right to request review by the board (~~(at the next scheduled board meeting)~~).

(5) The written decision of the presiding officer is an initial order. If no review is taken of the initial order, the initial order shall be the final order.

AMENDATORY SECTION (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

**WAC 292-100-200 Brief (~~(enforcement hearing)~~) adjudicative proceeding—Administrative review procedures.** (1) The board will conduct a review of the initial order upon the written or oral request of a party if the board receives the request within (~~(twenty-one)~~) twenty days after the service of the initial order.

(2) If the parties have not requested review, the board may conduct a review of the initial order upon its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(3) The order on review shall be in writing stating the findings made, and the reasons for the decision, and notice that judicial review is available. The order on review shall be entered within twenty-one days after the date of the initial order or of the request for review, whichever is later.

AMENDATORY SECTION (Amending WSR 99-06-073, filed 3/2/99, effective 4/2/99)

**WAC 292-100-210 Reconsideration (~~(and review of decisions)~~) of final orders.** (1) (~~(For purposes of this rule, "decision" means any findings, conclusions, order, or other action by the board which is reviewable by a court.~~)

(2) A decision may be reconsidered only upon:

(a) The written request of a party; or

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~~(b) The motion or written request of a board member who voted on the prevailing side when that decision was made.~~

~~(3)) Within ten days of the service of a final order, any party may file a petition for reconsideration as provided in RCW 34.050.470.~~

~~(2) Such a request for reconsideration shall be served at the office of the board and on all parties, or motion made, no later than ten days after service of the decision of which reconsideration is sought. ((4)) A request or motion for reconsideration shall specify the grounds therefor.~~

~~((5) When a request for reconsideration is served, or motion made, enforcement of the decision of which reconsideration is sought shall be stayed and the decision shall not be final until the board has acted on the reconsideration.) (3) Any party may respond to a request ((or motion)) for reconsideration. The response is due no later than ten days after the party is served with the request ((of motion)).~~

~~((6) The board shall act on the reconsideration, at the next meeting at which it practicably may do so by:~~

~~(a) Deciding whether to reconsider its decision; and~~

~~(b) If it decides to do so, either affirming or amending its decision. A copy of the board's decision on reconsideration shall be served on all parties, the complainant, and the employing agency.~~

~~(7) Upon being served with a decision, the respondent may treat that decision as final for the purpose of petitioning for judicial review. The board may not reconsider any decision after being served with a petition for judicial review.)~~

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 292-100-070 Investigation materials not disclosable during investigation.

AMENDATORY SECTION (Amending WSR 98-03-045, filed 1/15/98, effective 2/15/98)

**WAC 292-110-050 Advisory opinions.** State officers and employees are encouraged to seek an advisory opinion whenever they have questions concerning ethical standards or potential conflicts of interest. Advisory opinions are intended to provide guidance to a state officer or state employee in advance of an action or decision and thereby prevent ethics violations.

(1) Whenever requested by a state officer, state employee, or other person, or whenever it deems it in the public interest, the board shall issue advisory opinions. Requests for advisory opinions, if not issued in response to a motion by the board, shall be written and signed, and addressed to either the chair of the board or the ~~((board secretary))~~ executive director. Requests may be made by electronic mail. Each request should provide sufficient information and circumstances to enable the board to evaluate the request and issue the advisory opinion.

(2) Upon receiving a request for an advisory opinion, the ~~((board secretary))~~ executive director shall, within fifteen calendar days of receipt, acknowledge the request. Persons requesting advisory opinions shall be notified of the status of the request at thirty day intervals until final action is taken.

(3) The board shall either:

(a) Deny the request and state the reason(s) for the denial; or,

(b) Issue a written advisory opinion.

(4) An advisory opinion is final when it has been approved by the board and is signed by the ~~((board secretary))~~ executive director.

(5) A person requesting an advisory opinion may, upon receiving the opinion, petition the board for reconsideration within thirty days of the date the opinion is issued if the person believes that the opinion is erroneous in factual detail. A petition for reconsideration shall be written and signed, and shall briefly state the errors of fact. The board may deny the petition if it lacks merit, or if the person who submitted the request provided erroneous information to the board.

(6) If a state officer or state employee receives an advisory opinion and fails to make a good faith effort to follow its guidance, the board shall give this fact weight when considering a complaint alleging a violation based on the advice received.

(7) Informal staff analysis. It is the responsibility of the ~~((board secretary))~~ executive director to provide ethics advice to any state officer, state employee, or other person; however, a state officer, state employee, or other person may only rely on written ethics advice. In providing such advice, the ~~((board secretary))~~ executive director may issue a written nonbinding staff analysis. A nonbinding staff analysis is intended to provide ethics guidance and advice in an expeditious manner, but does not substitute for a formal advisory opinion from the board. The ~~((board secretary))~~ executive director shall provide a disclaimer to the person requesting the nonbinding staff analysis that the advice is solely the opinion of the ~~((board secretary))~~ executive director and not the opinion of the board or in any respect binding on the board. Only advisory opinions issued by the board and complaints decided by the board may be relied on for determining how the board will interpret a provision of the Ethics in Public Service Act.

(a) In considering a complaint alleging a violation, the board will give weight to the fact that the person charged in the complaint relied in good faith on written advice from the ~~((board secretary))~~ executive director.

(b) The board may review staff analyses provided under this subsection and may approve or disapprove of any advice so provided. However, any such approval or disapproval is limited to whether staff had reasonable grounds for the advice and should not be interpreted as indicating approval or disapproval of the advice provided.

AMENDATORY SECTION (Amending WSR 98-04-001, filed 1/21/98, effective 2/21/98)

**WAC 292-110-060 Compensation for outside activities and contracting with state agencies.** (1) The primary purpose of the Ethics in Public Service Act is to prevent con-

licts of interest that impair the impartial and independent judgment of state officers and employees. A conflict of interest may occur when a state officer or state employee accepts compensation for outside activities, and acceptance conflicts with the performance of official duties on behalf of the state and the citizens of Washington. Conflicts of interest occur whenever a state officer or state employee has a beneficial interest in a transaction with the state; accepts outside compensation for the performance or non-performance of an official duty; or, accepts or seeks outside compensation relating to a matter in which the officer or employee participated in an official capacity. A conflict of interest extends to those matters in which a state officer or employee exercises responsibility. Potential conflicts of interest relating to the receipt of compensation for outside activities may be resolved by seeking the review and prior approval of the executive ethics board.

(2) A state officer or employee may not receive anything of economic value under a contract or grant outside his or her official duties unless each of the following conditions is met:

(a) The contract or grant is legitimate and actually performed;

(b) The contract or grant is not within the state officer's or employee's official duties, is not under his or her supervision; is not created or authorized by the state officer or employee in an official capacity, and is not within an area of his or her official responsibility;

(c) The contract or grant is not performed for nor compensated by a person from whom the state officer or employee would not be able to accept a gift; and,

(d) The contract or grant would not require the disclosure of confidential or nonpublic information.

(3) A state officer or employee may not engage in a business or transaction or professional activity, or incur an obligation of any nature if such activities may conflict with the proper discharge of official duties.

(4) A state officer or employee may not enter into a contract or receive a grant, or have a beneficial interest in a contract or grant with a state agency unless all conditions in section two are met, and one of the following conditions are satisfied:

(a) The contract bid or grant application is awarded through an open and competitive bidding process and more than one bid or grant application is received; or

(b) If only one bid or application is received, or the process for awarding the contract or grant was not open and competitive, and the executive ethics board has advised that the employee's interest in the contract or grant is not in conflict with the proper discharge of the employee's official duties.

(5) Provided that the conditions in sections two and three are met, the following contracts are approved by the executive ethics board:

(a) A contract or grant whereby the state officer or state employee receives assistance through state programs or federal programs administered by the state when they are entitled to receive such assistance by law and on the same basis as similarly situated citizens, and when the officer or employee does not exercise discretionary judgement with

regard to an assistance program for which he or she is otherwise eligible;

(b) A contract to perform teaching duties at a bona fide community college, vocational-technical school, or institution of higher learning, provided no state resources are used to perform the duties; there is no conflict with the performance of official duties; and the state officer or state employee did not use his or her official position to influence the contract of employment; and,

(c) A contract held by a spouse, in which the officer or employee has a beneficial interest, with a state agency, provided that the officer or employee did not participate in the contract.

(d) An employee who has a contract or grant or a beneficial interest therein which is approved by the board under section (5)(a)-(c) of this rule is not required to file a separate application for approval of the contract under section (6). However, the employee is responsible for determining that the criteria in sections (2) and (3) are satisfied.

(e) An employee who is awarded a contract or grant under section (5)(a)-(c) of this rule shall file a copy of the contract with the board. However, if the employee's only interest is a beneficial interest, the contract need not be filed with the board.

(6) State officers and employees seeking the approval of the board for a contract, grant application, or outside employment shall provide the following information to the ~~((board secretary))~~ executive director no later than thirty days prior to the commencement of the contract:

(a) A description of current official duties and responsibilities;

(b) A statement of the work to be performed and, a copy of the contract;

(c) The duration and dollar value of the contract, if applicable;

(d) A statement that no state resources will be used to perform the outside employment or to fulfill the contract or grant; and,

(e) A description of how the work will be performed without the use of state resources.

(7) The ~~((board secretary))~~ executive director shall review the contract or grant application terms and related documents and may determine whether there could be a potential conflict. If the board secretary determines:

(a) There would be no potential conflict under sections two and three of this rule, the ~~((board secretary))~~ executive director shall approve the contract or grant application.

(b) There could be a potential conflict under sections two and three of this rule, the ~~((board secretary))~~ executive director shall refer the contract or grant application to the board for approval or disapproval.

(8) If a contract has been amended or the scope of work altered, and the effect of the amendment or alteration may create a potential conflict of interest under sections two and three of this rule, the employee must resubmit the contract to the board at least fifteen days prior to commencement of work under the amended or altered contract.

(9) If a series of substantially identical contracts or grants with a state agency is anticipated, the state officer or employee may request that the board preapprove such con-

tracts or grants. Preapproval shall be effective for the period of one calendar year, after which the state officer or employee shall resubmit the request.

(10) The ~~((board secretary))~~ executive director shall provide written notice of any action on a contract bid, grant application or request for outside employment within fifteen working days of the board's action.

(11) Final contracts reviewed under this rule shall be filed with the ~~((board secretary))~~ executive director within thirty days of execution.

AMENDATORY SECTION (Amending WSR 98-22-072, filed 11/3/98, effective 12/4/98)

**WAC 292-130-020 Function—Organization—Office.** The executive ethics board was created by chapter 42.52 RCW to enforce the state's ethics law and rules adopted under it with respect to statewide elected officers and all other officers and employees in the executive branch, boards and commissions, and institutions of higher education.

The executive ethics board consists of five members, appointed by the governor as follows: One member shall be a classified service employee; one member shall be a state officer or state employee in an exempt position; one member shall be a citizen selected from a list of three names submitted by the attorney general; one member shall be a citizen selected from a list of three names submitted by the state auditor; and, one member shall be a citizen at large selected by the governor.

The board's administrative office is located at 1125 Washington Street SE, ~~((6th))~~ 5th Floor, P.O. Box 40100, Olympia, Washington, 98504-0100. The office hours are 8:00 a.m. to noon and 1:00 p.m. to ~~((5:00))~~ 4:00 p.m., Monday through Friday except legal holidays and during regularly scheduled board meetings.

AMENDATORY SECTION (Amending WSR 98-22-072, filed 11/3/98, effective 12/4/98)

**WAC 292-130-030 Operations and procedures.** ~~((Board members meet the second Friday of each month, except for the months of August and December, at such times and places as are deemed necessary for the conduct of agency business.))~~ The board holds regular scheduled meetings in accordance with a schedule filed with the code reviser's office and published in the *Washington State Register*. All meetings are conducted in accordance with the Open Public Meetings Act (chapter 42.30 RCW). Three members of the board constitute a quorum. Any matter coming before the board may be decided by a majority vote of those members present and voting. Minutes shall be taken at all meetings.

The board issues advisory opinions; develops education and training materials; investigates, hears, and determines complaints; reviews and approves agency ethics policies; and, reviews, approves, or denies contracts between state officers and employees and state agencies.

Written communications intended for board consideration or action shall be filed with the administrative office.

AMENDATORY SECTION (Amending WSR 98-22-072, filed 11/3/98, effective 12/4/98)

**WAC 292-130-040 Executive ~~((secretary))~~ director.** The executive ~~((secretary))~~ director shall perform the following duties under the general authority and supervision of the board:

(1) Make initial determinations, pursuant to RCW 42.52.425 and WAC 292-100-045, regarding complaints received by the board;

(2) Render informal nonbinding advice, pursuant to RCW 42.52.360 (2)(b) and (c) and WAC 292-110-050;

(3) Make initial determinations, pursuant to RCW 42.52.120 and WAC 292-110-060, regarding approval of certain contracts between state agencies and state officers or employees;

(4) Act as records officer and administrative arm of the board~~((:));~~

~~((2))~~ (5) Coordinate the policies of the board and the activities of board staff~~((:));~~ supervise board staff as appropriate;

~~((3))~~ (6) Act as a liaison between the board and other public agencies~~((:));~~ and

~~((4))~~ (7) Conduct ethics training and information outreach.

AMENDATORY SECTION (Amending WSR 98-22-072, filed 11/3/98, effective 12/4/98)

**WAC 292-130-060 Index.** Prior to January 1, 2001, the board ~~((has))~~ indexed by subject matter the advisory opinions of the board. The index is maintained in the administrative office and is accessible at the board's web site located at [www.wa.gov/ethics](http://www.wa.gov/ethics).

The volume of correspondence managed by the office is such that it would be unduly burdensome to formulate and maintain an index of all correspondence. In lieu of an index, the following filing system is utilized at the board's administrative office:

(1) Complaints received by the board are indexed by year, number, and name of the respondent and agency.

(2) Whistleblower referrals from the state auditor are indexed by whistleblower case number.

(3) Contract approvals are filed by year and name of the state employee.

(4) Agency ethics policies are filed by agency name.

#### NEW SECTION

**WAC 292-130-065 Index.** The board has indexed by subject matter the advisory opinions of the board. The index is maintained in the administrative office and is accessible at the board's web site located at [www.wa.gov/ethics](http://www.wa.gov/ethics).

The volume of correspondence managed by the office is such that it would be unduly burdensome to formulate and maintain an index of all correspondence. In lieu of an index, the following filing system is utilized at the board's administrative office:

(1) Complaints, including referrals from the state auditor, received by the board are indexed by year, month, day,

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and sequential number. Complaints that are referred for full investigation are indexed by year and sequential case number.

(2) Requests for advisory opinions, including informal staff analysis, are indexed by year, month, day, and sequential number. Advisory opinions issued by the board are indexed by year and sequential opinion number.

(3) Requests for contract approvals, under WAC 292-110-060 are indexed by year, month, day, sequential number and name of the state employee.

(4) Requests for board review of agency ethics policies, filed under RCW 42.52.360(4) are indexed by year, month, day, and sequential number. Agency ethics policies that are approved by the board are indexed by year, month, day, sequential policy number, and agency name.

**AMENDATORY SECTION** (Amending WSR 98-22-072, filed 11/3/98, effective 12/4/98)

**WAC 292-130-070 Public records—Officer.** The public records officer for the ~~((administrative office))~~ board shall be the executive ~~((secretary))~~ director to the board.

**AMENDATORY SECTION** (Amending WSR 98-22-072, filed 11/3/98, effective 12/4/98)

**WAC 292-130-080 Hours for seeking public records.** Public records shall be available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to ~~((4:30))~~ 4:00 p.m., Monday through Friday, excluding legal holidays and during regularly scheduled board meetings.

**AMENDATORY SECTION** (Amending WSR 98-22-072, filed 11/3/98, effective 12/4/98)

**WAC 292-130-130 Exemptions.** (1) The ~~((administrative office))~~ board reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 292-130-060 is exempt under the provisions of RCW 42.17.310.

(2) It is the policy of the board during the course of any investigation that all records generated or collected as a result of that investigation are exempt from public inspection and copying under RCW 42.17.310 (1)(d). The investigation is not considered complete until a case is resolved either by a stipulation and settlement that is signed by all parties; or, when the board enters a final order after a public hearing. If a public records request is made following a signed stipulation and settlement or a final order for any such record which implicates the privacy of an individual, written notice of the records request will be provided to the individual in order that such individual may request a protective order from a court under RCW 42.17.330. The following records are not considered part of the investigation file and are releasable upon request:

(a) Complaints, upon receipt by the respondent;

(b) The board staff's preliminary review or investigation report;

(c) The board's findings of reasonable cause or no reasonable cause; and

(d) Proposed stipulations and settlements, upon receipt by the board.

(3) In addition, pursuant to RCW ~~((42.17.260(1)))~~ 42.17.310, the office reserves the right to ~~((delete identifying details))~~ withhold or delete information when it makes available or publishes any public record in any cases where there is reason to believe that disclosure of such details ~~((would be an invasion of personal privacy protected by))~~ otherwise exempt from disclosure under chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.

~~((3))~~ (4) Any denial 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 records withheld.

**WSR 01-08-081**

**PROPOSED RULES**

**BOARD OF**

**PILOTAGE COMMISSIONERS**

[Filed April 3, 2001, 4:33 p.m.]

Original Notice.

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

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

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

Other Identifying Information: WAC 363-116-300.

Statutory Authority for Adoption: RCW 88.16.035.

Statute Being Implemented: RCW 88.16.035.

Summary: The proposed rule reflects a 6.65% increase in all categories except transportation to be charged for pilotage services in the Puget Sound pilotage district for the 2001-2002 tariff year.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Board of Pilotage Commissioners, 2911 2nd Avenue, Suite 100, Seattle, WA, (206) 515-3904.

Name of Proponent: Puget Sound Pilots, private.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Current rates for the Puget Sound pilotage district expire on June 30, 2001. New rates must be set annually.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule as proposed by the Puget Sound pilots would increase the tariff for pilotage services in the Puget Sound pilotage district by 6.65% over the present tariff in all categories except transportation.

Proposal Changes the Following Existing Rules: The proposed rule is a 6.65% increase over the existing tariff in all categories except transportation.

PROPOSED

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is being considered in the context of the required annual revision to the rates charged for pilotage services. The application of the 6.65% increase is clear in the proposed tariff below and represents a minor economic impact on shipping costs.

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

Hearing Location: 2911 2nd Avenue, Level B Conference Room, Seattle, WA 98121, on May 10, 2001, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Peggy Larson by May 7, 2001.

Submit Written Comments to: Harry Dudley, Chairman, 2911 2nd Avenue, Suite 100, Seattle, WA 98121, fax (206) 515-3969, by May 3, 2001.

Date of Intended Adoption: May 10, 2001.

April 3, 2001  
Peggy Larson  
Administrator

**AMENDATORY SECTION** (Amending WSR 00-11-119, filed 5/22/00, effective 7/1/00)

**WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district.** Effective 0001 hours July 1, (~~2000~~) 2001, through 2400 hours June 30, (~~2001~~) 2002.

CLASSIFICATION	RATE
Ship length overall (LOA)	
Charges:	per LOA rate schedule in this section
Boarding fee:	( <del>(\$36.00)</del> ) <u>\$38.00</u>
Per each board- ing/deboarding at the Port Angeles pilot sta- tion.	
Harbor shift - Live ship (Seattle Port)	LOA Zone I
Harbor shift - Live ship (other than Seattle Port)	LOA Zone I
Harbor shift Dead ship	Double LOA Zone I
Dead ship towing charge:	Double LOA
LOA of tug+ LOA of tow+ beam of tow	Zone

Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.

**Waterway and bridge charges:**

Ships up to 90' beam:

A charge of (~~(\$189.00)~~) \$202.00 shall be in addition to bridge fees for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle, south of Eleventh Street in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of (~~(\$90.00)~~) \$96.00 per bridge.

Ships 90' beam and/or over:

A charge of (~~(\$255.00)~~) \$272.00 shall be in addition to bridge fees for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle and south of Eleventh Street in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of (~~(\$179.00)~~) \$191.00 per bridge.

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

Two or three pilots required:

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

Compass adjustment	( <del>(\$254.00)</del> ) <u>\$271.00</u>
Radio direction finder calibration	( <del>(\$254.00)</del> ) <u>\$271.00</u>
Launching vessels	( <del>(\$382.00)</del> ) <u>\$407.00</u>
Trial trips, 6 hours or less (Minimum ( <del>(\$714.00)</del> ) <u>\$762.00</u> )	( <del>(\$119.00)</del> ) <u>\$127.00</u> per hr.
Trial trips, over 6 hours (two pilots)	( <del>(\$238.00)</del> ) <u>\$254.00</u> per hr.
Shilshole Bay – Salmon Bay	( <del>(\$149.00)</del> ) <u>\$159.00</u>
Salmon Bay – Lake Union	( <del>(\$116.00)</del> ) <u>\$124.00</u>
Lake Union – Lake Washington (plus LOA zone from Webster Point)	( <del>(\$149.00)</del> ) <u>\$159.00</u>
Cancellation charge	LOA Zone I
Cancellation charge—Port Angeles (when a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for pilot or when a pilot order is cancelled less than twelve hours prior to the original ETA.)	LOA Zone II
Docking delay after anchoring:	( <del>(\$119.00)</del> ) <u>\$127.00</u> per hr.
Applicable harbor shift rate to apply, plus ( <del>(\$119.00)</del> ) <u>\$127.00</u> per hour standby. No charge if delay is 60 min- utes or less. If the delay is more than 60 minutes, charge is ( <del>(\$119.00)</del> ) <u>\$127.00</u> for every hour or fraction thereof.	
Sailing delay:	( <del>(\$119.00)</del> ) <u>\$127.00</u> per hour

PROPOSED

No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is ~~(\$119.00)~~ \$127.00 for every hour or fraction thereof. The assessment of the standby fee shall not exceed a period of twelve hours in any twenty-four hour period.

Slowdown: ~~(\$119.00)~~ \$127.00  
per hour

When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of ~~(\$119.00)~~ \$127.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.

**Tonnage charges:**

0 to 20,000 gross tons:  
Additional charge to LOA zone mileage of ~~(\$0.0060)~~ \$0.0064 a gross ton for all gross tonnage up to 20,000 gross tons.

20,000 to 50,000 gross tons:  
Additional charge to LOA zone mileage of ~~(\$0.0616)~~ \$0.0657 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

50,000 gross tons and up:  
In excess of 50,000 gross tons, the charge shall be ~~(\$0.0737)~~ \$0.0786 per gross ton.

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

Delayed arrival-Port Angeles: ~~(\$119.00)~~ \$127.00  
per hour

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of ~~(\$119.00)~~ \$127.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

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

**Transportation to vessels on Puget Sound:**

March Point or Anacortes	\$ 144.00
Bangor	84.00
Bellingham	158.00
Bremerton	44.00
Cherry Point	175.00
Dupont	85.00
Edmonds	27.00

Everett	52.00
Ferndale	173.00
Manchester	66.00
Mukilteo	52.00
Olympia	108.00
Point Wells	27.00
Port Gamble	77.00
Port Townsend (Indian Island)	109.00
Seattle	15.00
Semiahmoo (Blaine)	196.00
Tacoma	56.00
Tacoma Smelter	66.00
Winslow	42.00

- (a) Intraharbor transportation for the Port Angeles port area -transportation between Port Angeles pilot station and Port Angeles harbor docks - \$15.00.
- (b) Interport shifts: Transportation paid to and from both points.
- (c) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is cancelled on or before scheduled reporting time, transportation paid one way only.
- (d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.
- (e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x \$1.80 per mile. Delinquent payment charge: 1 1/2% per month after 45 days from first billing.

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

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

**LOA rate schedule**

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

(LOA	ZONE I	ZONE II	ZONE III	ZONE IV	ZONE V	ZONE VI
Intra-Harbor	0-30 Miles	31-50 Miles	51-75 Miles	76-100 Miles	101 Miles	& Over
Up to 449	179	279	484	725	979	1272
450-459	185	285	487	736	995	1278
460-469	188	289	494	748	1009	1284

PROPOSED

PROPOSED

(LOA	ZONE I Intra- Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101- & Over	(LOA	ZONE I Intra- Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101- & Over
<del>470-479</del>	194	297	501	763	1012	1287	<del>1080-1099</del>	837	899	1048	1446	1948	2270
<del>480-489</del>	199	303	503	778	1018	1293	<del>1100-1119</del>	862	926	1079	1490	2007	2338
<del>490-499</del>	202	307	510	792	1030	1298	<del>1120-1139</del>	888	954	1112	1534	2067	2408
<del>500-509</del>	213	312	518	801	1037	1307	<del>1140-1159</del>	915	983	1145	1580	2129	2481
<del>510-519</del>	215	318	523	813	1049	1311	<del>1160-1179</del>	942	1012	1179	1628	2193	2555
<del>520-529</del>	218	329	531	817	1058	1324	<del>1180-1199</del>	971	1043	1215	1677	2259	2632
<del>530-539</del>	225	334	538	826	1075	1337	<del>1200-1219</del>	1000	1074	1251	1727	2326	2711
<del>540-549</del>	228	339	550	835	1093	1349	<del>1220-1239</del>	1030	1106	1289	1779	2396	2792
<del>550-559</del>	233	350	554	848	1100	1363	<del>1240-1259</del>	1061	1139	1327	1832	2468	2876
<del>560-569</del>	242	364	564	855	1111	1376	<del>1260-1279</del>	1093	1173	1367	1887	2542	2962
<del>570-579</del>	247	368	568	859	1123	1385	<del>1280-1299</del>	1125	1209	1408	1944	2618	3051
<del>580-589</del>	258	375	580	866	1130	1399	<del>1300-1319</del>	1159	1245	1450	2002	2697	3142
<del>590-599</del>	270	382	584	870	1146	1415	<del>1320-1339</del>	1194	1282	1494	2062	2778	3237
<del>600-609</del>	279	393	591	872	1160	1422	<del>1340-1359</del>	1230	1321	1539	2124	2861	3334
<del>610-619</del>	296	398	603	877	1172	1434	<del>1360-1379</del>	1267	1360	1585	2188	2947	3434
<del>620-629</del>	308	403	609	887	1185	1452	<del>1380-1399</del>	1305	1401	1633	2253	3035	3537
<del>630-639</del>	323	410	616	889	1195	1464	<del>1400-1419</del>	1344	1443	1681	2321	3126	3643
<del>640-649</del>	336	420	623	892	1206	1476	<del>1420-1439</del>	1384	1486	1732	2390	3220	3752
<del>650-659</del>	360	427	633	899	1221	1491	<del>1440-1459</del>	1426	1531	1784	2462	3317	3865
<del>660-669</del>	367	431	639	903	1233	1502	<del>1460-1479</del>	1468	1577	1837	2536	3416	3981
<del>670-679</del>	380	443	645	919	1248	1511	<del>1480-1499</del>	1512	1624	1893	2612	3519	4100
<del>680-689</del>	386	452	654	929	1259	1527	<del>1500 &amp; Over</del>	1558	1673	1949	2691	3624	4223))
<del>690-699</del>	398	459	663	945	1272	1557							
<del>700-719</del>	416	474	676	955	1297	1575	<u>LOA</u>	<u>ZONE</u>	<u>ZONE</u>	<u>ZONE</u>	<u>ZONE</u>	<u>ZONE</u>	<u>ZONE</u>
<del>720-739</del>	441	487	693	969	1324	1603	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>VI</u>	
<del>740-759</del>	459	510	707	979	1349	1630	<u>Intra</u>	<u>0-30</u>	<u>31-50</u>	<u>51-75</u>	<u>76-100</u>	<u>101</u>	
<del>760-779</del>	477	528	723	995	1376	1653	<u>Harbor</u>	<u>Miles</u>	<u>Miles</u>	<u>Miles</u>	<u>Miles</u>	<u>Miles</u>	<u>&amp;</u>
<del>780-799</del>	501	551	736	1009	1399	1682							<u>Over</u>
<del>800-819</del>	521	568	751	1014	1422	1707							
<del>820-839</del>	538	587	769	1030	1452	1727	<u>Up to 449</u>	<u>191</u>	<u>298</u>	<u>516</u>	<u>773</u>	<u>1044</u>	<u>1357</u>
<del>840-859</del>	561	612	782	1041	1475	1757	<u>450 - 459</u>	<u>197</u>	<u>304</u>	<u>519</u>	<u>785</u>	<u>1061</u>	<u>1363</u>
<del>860-879</del>	582	633	797	1069	1502	1782	<u>460 - 469</u>	<u>201</u>	<u>308</u>	<u>527</u>	<u>798</u>	<u>1076</u>	<u>1369</u>
<del>880-899</del>	603	652	813	1095	1527	1808	<u>470 - 479</u>	<u>207</u>	<u>317</u>	<u>534</u>	<u>814</u>	<u>1079</u>	<u>1373</u>
<del>900-919</del>	621	672	827	1121	1557	1834	<u>480 - 489</u>	<u>212</u>	<u>323</u>	<u>536</u>	<u>830</u>	<u>1086</u>	<u>1379</u>
<del>920-939</del>	640	693	848	1146	1574	1858	<u>490 - 499</u>	<u>215</u>	<u>327</u>	<u>544</u>	<u>845</u>	<u>1099</u>	<u>1384</u>
<del>940-959</del>	663	712	860	1172	1603	1882	<u>500 - 509</u>	<u>227</u>	<u>333</u>	<u>552</u>	<u>854</u>	<u>1106</u>	<u>1394</u>
<del>960-979</del>	679	733	874	1195	1630	1910	<u>510 - 519</u>	<u>229</u>	<u>339</u>	<u>558</u>	<u>867</u>	<u>1119</u>	<u>1398</u>
<del>980-999</del>	703	751	890	1221	1653	1933	<u>520 - 529</u>	<u>233</u>	<u>351</u>	<u>566</u>	<u>871</u>	<u>1128</u>	<u>1412</u>
<del>1000-1019</del>	744	799	931	1285	1731	2017	<u>530 - 539</u>	<u>240</u>	<u>356</u>	<u>574</u>	<u>881</u>	<u>1146</u>	<u>1426</u>
<del>1020-1039</del>	766	823	959	1324	1783	2078	<u>540 - 549</u>	<u>243</u>	<u>362</u>	<u>587</u>	<u>891</u>	<u>1166</u>	<u>1439</u>
<del>1040-1059</del>	789	848	988	1363	1836	2140	<u>550 - 559</u>	<u>249</u>	<u>373</u>	<u>591</u>	<u>904</u>	<u>1173</u>	<u>1454</u>
<del>1060-1079</del>	813	873	1017	1404	1892	2204	<u>560 - 569</u>	<u>258</u>	<u>388</u>	<u>602</u>	<u>912</u>	<u>1185</u>	<u>1468</u>



PROPOSED

LOA	ZONE	ZONE	ZONE	ZONE	ZONE	ZONE
	I	II	III	IV	V	VI
	Intra Harbor	0-30 Miles	31-50 Miles	51-75 Miles	76-100 Miles	101 Miles & Over
<u>570 - 579</u>	<u>263</u>	<u>392</u>	<u>606</u>	<u>916</u>	<u>1198</u>	<u>1477</u>
<u>580 - 589</u>	<u>275</u>	<u>400</u>	<u>619</u>	<u>924</u>	<u>1205</u>	<u>1492</u>
<u>590 - 599</u>	<u>288</u>	<u>407</u>	<u>623</u>	<u>928</u>	<u>1222</u>	<u>1509</u>
<u>600 - 609</u>	<u>298</u>	<u>419</u>	<u>630</u>	<u>930</u>	<u>1237</u>	<u>1517</u>
<u>610 - 619</u>	<u>316</u>	<u>424</u>	<u>643</u>	<u>935</u>	<u>1250</u>	<u>1529</u>
<u>620 - 629</u>	<u>328</u>	<u>430</u>	<u>650</u>	<u>946</u>	<u>1264</u>	<u>1549</u>
<u>630 - 639</u>	<u>344</u>	<u>437</u>	<u>657</u>	<u>948</u>	<u>1274</u>	<u>1561</u>
<u>640 - 649</u>	<u>358</u>	<u>448</u>	<u>664</u>	<u>951</u>	<u>1286</u>	<u>1574</u>
<u>650 - 659</u>	<u>384</u>	<u>455</u>	<u>675</u>	<u>959</u>	<u>1302</u>	<u>1590</u>
<u>660 - 669</u>	<u>391</u>	<u>460</u>	<u>682</u>	<u>963</u>	<u>1315</u>	<u>1602</u>
<u>670 - 679</u>	<u>405</u>	<u>472</u>	<u>688</u>	<u>980</u>	<u>1331</u>	<u>1611</u>
<u>680 - 689</u>	<u>412</u>	<u>482</u>	<u>698</u>	<u>991</u>	<u>1343</u>	<u>1629</u>
<u>690 - 699</u>	<u>424</u>	<u>490</u>	<u>707</u>	<u>1008</u>	<u>1357</u>	<u>1661</u>
<u>700 - 719</u>	<u>444</u>	<u>506</u>	<u>721</u>	<u>1019</u>	<u>1383</u>	<u>1680</u>
<u>720 - 739</u>	<u>470</u>	<u>519</u>	<u>739</u>	<u>1033</u>	<u>1412</u>	<u>1710</u>
<u>740 - 759</u>	<u>490</u>	<u>544</u>	<u>754</u>	<u>1044</u>	<u>1439</u>	<u>1738</u>
<u>760 - 779</u>	<u>509</u>	<u>563</u>	<u>771</u>	<u>1061</u>	<u>1468</u>	<u>1763</u>
<u>780 - 799</u>	<u>534</u>	<u>588</u>	<u>785</u>	<u>1076</u>	<u>1492</u>	<u>1794</u>
<u>800 - 819</u>	<u>556</u>	<u>606</u>	<u>801</u>	<u>1081</u>	<u>1517</u>	<u>1821</u>
<u>820 - 839</u>	<u>574</u>	<u>626</u>	<u>820</u>	<u>1099</u>	<u>1549</u>	<u>1842</u>
<u>840 - 859</u>	<u>598</u>	<u>653</u>	<u>834</u>	<u>1110</u>	<u>1573</u>	<u>1874</u>
<u>860 - 879</u>	<u>621</u>	<u>675</u>	<u>850</u>	<u>1140</u>	<u>1602</u>	<u>1901</u>
<u>880 - 899</u>	<u>643</u>	<u>695</u>	<u>867</u>	<u>1168</u>	<u>1629</u>	<u>1928</u>
<u>900 - 919</u>	<u>662</u>	<u>717</u>	<u>882</u>	<u>1196</u>	<u>1661</u>	<u>1956</u>
<u>920 - 939</u>	<u>683</u>	<u>739</u>	<u>904</u>	<u>1222</u>	<u>1679</u>	<u>1982</u>
<u>940 - 959</u>	<u>707</u>	<u>759</u>	<u>917</u>	<u>1250</u>	<u>1710</u>	<u>2007</u>
<u>960 - 979</u>	<u>724</u>	<u>782</u>	<u>932</u>	<u>1274</u>	<u>1738</u>	<u>2037</u>
<u>980 - 999</u>	<u>750</u>	<u>801</u>	<u>949</u>	<u>1302</u>	<u>1763</u>	<u>2062</u>
<u>1000 - 1019</u>	<u>793</u>	<u>852</u>	<u>993</u>	<u>1370</u>	<u>1846</u>	<u>2151</u>
<u>1020 - 1039</u>	<u>817</u>	<u>878</u>	<u>1023</u>	<u>1412</u>	<u>1902</u>	<u>2216</u>
<u>1040 - 1059</u>	<u>841</u>	<u>798</u>	<u>1054</u>	<u>1454</u>	<u>1958</u>	<u>2282</u>
<u>1060 - 1079</u>	<u>867</u>	<u>931</u>	<u>1085</u>	<u>1497</u>	<u>2018</u>	<u>2351</u>
<u>1080 - 1099</u>	<u>893</u>	<u>959</u>	<u>1118</u>	<u>1542</u>	<u>2078</u>	<u>2421</u>
<u>1100 - 1119</u>	<u>919</u>	<u>988</u>	<u>1151</u>	<u>1589</u>	<u>2140</u>	<u>2493</u>
<u>1120 - 1139</u>	<u>947</u>	<u>1017</u>	<u>1186</u>	<u>1636</u>	<u>2204</u>	<u>2568</u>
<u>1140 - 1159</u>	<u>976</u>	<u>1048</u>	<u>1221</u>	<u>1685</u>	<u>2271</u>	<u>2646</u>
<u>1160 - 1179</u>	<u>1005</u>	<u>1079</u>	<u>1257</u>	<u>1736</u>	<u>2339</u>	<u>2725</u>
<u>1180 - 1199</u>	<u>1036</u>	<u>1112</u>	<u>1296</u>	<u>1789</u>	<u>2409</u>	<u>2807</u>
<u>1200 - 1219</u>	<u>1067</u>	<u>1145</u>	<u>1334</u>	<u>1842</u>	<u>2481</u>	<u>2891</u>
<u>1220 - 1239</u>	<u>1099</u>	<u>1180</u>	<u>1375</u>	<u>1897</u>	<u>2555</u>	<u>2978</u>
<u>1240 - 1259</u>	<u>1132</u>	<u>1215</u>	<u>1415</u>	<u>1954</u>	<u>2632</u>	<u>3067</u>
<u>1260 - 1279</u>	<u>1166</u>	<u>1251</u>	<u>1458</u>	<u>2012</u>	<u>2711</u>	<u>3159</u>

LOA	ZONE	ZONE	ZONE	ZONE	ZONE	ZONE
	I	II	III	IV	V	VI
	Intra Harbor	0-30 Miles	31-50 Miles	51-75 Miles	76-100 Miles	101 Miles & Over
<u>1280 - 1299</u>	<u>1200</u>	<u>1289</u>	<u>1502</u>	<u>2073</u>	<u>2792</u>	<u>3254</u>
<u>1300 - 1319</u>	<u>1236</u>	<u>1328</u>	<u>1546</u>	<u>2135</u>	<u>2876</u>	<u>3351</u>
<u>1320 - 1339</u>	<u>1273</u>	<u>1367</u>	<u>1593</u>	<u>2199</u>	<u>2963</u>	<u>3452</u>
<u>1340 - 1359</u>	<u>1312</u>	<u>1409</u>	<u>1641</u>	<u>2265</u>	<u>3051</u>	<u>3556</u>
<u>1360 - 1379</u>	<u>1351</u>	<u>1450</u>	<u>1690</u>	<u>2334</u>	<u>3143</u>	<u>3662</u>
<u>1380 - 1399</u>	<u>1392</u>	<u>1494</u>	<u>1742</u>	<u>2403</u>	<u>3237</u>	<u>3772</u>
<u>1400 - 1419</u>	<u>1433</u>	<u>1539</u>	<u>1793</u>	<u>2475</u>	<u>3334</u>	<u>3885</u>
<u>1420 - 1439</u>	<u>1476</u>	<u>1585</u>	<u>1847</u>	<u>2549</u>	<u>3434</u>	<u>4002</u>
<u>1440 - 1459</u>	<u>1521</u>	<u>1633</u>	<u>1903</u>	<u>2626</u>	<u>3538</u>	<u>4122</u>
<u>1460 - 1479</u>	<u>1566</u>	<u>1682</u>	<u>1959</u>	<u>2705</u>	<u>3643</u>	<u>4246</u>
<u>1480 - 1499</u>	<u>1613</u>	<u>1732</u>	<u>2019</u>	<u>2786</u>	<u>3753</u>	<u>4373</u>
<u>1500 &amp; Over</u>	<u>1662</u>	<u>1784</u>	<u>2079</u>	<u>2870</u>	<u>3865</u>	<u>4504</u>

**WSR 01-08-082**  
**PROPOSED RULES**  
**SHORELINE COMMUNITY COLLEGE**

[Filed April 4, 2001, 8:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-24-080.

Title of Rule: Chapter 132G-120 WAC, Student conduct code.

Purpose: To update chapter 132G-120 WAC, which has not been revised since 1968, and does not address current conduct issues at institutions of higher education.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Summary: Update definitions, jurisdiction, expectations and procedural guidelines in matters pertaining to student conduct.

Reasons Supporting Proposal: Rules have not been revised since 1968 and need to be updated.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: S. James Perez, 5201, (206) 546-4642.

Name of Proponent: Shoreline Community College, public.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These rules revise and update Shoreline Community College's disciplinary rules for students attending the college. The current rules are inadequate to address contemporary student discipline issues at the college. The proposed rules clarify and inform students of unacceptable conduct at Shoreline Community College.

Proposal Changes the Following Existing Rules: The proposed rules specify acts of student misconduct that were missing in the current rules. The proposed rules amend some of the procedures used in student discipline cases.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no anticipated economic impact on small business.

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

Hearing Location: Shoreline Community College, Board Room, 16101 Greenwood Avenue North, Shoreline, WA 98133, on May 9, 2001, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact S. James Perez by May 1, 2001, TDD (206) 546-4520, or (206) 546-4642.

Submit Written Comments to: S. James Perez, Vice-President Student Services, fax (206) 533-5109, by May 9, 2001.

Date of Intended Adoption: June 15, 2001.

April 2, 2001  
S. James Perez  
Vice-President  
for Student Services

AMENDATORY SECTION (Amending Order 49:83, filed 3/11/83)

**WAC 132G-120-010 Student conduct code—Preamble.** Admission to the college carries with it the expectation that ~~((the))~~ students will conduct ~~((himself/herself))~~ themselves as ~~((a))~~ responsible members of the academic community. This includes the expectation that ~~((the))~~ students will obey the law; comply with the rules and regulations of the college; maintain high standards of integrity and honesty; respect the rights, privileges, and property of other members of the college community; and will not interfere with ~~((legitimate))~~ college ~~((affairs))~~ operations.

~~((The student will assume responsibility for his/her own conduct. Sanctions for violations of college rules and regulations or for conduct which interferes with legitimate college affairs will be dealt with by the college. In the case of student conduct which involves an alleged or proven violation of criminal law, the disciplinary authority of the college will not be used to duplicate the function of civil authority. Disciplinary action may be taken if the conduct also involves a violation of college standards and if the interests of the academic community are distinct from those of the civil authority.~~

~~Sanctions, up to and including expulsion from the college, may be imposed for failure to satisfy the expectations stated in this section or for misconduct of the kinds indicated. These sanctions will determine whether, and under what conditions, the violator may continue at the college.~~

~~Most disciplinary proceedings will be conducted informally between the student and a division chairman, in matters relating to the student's academic work, and between the student and the vice president for student services in other matters.~~

~~More formal procedures are provided, however, including an impartial hearing before a college discipline commit-~~

~~tee; these procedures may be invoked either by the officer dealing with the case or by the student involved. In all situations, whether handled formally or informally, basic standards of fairness will be observed in the determination of (1) the truth or falsity of the charges against the student, (2) whether the alleged misconduct calls for sanctions, and, if so, (3) what those sanctions should be.))~~

#### NEW SECTION

**WAC 132G-120-015 Grounds for discipline.** Student activity or behavior which violates any provision of the college conduct code is not acceptable; yet, an individual who enrolls at the college can rightfully expect that the instructors and administrators will exercise with restraint the power of the college to regulate student behavior, and that rules and regulations will be adopted only when the education process clearly and directly requires such legislation. However, restrictive rules and regulations will not be made without showing relevance to those conditions toward which they apply. The enforcement of these rules and regulations shall be fair and shall be pursued in accordance with regulations governing student conduct. Sanctions, up to and including expulsion from the college, may be imposed for failure to satisfy the expectations stated above. These sanctions will determine whether, and under what conditions, the violator may continue at the college.

(1) Upon enrollment, students assume responsibilities that include, but are not limited to:

(a) Respecting the rights, privileges, and property of other members of the campus community and refraining from any conduct that would interfere with college functions or endanger the health, welfare, or safety of other persons;

(b) Maintaining high standards of academic and personal honesty and integrity; and

(c) Complying with the rules, regulations, procedures, policies, standards of conduct, and orders of Shoreline Community College, as outlined in various college publications such as the college catalog, the student guidebook and the college policy manual.

(2) Specific instances of misconduct for which the college will impose sanctions include, but are not limited to:

(a) Acts of dishonesty, including, but not limited to:

(i) Cheating, plagiarism or other forms of academic dishonesty as outlined in Policy 5033;

(ii) Furnishing false information to any college official, faculty member, or office;

(iii) Forgery, alteration or misuse of any college document, record or instrument of identification;

(iv) Tampering with the election process or outcome of any recognized student organization; and

(v) Violations of copyright laws.

(b) Conduct constituting a sexual offense or sexual harassment as defined by law. Sexual harassment includes, but is not limited to, unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature when:

(i) Such conduct implicitly or explicitly suggests that submission to or rejection of the conduct will be a factor in

academic or employment decisions or evaluations or permission to participate in a college activity; or

(ii) Such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance or creating an intimidating or hostile academic or work environment.

(c) Malicious damage to or malicious misuse of college property or the property of any person where such property is located on the college campus.

(d) The intentional obstruction or disruption of teaching, learning, research, administration, disciplinary proceedings, or other campus activities, including public service functions and other authorized activities on campus premises.

(e) Possession, use or furnishing on campus premises of intoxicating beverages or controlled substances or unlawful drugs (as defined in Washington State Uniform Controlled Substances Act, chapter 69.50 RCW, a copy of which may be obtained in the office of the vice-president for human resources and employee relations, room 1019 of the administration building, Shoreline Community College).

(f) Failure to comply with the direction of campus officials acting in the performance of their duties.

(g) Intentionally inciting others to engage in any unlawful activity when the incitement leads directly to such unlawful conduct on the college campus.

(h) Possession or use of unlawfully possessed firearms, explosives, dangerous chemicals or other dangerous weapons or instrumentalities on the college campus, except for authorized college purposes (legal defense sprays are exempt in this section).

(i) Conduct which is disorderly, lewd, indecent, obscene, verbally abusive or which carries a threat or perception of a threat of bodily harm.

(j) Theft or other abuse or misuse of computer account privileges, equipment, software, network resources or time, including, but not limited to:

(i) Unauthorized entry into an account, file or network, to use, read or change the contents, or for any other purpose;

(ii) Unauthorized transfer or copying of accounts, programs or files;

(iii) Unauthorized use of another individual's account, identification or password, or sending anonymous messages without clearly and correctly identifying the sender;

(iv) Use of computer facilities to interfere with the work of another student, faculty member, college official or computer network operations;

(v) Use of computer facilities to send or receive obscene, abusive, or harassing messages;

(vi) Use of college e-mail accounts to disseminate viruses, destructive or malicious programs;

(vii) Use of college computer facilities to introduce or send viruses or other destructive or invasive software programs.

Violations of the student conduct code will lead to disciplinary action; however, nothing herein will be construed to deny students their legally and/or constitutionally protected right(s) to due process.

AMENDATORY SECTION (Amending Order 49:83, filed 3/11/83)

**WAC 132G-120-030 Jurisdiction.** The vice-president for student services and the division ~~((chairmen are hereby delegated the responsibility))~~ deans are responsible for initiating disciplinary proceedings ~~((in accordance with these rules))~~ for infractions of the rules and regulations of the college ~~((and))~~ or for alleged misconduct in academic work.

The division ~~((chairman))~~ dean is the primary agent for disciplinary matters arising solely out of scholarship. The vice-president for student services is the primary agent for the administration of discipline for unacceptable conduct or infraction of college rules in all matters except those which are the responsibilities of divisions and instructors. Division ~~((chairmen))~~ deans shall give written notice to the vice-president for student services of any disciplinary action which they take.

Instructors ~~((are hereby delegated))~~ have the authority to take such summary actions as may be necessary to maintain order and proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course, and to maintain academic integrity. Such actions may be appealed to the ~~((chairman))~~ dean of the division offering the course ~~((before the end of the next succeeding))~~ no later than the end of the next regular academic quarter, excluding summer quarter.

The provisions of these sanctions do not apply to the evaluation of a student's academic performance.

AMENDATORY SECTION (Amending Order 49:83, filed 3/11/83)

**WAC 132G-120-040 The use of disciplinary authority.** All disciplinary proceedings will be initiated by either the vice-president for student services or a division ~~((chairman))~~ dean. The vice-president for student services or a division ~~((chairman))~~ dean, may, however, delegate this responsibility to others. In cases ~~((referred))~~ appealed to it, the college discipline committee (see WAC 132G-120-070) assumes the responsibility for making a recommendation to the president of the college.

AMENDATORY SECTION (Amending Order 49:83, filed 3/11/83)

**WAC 132G-120-060 Possible actions.** ~~((After considering the evidence in the case and interviewing the students involved,))~~ The initiating authority may take one of the following actions.

(1) Terminate the proceedings, exonerating the student or students.

(2) Dismiss the case after whatever counseling and advice may be appropriate.

(3) Impose minor sanctions directly (disciplinary warning or disciplinary probation) subject to the student's right of appeal (see WAC 132G-120-100). The student shall be notified of the action taken~~((;))~~. This notification must be in writing when a disciplinary warning or disciplinary probation is imposed. ~~((In the case of an unmarried student under 18 years~~

of age being placed on disciplinary probation, written notice shall also be sent to the parents or the guardian of the student.

(4) Recommend to the college discipline committee that the student be denied registration or be expelled. The student shall be advised of his/her rights by reference to the appropriate sections of chapter 132G-120 WAC. If the denial of registration or expulsion is approved, the vice-president for student services shall notify the student in writing that he/she has been denied registration or that he/she has been expelled. In the case of an unmarried student under 18 years of age, written notice of this action shall be sent to the parents or guardian of the student.

(5) Refer the matter to the college discipline committee. The student shall be notified in writing that the matter has been referred to the committee.

In all cases, the student shall be advised of his/her rights by reference to the appropriate section of chapter 132G-120 WAC.)

The initiating authority will notify parent(s) or legal guardian(s) of a dependent student under the age of eighteen of the disciplinary probation. The initiating authority will notify parent(s) or legal guardian(s) of students under the age of twenty-one of any determination that the student violated college rules against the use or possession of alcohol or controlled substances.

(4) The vice-president for student services, or his/her designee, will have the responsibility of imposing major sanctions such as denial of registration or expulsion. The student shall be advised of his/her rights by reference to the appropriate sections of this document. If the denial of registration or expulsion is approved, the vice-president for student services, or his/her designee, shall notify the student in writing that he/she has been denied registration or that he/she has been expelled. The vice-president of student services, or his/her designee, will notify parent(s) or legal guardian(s) of a dependent student under the age of eighteen of the disciplinary action. The vice-president for student services, or his/her designee, will notify parent(s) or legal guardian(s) of students under the age of twenty-one of any determination that the student violated college rules against the use or possession of alcohol or controlled substances.

AMENDATORY SECTION (Amending Order 49:83, filed 3/11/83)

**WAC 132G-120-061 Initiation of summary suspension proceedings.** The vice-president for student services or his/her designee may summarily suspend any student from the college for not more than ~~((ten academic))~~ fourteen calendar days pending investigation, action or prosecution of charges of an alleged chapter 132G-120 WAC violation or violations, if the vice-president for student services or his/her designee has ~~((reason))~~ probable cause to believe that the student's physical or emotional safety ~~((and well-being))~~, health, or welfare, or the safety ~~((and well-being))~~ or welfare of other college community members, or the protection of property requires such suspension. If the emergency situation requires a lesser sanction, the vice-president for student services or his/her designee shall narrowly tailor the sanction to address the emergency situation.

AMENDATORY SECTION (Amending Order 49:83, filed 3/11/83)

**WAC 132G-120-062 Permission to enter or remain on campus.** During the period of summary suspension, the suspended student shall not enter the campus other than to meet with the vice-president for student services, or his/her designee, or to attend the summary suspension hearing. However, the vice-president for student services, or his/her designee, may grant the student special permission to enter for the express purpose of meeting with faculty, staff, or students in preparation for the hearing.

AMENDATORY SECTION (Amending Order 49:83, filed 3/11/83)

**WAC 132G-120-063 Notice of summary suspension proceedings.** If the vice-president for student services or his/her designee finds it necessary to exercise the authority to summarily suspend or restrict a student, he/she shall:

(1) Give an oral or written notice of the alleged misconduct and violation(s) of any provision(s) of chapter 132G-120 WAC to the student;

(2) Give an oral or written explanation of the evidence in support of the charge(s) to the student;

(3) Give an oral or written explanation of the corrective action or punishment (up to a maximum of ~~((ten academic))~~ fourteen calendar days suspension) which may be imposed ~~((on the student))~~ on the student; and

(4) The student shall be provided an opportunity to present his or her explanation of the conduct alleged to be violative of the college student rights and responsibilities policy.

AMENDATORY SECTION (Amending Order 49:83, filed 3/11/83)

**WAC 132G-120-064 Decision by the vice-president for student services.** If the vice-president for student services, or his/her designee, at the conclusion of the ~~((summary suspension))~~ emergency adjudicative proceedings, finds that there is ~~((probable))~~ cause to believe that:

(1) The student against whom specific violations of law or of provisions of chapter 132G-120 WAC are alleged has committed one or more of such violations; and

(2) Such violation(s) ~~((or violations))~~ of the law or of provisions of chapter 132G-120 WAC constitute grounds ~~((for))~~ of disciplinary action; and

(3) Summary suspension of the student is necessary; then, the vice-president for student services or his/her designee, may immediately suspend such student from the college for up to ~~((ten academic))~~ fourteen calendar days if summary suspension of the student or other summary action is necessary.

AMENDATORY SECTION (Amending Order 49:83, filed 3/11/83)

**WAC 132G-120-065 Suspension for failure to appear.** If the student against whom specific violations of provisions of chapter 132G-120 WAC have been alleged has been instructed by the vice-president for student services or his/her designee to appear for summary suspension proceedings and then fails to appear at the time designated for the summary suspension proceedings, the vice-president for student services or his/her designee may suspend the student from the college and shall give written notice of suspension to the student at his/her last address of record on file with the college.

AMENDATORY SECTION (Amending Order 49:83, filed 3/11/83)

**WAC 132G-120-070 College discipline committee.** A ~~((standing))~~ college discipline committee will hear ~~((, de novo, and make recommendations on))~~ all disciplinary cases ~~((referred))~~ appealed to it by ~~((the appropriate authority or appealed to it by))~~ students who have ~~((been disciplined))~~ received disciplinary sanctions and shall either approve the actions of the vice-president for student services or his/her designee, or give directions as to what other disciplinary action should be taken, or exonerate the student. The committee will ~~((be established each fall. It will))~~ be composed of the following persons:

(1) A member appointed by the president of the college ~~((:));~~

(2) ~~((A))~~ Two members of the faculty, appointed by the president of the Shoreline Community College Federation of Teachers ~~((:))~~ (SCCFT); and

(3) ~~Two~~ ~~((students. The two))~~ students ~~((will be))~~ appointed by the president of the student body association ~~((; but at the option of the student being disciplined, they may not hear the case)).~~

None of the above-named persons shall sit in any case in which he/she is a complainant or witness, in which he/she has a direct or personal interest, or in which he/she has acted previously in an advisory capacity. Decisions in this regard, including the selection of alternates, shall be made by the discipline committee as a whole.

The discipline committee ~~((chairman))~~ chair will be elected by the members of the discipline committee.

In hearings before the discipline committee, at the discretion of the committee, an assistant attorney general will be requested to ~~((take the case))~~ assist the committee. This action may be considered necessary in order to have a fair hearing.

AMENDATORY SECTION (Amending Order 49:83, filed 3/11/83)

**WAC 132G-120-080 Discipline committee procedural guidelines and safeguards.** ~~((The))~~ A student has a right to a fair and impartial hearing before the discipline committee on any ~~((charge of misconduct))~~ matter appealed to it. ~~((His/her))~~ Failure to cooperate with the hearing procedures,

however, shall not preclude the committee from making its findings of fact, conclusions and recommendations as provided below. Failure of the student to cooperate may be taken into consideration by the committee in recommending penalties.

(1) The student shall be given written notice at least seven calendar days in advance of the date, time, and place of the hearing, the charge(s) against him/her, a list of witnesses who ~~((will))~~ may appear, and a description of any documentary ~~and/or~~ ~~((other))~~ physical evidence that ~~((will))~~ may be presented at the hearing. ~~((This notice shall be given to the student in writing and shall be provided in sufficient time to permit him/her to prepare his/her defense. The notice may be amended at any time prior to the hearing, but, if such amendment is prejudicial to the student's case, the hearing shall be rescheduled to a later date.))~~ The student may waive the seven-day notice requirement by requesting a prompt hearing to contest an order of summary suspension or other summary action.

(2) The student shall be entitled to hear and examine the evidence against him/her ~~((and be informed of the identity of its sources;)).~~ Also, he/she shall be entitled to present evidence in his/her own behalf ~~((and to question witnesses testifying against him/her as to factual matters. The student shall have all authority possessed by the college to obtain information or to request the presence of witnesses or the production of other evidence relevant to the issues at the hearing)).~~

(3) Only those matters presented at the hearing, in the presence of the student involved, will be considered in determining ~~((whether he/she is guilty))~~ guilt or innocence of the alleged misconduct ~~((charged)),~~ but the student's past record of conduct may be taken into account in formulating the committee's ~~((recommendation for))~~ determination of appropriate disciplinary action.

(4) The student may be represented by counsel and/or accompanied by an advisor of his/her choice.

(5) No one will be required to give self-incriminating evidence.

(6) Hearings conducted by the committee may be held in closed session at the discretion of the committee, the only exception being when the student involved invites particular persons or requests an open hearing. If at any time during the conduct of a hearing invited guests are disruptive of the proceedings, the ~~((chairman))~~ chair of the committee may exclude such persons from the hearing room.

(7) All proceedings of the committee will be conducted with reasonable dispatch and terminated as soon as fairness to all parties involved permits.

(8) An adequate summary of the proceedings will be kept. As a minimum, such a summary would include a tape recording of testimony. The presiding officer or court reporter will require all witnesses and interpreters to give testimony under oath.

(9) The student will be provided with a copy of the findings of fact and with the conclusions and the recommendations of the committee ~~((:)), and he/she will also be advised of~~ ~~((his/her))~~ the right to ~~((present))~~ file, within seven calendar days, a written statement of further appeal to the president of the college before action is taken on the recommendation.

PROPOSED

(10) If discipline is to be imposed after the review provided by this section, the officer who initiated the proceedings shall notify the student in writing of the discipline imposed. ~~((In the case of an unmarried student under 18 years of age, written notice of any action involving expulsion or disciplinary probation also will be sent to the parents or guardian of the student.))~~ The initial order will notify the parent(s) or legal guardian(s) of a dependent student under the age of eighteen of any expulsion or disciplinary probation of a student. The initial order will also notify the parent(s) or legal guardian(s) of students under the age of twenty-one, if the discipline is for violation of college rules against the use or possession of alcohol or controlled substance.

The committee shall establish general rules of procedure consistent with the foregoing procedural safeguards. A copy of any such rules of procedure shall be given to the student in advance of his/her hearing.

AMENDATORY SECTION (Amending Order 49:83, filed 3/11/83)

**WAC 132G-120-090 The president's review.** The president of the college, or his/her designated representative, shall review all cases ~~((heard by the college discipline committee, including the report of the committee))~~ appealed by the student to the discipline committee. Upon review of the committee's report, relevant portions of the record and any statement filed by the student, ((and)) the president of the college, or his/her designee, shall either approve the recommendations of the committee ((or)), give directions as to what other disciplinary action should be taken, ((and he/she shall)) or exonerate the student and notify the initiating authority.

AMENDATORY SECTION (Amending Order 49:83, filed 3/11/83)

**WAC 132G-120-100 Appeals.** Any disciplinary action may be appealed ~~((to the college discipline committee)), in succession, following the steps as outlined below. An appropriate appeal ((by a student)) shall be made in writing ((and addressed to the chairman of the committee)) within ((15)) fifteen days after the student has been notified of the action taken. In all proceedings wherein the student is not exonerated, there shall be one automatic review by a reviewing authority.~~

(1) Disciplinary action by a division ~~((chairman))~~ dean may be appealed to, and shall be reviewed by, the vice-president for student services.

(2) Disciplinary action by the vice-president for student services may be appealed to, and shall be reviewed by, the discipline committee.

(3) Disciplinary action by the discipline committee may be appealed to, and shall be reviewed by, the college president((-

(4)), who shall have final authority in all disciplinary action ((shall rest with the board of trustees of the college)).

AMENDATORY SECTION (Amending Order 49:83, filed 3/11/83)

**WAC 132G-120-110 Disciplinary terms.** The following definitions of disciplinary terms have been established to provide consistency in the application of penalties.

(1) **Disciplinary warning:** Formal action censuring a student for violation of college rules or regulations or for failure to satisfy the expectations of the college regarding conduct. Disciplinary warnings are always made in writing to the student by the officer or agency taking the action, with copies to the vice-president for student services' office. A disciplinary warning indicates to the student that continuation of the specific conduct involved or other misconduct will result in one of the more serious disciplinary actions (see WAC 132G-120-110 (2) through (6)).

(2) **Hold:** Attachment of a student's academic record to encourage the fulfillment of the student's obligations to the college, particularly financial. Holds are always made in writing, including a detailed list of the obligations to be met, and are sent to the student. Requests for transcripts of the student's academic record will not be honored until the initiating authority is satisfied that the obligations have been met and provides the registrar with written notification of the release of the hold.

(3) **Registration denied:** Formal action refusing to allow a student to register for subsequent quarters((-)) for violation of college rules or regulations, ~~((or))~~ failure to satisfy the expectations of the college regarding conduct, or failure to fulfill obligations to the college. ~~((Students may be denied registration only on the approval of the president and on the recommendation of the college discipline committee.))~~ The initiating authority, in his/her written notification to the student, will detail the reasons for the denial of registration and the conditions to be met before registration will be allowed. Registration may be denied for a fixed or indefinite period. Future registration will not be allowed until the initiating authority is satisfied that the conditions have been met.

(4) **Disciplinary probation:** Formal action placing conditions upon the student's continued attendance for violation of college rules or regulations or failure to satisfy the expectations of the college regarding conduct. The office placing the student on disciplinary probation will specify, in writing, the period of probation and the conditions. Disciplinary probation warns the student that any further misconduct will make him/her liable to suspension or expulsion from the college. Disciplinary probation may be for a specific term or for an indefinite period which may extend to graduation or other termination of the student's enrollment in the college.

(5) **Academic penalties:** Consequences of any breach of academic integrity may include withholding of credit, lowering of grade, and/or failure (0.0) for the assignment and/or course, or lesser sanctions. Matters involving academic dishonesty may be referred to the vice-president for student services for additional disciplinary action(s).

(6) **Suspension:** Formal action by an authorized disciplinary agency dismissing a student temporarily from the college for unacceptable conduct or violation of college rules or regulations. ~~((Suspension))~~ Denial of registration or expul-

sion may be for a stated or for an indefinite period, but the implication of the action is that the student may eventually return if evidence or other assurance is presented that the unacceptable conduct will not be repeated.

~~((6) **Expulsion:** Students may be expelled only on the approval of the president of the college and on the recommendation of the vice president for student services and the college discipline committee. The notification expelling a student will indicate, in writing, the term of the expulsion and any special conditions which must be met before readmission. There is no refund of fees for the quarter in which the action is taken, but fees paid in advance for a subsequent quarter are to be refunded.))~~

AMENDATORY SECTION (Amending Order 1-35:72, filed 11/29/72, effective 1/1/73)

**WAC 132G-120-130 Readmission after expulsion.**

Any student expelled from the college may be readmitted only on written petition to the office which initiated the action resulting in his expulsion. Such petitions must indicate how specified conditions have been met and, if the term of the expulsion has not expired, any reasons which support a reconsideration of the matter. ~~((Because the president of the college participates in all disciplinary actions expelling students from the college, decisions on such petitions for readmission must be reviewed and approved by the president before readmission is granted.))~~

AMENDATORY SECTION (Amending Order 1-35:72, filed 11/29/72, effective 1/1/73)

**WAC 132G-120-140 Reporting, recording and maintenance of records.** Records of all disciplinary cases shall be kept by the office taking or initiating the action. Except in proceedings wherein the student is exonerated, all documentary or other physical evidence produced or considered in disciplinary proceedings and all recorded testimony shall be preserved insofar as possible, for not more than five years in accordance with the record retention schedule. ~~((No))~~ Any record of proceedings wherein the student is exonerated, ~~((other than))~~ except the fact of exoneration, shall be ~~((maintained in the student's file or other college repository after the date of the student's graduation))~~ destroyed as expeditiously as possible in accordance with the appropriate record retention schedule.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- |                  |                     |
|------------------|---------------------|
| WAC 132G-120-020 | Student conduct.    |
| WAC 132G-120-120 | Lowering of grades. |

**WSR 01-08-084**

**PROPOSED RULES**

**WASHINGTON STATE UNIVERSITY**

[Filed April 4, 2001, 10:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-05-079.

Title of Rule: Small works roster.

Purpose: To allow the Washington State University (WSU) to create a small works roster for use in the minor public works process.

Statutory Authority for Adoption: RCW 39.04.155.

Summary: A series of regulations to establish and monitor a roster of responsible bidders for minor public works projects at WSU.

Reasons Supporting Proposal: To expedite the selection of responsible bidders for minor public works projects at WSU.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lawrence Davis, Pullman, Washington, (509) 335-9002.

Name of Proponent: Facilities Operations, Office of the Attorney General, public.

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

Explanation of Rule, its Purpose, and Anticipated Effects: To allow WSU to create a small works roster for use in the minor public works process. To expedite the selection of responsible bidders for minor public works.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. WAC is required by statute in order to have a small works roster.

Hearing Location: Washington State University, Lighty 405, Pullman, Washington 99164, on May 17, at 3:00 p.m.

Assistance for Persons with Disabilities: Contact Lori Lamb by May 2, 2001, (509) 335-5524.

Submit Written Comments to: Loretta M. Lamb, P.O. Box 641045, Pullman, WA 99164-1045, fax (509) 335-4642, May 2, 2001.

Date of Intended Adoption: June 15, 2001.

March 30, 2001

Loretta M. Lamb

Assistant Vice-President

for Personnel and Administration

Rules Coordinator

NEW SECTION

**WAC 504-50-010 Purpose and authority.** This chapter of the Washington Administrative Code is adopted pursuant to RCW 39.04.155, authorizing Washington State University to adopt procedures to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property in lieu of other procedures for such work with an estimated cost of two hundred thousand dollars (\$200,000) or less. The University, in establishing a

Small Works Roster, shall use the procedures set forth in this chapter.

#### NEW SECTION

**WAC 504-50-020 Project construction cost.** Whenever the estimated cost of any construction... or improvement of real property does not exceed two hundred thousand dollars (\$200,000), the University is authorized to use the Small Works Roster in lieu of public advertisement for bids. In the event that the legislature further increases the Small Works Roster limit, the University is authorized to use the Small Works Roster for any projects up to the legislatively authorized limit. No project shall be broken into units or phases for the purpose of avoiding the maximum dollar amount of a contract that may be met using the Small Works Roster.

#### NEW SECTION

**WAC 504-50-030 Creation of small works roster or rosters.** The University may create a single general Small Works Roster, or it may create a Small Works Roster for different specialties or categories of anticipated work. The rosters may make distinctions between contractors based upon different geographic areas served by the contractors.

#### NEW SECTION

**WAC 504-50-040 Notice of small works rosters and solicitation of contractors.** At least once per year, the University shall publish, in a newspaper of general circulation within the counties where small works are expected to be performed, a notice of the existence of any rosters, and shall solicit the names of contractors for such roster or rosters.

#### NEW SECTION

**WAC 504-50-050 Contractors application form—Information required.** In response to the notifications above, or at any time, contractors desiring to be included on a Small Works Roster established by Washington State University, may submit a completed application in a format prescribed by the Director, Department of Facilities Operations. Copies of the form may be obtained from the Department of Facilities Operations and will contain the following information:

- (1) Name of contracting firm, including designation as corporation, partnership, sole proprietorship, or otherwise;
- (2) Address of contracting firm;
- (3) Telephone number;
- (4) Fax number;
- (5) E-mail address;
- (6) State contractor's license number;
- (7) Name of the owner or chief operating officer;
- (8) State of Washington Department of Revenue tax number;
- (9) Indication of type of construction firm by categories enumerated on the form;

(10) An indication of those counties, enumerated on the form, in which the contractor is interested in being considered for projects;

(11) Indication of whether contractor is certified as a minority or women's business enterprise;

(12) Three references of satisfactorily completed contracts of a value of not less than twenty-five thousand dollars (\$25,000) within the past two (2) years.

Upon receipt of the application, the University shall evaluate the qualifications of the firm for inclusion on the Small Works Roster, in accordance with WAC 504-XX-050, enter the information set forth therein into its Small Works Roster, and send a copy of the information which is entered to the applicant contractor. Contractors should not consider themselves to be enrolled in a Small Works Roster until they have received this verification.

#### NEW SECTION

**WAC 504-50-060 Qualification requirements.** To qualify for placement on the Washington State University Small Works Roster, contractors must demonstrate the following in experience and qualifications:

- (1) Be a licensed contractor in the state of Washington;
- (2) Have successfully completed, at least three (3) projects, each with a value of not less than twenty-five thousand dollars (\$25,000) within the past two (2) years;
- (3) Have some experience in public works contracts;
- (4) Have two (2) years experience in the area of expertise for which listing is sought.

#### NEW SECTION

**WAC 504-50-070 Denial or removal of contractors from small works roster—Reasons.** A contractor may be denied placement on or, after such placement, may be removed from a Small Works Roster for any of the following reasons:

- (1) The information set forth in the contractor's application is not accurate;
- (2) The contractor fails to notify the University of any changes in the information set forth in its original application for placement on the Small Works Roster within thirty (30) days of the effective date of such change;
- (3) The contractor has failed to respond to three (3) consecutive solicitations for bids on jobs offered through the Small Works Roster;
- (4) The contractor's past performance has demonstrated the firm not to be a responsible bidder as defined in RCW 43.19.1911;
- (5) The contractor fails to complete and return to the University any periodic update submitted by the University to determine the contractor's ongoing interest in maintaining its placement on the Small Works Roster.

#### NEW SECTION

**WAC 504-50-080 Procedures for use.** When using a Small Works Roster, the University shall obtain telephone, written or electronic quotations for public works contracts



from contractors on the appropriate Small Works Roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 43.19.1911, as follows:

(1) A contract awarded from a Small Works Roster need not be advertised. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This paragraph does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate Small Works Roster. As an alternative, quotations may be invited from at least five contractors on the appropriate Small Works Roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. In those cases where there are fewer than five contractors on the appropriate small works roster, quotations will be invited from all contractors on the roster.

(2) If the estimated cost of the work is from one hundred thousand dollars (\$100,000) to two hundred thousand dollars (\$200,000), the University may choose to solicit bids from less than all the appropriate contractors on the appropriate Small Works Roster but must also notify the remaining contractors on the appropriate Small Works Roster that quotations on the work are being sought. The University has the sole option of determining whether this notice to the remaining contractors is made by:

- (a) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done;
- (b) Mailing a notice to these contractors; or
- (c) Sending a notice to these contractors by facsimile or other electronic means.

(3) For purposes of this resolution, "equitably distribute" means that the University may not favor certain contractors on the appropriate Small Works Roster over other contractors on the appropriate Small Works Roster who perform similar services. At the time bids are solicited, the University representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project.

(4) A written record shall be made by the University representative of each contractor's bid on the project and of any conditions imposed on the bid. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(5) The University shall award the contract for the public works project to the lowest responsible bidder provided that, whenever there is a reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the University may call for new bids. In addition to price, the University shall take into account the following:

- (a) The ability, capacity, and skill of the bidder to perform the contract;
- (b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- (c) Whether the bidder can perform the contract within the time specified by the University;

(d) The quality of the bidder's performance of previous contracts or services;

(e) The previous and existing compliance by the bidder with laws relating to the contract or services;

(f) Such other information as may be secured having a bearing on the decision to award the contract.

## WSR 01-08-085

### PROPOSED RULES

## WASHINGTON STATE UNIVERSITY

[Filed April 4, 2001, 10:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-05-078.

Title of Rule: Permit fees.

Purpose: An amendment to allow parking fees at the student-run Student Recreation Center to be set by the president or his designee, rather than the regents.

Statutory Authority for Adoption: RCW 28B.30.095, [28B.30].125, [28B.30].150.

Summary: An amendment to allow parking fees at the student-run Student Recreation Center to be set by the president or his designee, rather than the regents.

Reasons Supporting Proposal: Expediting the parking fee setting process.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Loretta M. Lamb, Pullman, Washington, (509) 335-5524.

Name of Proponent: Student Recreation Center, Office of the Attorney General, Office of President, public.

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

Explanation of Rule, its Purpose, and Anticipated Effects: An amendment to allow parking fees at the student-run Student Recreation Center to be set by the president or his designee, rather than the board of regents.

Proposal Changes the Following Existing Rules: Same as above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

Hearing Location: Washington State University, Lighty 405, Pullman, Washington 99164, on May 17, at 2:00.

Assistance for Persons with Disabilities: Contact Lori Lamb by May 2, 2001, 335-5524.

Submit Written Comments to: Loretta M. Lamb, P.O. Box 641045, Pullman, WA 99164-1045, fax (509) 335-4642, by May 2, 2001.

Date of Intended Adoption: June 15, 2001.

March 30, 2001

Loretta M. Lamb

Assistant Vice-President

for Personnel and Administration

Rules Coordinator

PROPOSED

AMENDATORY SECTION (Amending WSR 95-13-003, filed 6/8/95)

**WAC 504-15-650 Permit fees.** (1) Schedules for parking fees, parking administrative fees, meter rates, prorate and refund schedules, and the effective date thereof will be submitted to the president or his/her designee and to the board of regents for approval by motion, PROVIDED, HOWEVER, that fees associated with parking at the Student Recreational Center. (SRC) including refunds of fees, will not be submitted to the Board of Regents so long as the Board has delegated authority to the president or his designee to approve all such fees. The schedules for all parking fees, parking administrative fees, meter rates, prorate and refund schedules, including those for the SRC, ((and)) will thereafter be ((proofed)) posted in the public area of the parking services office, and filed with the university rules coordinator.

(2) Disability permits will be issued free of charge to those who have their vehicle identified with a state disability license plate or other indicator in accordance with RCW 46.16.380.

(3) Payments: Fees may be paid at parking services by cash, check, or money order. A payroll deduction plan is available for permanent university employees and eligible graduate students during the fall semester only.

(4) The annual fee for any shorter period relative to all permits shall be prorated.

(5) The proper fee must be paid for all vehicles parked in metered areas unless otherwise authorized.

(6) Staff members whose work schedules qualify them for night time differential pay may purchase a permit for one-half the regular fee. Verification will be required.

(7) Refunds: Annual permits being relinquished may be returned to parking services for a prorata refund. Identifiable remnants of the permit must be returned. Provision of the permit holder's copy of the permit receipt will facilitate the refund process. A minimum ten-dollar service charge will be retained by parking services. Further, the balance of any fees and fines owed parking services will be deducted from any refund due. No refunds will be granted after 5:00 p.m. Friday of the third week of the spring semester. Refunds for temporary permits will not be granted.

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

**WSR 01-08-086  
PROPOSED RULES  
DEPARTMENT OF HEALTH**

[Filed April 4, 2001, 10:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-04-053.

Title of Rule: Dentist fees—Impaired dentist surcharge.

Purpose: The purpose is to implement 1999 legislation, chapter 179, Laws of 1999, which allows for an increase to

the impaired dentist surcharge to provide additional revenue to contract with a new treatment provider.

Other Identifying Information: WAC 246-817-990.

Statutory Authority for Adoption: RCW 18.32.0365 and 43.70.250.

Statute Being Implemented: RCW 18.32.534.

Summary: This rule will amend the fee schedule and increase the impaired dentist surcharge.

Reasons Supporting Proposal: Fee increase will allow the department to contract with a new impaired treatment provider.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lisa Anderson, Program Manager, 1112 S.E. Quince Street, Olympia, WA 98504, (360) 236-4863.

Name of Proponent: Department of Health, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Amending the impaired dentist surcharge fee will allow the Department of Health to collect additional revenue to pay for a contract with a new impaired treatment provider.

Proposal Changes the Following Existing Rules: Proposed change will amend the fee rule [rule], impaired dentist surcharge.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Cost did not exceed minimum threshold.

RCW 34.05.328 does not apply to this rule adoption. Fee rules do not fall under the parameters of RCW 34.05.328.

Hearing Location: Department of Health, Conference Center, Hearing Room #5, 1101 Eastside Street, Olympia, WA 98504, on May 8, 2001, at 12:30-1:30 p.m.

Assistance for Persons with Disabilities: Contact Lisa Anderson by May 4, 2001, TDD 1-800-833-6388, or (360) 236-4863.

Submit Written Comments to: Lisa Anderson, fax (360) 664-9077, by May 4, 2001.

Date of Intended Adoption: May 8, 2001.

M. C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 99-08-101, filed 4/6/99, effective 7/1/99)

**WAC 246-817-990 Dentist fees and renewal cycle.** (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except faculty and resident licenses.

(2) Faculty and resident licenses must be renewed every year on July 1 as provided in chapter 246-12 WAC, Part 2.

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
<b>Original application by examination*</b>	
Initial application	\$ 325.00

PROPOSED

**Original application - Without examination**

Initial application	350.00
Initial license	350.00

**Faculty license application** 325.00

**Resident license application** 60.00

**License renewal:**

Renewal	205.00
Surcharge - impaired dentist	<del>((5.00))</del> <u>20.00</u>
Late renewal penalty	102.50
Expired license reissuance	102.50

**Duplicate license** 15.00

**Certification of license** 25.00

**Anesthesia permit**

Initial application	50.00
Renewal - (three-year renewal cycle)	50.00
Late renewal penalty	50.00
Expired permit reissuance	50.00
On-site inspection fee	To be determined by future rule adoption.

\* In addition to the initial application fee above, applicants for licensure via examination will be required to submit a separate application and examination fee directly to the dental testing agency accepted by the dental quality assurance commission.

**WSR 01-08-087**

**PROPOSED RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed April 4, 2001, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-04-008.

Title of Rule: Rules relating to the apiaries program, chapter 16-602 WAC.

Purpose: To amend existing rules comply with recent statutory amendments that become effective June 30, 2001.

Statutory Authority for Adoption: Chapter 15.60 RCW.  
Statute Being Implemented: Chapter 15.60 RCW.

Summary: Existing rules implementing chapter 15.60 RCW have been in effect for several years. The statute was extensively amended by reducing or repealing many regulatory requirements and authorities, effective June 30, 2001. It is necessary to change the implementing rules to reflect and clarify these changes.

Reasons Supporting Proposal: The program rules cannot exceed statutory authority.

Name of Agency Personnel Responsible for Drafting: Mary Toohey, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1907; Implementation and Enforcement: Clinton Campbell, PhD, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-2071.

Name of Proponent: Washington State Department of Agriculture, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Existing chapter 16-602 WAC implements the requirements of chapter 15.60 RCW, the Apiaries Act. Proposed changes would reduce regulatory requirements in compliance with amendments to chapter 15.60 RCW, which will go into effect June 30, 2001.

Proposal Changes the Following Existing Rules: The definitions section is repealed, because the statute contains all remaining necessary definitions. Simplifications to the statutory requirements for the Apiary Advisory Committee make unnecessary the existing section designating geographical boundaries for selecting members of the Apiary Advisory Committee. Statutory authority for apiary inspection fees, grower pollination fees, standards for colony strength, and the apiary marking requirement were eliminated. The mechanism for setting the apiarist registration fee schedule is not in statute. The late charge for registration is repealed from rule because the statute directly defines late charges. Types of violations and level of civil penalty assessment are revised to comply with the amended statute. Revisions to reflect recodification of the statute and technical corrections were also incorporated.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The changes should result in net monetary savings to affected parties.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Washington State Department of Agriculture is not a listed agency in section 201.

Hearing Location: Hal Holmes Community Center, West Room Conference Room, 201 North Ruby, Ellensburg, WA 98926, on May 9, 2001, at 11:00 a.m.

Assistance for Persons with Disabilities: Contact Lou Jones by May 7, 2001, TDD (360) 902-1996, or (360) 902-1806.

Submit Written Comments to: Mary Toohey, Assistant Director, Laboratory Services Division, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, e-mail mtoohey@agr.wa.gov, fax (360) 902-2094, by May 10, 2001.

Date of Intended Adoption: May 17, 2001.

April 4, 2001

Mary A. Martin Toohey  
Assistant Director

AMENDATORY SECTION (Amending Order 5030, filed 2/10/94, effective 3/13/94)

**WAC 16-602-025 Apiarist registration fees, schedule.** (1) Beekeepers in the following two categories shall pay a fee for owning or operating colonies of bees in Washington:

(a) Resident beekeepers of Washington;

(b) Nonresident beekeepers operating colonies in Washington for the purpose of producing honey or other products, or their use or rental for pollination of agricultural crops.

PROPOSED

(2) Both categories of beekeepers shall pay a fee based upon the number of colonies they own or will operate during the calendar year in Washington. The fee schedule shall be as follows:

1	-	5 colonies	\$	5.00
6	-	25 colonies	\$	10.00
26	-	100 colonies	\$	25.00
101	-	300 colonies	\$	50.00
301	-	500 colonies	\$	100.00
501	-	1,000 colonies	\$	200.00
1,001	-	or more colonies	\$	300.00

~~((This fee schedule shall remain in effect unless changed upon the advice of the apiary advisory committee and pursuant to the Administrative Procedure Act, chapter 34.05 RCW.))~~

(3) The registration fee shall be paid, on or before April first, on the number of colonies of bees:

- (a) Owned by resident beekeepers;
- (b) Operated and or rented for pollination by nonresident beekeepers during the calendar year in Washington.

~~((A late charge of one and one half percent per month shall be assessed on the unpaid balance against persons more than thirty days in arrears.))~~

AMENDATORY SECTION (Amending WSR 97-24-066, filed 12/2/97, effective 1/2/98)

**WAC 16-602-026 Broker registration fees.** In accordance with RCW ~~((15.60.050))~~ 15.60.021, there is assessed an annual broker registration fee of \$100 due and payable to the department on April 1 of each year. If a person registers as both a broker and an apiarist, only one of the registration fees shall be owed. The lesser of the two registration fees shall be waived.

AMENDATORY SECTION (Amending WSR 97-24-066, filed 12/2/97, effective 1/2/98)

**WAC 16-602-050 Types of offenses and level of civil penalty assessment.** (1) Violations of the Apiaries Act include, but are not limited to:

- (a) Failure to register as a resident or non-resident apiarist ~~((reference WAC 16-602-025 and RCW 15.60.050));~~
- (b) Failure to register as a broker ~~((reference WAC 16-602-026 and RCW 15.60.050));~~
- (c) Failure to remit apiary registration fees ~~((reference WAC 16-602-025 and RCW 15.60.050));~~
- (d) Failure to remit broker registration fees ~~((reference WAC 16-602-026 and RCW 15.60.050));~~
- ~~(e) Failure to remit pollination service fees (reference WAC 16-602-027 and RCW 15.60.040);~~
- ~~(f) Failure to mark apiaries in accordance with WAC 16-602-040 (reference RCW 15.60.020);~~
- ~~(g) Altering an official certificate or other official inspection document or misrepresenting a document, as described in RCW 15.60.150(2)).~~

(2) The level of civil penalty assessed for each individual violation shall be as follows:

First violation . . . . .	\$100
Second violation . . . . .	\$500
Third and each subsequent violation . . . . .	\$1,000

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-602-005	Definitions.
WAC 16-602-010	Apiary board, area boundaries.
WAC 16-602-020	Apiary inspection fees.
WAC 16-602-027	Grower pollination service fee, collection, remittance.
WAC 16-602-030	Colony strength.
WAC 16-602-040	Apiary marking.
WAC 16-602-045	Civil penalty authority and application.

**WSR 01-08-092  
PROPOSED RULES  
DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed April 4, 2001, 10:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-02-091.

Title of Rule: Medical aid rules, new rules WAC 296-20-303, amended rules WAC 296-20-01002, 296-20-03001, 296-20-091, 296-23-165, 296-23-170, and 296-23-245.

Purpose: (1) To address quality of care concerns through the establishment of eligibility requirements for providers of attendant services; (2) to resolve and clarify issues relating to payment of federal and state taxes; and (3) to resolve and clarify issues relating to mandatory industrial insurance coverage.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, 51.32.060, 51.32.072, 7.68.070.

Statute Being Implemented: RCW 51.32.060, 51.32.072, 7.68.070.

Summary: Defines attendant services and eligible providers, including specific services covered; describes treatment limits and prior authorization needed; identifies eligible workers and providers eligible for reimbursement. Only agency attendants and current nonagency spouse attendants will continue to be reimbursed.

Reasons Supporting Proposal: Addresses quality of care concern, tax/industrial insurance ambiguities through eligibility requirements.

Name of Agency Personnel Responsible for Drafting: Evonne Peryea, Tumwater, (360) 902-6828; Implementation

PROPOSED

and Enforcement: Doug Connell, Tumwater, (360) 902-4209.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 296-20-303 defines attendant services and eligible providers, including specific services covered; describes treatment limits and prior authorization needed; identifies eligible workers and providers eligible for reimbursement. The purpose of the rule change is to: (1) Address quality of care concerns through the establishment of eligibility requirements for providers of attendant services; (2) resolve and clarify issues relating to payment of federal and state taxes; and (3) resolve and clarify issues relating to mandatory industrial insurance coverage. Except current spouse providers, the primary effect of the rule changes will be to eliminate nonagency attendant services for injured workers. Only agency attendants and current nonagency spouse attendants will continue to be reimbursed for attendant services.

Proposal Changes the Following Existing Rules: Existing rules are being amended to become consistent with proposed WAC 296-20-303 Attendant services. Previously, references to the same service have been referred to in different ways in different rules. The proposed rule clarifies and standardizes references to services now labeled as attendant services.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendments to chapters 296-20 and 296-23 WAC will primarily have impact on nonagency attendant care services. The department will still pay for injured workers' attendant services, but will require that licensed agency personnel provide these services. Because nonagency attendant service providers are individuals, and not small business, the RFA requirements for a small business economic impact statement do not apply and the department is exempt from preparing this economic analysis document.

RCW 34.05.328 applies to this rule adoption. This is a significant legislative rule and requires completion of the rule-making criteria analysis.

Hearing Location: Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA, on May 8, 2001, at 1:00 p.m.

Assistance for Persons with Disabilities: Jim Dick, fax (360) 902-4249, e-mail [dija235@lni.wa.gov](mailto:dija235@lni.wa.gov), TDD 1-800-833-6388.

Submit Written Comments to: Jim Dick, Department of Labor and Industries, P.O. Box 44321, Olympia, WA 98504-4321, or fax (10 pages or less) (360) 902-4249, e-mail [dija235@lni.wa.gov](mailto:dija235@lni.wa.gov).

Date of Intended Adoption: June 15, 2001.

April 4, 2001

Gary Moore

Director

AMENDATORY SECTION (Amending WSR 00-01-039, filed 12/7/99, effective 1/8/00)

**WAC 296-20-01002 Definitions. Acceptance, accepted condition:** Determination by a qualified representative of the department or self-insurer that reimbursement for the diagnosis and curative or rehabilitative treatment of a claimant's medical condition is the responsibility of the department or self-insurer. The condition being accepted must be specified by one or more diagnosis codes from the current edition of the International Classification of Diseases, Clinically Modified (ICD-CM).

**Attendant care:** Those proper and necessary personal care services (~~((that assist a worker with dressing, feeding, and personal hygiene to facilitate self care and are))~~) provided (~~((in order))~~) to maintain the worker in (~~((their place of temporary or permanent))~~) his or her residence (~~((consistent with their needs, abilities, and safety. These services may be provided by, but are not limited to, registered nurses, licensed practical nurses, registered nursing assistants, and other individuals such as family members))~~). Refer to WAC 296-20-303 for more information.

**Attending doctor report:** This type of report may also be referred to as a "60 day" or "special" report. The following information must be included in this type of report. Also, additional information may be requested by the department as needed.

(1) The condition(s) diagnosed including ICD-9-CM codes and the objective and subjective findings.

(2) Their relationship, if any, to the industrial injury or exposure.

(3) Outline of proposed treatment program, its length, components, and expected prognosis including an estimate of when treatment should be concluded and condition(s) stable. An estimated return to work date should be included. The probability, if any, of permanent partial disability resulting from industrial conditions should be noted.

(4) If the worker has not returned to work, the attending doctor should indicate whether a vocational assessment will be necessary to evaluate the worker's ability to return to work and why.

(5) If the worker has not returned to work, a doctor's estimate of physical capacities should be included with the report. If further information regarding physical capacities is needed or required, a performance-based physical capacities evaluation can be requested. Performance-based physical capacities evaluations should be conducted by a licensed occupational therapist or a licensed physical therapist. Performance-based physical capacities evaluations may also be conducted by other qualified professionals who provided performance-based physical capacities evaluations to the department prior to May 20, 1987, and who have received written approval to continue supplying this service based on formal department review of their qualifications.

**Authorization:** Notification by a qualified representative of the department or self-insurer that specific proper and necessary treatment, services, or equipment provided for the diagnosis and curative or rehabilitative treatment of an accepted condition will be reimbursed by the department or self-insurer.

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**Average wholesale price (AWP):** A pharmacy reimbursement formula by which the pharmacist is reimbursed for the cost of the product plus a mark-up. The AWP is an industry benchmark which is developed independently by companies that specifically monitor drug pricing.

**Baseline price (BLP):** Is derived by calculating the mean average for all NDC's (National Drug Code) in a specific product group, determining the standard deviation, and calculating a new mean average using all prices within one standard deviation of the original mean average. "Baseline price" is a drug pricing mechanism developed and updated by First Data Bank.

**Bundled codes:** When a bundled code is covered, payment for them is subsumed by the payment for the codes or services to which they are incident. (An example is a telephone call from a hospital nurse regarding care of a patient. This service is not separately payable because it is included in the payment for other services such as hospital visits.) Bundled codes and services are identified in the fee schedules.

**By report:** BR (by report) in the value column of the fee schedules indicates that the value of this service is to be determined by report (BR) because the service is too unusual, variable or new to be assigned a unit value. The report shall provide an adequate definition or description of the services or procedures that explain why the services or procedures (e.g., operative, medical, radiological, laboratory, pathology, or other similar service report) are too unusual, variable, or complex to be assigned a relative value unit, using any of the following as indicated:

- (1) Diagnosis;
- (2) Size, location and number of lesion(s) or procedure(s) where appropriate;
- (3) Surgical procedure(s) and supplementary procedure(s);
- (4) Whenever possible, list the nearest similar procedure by number according to the fee schedules;
- (5) Estimated follow-up;
- (6) Operative time;
- (7) Describe in detail any service rendered and billed using an "unlisted" procedure code.

The department or self-insurer may adjust BR procedures when such action is indicated.

**Chart notes:** This type of documentation may also be referred to as "office" or "progress" notes. Providers must maintain charts and records in order to support and justify the services provided. "Chart" means a compendium of medical records on an individual patient. "Record" means dated reports supporting bills submitted to the department or self-insurer for medical services provided in an office, nursing facility, hospital, outpatient, emergency room, or other place of service. Records of service shall be entered in a chronological order by the practitioner who rendered the service. For reimbursement purposes, such records shall be legible, and shall include, but are not limited to:

- (1) Date(s) of service;
- (2) Patient's name and date of birth;
- (3) Claim number;
- (4) Name and title of the person performing the service;
- (5) Chief complaint or reason for each visit;

- (6) Pertinent medical history;
- (7) Pertinent findings on examination;
- (8) Medications and/or equipment/supplies prescribed or provided;
- (9) Description of treatment (when applicable);
- (10) Recommendations for additional treatments, procedures, or consultations;
- (11) X-rays, tests, and results; and
- (12) Plan of treatment/care/outcome.

**Consultation examination report:** The following information must be included in this type of report. Additional information may be requested by the department as needed.

- (1) A detailed history to establish:
  - (a) The type and severity of the industrial injury or occupational disease.
  - (b) The patient's previous physical and mental health.
  - (c) Any social and emotional factors which may effect recovery.
- (2) A comparison history between history provided by attending doctor and injured worker, must be provided with exam.
- (3) A detailed physical examination concerning all systems affected by the industrial accident.
- (4) A general physical examination sufficient to demonstrate any preexisting impairments of function or concurrent condition.
- (5) A complete diagnosis of all pathological conditions including ICD-9-CM codes found to be listed:
  - (a) Due solely to injury.
  - (b) Preexisting condition aggravated by the injury and the extent of aggravation.
  - (c) Other medical conditions neither related to nor aggravated by the injury but which may retard recovery.
  - (d) Coexisting disease (arthritis, congenital deformities, heart disease, etc.).
- (6) Conclusions must include:
  - (a) Type of treatment recommended for each pathological condition and the probable duration of treatment.
  - (b) Expected degree of recovery from the industrial condition.
  - (c) Probability, if any, of permanent disability resulting from the industrial condition.
  - (d) Probability of returning to work.
- (7) Reports of necessary, reasonable X-ray and laboratory studies to establish or confirm the diagnosis when indicated.

**Doctor:** For these rules, means a person licensed to practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic physician; podiatry; dentistry; optometry.

Only those persons so licensed may sign report of accident forms and time loss cards except as provided in chapter 296-20 WAC.

**Emergent hospital admission:** Placement of the worker in an acute care hospital for treatment of a work related medical condition of an unforeseen or rapidly progressing nature which if not treated in an inpatient setting, is likely to jeopardize the worker's health or treatment outcome.

**Fatal:** When the attending doctor has reason to believe a worker has died as a result of an industrial injury or exposure, the doctor should notify the nearest department service location or the self-insurer immediately. Often an autopsy is required by the department or self-insurer. If so, it will be authorized by the service location manager or the self-insurer. Benefits payable include burial stipend and monthly payments to the surviving spouse and/or dependents.

**Fee schedules or maximum fee schedule(s):** The fee schedules consist of, but are not limited to, the following:

(a) Health Care Financing Administration's Common Procedure Coding System Level I and II Codes, descriptions and modifiers that describe medical and other services, supplies and materials.

(b) Codes, descriptions and modifiers developed by the department.

(c) Relative value units (RVUs), calculated or assigned dollar values, percent-of-allowed-charges (POAC), or diagnostic related groups (DRGs), that set the maximum allowable fee for services rendered.

(d) Billing instructions or policies relating to the submission of bills by providers and the payment of bills by the department or self-insurer.

(e) Average wholesale price (AWP), baseline price (BLP), and policies related to the purchase of medications.

**Health services provider or provider:** For these rules means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of services related to the treatment of an industrially injured worker. It includes, but is not limited to, hospitals, medical doctors, dentists, chiropractors, vocational rehabilitation counselors, osteopathic physicians, pharmacists, podiatrists, physical therapists, occupational therapists, massage therapists, psychologists, naturopathic physicians, and durable medical equipment dealers.

**Home nursing:** Those nursing services that are proper and necessary to maintain the worker in ~~((their place of temporary or permanent))~~ his or her residence ((consistent with their needs, abilities, and safety)). These services ~~((may))~~ must be provided ~~((by, but are not limited to, home health care, and hospice agencies on either an hourly or intermittent basis))~~ through an agency licensed, certified or registered to provide home care, home health or hospice services. Refer to WAC 296-20-091 for more information.

**Independent or separate procedure:** Certain of the fee schedule's listed procedures are commonly carried out as an integral part of a total service, and as such do not warrant a separate charge. When such a procedure is carried out as a separate entity, not immediately related to other services, the indicated value for "independent procedure" is applicable.

**Medical aid rules:** The Washington Administrative Codes (WACs) that contain the administrative rules for medical and other services rendered to workers.

**Modified work status:** The worker is not able to return to their previous work, but is physically capable of carrying out work of a lighter nature. Workers should be urged to return to modified work as soon as reasonable as such work is frequently beneficial for body conditioning and regaining self confidence.

Under RCW 51.32.090, when the employer has modified work available for the worker, the employer must furnish the doctor and the worker with a statement describing the available work in terms that will enable the doctor to relate the physical activities of the job to the worker's physical limitations and capabilities. The doctor shall then determine whether the worker is physically able to perform the work described. The employer may not increase the physical requirements of the job without requesting the opinion of the doctor as to the worker's ability to perform such additional work. If after a trial period of reemployment the worker is unable to continue with such work, the worker's time loss compensation will be resumed upon certification by the attending doctor.

If the employer has no modified work available, the department should be notified immediately, so vocational assessment can be conducted to determine whether the worker will require assistance in returning to work.

**Nonemergent (elective) hospital admission:** Placement of the worker in an acute care hospital for medical treatment of an accepted condition which may be safely scheduled in advance without jeopardizing the worker's health or treatment outcome.

**Permanent partial disability:** Any anatomic or functional abnormality or loss after maximum rehabilitation has been achieved, which is determined to be stable or nonprogressive at the time the evaluation is made. When the attending doctor has reason to believe a permanent impairment exists, the department or self-insurer should be notified. Specified disabilities (amputation or loss of function of extremities, loss of hearing or vision) are to be rated utilizing a nationally recognized impairment rating guide. Unspecified disabilities (internal injuries, spinal injuries, mental health, etc.) are to be rated utilizing the category system detailed under WAC 296-20-200 et al. for injuries occurring on or after October 1, 1974. **Under Washington law disability awards are based solely on physical or mental impairment due to the accepted injury or conditions without consideration of economic factors.**

**Physician:** For these rules, means any person licensed to perform one or more of the following professions: Medicine and surgery; or osteopathic medicine and surgery.

**Practitioner:** For these rules, means any person defined as a "doctor" under these rules, or licensed to practice one or more of the following professions: Audiology; physical therapy; occupational therapy; pharmacy; prosthetics; orthotics; psychology; nursing; physician or osteopathic assistant; and massage therapy.

**Proper and necessary:**

(1) The department or self-insurer pays for proper and necessary health care services that are related to the diagnosis and treatment of an accepted condition.

(2) Under the Industrial Insurance Act, "proper and necessary" refers to those health care services which are:

(a) Reflective of accepted standards of good practice, within the scope of practice of the provider's license or certification;

(b) Curative or rehabilitative. Care must be of a type to cure the effects of a work-related injury or illness, or it must

be rehabilitative. Curative treatment produces permanent changes, which eliminate or lessen the clinical effects of an accepted condition. Rehabilitative treatment allows an injured or ill worker to regain functional activity in the presence of an interfering accepted condition. Curative and rehabilitative care produce long-term changes;

(c) Not delivered primarily for the convenience of the claimant, the claimant's attending doctor, or any other provider; and

(d) Provided at the least cost and in the least intensive setting of care consistent with the other provisions of this definition.

(3) The department or self-insurer stops payment for health care services once a worker reaches a state of maximum medical improvement. Maximum medical improvement occurs when no fundamental or marked change in an accepted condition can be expected, with or without treatment. Maximum medical improvement may be present though there may be fluctuations in levels of pain and function. A worker's condition may have reached maximum medical improvement though it might be expected to improve or deteriorate with the passage of time. Once a worker's condition has reached maximum medical improvement, treatment that results only in temporary or transient changes is not proper and necessary. "Maximum medical improvement" is equivalent to "fixed and stable."

(4) In no case shall services which are inappropriate to the accepted condition or which present hazards in excess of the expected medical benefits be considered proper and necessary. Services that are controversial, obsolete, investigational or experimental are presumed not to be proper and necessary, and shall be authorized only as provided in WAC 296-20-03002(6) and 296-20-02850.

**Regular work status:** The injured worker is physically capable of returning to his/her regular work. It is the duty of the attending doctor to notify the worker and the department or self-insurer, as the case may be, of the specific date of release to return to regular work. Compensation will be terminated on the release date. Further treatment can be allowed as requested by the attending doctor if the condition is not stationary and such treatment is needed and otherwise in order.

**Temporary partial disability:** Partial time loss compensation may be paid when the worker can return to work on a limited basis or return to a lesser paying job is necessitated by the accepted injury or condition. The worker must have a reduction in wages of more than five percent before consideration of partial time loss can be made. No partial time loss compensation can be paid after the worker's condition is stationary. **All time loss compensation must be certified by the attending doctor based on objective findings.**

**Termination of treatment:** When treatment is no longer required and/or the industrial condition is stabilized, a report indicating the date of stabilization should be submitted to the department or self-insurer. This is necessary to initiate closure of the industrial claim. The patient may require continued treatment for conditions not related to the industrial condition; however, financial responsibility for such care must be the patient's.

**Total permanent disability:** Loss of both legs or arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the worker from performing any work at any gainful employment. When the attending doctor feels a worker may be totally and permanently disabled, the attending doctor should communicate this information immediately to the department or self-insurer. A vocational evaluation and an independent rating of disability may be arranged by the department prior to a determination as to total permanent disability. Coverage for treatment does not usually continue after the date an injured worker is placed on pension.

**Total temporary disability:** Full-time loss compensation will be paid when the worker is unable to return to any type of reasonably continuous gainful employment as a direct result of an accepted industrial injury or exposure.

**Unusual or unlisted procedure:** Value of unlisted services or procedures should be substantiated "by report" (BR).

**Utilization review:** The assessment of a claimant's medical care to assure that it is proper and necessary and of good quality. This assessment typically considers the appropriateness of the place of care, level of care, and the duration, frequency or quantity of services provided in relation to the accepted condition being treated.

**AMENDATORY SECTION** (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

**WAC 296-20-03001 Treatment requiring authorization.** Certain treatment procedures require authorization by the department or self-insurer. Requests for authorization must include a statement of: The condition(s) diagnosed; ICD-9-CM codes; their relationship, if any, to the industrial injury/exposure; an outline of the proposed treatment program, its length and components, procedure codes, and expected prognosis; and an estimate of when treatment would be concluded and condition stable.

(1) Office calls in excess of the first twenty visits or sixty days whichever occurs first.

(2) The department may designate those inpatient hospital admissions that require prior authorization.

(3) X-ray and radium therapy.

(4) Diagnostic studies other than routine x-ray and blood or urinalysis laboratory studies.

(5) Myelogram and discogram in nonemergent cases.

(6) Physical therapy treatment beyond initial twelve treatments as outlined in chapters 296-21, 296-23, and 296-23A WAC.

(7) Diagnostic or therapeutic injection. Epidural or caudal injection of substances other than anesthetic or contrast solution will be authorized under the following conditions only:

(a) When the worker has experienced acute low back pain or acute exacerbation of chronic low back pain of no more than six months duration.

(b) The worker will receive no more than three injections in an initial thirty-day treatment period, followed by a thirty-day evaluation period. If significant pain relief is demonstrated one additional series of three injections will be autho-



ized. No more than six injections will be authorized per acute episode.

(8) Home nursing, attendant services or convalescent center care must be authorized per provisions outlined in WAC 296-20-091 or 296-20-303.

(9) Provision of prosthetics, orthotics, surgical appliances, special equipment for home or transportation vehicle; custom made shoes for ankle/foot injuries resulting in permanent deformity or malfunction of a foot; TNS units; masking devices; hearing aids; etc., must be authorized in advance as per WAC 296-20-1101 and 296-20-1102.

(10) Biofeedback program; pain clinic; weight loss program; psychotherapy; rehabilitation programs; and other programs designed to treat special problems must be authorized in advance. Refer to the department's medical aid rules and fee schedules for details.

(11) Prescription or injection of vitamins for specific therapeutic treatment of the industrial condition(s) when the attending doctor can demonstrate that published clinical studies indicate vitamin therapy is the treatment of choice for the condition. Authorization for this treatment will require presentation of facts to and review by department medical consultant.

(12) Injections of anesthetic and/or anti-inflammatory agents into the vertebral facet joints will be authorized to qualified specialists in orthopedics, neurology, and anesthesia, or other physicians who can demonstrate expertise in the procedure, AND who can provide certification their hospital privileges include the procedure requested under the following conditions:

(a) Rationale for procedure, treatment plan, and request for authorization must be presented in writing to the department or self-insurer.

(b) Procedure must be performed in an accredited hospital under radiographic control.

(c) Not more than four facet injection procedures will be authorized in any one patient.

(13) The long term prescription of medication under the specific conditions and circumstances in (a) and (b) are considered corrective therapy rather than palliative treatment and approval in advance must be obtained.

(a) Nonsteroidal anti-inflammatory agents for the treatment of degenerative joint conditions aggravated by occupational injury.

(b) Anticonvulsive agents for the treatment of seizure disorders caused by trauma.

(14) Intra-muscular and trigger point injections of steroids and other nonscheduled medications are limited to three injections per patient. The attending doctor must submit justification for an additional three injections if indicated with a maximum of six injections to be authorized for any one patient.

(15) The department may designate those diagnostic and surgical procedures which can be performed in other than a hospital inpatient setting. Where a worker has a medical condition which necessitates a hospital admission, prior approval of the department or self-insurer must be obtained.

AMENDATORY SECTION (Amending WSR 92-05-041, filed 2/13/92, effective 3/15/92)

**WAC 296-20-091 Home nursing** (~~(or attendant care)~~). A worker temporarily totally disabled or permanently totally disabled may either temporarily or permanently require home nursing (~~(or attendant)~~) care. A physician's request and prior department authorization are required for home nursing (~~(and attendant)~~) care.

Home health, hospice, and home care agency providers shall be licensed.

## ATTENDANT SERVICES

### NEW SECTION

**WAC 296-20-303 Attendant services.** (1) **What are attendant services?** Attendant services are proper and necessary personal care services provided to maintain the injured worker in his or her residence.

(2) **Who may receive attendant services?** Workers who are temporarily or permanently totally disabled and rendered physically helpless by the nature of their industrial injury or occupational disease may receive attendant services.

(3) **Is prior authorization required for attendant services?** Yes. To be covered by the department, attendant services must be requested by the attending physician and authorized by the department before care begins.

(4) **What attendant services does the department cover?** The department covers proper and necessary attendant services that are provided consistent with the injured worker's needs, abilities and safety. Only attendant services that are necessary due to the physical restrictions caused by the accepted industrial injury or occupational disease are covered.

The following are examples of attendant services that may be covered:

- Bathing and personal hygiene;
- Dressing;
- Administration of medications;
- Specialized skin care, including changing or caring for dressings or ostomies;
- Tube feeding;
- Feeding assistance (not meal preparation);
- Mobility assistance, including walking, toileting and other transfers;
- Turning and positioning;
- Bowel and incontinent care; and
- Assistance with basic range of motion exercises.

Services the department considers everyday environmental needs, unrelated to the medical care of the worker are not covered. The following chore services are examples of services that are not covered: Housecleaning, laundry, shopping, meal planning and preparation, transportation of the injured worker, errands for the injured worker, recreational activities, yard work, and child care.

(5) **Who may provide attendant services?** Attendant services provided on or after April 1, 2002, must be provided

through an agency licensed, certified or registered to provide home care or home health services.

**EXCEPTION:** A worker who received department approved attendant services from a spouse prior to August 1, 2001, may continue to receive attendant services from that spouse as long as all of the following criteria are met. The attendant service spouse provider:

- (a) Had an active provider account with the department on July 31, 2001; and
- (b) Maintains an active provider account with the department; and
- (c) Remains legally married to the injured worker; and
- (d) Allows the department or its designee to perform periodic independent nursing evaluations in the worker's residence.

**(6) What are the treatment limits for attendant services?** The department will determine the maximum hours of authorized attendant care services based on an independent nursing assessment of the worker's care needs.

Spouses eligible to provide attendant services are limited to a maximum of seventy hours of attendant services per week or to the maximum hours authorized for the worker, whichever is less. Workers who are receiving attendant services from spouses and whose care needs exceed seventy hours per week must receive attendant services in excess of seventy hours from an agency eligible to provide attendant services.

**EXCEPTION:** The department may exempt a spouse from the seventy-hour limit if, after review by the department and based on independent nursing assessment:

- (a) The injured worker is receiving proper and necessary care; and
- (b) The worker's care needs exceed seventy hours per week; and
- (c) No eligible agency provider is available.

**(7) Will the department review attendant services?**

Yes. The department or its designee will perform periodic independent nursing evaluations of attendant services. Evaluations may include, but are not limited to, on-site review of the injured worker and review of medical records.

**AMENDATORY SECTION** (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

**WAC 296-23-165 Miscellaneous services and appliances.** (1) The department or self-insurer will reimburse for certain (~~medically~~) proper and necessary miscellaneous services and items needed as a result of an industrial accident. Nursing care, attendant (~~care~~) services, transportation, hearing aids, eyeglasses, orthotics and prosthetics, braces, medical supplies, oxygen systems, walking aids, and durable medical equipment are included in this classification.

(a) When a fee maximum has been established, the rate of reimbursement for miscellaneous services and items will be the supplier's usual and customary charge or the department's current fee maximum, whichever is less. In no case may a supplier or provider charge a worker the difference between the fee maximum and their usual and customary charge.

(b) When the department or self-insurer has established a purchasing contract with a qualified supplier through an open competitive request for proposal process, the department or self-insurer will require that workers obtain specific groups

of items from the contractor. When items are obtained from a contractor, the contractor will be paid at the rates established in the contract. When a purchasing contract for a selected group of items exists, suppliers who are not named in the contract will be denied reimbursement if they provide a contracted item to a worker. The noncontracting supplier, not the worker, will be financially responsible for providing an item to a worker when it should have been supplied by a contractor. This rule may be waived by an authorized representative of the department or self-insurer in special cases where a worker's attending doctor recommends that an item be obtained from another source for medical reasons or reasons of availability. In such cases, the department may authorize reimbursement to a supplier who is not named in a contract. Items or services may be provided on an emergency basis without prior authorization, but will be reviewed for appropriateness to the accepted industrial condition and medical necessity on a retrospective basis.

(2) The department or self-insurer will inform providers and suppliers of the selected groups of items for which purchasing contracts have been established, including the beginning and ending dates of the contracts.

(3) Prior authorization by an authorized representative of the department or self-insurer will be required for reimbursement of selected items and services which are provided to workers. Payment will be denied for selected items or services supplied without prior authorization. The supplier, not the worker, will be financially responsible for providing selected items or services to workers without prior authorization. In cases where a worker's doctor recommends rental or purchase of a contracted item from a supplier who lacks a contract agreement, prior authorization will be required.

The decision to grant or deny prior authorization for reimbursement of selected services or items will be based on the following criteria:

(a) The worker is eligible for coverage.

(b) The service or item prescribed is appropriate and medically necessary for treatment of the worker's accepted industrial condition.

(4) The decision to rent or purchase an item will be made based on a comparison of the projected rental costs of the item with its purchase price. An authorized representative of the department or self-insurer will decide whether to rent or purchase certain items provided they are appropriate and medically necessary for treatment of the worker's accepted condition. Decisions to rent or purchase items will be based on the following information:

(a) Purchase price of the item.

(b) Monthly rental fee.

(c) The prescribing doctor's estimate of how long the item will be needed.

(5) The department will review the medical necessity, appropriateness, and quality of items and services provided to workers.

(6) The department's STATEMENT FOR MISCELLANEOUS SERVICES form or electronic transfer format specifications must be used for billing the department for miscellaneous services, equipment, supplies, appliances, and transportation. Bills must be itemized according to instructions in WAC 296-20-125 and the department or self-insurer's billing

instructions. Bills for medical appliances and equipment must include the type of item, manufacturer name, model name and number, and serial number.

(7) All miscellaneous materials, supplies and services must be billed using the appropriate HCPCS Level II codes and billing modifiers. HCPCS codes are listed in the fee schedules.

**AMENDATORY SECTION** (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

**WAC 296-23-170 Nursing services ((and attendant care)).** Refer to WAC 296-20-132 and 296-20-135 for information regarding use of the conversion factors.

See WAC 296-20-091 for qualifications.

The codes and fees for home nursing services ((and attendant care)) are listed in the fee schedules.

**AMENDATORY SECTION** (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

**WAC 296-23-245 Licensed nursing billing instructions.** (1) Registered nurses may be required to obtain provider account numbers from the department as outlined by department policy.

(2) Advanced registered nurse practitioners must obtain provider account numbers from the department.

(3) Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

(4) Refer to the department's billing instructions for additional information.

(5) Services performed by advanced registered nurse practitioners must be billed using the appropriate procedure code number listed in the fee schedules preceded by a Type of Service Code "N." The rate of reimbursement for the services billed by advanced registered nurse practitioners will be ninety percent of the value listed in the fee schedules.

(6) Refer to ((chapter 296-20 WAC (home nursing care) and chapter 296-23 WAC (miscellaneous services))) **WAC 296-20-303** for rules regarding ((reimbursement for)) home attendant ((care)) services.

**WSR 01-08-098**  
**PROPOSED RULES**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**  
[Filed April 4, 2001, 11:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-22-117.

Title of Rule: Annual statement filing instructions.

Purpose: Insurers and carriers currently file quarterly financial reports with the insurance commissioner. The proposed rule would require that the report be filed with the NAIC also. Filing of the quarterly financial statements of insurers and carriers with the NAIC is an NAIC accreditation standard. This amendment will bring the rule into compli-

ance. The rule will also assist the insurance commissioner in monitoring the financial condition of domestic insurers.

Other Identifying Information: R 2000-09.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, 48.46.200.

Statute Being Implemented: RCW 48.05.073.

Summary: The quarterly reports are currently required to be filed with the insurance commissioner. The rule will require insurers and carriers to file the reports with the NAIC also.

Reasons Supporting Proposal: The rule will aid in NAIC accreditation review and will assist in the financial oversight of insurers and carriers.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jim Tompkins, Lacey, Washington, (360) 407-0537.

Name of Proponent: Mike Kreidler, Insurance Commissioner, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Insurers and carriers currently file quarterly financial reports with the insurance commissioner. The proposed rule would require that the report be filed with the NAIC also. Filing of the quarterly financial statements of insurers and carriers with the NAIC is an NAIC accreditation standard. This amendment will bring the rule into compliance. The rule will also assist the insurance commissioner in monitoring the financial condition of domestic insurers.

Proposal Changes the Following Existing Rules: WAC 284-07-050 is amended to include the NAIC as a recipient of the quarterly financial reports.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

**Small Business Economic Impact Statement**

**Background:** In November of 2000, a CR-101 was filed announcing the agency's intent to begin rule making in this area. The CR-101 was mailed to affected parties and posted on the agency website. In late March of 2001, the commissioner notified domestic carriers of the possibility of filing the proposed text and requested comments.

**Is the Rule Required by Federal Law or Federal Regulation?** This rule is not required by federal law or regulation.

**What Industry is Affected by the Proposed Rule?**

The rules would impact insurers as defined in RCW 48.01.050 and health care service contractors (HCSCs) and health maintenance organizations (HMOs). The only impacted insurers and carriers are domestics. The industry codes that would be affected by the proposed rules include: Hospital and Medical Service Plans, #6324; Group and Blanket Disability Carriers, #6321; Life Insurers, #6311; Fire, Marine & Casualty Insurers, #6331; Surety Insurers, #6351; and Title Insurers, #6351.

**List the Specific Parts of the Proposed Rule, Based on the Underlying Statutory Authority (RCW Section), Which May Impose a Cost to Business:** The rule requires that quarterly financial reports of domestic insurers, HCSCs,

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and HMOs currently produced and filed with the insurance commissioner also be filed with the National Association of Insurance Commissioners (NAIC).

**What Will Be the Compliance Costs for the Industries Affected?** The only compliance costs that could be incurred due to the rule are the nominal costs to duplicate and mail quarterly reports that are already produced. It is the commissioner's understanding that these reports are currently sent to the NAIC as a general matter of course. Thus, no or little costs should be entailed.

**What Percentage of the Industries in the Four-digit Standard Industrial Classification Will Be Affected by the Rule?** The proposed rule would affect 100% of the insurers and carriers subject to regulation by the insurance commissioner.

**Will the Rule Impose a Disproportionately Higher Economic Burden on Small Businesses Within the Four-digit Classification?** No, the proposed rule will not impose a disproportionately higher economic burden on smaller carriers. The rules should not be an economic burden for any carrier and should have little to no economic impact.

**Can Mitigation Be Used to Reduce the Economic Impact of the Rule on Small Businesses and Still Meet the Stated Objective of the Statutes That are the Basis of the Proposed Rule?** No mitigation is possible and none should be necessary. The NAIC requested the rule change as a part of accreditation. The rule change will aid in Washington's accreditation review and should incur little to no additional costs. It does not appear that this goal can be achieved in any more efficient fashion.

**What Steps Will the Commissioner Take to Reduce the Costs of the Rule on Small Businesses?** See above.

**Which Mitigation Techniques Have Been Considered and Incorporated into the Proposed Rule?** No changes have been suggested. If any changes are proposed, they will be considered and discussed throughout the remainder of the rule-making process.

**Which Mitigation Techniques Were Considered for Incorporation into the Proposed Rule but Were Rejected, and Why?** See above.

**Briefly Describe the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule.** There are no new record-keeping requirements as a result of this rule. An additional copy of a current report may have to be produced and mailed.

**List the Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule:** It is expected that no new professional services will be needed by smaller businesses.

*Cost of Equipment:* There is no anticipated additional cost of equipment.

*Cost of Supplies:* There are minimal anticipated additional costs of supplies for copying if an additional copy is needed.

*Cost of Labor:* There should be no more than minimal labor costs associated with making and mailing an additional copy if an additional copy is necessary.

*Cost of Increased Administration:* There may be some minimal costs associated with reading and comprehending the new rule.

**Compare the Cost of Compliance for Small Business with the Cost of Compliance for the Largest Business in the Same Four-digit Classification, Using One or More of the Following:** The cost of compliance should be proportional for small businesses. There should be no proportional differences in costs of equipment, supplies, labor, or administration.

**Have Businesses That Will Be Affected Been Asked What the Economic Impact Will Be?** All parties were informed of the commissioner's intent to revisit this subject and to draft rules on November 1, 2000. The proposal was published in the Washington State Register and was posted on the insurance commissioner's website. Interested and affected parties, including smaller businesses, were mailed the CR-101. The CR-101 stated that an additional copy of the quarterly statements would be required to be mailed to the NAIC. The CR-101 requested comments and gave agency contact numbers for parties interested in participating in the rule-making process. In late March of 2001, the commissioner notified domestic carriers of the possibility of filing the proposed text and requested comments.

**How Did the Commissioner Involve Small Business in the Development of the Proposed Rule?** See above.

**How and When Were Affected Small Businesses Advised of the Proposed Rule?** The CR-101 was filed on November 1, 2000. The proposal was published in the Washington State Register and was posted on the insurance commissioner's website. Interested parties and all health carriers, including smaller carriers, were mailed the CR-101. The CR-101 requested comments and gave agency contact numbers for parties interested in participating in the rule-making process. In late March of 2001, the commissioner notified domestic carriers of the possibility of filing the proposed text and requested comments.

A copy of the statement may be obtained by writing to Kacy Brandeberry, P.O. Box 40255, Olympia, WA 98504-0255, e-mail Kacyb@oic.wa.gov, phone (360) 664-3784, fax (360) 664-2782.

RCW 34.05.328 applies to this rule adoption. It is a significant legislative rule.

Hearing Location: Insurance Building, Room 200A, 14th and Water, Olympia, Washington, on May 8, 2001, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Lori Villaflores by May 1, 2001, TDD (360) 407-0409.

Submit Written Comments to: Kacy Brandeberry, P.O. Box 40255, Olympia, WA 98504-0255, e-mail Kacyb@oic.wa.gov, fax (360) 664-2782, by May 7, 2001.

Date of Intended Adoption: May 11, 2001.

April 4, 2001

Mike Kreidler

Insurance Commissioner

**AMENDATORY SECTION** (Amending Matter No. R - 99-3, filed 7/28/99, effective 8/28/99)

**WAC 284-07-050 Annual statement instructions.** (1) For the purpose of this section, the following definitions shall apply:

(a) "Insurer" shall have the same meaning as set forth in RCW 48.01.050. It also includes health care service contractors registered under chapter 48.44 RCW and health maintenance organizations registered under chapter 48.46 RCW.

(b) "Insurance" shall have the same meaning as set forth in RCW 48.01.040. It also includes prepayment of health care services as set forth in RCW 48.44.010(3) and prepayment of comprehensive health care services as set forth in RCW 48.46.020(1).

(2) Each authorized insurer is required to file with the commissioner an annual statement for the previous calendar year in the general form and context as promulgated by the National Association of Insurance Commissioners (NAIC) for the kinds of insurance to be reported upon, and shall also file a copy thereof with the NAIC. To effectuate RCW 48.05.250, 48.05.400, 48.44.095 and 48.46.080 and to enhance consistency in the accounting treatment accorded various kinds of insurance transactions, the valuation of assets, and related matters, insurers shall adhere to the appropriate Annual Statement Instructions and the Accounting Practices and Procedures Manuals promulgated by the NAIC.

(3) This section does not relieve an insurer from its obligation to comply with specific requirements of the insurance code or rules thereunder.

(4) Number of statements:

(a) For domestic insurers, the statements are to be filed in triplicate to assist with public viewing and copying. Two statements must be permanently bound on the left side. The third statement must be unbound. The statements are to be filed in the Olympia office.

(b) For foreign insurers, except for health care service contractors and health maintenance organizations, one statement shall be filed in the Olympia office. For health care service contractors and health maintenance organizations, two left side permanently bound and one unbound statement shall be filed in the Olympia office to assist with public viewing and copying.

(5) Each domestic insurer shall file quarterly reports of its financial condition with the commissioner and with the NAIC. Each foreign insurer shall file quarterly reports of its financial condition with the NAIC. The commissioner may require a foreign insurer to file quarterly reports with the commissioner whenever, in the commissioner's discretion, there is a need to more closely monitor the financial activities of the foreign insurer. The reports shall be filed in the commissioner's office not later than the forty-fifth day after the end of the insurer's calendar quarters. Such quarterly reports shall be in the form and content as promulgated by the NAIC for quarterly reporting by insurers, shall be prepared according to appropriate Annual and Quarterly Statement Instructions and the Accounting Practices and Procedures Manuals promulgated by the NAIC and shall be supplemented with additional information required by this title and by the commissioner. The statement is to be completed and filed in the

same manner and places as the annual statement. Quarterly reports for the fourth quarter are not required.

(6) As a part of any investigation by the commissioner, the commissioner may require an insurer to file monthly financial reports whenever, in the commissioner's discretion, there is a need to more closely monitor the financial activities of the insurer. Monthly financial statements shall be filed in the commissioner's office no later than the twenty-fifth day of the month following the month for which the financial report is being filed. Such monthly financial reports shall be the internal financial statements of the company. In addition, the commissioner may require these internal financial statements to be accompanied by a schedule converting the financial statements to reflect financial position according to statutory accounting practices and submitted in a form using the same format and designation as the insurer's quarterly financial reports of insurers.

(7) Health care service contractors shall use the Hospital, Medical, Dental Service or Indemnity Corporation's Statement Form promulgated by the NAIC for their statutory filings.

(8) Each health care service contractor's and health maintenance organization's annual statement shall be accompanied by a monthly enrollment data form (IC-16-HC/IC-15-HMO) and additional data statement form (IC-13A-HC/IC-14-HMO).

(9) An insurer who on December 31, 1996, has not previously filed its annual or quarterly statements with the NAIC, shall comply with this rule for the year ending December 31, 1996, and each year thereafter. To enhance the intrastate and interstate surveillance of the insurer's financial condition earlier application is permitted.

(10) The commissioner may allow a reasonable extension of the time within which such financial statements shall be filed.

PROPOSED



**WSR 01-07-053**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed March 16, 2001, 3:37 p.m.]

Date of Adoption: March 16, 2001.

Purpose: Chapter 248-554 WAC, Shelters for victims of domestic violence, is repealed and replaced by chapter 388-61A WAC, Shelters for victims of domestic violence. The rules establish minimum standards for agencies that contract with the Department of Social and Health Services (DSHS) to provide domestic violence shelter and services. The rules have been updated and rewritten using a question and answer format in accordance with Executive Order 97-02.

Citation of Existing Rules Affected by this Order: Repealing WAC 248-554-001, 248-554-005, 248-554-010, 248-554-015, 248-554-018, 248-554-020, and 248-554-030.

Statutory Authority for Adoption: Chapter 70.123 RCW.

Adopted under notice filed as WSR 00-17-160 on August 22, 2000.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 39, Amended 0, Repealed 7.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 7.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 7.

Effective Date of Rule: Thirty-one days after filing.

March 15, 2001

Brian Lindgren

for Charles Hunter, Director  
Administrative Services Division

**Chapter 388-61A WAC**

**SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE**

**PURPOSE**

**NEW SECTION**

**WAC 388-61A-0005 What is the legal basis for the domestic violence shelter program?** Chapter 70.123 RCW authorizes us to establish minimum standards for agencies that receive funding from the department of social and health services (DSHS) to provide domestic violence shelter and services.

**NEW SECTION**

**WAC 388-61A-0010 What is the purpose of having minimum standards for domestic violence shelters and services?** The purpose of these rules is to have uniform state-wide standards for domestic violence shelters and services funded by us. Minimum standards are necessary to provide rules for agencies that contract with us to provide shelter and services for domestic violence victims. These standards address issues such as adequate food, clothing, housing, safety, security, advocacy, and counseling for victims.

**NEW SECTION**

**WAC 388-61A-0015 Is DSHS required to provide funding to any domestic violence service that requests funding?** We are not obligated to disburse funds to all domestic violence services that may comply with the minimum standards set forth in this chapter. The goal of this program is to provide funding and support for the state-wide development, stability, and expansion of shelter and services for victims of domestic violence. In support of that goal, if an agency applies to receive funding we will consider such things as:

- (1) Geographic location;
- (2) Population ratios;
- (3) Population need for services;
- (4) An agency's ability to provide services that comply with these minimum standards;
- (5) The availability of other domestic violence services in a community; and
- (6) The amount of funding we have available to support domestic violence services.

**NEW SECTION**

**WAC 388-61A-0020 What are the facility and service requirements for domestic violence services?** In order for us to contract with an agency for domestic violence services, the agency must provide shelter and supportive services to victims of domestic violence. The agency must comply with the:

- (1) General facility requirements for shelters; and
- (2) Specific additional requirements for safe homes; or
- (3) Specific additional requirements for shelter homes; and
- (4) Requirements for supportive services and agency administration.

**NEW SECTION**

**WAC 388-61A-0025 What definitions apply to domestic violence shelters and services?** "Advocacy-based counseling" means that the client is involved with an advocate counselor in individual, family, or group sessions with the primary focus on safety planning, empowerment, and education of the client through reinforcing the client's autonomy and self-determination.

"Advocate counselor" means a trained staff person who works in a domestic violence service and provides advo-

cacy-based counseling, counseling, and supportive temporary shelter services to clients.

"**Client**" means a victim of domestic violence or dependent child of the victim.

"**Cohabitant**" means a person who is married or is living with a person as a husband or wife at the present time or at some time in the past. Any person who has one or more children in common with another person, regardless of whether they have been married or have lived together at any time, is considered a cohabitant.

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

"**Domestic violence**" includes, but is not limited to, the criminal offenses defined in RCW 10.99.020 when committed by one cohabitant against another.

"**Domestic violence service**" means an agency that provides shelter, advocacy, and counseling for domestic violence clients in a safe, supportive environment.

"**Lodging unit**" means one or more rooms used for a victim of domestic violence including rooms used for sleeping or sitting.

"**Program**" means the DSHS domestic violence program.

"**Safe home**" means a shelter that has two or less lodging units and has a written working agreement with a domestic violence service.

"**Secretary**" means the DSHS secretary or the secretary's designee.

"**Shelter**" means a safe home or shelter home that provides temporary refuge and adequate food and clothing offered on a twenty-four-hour, seven-day-per-week basis to victims of domestic violence and their children.

"**Shelter home**" means a shelter that has three or more lodging units and either is a component of or has a written working agreement with a domestic violence service.

"**Staff**" means persons who are paid or who volunteer services and are a part of a domestic violence service.

"**Victim**" means a cohabitant who has been subjected to domestic violence.

"**We, us and our**" refers to the department of social and health services and its employees.

"**You, I and your**" refers to the domestic violence service or shelter.

## GENERAL FACILITY REQUIREMENTS

### NEW SECTION

**WAC 388-61A-0030 What safety requirements is the shelter required to meet?** You must keep your equipment and the physical structures in the shelter safe and clean for the clients you serve. You must:

(1) Maintain the shelter, premises, equipment, and supplies in a clean, safe and sanitary condition, free of hazards, and in good repair;

(2) Provide guard or handrails, as necessary, for stairways, porches and balconies used by clients;

(3) Maintain swimming pools, wading pools, bathtubs, hot tubs, spas, and bathing beaches in a safe manner and in such a way that does not present a health hazard, safety problem, or nuisance;

(4) Have a method for securing all windows, doors, and other building accesses to prevent the entry of intruders;

(5) Provide a way for staff to enter any area occupied by clients should there be an emergency; and

(6) Secure all unused refrigerators and freezers accessible to children in such a way that prevents them from climbing in and becoming trapped.

### NEW SECTION

**WAC 388-61A-0035 What are the general requirements for bedrooms?** Shelters must meet the following requirements for bedrooms:

(1) You must provide a bed in good condition, with a clean and comfortable mattress to shelter residents.

(2) If the shelter provides cribs or bassinets for infants, the shelter must follow each of these requirements:

(a) Cribs and bassinets must have clean, firm mattresses covered with waterproof material that is easily sanitized;

(b) Crib mattresses must fit snugly to prevent the infant from being caught between the mattress and crib side rails;

(c) Cribs must be made of wood, metal, or approved plastic with secure latching devices;

(d) Cribs must have no more than two and three-eighths inches space between vertical slats when used for infants under six months of age; and

(e) Bumper pad ties must be no longer than twelve inches in length.

### NEW SECTION

**WAC 388-61A-0040 What kind of diaper changing area must I provide?** You must provide a sanitary diaper changing area. In addition, you must develop and provide to clients, hygiene procedures for handling and storing diapers and sanitizing the changing area.

### NEW SECTION

**WAC 388-61A-0045 What are the kitchen requirements?** The following are the minimum general requirements for kitchen facilities:

(1) A sink for dishwashing;

(2) A refrigerator or other storage equipment capable of maintaining a temperature of forty-five degrees Fahrenheit or lower;

(3) A range, stove, or hot plate;

(4) Covered garbage container;

(5) Eating and cooking utensils that are clean and in good repair; and

(6) Counter surfaces that are clean and resistant to moisture.



NEW SECTION

**WAC 388-61A-0050 Are there any restrictions on food preparation?** Food and beverages prepared by and for clients must be prepared, served and stored safely and in a sanitary manner. You must not serve home-canned, low-acid foods (e.g., meats and vegetables) to clients residing in a shelter.

NEW SECTION

**WAC 388-61A-0055 What are the requirements for providing food and clothing to shelter residents?** (1) The domestic violence service must provide appropriate food and beverages for the basic sustenance of shelter residents, unless other resources are immediately available.

(2) You should store appropriate food, including infant formula, at the shelter to provide to residents when other resources are not immediately available.

(3) Whenever possible, the shelter should provide food that is culturally appropriate.

(4) You must provide shelter residents with access to clean, adequate clothing. Clothing that you provide must be clean and have been stored in a sanitary manner.

NEW SECTION

**WAC 388-61A-0060 What are the requirements for toilets, sinks, and bathing facilities?** You must meet these requirements for toilets, sinks, and bathing facilities.

(1) You must provide at least one indoor flush-type toilet, one nearby hand-washing sink with hot and cold running water, and a bathtub or shower facility. These facilities must be located within the shelter building premises.

(2) You must comply with all of the following requirements for toilet and bathing facilities:

(a) Toilet and bathing facilities must allow for privacy of shelter residents.

(b) Toilets, urinals, and hand-washing sinks must be the appropriate height for the children served, or have a safe and easily cleaned step stool or platform that is water resistant.

(c) Hand-washing and bathing facilities must be provided with hot and cold running water; the hot water must not exceed one hundred twenty degrees.

(d) Potty chairs and toilet training equipment for toddlers must be regularly maintained and kept in a sanitary condition. You must put potty chairs, when in use, on washable, water resistant surfaces.

(e) You must provide soap and clean washcloths and towels, disposable towels or other approved hand-drying devices to residents.

NEW SECTION

**WAC 388-61A-0065 What types of linen do I need to provide to clients?** (1) You must provide the following to clients residing in shelter:

(a) Bed linen, towels and washcloths that are clean and in good repair. After use by a client, bed linen, towels and washcloths must be laundered prior to use by another client.

(b) A clean liner for a sleeping bag unless the bag is cleaned between use by different clients.

(2) Clients residing in shelter must be provided with changes of clean bed linen, towels and washcloths upon their request.

NEW SECTION

**WAC 388-61A-0070 What are the requirements for laundry facilities?** We have specific requirements for laundry facilities at your shelter.

(1) You must provide adequate laundry and drying equipment, or make other arrangements for getting laundry done on a regular basis.

(2) You must handle and store laundry in a sanitary manner.

NEW SECTION

**WAC 388-61A-0075 Are there requirements for drinking water?** Water supplies to be used for human consumption must be from an approved public water system. If it is an individual system, the local health department must approve it as safe for human consumption.

NEW SECTION

**WAC 388-61A-0080 What are the requirements for sewage and liquid wastes?** You must discharge sewage and liquid wastes into a public sewer system or into a functioning septic system, approved by the local health authority or department.

NEW SECTION

**WAC 388-61A-0085 What kind of heating system is required?** (1) Rooms used by clients in a shelter must be equipped with a safe and adequate source of heat that can keep the room at a healthful temperature during the time the room is occupied.

(2) Gas-fired or oil-fired space heaters and water heaters must be safely vented to the outside.

NEW SECTION

**WAC 388-61A-0090 How must I ventilate the shelter?** (1) You must ensure that your shelter is ventilated for the health and comfort of the shelter residents. A mechanical exhaust to the outside must ventilate toilets and bathrooms that do not have windows opening to the outside.

(2) Bedrooms and communal living areas must have a window or opening to the outdoors that can be locked or secured from the inside.

NEW SECTION

**WAC 388-61A-0095 How much lighting is required in the shelter?** You must locate light fixtures and provide lighting that promotes good visibility and comfort for shelter residents.

NEW SECTION

**WAC 388-61A-0100 Are there any requirements about pets in the shelter?** Pets are prohibited from the kitchen during food preparation.

NEW SECTION

**WAC 388-61A-0105 What first-aid supplies must I provide?** You must keep first-aid supplies on hand for immediate use, including unexpired syrup of ipecac that is to be used only when advised by the poison control center. First-aid supplies must include at least the following: First aid manual, band-aids, gauze, and adhesive tape.

NEW SECTION

**WAC 388-61A-0110 What are the requirements for storing medications?** (1) All medications, including pet medications and herbal remedies, must be stored in a way that is inaccessible to children.

(2) Pet and human medications must be stored separately.

NEW SECTION

**WAC 388-61A-0115 What measures must I take for pest control?** You must make reasonable attempts to keep the shelter free from pests, such as rodents, flies, cockroaches, fleas and other insects.

NEW SECTION

**WAC 388-61A-0120 What are the requirements for labeling and storing chemicals and toxic materials?** (1) Containers of chemical cleaning agents and other toxic materials must:

(a) Be clearly labeled with the contents; and  
(b) Bear the manufacturer's instructions and precautions for use.

(2) You must store the following items in a place that is not accessible to children:

- (a) Chemical cleaning supplies;
- (b) Toxic substances;
- (c) Poisons;
- (d) Aerosols; and
- (e) Items with warning labels.

(3) You must store chemical cleaning supplies and toxic substances separately from food items, clothing, and bedding in order to prevent contamination.

NEW SECTION

**WAC 388-61A-0125 Where do I keep firearms and other dangerous weapons?** (1) You must keep firearms and other dangerous weapons in a locked storage container, gun safe, or another storage area made of strong, unbreakable material.

(2) If the storage cabinet has a glass or another breakable front, you must secure the firearms with a locked cable or chain placed through the trigger guards.

(3) You must store ammunition in a place that is separate from the firearms or locked in a gun safe.

(4) You must allow access to firearms, weapons and ammunition only to authorized persons.

**ADDITIONAL REQUIREMENTS FOR SAFE HOMES**NEW SECTION

**WAC 388-61A-0130 What are the additional requirements for a safe home?** Safe homes must meet the following additional requirements in order for a domestic violence service to contract with us:

(1) A safe home must complete a written application to a domestic violence service. The domestic violence service must approve the application and give training to the safe home staff before the home may receive clients.

(2) The domestic violence service must maintain a written record of all safe homes. The record must include:

(a) The name and address of the person operating the safe home or an identification code for the safe home;

(b) A written safe home application;

(c) Documentation that the safe home complies with the general facility and additional requirements for safe homes; and

(d) Verification that safe home staff received initial basic training as outlined in this WAC by the domestic violence service.

(3) You must have at least one telephone at the safe home for incoming and outgoing calls. You must provide the following information to residents:

(a) Emergency telephone numbers; and

(b) Instructions on how residents can access domestic violence service staff.

(4) When clients are residing in a safe home at least one domestic violence service staff member must be on-call to go to the safe home twenty-four-hours a day, seven-days-per-week.

(5) Safe homes must comply with the following general fire safety requirements:

(a) Every room used by children in the safe home must have easy entry and exit, including one of these features:

(i) Two separate doors;

(ii) One door leading directly to the outside; or

(iii) A window that opens to the outside and is large enough for emergency escape or rescue.

(b) Every occupied area must have access to at least one exit that does not pass through rooms or spaces that can be locked or blocked from the opposite side.

(c) No space may be lived in by a client that is accessible only by a ladder, folding stairs, or a trap door.

(d) Every bathroom door used by clients must be designed to permit the opening of the locked door from the outside.

(e) Every closet door latch must be designed to be opened from the inside.

(f) Stoves or heaters must not block escape or exit routes.

(g) Flammable, combustible, or poisonous material must be stored away from exits and away from areas that are accessible to children.

(h) Open-flame devices and fireplaces, heating and cooking appliances, and products capable of igniting clothing must not be left unattended or used incorrectly.

(i) Fireplaces, wood stoves and other heating systems that have a surface hot enough to cause harm must have gates or protectors around them when in use.

(j) Multi-level dwellings must have a means of escape from an upper floor. If a fire ladder is needed to escape from an upper story window, it must be stored in a location that is easily accessible to the clients who may need it.

(k) You must place a smoke detector in good working condition in each bedroom or in areas close to where children sleep, such as a hallway. If the smoke detector is mounted on the wall, it must be twelve inches from the ceiling and a corner.

(l) If questions arise concerning fire danger, the local fire protection authority must be consulted.

## ADDITIONAL REQUIREMENTS FOR SHELTER HOMES

### NEW SECTION

**WAC 388-61A-0135 What are the additional requirements for a shelter home?** Shelter homes must meet the following additional requirements in order for a domestic violence service to contract with us:

(1) When a shelter home is not a component of a domestic violence service, the shelter home and domestic violence service must have a written working agreement before the shelter home receives clients from the domestic violence service. The written working agreement must include:

(a) Confirmation that the domestic violence service has inspected the shelter home and that the shelter home complies with the general facility and additional requirements for shelter homes;

(b) How the domestic violence service will provide supportive services to shelter home residents; and

(c) Verification that shelter home staff received initial basic training as outlined in this rule by the domestic violence service.

(2) Shelter homes must provide at least one toilet, sink, and bathing facility for each fifteen clients or fraction of this number. The floors of all toilet and bathing facilities must be resistant to moisture.

(3) You must have at least one telephone at the shelter for incoming and outgoing calls. Next to the telephone in shelter homes you must post:

(a) Emergency telephone numbers; and

(b) Instructions on how residents can access domestic violence service staff.

(4) In shelter homes all bathrooms, toilet rooms, laundry rooms, and janitor closets containing wet mops and brushes must have natural or mechanical ventilation in order to prevent objectionable odors and condensation.

(5) When staff serve food to clients in shelter homes, the staff must prepare the food in compliance with WAC 246-215-190, Temporary food service establishment.

(6) Shelter homes must develop and post hygiene procedures for handling and storing diapers and sanitizing the changing area.

(7) Shelter homes must comply with the fire and life safety requirements as outlined in chapter 51-40 WAC.

(8) Shelter homes must meet the following requirements for bedrooms:

(a) Bedrooms must have a minimum ceiling height of seven and half feet;

(b) Bedrooms must provide at least fifty square feet of usable floor area per bed; and

(c) Floor area where the ceiling height is less than five feet cannot be considered as usable floor area.

(9) When clients are residing in a shelter home at least one domestic violence service staff member must be present or on-call to go to the shelter home twenty-four-hours a day, seven-days-per-week.

## SUPPORTIVE SERVICES

### NEW SECTION

**WAC 388-61A-0140 What supportive services am I required to provide to clients?** You must give clients an opportunity to receive supportive services and assistance during their stay in the shelter. Clients are not required to participate in these services as a condition of residing in the shelter. Supportive services must include:

(1) Twenty-four-hour, seven-day-per-week access to advocacy-based counseling;

(2) A safe, supportive environment that offers clients the opportunity to examine the events that led to the need for domestic violence services;

(3) A private area for counseling;

(4) Advocacy-based counseling with, and on behalf of, the client;

(5) Safety planning, problem solving and crisis intervention;

(6) Assistance with child care during individual and group counseling sessions;

(7) A minimum ratio of one group facilitator to eight group participants;

(8) Planned activities for children who are residents of the shelter;

(9) A day program or drop-in center to assist victims of domestic violence who have found other shelter but who have a need for supportive services; and

(10) Referrals to other appropriate services or domestic violence services when:

(a) Shelter homes or safe homes are full;

(b) A client must be transferred to another domestic violence service for reasons of safety of the client; or

(c) An inappropriate referral has been made to a domestic violence service; or

(d) The client has problems that require services of another agency or agencies before receiving domestic violence services.

#### NEW SECTION

**WAC 388-61A-0145 What is advocacy-based counseling?** Advocacy-based counseling means the involvement of a client with an advocate counselor in an individual, family, or group session with the primary focus on safety planning and on empowerment of the client through reinforcing the client's autonomy and self-determination. Advocacy-based counseling uses nonvictim blaming problem-solving methods that include:

- (1) Identifying the barriers to safety;
- (2) Developing safety checking and planning skills;
- (3) Clarifying issues;
- (4) Providing options;
- (5) Solving problems;
- (6) Increasing self-esteem and self-awareness; and
- (7) Improving and implementing skills in decision making, parenting, self-help, and self-care.

#### NEW SECTION

**WAC 388-61A-0150 What type of training is required for staff of the domestic violence service?** All staff providing direct services to domestic violence clients, and supervisors of direct service staff, must meet the following minimum training requirements.

- (1) A minimum of twenty hours of initial basic training that covers at least the following topics:
  - (a) Theory and implementation of advocacy-based counseling;
  - (b) The history of domestic violence;
  - (c) Legal, medical, social service, and systems advocacy;
  - (d) Confidentiality and ethics;
  - (e) Client safety assessment;
  - (f) Planning, problem-solving, and crisis intervention;
  - (g) Providing services and advocacy to individuals from diverse communities;
  - (h) Policies and procedures of the domestic violence service; and
  - (i) Referrals and shelter resident transfers.
- (2) In the year following the year in which they received their initial basic training, and every year thereafter, staff providing direct services, and supervisors of direct service staff, must attend a minimum of thirty hours of continuing education as follows:
  - (a) At least fifteen hours of continuing education must be training on advocacy-based counseling directly related to serving victims of domestic violence and their children.
  - (b) At least five hours of continuing education must be training on services and advocacy to individuals from diverse communities.
  - (c) Staff must devote not more than ten hours to video, audiotapes, or self-study as part of the overall thirty-hour continuing education requirement.

#### NEW SECTION

**WAC 388-61A-0155 Must supervisors of domestic violence service staff have specific experience and training?** Supervisors of staff providing direct services to domestic violence clients must meet the following minimum experience and training requirements.

- (1) At least two years' counseling experience with a domestic violence service; and
- (2) Fifty hours of training on domestic violence issues and advocacy-based counseling within three years prior to providing staff supervision.

#### NEW SECTION

**WAC 388-61A-0160 What written policies and procedures do you need to have?** The domestic violence service must have written policies and procedures that cover the following issues:

- (1) Victims in immediate danger or at risk will receive first priority for shelter;
- (2) Confidentiality of client records and communication;
- (3) Nondiscrimination relating to staff, clients, and provision of services;
- (4) The provision of bilingual and interpreter services to clients;
- (5) Recruitment, hiring, periodic performance evaluation, promotion and termination of staff. Agencies must recruit, to the extent feasible, persons who are former victims of domestic violence to work as paid or volunteer staff;
- (6) Job descriptions for all staff positions including volunteers;
- (7) Reporting of child abuse as legally mandated;
- (8) Clients access to their files;
- (9) Grievance procedures for staff and clients;
- (10) Procedures for making referrals to other community resources such as medical, community service offices, pastoral care, legal representation, and client transfers to another domestic violence service for reasons of safety of the client;
- (11) Emergency procedures for fire, disaster, first aid, medical and police intervention;
- (12) Appropriate documentation of domestic violence services and client files;
- (13) Protection of agency and client records;
- (14) Records retention;
- (15) Appropriate accounting procedures;
- (16) Personnel policies and procedures; and
- (17) Administrative policies and procedures.

#### **COMPLIANCE WITH STANDARDS**

#### NEW SECTION

**WAC 388-61A-0165 Will DSHS do an evaluation of the domestic violence service?** (1) To measure compliance with our requirements we will conduct a biennial evaluation of each agency under contract with us to provide domestic violence service.

(2) We will inspect a random number of safe homes during biennial evaluations of domestic violence services to measure compliance with our requirements.

(3) If a lodging unit is occupied at the time of an evaluation, the domestic violence service must give the client an opportunity to leave the unit.

#### NEW SECTION

**WAC 388-61A-0170 What will happen if I am out of compliance with my contract?** (1) If we find that the domestic violence service, safe home, or shelter home is out of compliance with the standards specified in this chapter or the contract, we will give you written notice of the deficiencies. You must correct the deficiencies according to a plan of correction we approve.

(2) We may suspend or revoke the funding of a domestic violence service where a safe home, shelter home, or the domestic violence service itself is out of compliance with this chapter or the DSHS contract.

#### NEW SECTION

**WAC 388-61A-0175 What will happen if there is a complaint to DSHS about the domestic violence service?**

(1) If we receive a complaint that your domestic violence service is out of compliance with this chapter or the DSHS contract, we will notify you and we will initiate an investigation.

(2) If the investigation requires that we be on-site at your domestic violence service, you must give clients residing in lodging units an opportunity to leave the unit during the inspection.

(3) If we find that the domestic violence service, safe home, or shelter home has not complied with the standards specified in this chapter or the terms of the DSHS contract, we will give you written notice of the deficiencies. You must correct the deficiencies according to a plan of correction we approve.

(4) We may suspend or revoke the funding of a domestic violence service where a safe home, shelter home, or the service itself is out of compliance with this chapter or the DSHS contract.

#### NEW SECTION

**WAC 388-61A-0180 Can DSHS waive any of the minimum standards of this chapter?** Under certain conditions we may waive some of the rules contained in this chapter if you submit a written request that satisfactorily demonstrates that:

(1) The waiver will not place the client's safety or health in jeopardy and that:

(a) The domestic violence service is unable to meet the requirements of this chapter without the waiver; or

(b) The absence of the waiver will have a detrimental effect on the provision of services.

(2) Any substitutions of procedures, materials, or equipment from those specified in this chapter are at least equivalent to those required.

## APPEAL PROCESS

### NEW SECTION

**WAC 388-61A-0185 What are my rights if DSHS suspends, revokes, or denies funding?** If we suspend, revoke or deny funding you may request an agency hearing.

### NEW SECTION

**WAC 388-61A-0190 Will I be notified if my funding has been suspended, revoked, or denied?** We will notify you in writing if:

(1) Your funding has been suspended or revoked and we will state our reasons for making that decision; or

(2) Your request for funding has been denied and we will state our reasons for making that decision.

### NEW SECTION

**WAC 388-61A-0195 How do I request an agency hearing?** In order to request an agency hearing you must:

(1) Notify the office of administrative hearings within twenty-eight days from the date of the letter that notified you of our decision;

(2) Include in your letter a statement of your reasons why you disagree with our decision; and

(3) Attach a copy of our letter to your request for an agency hearing.

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 248-554-001	Purpose.
WAC 248-554-005	Definitions.
WAC 248-554-010	Shelter homes.
WAC 248-554-015	Safe homes.
WAC 248-554-018	Shelter homes and safe homes—General.
WAC 248-554-020	Domestic violence services—General.
WAC 248-554-030	Exemptions, separability, and notice and appeal.

**WSR 01-08-003**

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed March 21, 2001, 3:49 p.m.]

Date of Adoption: March 21, 2001.

Purpose: This rule explains how the trade-in exclusions from the measure of the retail sales and use taxes apply to transactions where the buyer delivers property of a like kind

as consideration to the seller. The rule provides definitions, examples of what qualifies as property of a like kind, and the record-keeping requirements of sellers accepting trade-in property. The rule clarifies that the trade-in exclusion is available for sales transactions where the seller is not the owner of the tangible personal property (e.g., consignment sales).

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-247 Trade-ins, selling price, sellers' tax measures.

Statutory Authority for Adoption: RCW 82.32.300.

Adopted under notice filed as WSR 01-04-048 on February 1, 2001.

Changes Other than Editing from Proposed to Adopted Version: Additional language has been added to subsection (2) to clarify that if a buyer trades-in more than one article of like-kind property the buyer is entitled to a reduction in the measure of tax based on the value of all like-kind trade-in property.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 21, 2001

Russell W. Brubaker

Assistant Director

Legislation and Policy

**AMENDATORY SECTION** (Amending Order 86-2, filed 1/28/86)

**WAC 458-20-247 Trade-ins, selling price, sellers' tax measures.** (~~Initiative Measure No. 464, approved November 6, 1984 amended RCW 82.08.010(1), the statutory definition of "selling price," by excluding from that term the value of "trade-in property of like kind." The effective date of this exclusion is December 6, 1984. As a result, the retail sales tax measure on trade-in sales is reduced by the value of the property traded in. Thus, on and after the effective date, the value of "trade-in property" may be excluded from the measure of retail sales tax to be collected and reported by the seller who accepts the trade-in property as payment for new or used property sold. Actual delivery of the property to the buyer determines when the sale is made (see WAC 458-20-103). The initiative applies only to sales where the property is delivered to the purchaser on or after December 6, 1984.~~)

~~Under RCW 82.08.010, as amended by the initiative, "the term 'selling price' means the consideration, whether money, credits, rights, or other property **except trade-in property of like kind**, expressed in terms of money, paid or delivered by a buyer to a seller, all without any deduction, on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discounts, delivery costs, taxes other than taxes imposed under this chapter if the seller advertises the price as including the tax or that the seller is paying the tax, or any other expense whatsoever paid or accrued and without any deduction on account of losses." (Amendatory language underscored.)~~

### Definitions

~~Unless otherwise stated, the terms "tax," "taxable," and "nontaxable," as used in this rule, refer to retail sales tax only.~~

~~The terms, "trade-in," "traded-in," and "property traded-in" have their ordinary and common meaning. They mean property of like kind to that acquired in a retail sale which is applied, in whole or in part, toward the selling price.~~

~~The term "property of like kind" means articles of tangible property of the same generic classification. It refers to the class and kind of property, not to its grade or quality. The term includes all property within a general classification rather than within a specific category in the classification. Thus, as examples, it means furniture for furniture, motor vehicles for motor vehicles, licensed recreational land vehicles for licensed recreational land vehicles, appliances for appliances, auto parts for auto parts, audio/video equipment for audio/video equipment, and the like. These general classifications are determined by the nature of the property and its function or use. It may be that some kinds of property fit within more than one general classification. For example, a motor home is both a motor vehicle and a licensed recreational land vehicle. Thus, for purposes of this rule, a motor home may be taken as a trade-in on a travel trailer, truck, camper, or a truck with camper attached, and vice versa. Similarly, a travel trailer may be taken as trade-in on a motor home even though a travel trailer is not a motor vehicle; both are licensed recreational land vehicles. Conversely, a utility trailer may not be taken as trade-in on a travel trailer, for purposes of this rule, because a utility trailer is neither a motor vehicle nor a licensed recreational land vehicle. Similarly, a car may not be taken as trade-in on a camper and vice versa.~~

~~Under these definitions it is not required that a car be traded-in exclusively on another car in order to get the trade-in reduction of the tax measure. It could, as well, be traded-in as part payment for a truck, motorcycle, motor home, or any other qualifying motor vehicle. Similarly, a sofa for a recliner chair, a pistol for a rifle, a sailboat for a motorboat, or a gold chain for a wrist watch are the kinds of generic trade-in transfers which would qualify. However, the exclusion of the value of property traded-in does not include such things as a motorcycle for a boat, a diamond ring for a television set, a battery for lumber, or farm machinery (including tractors and self-propelled combines) for a car.~~

~~**Value of property traded-in**—The seller and buyer establish the value of property traded-in. However, the par-~~

ties may not overstate the value of the property traded in in order to artificially lower the amount of sales or use tax due. Absent proof of a higher value, the property traded in must be determined by the fair market value of similar property of like quality, quantity, and age, sold or traded under comparable conditions. It is the substance of the actual sale and trade-in transaction which will control the retail sales tax measure, regardless of any subsequent accounting adjustments to the seller's inventory records or books of account.

**Record-keeping**—RCW 82.32.070 requires every person liable for any tax to keep and preserve records from which true tax liability can be determined. Before any exclusion from the selling price for the value of property traded in will be allowed, the property traded in must be specifically identified and clearly indicated as "trade in," by model, serial number and year of manufacture where applicable, and the full trade in value must be shown on the sales agreement or invoice given to the purchaser, with a copy retained in the seller's permanent sales records.

For example:

Less "trade in"—1983 G.E. Refrigerator/Freezer  
Model No. GE RF0001, Serial No. 0001, \$300.

**Encumbered property traded in**—Sellers are allowed to consider as nontaxable the value of property traded in even though ownership of the property may be encumbered by a conditional sale, retail installment contract, or security interest; provided that, the property traded in must be actually transferred to the seller of the new or used property for which it is traded in.

**Casual or isolated sales**—The retail sales tax applies to all casual or isolated retail sales made by any person who is engaged in business activity, that is, a person required to be registered and reporting tax to the state. Persons who are not engaged in business activity, i.e., private persons, are not required to be registered and are not required to collect sales tax on their casual or isolated sales (see WAC 458-20-106). Registered persons who make casual or isolated sales (e.g., a law firm which sells its law books) may reduce the taxable selling price by the value of the property traded in. The same record-keeping requirements apply as explained earlier in this rule.

**Retail services**—The exclusion of the value of property traded in from the selling price tax measure applies only to sales involving tangible property traded in for tangible property sold. It does not apply to any transactions involving services which have been statutorily included as "sales at retail" (see RCW 82.04.050). Thus, for example, a construction contractor may not accept part payment in tangible property to thereby reduce the sales tax measure of the construction contract selling price. Similarly, a seller of tangible personal property may not accept retail services as part payment to thereby reduce the selling price tax measure. Such transfers neither qualify as trade-in transfers of tangible property nor "in-kind" transfers.

**Trade-in for rental property**—Under RCW 82.04.050, rentals or leases of tangible personal property are "retail sales." The term "selling price" as amended by Initiative 464

is also the tax measure for such rentals and leases. Thus, where tangible property is traded in as part payment for the rental or lease of property of like kind (e.g., a used computer against the rental of a new one) the sales tax will apply to all payments after the value of the property traded in has been depleted or consumed and the lessor of the property actually begins making charges for the lease or rental of tangible property.

When tangible personal property is rented or leased, the "selling price" includes all charges to the renter or lessee for the use of the property rented or leased, including charges designated as insurance, interest and other costs recovered stated separately from the regular rental fee. When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" must be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character. In cases of doubt, all of the pertinent facts should be submitted to the department of revenue for an advisory determination.

**Real property transfers**—The trade in exclusion does not apply to sales of real property. It also does not apply where real property is traded in for tangible personal property.

### Business and Occupation Tax

The trade-in exclusion affects only the measure of retail sales tax to be collected and paid. There is no trade-in exclusion for business and occupation tax. Thus, the gross receipts to be reported under the retailing classification of business and occupation tax continues to be the total value proceeding or accruing from the sale, including the value of property traded in.

RCW 82.04.070 provides, "The term 'gross proceeds of sales' means the value proceeding or accruing from the sale of tangible personal property . . . without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes or any other expense whatsoever paid or accrued and without any deduction on account of losses."

Also, the terms "selling price" and "gross proceeds of sales" include items of cost which are the direct obligation of the seller but which the seller may invoice separately to the purchaser. Examples of such costs are the cost of the contractor's performance bond, the cost of city or state business and occupation taxes of public utility taxes, the cost of insurance protecting the seller and the cost of freight in. The selling price can be payable in money or otherwise. If it is payable in whole or in part in property, each party is a seller of the property being transferred.

### Use Tax

RCW 82.12.010 defines the measure of the use tax as the "value of the article used." Under certain circumstances that value is determined by the "selling price" of the article or property used. Also, this use tax statute provides that the

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meaning of words in chapter 82.08 RCW (retail sales tax) shall have full force as well with respect to the use tax chapter. Thus, the Initiative 464 amendment of the definition of "selling price" will apply equally for use tax purposes. Therefore, the measure of the use tax for tangible property upon which no retail sales tax has been paid (e.g., if it were purchased in another state with no sales tax) is the same "selling price" as defined for retail sales tax purposes. In such cases the value of the property traded in will be excluded from the use tax measure.

The consumer user, or any out of state seller who is registered in this state and collects this state's use tax, must retain the sales records reflecting property "traded in," as explained earlier in this rule.

### Preparing Tax Returns

The gross amounts reported under column 2 on the combined excise tax return should be the same amounts under the retailing business and occupation tax (line 18) and the retail sales tax (line 19). The reduction of the "selling price" tax measure for property traded in should be reflected as a deduction only under the retail sales tax (column 3, line 19). Until return forms are amended, this sales tax deduction should be shown on the back side of the form (line 19) under "other deductions" and explained as "traded in sales.") (1) **Introduction.** The value of "trade-in property of like kind" is excluded from the definitions of "selling price" in RCW 82.08.010 and the definition of "value of the article used" in RCW 82.12.010. This rule explains how and when the retail sales or use tax exclusions apply and the recordkeeping requirements needed to document the transactions. The retail sales and use tax exemptions provided for core deposits and credits by RCW 82.08.036 and 82.12.038 are discussed in WAC 458-20-250.

Unless otherwise stated, "tax," "taxable," and "nontaxable," as used in this rule, refer to retail sales or use tax only. The terms "trade-in," "traded in," and "property traded in" have their ordinary and common meaning. The terms refer to property applied, in whole or in part, toward the selling price of property of like kind. Readers are advised that the fact that sales and purchase transactions might be characterized as a "like kind" under Section 1031 of the Internal Revenue Code does not control for the purpose of the trade-in exclusion in RCW 82.08.010 and 82.12.010.

(2) **General nature of the trade-in exclusion.** RCW 82.08.010 and 82.12.010 define the terms "selling price" and "value of the article used," in pertinent part, to mean the consideration, whether money, credits, rights, or other property except trade-in property of like kind, expressed in terms of money paid or delivered by a buyer to a seller. As a result, the buyer of tangible personal property is entitled to reduce the measure of retail sales or use tax if (a) the buyer delivers the trade-in property to the seller, (b) the trade-in property is delivered as consideration for the purchase, and (c) the property traded in is "property of a like kind."

(a) The trade-in exclusion applies to all trade-in property of like kind delivered by a buyer to a seller as consideration for a purchase. Thus, if a buyer trades in two motor vehicles

when purchasing one motor vehicle, the buyer is entitled to a reduction in the measure of tax based on the value of both trade-in vehicles.

(b) The trade-in exclusion is limited to retail sales and use taxes. There is no comparable exclusion for business and occupation (B&O) tax. (See definition of "gross proceeds of sales" in RCW 82.04.070 and of "value proceeding or accruing" in RCW 82.04.090.) Sales tax need not have been paid on the item being traded in to be eligible for the trade-in exclusion.

(3) **Buyer to deliver trade-in property to seller.** The buyer must deliver trade-in property to the "seller."

(a) RCW 82.08.010 defines "seller" as "every person . . . making sales at retail or retail sales to a buyer or consumer, whether as agent, broker, or principal." There is no requirement that the seller be the owner of the property being sold to the buyer. RCW 82.08.010 anticipates and includes situations where a "seller" is selling property that he or she does not actually own, such as in consignment sales transactions.

For example, Broker enters into a consignment sale contract with Susan Smith to sell her Boat A. John Doe contacts Broker expressing interest in purchasing Boat A, provided his Boat B is accepted as a trade-in on the purchase. John Doe executes a purchase agreement with Broker which specifically identifies both Boat A being purchased and the trade-in. Broker accepts delivery and ownership of Boat B and places Boat B into Broker's own inventory. In turn Broker arranges delivery of the craft purchased to John. The buyer (John) has delivered the trade-in property (Boat B) to the seller (Broker). There is no requirement that Broker purchase Boat A from Susan (thereby becoming the owner) prior to selling Boat A to John and accepting Boat B as trade-in property because, as a broker, Broker is a seller under RCW 82.08.010.

(b) The trade-in exclusion does not apply to transactions where a seller transfers tangible personal property in or out of its own inventory in exchange for other property it also owns.

(4) **Trade-in as consideration.** Property traded in must be consideration delivered by the buyer to the seller. The sales documents must identify the tangible personal property being purchased and the trade-in property being delivered to the seller. This does not require simultaneous transfers of the property being traded in and the property being purchased, but it does require that the delivery of the trade-in and the purchase be components of a single transaction. Sales documents, executed not later than the date the trade-in property is delivered to the seller, must identify the property purchased and the trade-in property as more fully explained in subsection (7) below.

The following examples identify a number of facts and then state conclusions with respect to the trade-in exclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(a) Jane Doe offers to purchase Sailboat A from Dealer, if Dealer accepts her Sailboat B as a trade-in on the purchase. Dealer declines to accept ownership of Jane's Sailboat B, but instead offers to sell Sailboat B on a consignment basis with the net proceeds to be applied toward the purchase if Sailboat B is sold within three months. Jane accepts and Sailboat B is

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sold within the three-month period, and the net proceeds are applied to Jane's purchase of Sailboat A.

Jane is not entitled to the trade-in exclusion. An agreement to sell property on consignment does not constitute consideration "paid or delivered by a buyer to a seller," even if the subsequent proceeds are applied to the purchase price.

(b) Sally Jones decides to upgrade from her existing motor home to a new, larger motor home. The salesperson at a local RV dealership explains that while the dealership does not currently have on hand a motor home meeting Sally's needs, it can order one for her from the manufacturer. The salesperson also explains that if Sally trades in her motor home at the time she enters into the purchase contract, the dealership will accept the motor home as a down payment toward the purchase of the new motor home. Sally signs the purchase contract, the dealership orders the new motor home, and Sally delivers her motor home to the RV dealers (who accept ownership thereof). Sally's new motor home is delivered to her eight months later.

Sally is entitled to the trade-in exclusion because the motor home was delivered to the RV dealership as consideration paid toward her purchase of the new motor home.

(c) Mr. B and Coastal Brokers enter into a consignment sales agreement. Under the terms of this agreement, Coastal Brokers will sell Mr. B's sailboat on a consignment basis and at the time of sale place the proceeds due Mr. B into a trust account for use toward a possible purchase of a yacht by Mr. B. Mr. B's sailboat is sold and the proceeds due to Mr. B placed in the trust account. Mr. B subsequently purchases a yacht from Coastal Brokers, and the trust account proceeds are applied to the purchase price of the yacht.

Mr. B is not entitled to the trade-in exclusion. The delivery of Mr. B's sailboat to Coastal Brokers and Mr. B's purchase of the yacht are not components of a single transaction. In addition, Mr. B's delivery of his sailboat for consignment sale by Coastal Brokers does not constitute consideration "paid or delivered by a buyer to a seller," even if proceeds from the sale are applied to the purchase of the yacht.

(d) John Smith agrees to purchase Travel Trailer A from Dealer if Dealer accepts John's Travel Trailer B as a trade-in on the purchase. Dealer accepts ownership of Travel Trailer B at an agreed-upon value, on the condition that John pay Dealer a monthly fee to reimburse Dealer for financing costs associated with Travel Trailer B. This fee is to be paid for a period of four months or until Dealer sells Travel Trailer B, whichever is shorter. John has no further responsibility with respect to Travel Trailer B after this period.

John is entitled to the trade-in exclusion because he delivered Travel Trailer B to Dealer as consideration paid toward Travel Trailer A. The fees John paid to reimburse Dealer for financing costs associated with the trade-in property do not change the nature of the transaction, though for the purposes of the trade-in exclusion they do reduce the originally agreed-upon value of the trade-in property.

**(5) Property of like kind.** The term "property of like kind" means articles of tangible property of the same generic classification. It refers to the class and kind of property, not to its grade or quality. The term includes all property within a general classification rather than within a specific category

in the classification. Thus, as examples, it means furniture for furniture, motor vehicles for motor vehicles, licensed recreational land vehicles for licensed recreational land vehicles, appliances for appliances, auto parts for auto parts, and audio/video equipment for audio/video equipment. These general classifications are determined by the nature of the property and its function or use. It may be that some kinds of property fit within more than one general classification. For example, a motor home is both a motor vehicle and a licensed recreational land vehicle. Thus, for purposes of the trade-in exclusion, a motor home may be taken as a trade-in on a travel trailer, truck, camper, or a truck with camper attached, and vice versa. Similarly, a travel trailer may be taken as trade-in on a motor home even though a travel trailer is not a motor vehicle; both are licensed recreational land vehicles. Conversely, a utility trailer may not be taken as trade-in on a travel trailer because a utility trailer is neither a motor vehicle nor a licensed recreational land vehicle. Likewise a car may not be taken as trade-in on a camper and vice versa.

It is not required that a car be traded in exclusively on another car in order to get the trade-in reduction of the tax measure. It could, as well, be traded in as part payment for a truck, motorcycle, motor home, or any other qualifying motor vehicle. Similarly, a sofa for a recliner chair, a pistol for a rifle, a sailboat for a motorboat, or a gold chain for a wrist watch are the kinds of generic trade-in transfers which would qualify. The exclusion of the value of property traded in, however, does not include such things as a motorcycle for a boat, a diamond ring for a television set, a battery for lumber, computer hardware for computer software, or farm machinery (including tractors and self-propelled combines) for a car.

**(6) Value of property traded in.** The seller and buyer establish the value of property traded in. The parties may not overstate the value of the trade-in property in order to artificially lower the amount of retail sales or use tax due. Absent proof of a higher value, the property traded in must be determined by the fair market value of similar property of like quality, quantity, and age, sold or traded under comparable conditions.

**(7) Trade-in value exceeds selling price.** If the trade-in value exceeds the selling price of the item sold, the selling price of the item being purchased should be used as the trade-in value. For example, a Washington resident purchases a car with a value of \$5,000 and trades in a car with a fair market value of \$7,000. The net due to the purchaser is \$2,000. When the seller completes the excise tax return, he or she should report a trade-in value of \$5,000 and not \$7,000 because the trade-in value is capped at selling price of the item being purchased.

**(8) Recordkeeping.** RCW 82.32.070 requires every person liable for any tax to keep and preserve records from which tax liability can be determined. To substantiate a claim for the trade-in exclusion, the sales agreement and/or invoice must identify both the property being purchased and the trade-in property. Such identification includes the model number, serial number, year of manufacture, and other information as appropriate. The sales agreement and/or invoice must also specify the selling price and the value of the trade-in property.

A copy of the sales agreement or invoice must be retained as a part of the seller's sales records. The following is an example of an invoice providing the necessary information regarding a sales transaction with trade-in:

<u>Sold: 2000 Mountain Home 8.5 ft. Camper</u>	
<u>Model MH-20DT, Serial No. 200010</u>	<u>\$9,075</u>
<u>Less "trade-in" - 1983 Meadowlark 8 ft. Camper</u>	
<u>Model No. ML883, Serial No. 0001</u>	<u>\$2,000</u>

(9) Encumbered property traded in. A buyer is entitled to full value for trade-in property, which is otherwise encumbered by a security interest or the subject of a conditional sale, or retail installment sales contract.

(10) Casual or isolated sales. The retail sales tax applies to all casual or isolated retail sales made by any person who is required to be registered and reporting tax to the state. The trade-in exclusion applies in the case of a casual or isolated sale, provided the statutory requirements are satisfied. The recordkeeping requirements explained in subsection (7) apply to casual or isolated sales.

Persons who are not engaged in business activity, e.g., private persons, are not required to be registered and are not required to collect sales tax on their casual or isolated sales, RCW 82.08.0251 and WAC 458-20-106 (Casual or isolated sales—Business reorganizations). The use of property acquired through casual sales is subject to use tax. See RCW 82.12.0251 and WAC 458-20-178.

(11) Trade-ins as sales. RCW 82.04.040 defines the term "sale" in pertinent part to mean "any transfer of the ownership of, title to, or possession of property for a valuable consideration." When property is traded in, ownership in that property is transferred. As a result, under the law a buyer delivering trade-in property to a seller is making a sale of the trade-in property.

(a) If the buyer is not in the business of selling the type of property being traded in the buyer incurs no B&O tax liability. (See WAC 458-20-106 on casual or isolated sales.)

(b) On occasions where the buyer is in the business of selling the type of property being traded in, the buyer incurs a B&O tax liability.

For example, Leasing purchases a new car from Dealer. This car will be part of Leasing's inventory of cars that it rents to customers. Leasing delivers a used car out of its inventory to Dealer as a part of the consideration paid for the new car. The trade-in of the used car by Leasing is considered a wholesale sale to Dealer. This is not a casual or isolated sale because Leasing is in the business of selling cars in the form of rentals.

(c) In most cases, a buyer delivers trade-in property to a seller who is in the business of reselling trade-in property (e.g., a buyer trading in an automobile to a new car dealer). The buyer in these cases has no responsibility to collect retail sales tax.

(12) Retail services. The exclusion of the value of property traded in from the selling price tax measure applies only to sales involving tangible personal property traded in for tangible property sold. It does not apply to any transactions involving services that have been statutorily included as

"sales at retail" (see RCW 82.04.050). For example, a construction contractor may not accept part payment in tangible property to thereby reduce the sales tax measure of the construction contract selling price. Similarly, a seller of tangible personal property may not accept retail services as part payment to thereby reduce the selling price tax measure. Such transfers neither qualify as trade-in transfers of tangible property nor "in-kind" transfers.

(13) Trade-in for rental property. Under RCW 82.04.050, rentals or leases of tangible personal property are "retail sales." The "selling price" is also the measure of tax for such rentals and leases. Where tangible property is traded in as part payment for the rental or lease of property of like kind (e.g., a used computer against the rental of a new one), the sales tax will apply to all payments after the value of the property traded in has been depleted or consumed and the lessor of the property actually begins making charges for the lease or rental of tangible property. Refer to WAC 458-20-211 (Leases or rentals of tangible personal property, bailments) for more information regarding the tax-reporting responsibilities with respect to lease or rental transactions.

A lessee must first purchase leased property before trading it in toward the purchase/lease of other property to be entitled to the trade-in exclusion. A buyer cannot satisfy the statutory requirement that the trade-in property be delivered to the seller as a part of the consideration for the purchased property if the buyer does not have ownership of and the right to sell the property being traded in. For example, Jane Doe leases Auto A from Leasing Company. Jane decides to lease a newer Auto B from Leasing Company. Jane exercises her option to purchase Auto A, and then delivers Auto A as a trade-in towards the lease of Auto B. Jane is entitled to the trade-in exclusion. By delivering her ownership of Auto A to Leasing Company, Jane has satisfied the statutory requirement that she as the buyer deliver trade-in property to the seller as a part of the consideration paid for Auto B.

(14) Real property transfers. Because the trade-in exclusion is limited to tangible personal property, the trade-in exclusion does not apply to sales of real property or transactions where real property is traded in for tangible personal property.

(15) Use tax. RCW 82.12.010 defines the measure of the use tax as the "value of the article used." As explained in subsection (2) of this rule, the statutory definition excludes "trade-in property of like-kind." Therefore, the measure of the use tax for tangible property upon which no retail sales tax has been paid (e.g., if it were purchased in another state) is the same as the measure of the retail sales tax. In such cases the value of the property traded in should be excluded from the use tax measure.

The consumer-user, or any seller who has a duty to collect this state's use tax, must retain the sales records reflecting property "traded in," as explained in subsection (7) of this rule.

## WSR 01-08-005

## PERMANENT RULES

## PERSONNEL RESOURCES BOARD

[Filed March 22, 2001, 10:10 a.m., effective May 1, 2001]

Date of Adoption: March 20, 2001.

Purpose: This rule allows the board to grant additional pay to recognize assigned duties that exceed ordinary conditions.

Citation of Existing Rules Affected by this Order: Amending WAC 356-15-125.

Statutory Authority for Adoption: RCW 41.06.150.

Adopted under notice filed as WSR 01-04-079 on February 7, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Effective Date of Rule: May 1, 2001.

March 20, 2001

Doug Tanabe

Acting Secretary

**AMENDATORY SECTION** (Amending WSR 98-19-034, filed 9/10/98, effective 10/12/98)

**WAC 356-15-125 Assignment pay provisions.** The board may grant additional pay to recognize assigned duties and/or conditions that exceed the ordinary (conditions). Hazards, equipment operations and other specialized skills are examples of areas for board consideration. Out of the ordinary conditions include being in a position which is experiencing recruitment and/or retention problems and is located in an area where the cost of living impacts the agency's ability to recruit and/or retain employees. Approved classes will have the letters "AP" appearing after their class title in the compensation plan.

Details of the affected classes or positions within a class, with the additional amount granted, will appear in the salary schedule section of the compensation plan.

## WSR 01-08-007

## PERMANENT RULES

## UNIVERSITY OF WASHINGTON

[Filed March 22, 2001, 10:14 a.m.]

Date of Adoption: March 16, 2001.

Purpose: To bring the University of Washington's small works roster in line with the new state statute.

Citation of Existing Rules Affected by this Order: Amending WAC 478-355-010, 478-355-030, and 478-355-040.

Statutory Authority for Adoption: RCW 39.04.155.

Adopted under notice filed as WSR 01-03-122 on January 23, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 20, 2001

Rebecca Goodwin Dearnorff, Director  
Administrative Procedures

**AMENDATORY SECTION** (Amending WSR 93-24-049, filed 11/24/93, effective 12/25/93)

**WAC 478-355-010 Authority.** This chapter is enacted by the board of regents of the University of Washington pursuant to RCW ((28B.10.355)) 39.04.155 authorizing the university to establish a small works roster for public works projects with an estimated cost of less than ((one)) two hundred thousand dollars.

**AMENDATORY SECTION** (Amending WSR 93-24-049, filed 11/24/93, effective 12/25/93)

**WAC 478-355-030 Project construction cost.** Whenever the estimated project construction cost of any University of Washington public work is less than ((one)) two hundred thousand dollars, the University of Washington executive vice president is authorized to use the small works roster in lieu of public advertisement for bids. In the event the legislature further increases the small works roster limit, the university is authorized to use the small works roster for any projects up to the subsequently authorized limit.

AMENDATORY SECTION (Amending Order 88-01, filed 9/14/88)

WAC 478-355-040 Procedure for use. ((When the small works roster procedure is utilized, bids will be solicited from a bidders list of at least three contractors from the small works roster randomly selected from those who registered the capability of performing the type of public work at the required location and, if required, are MWBE certified. Only the contractors identified on the bidders list will be eligible to bid on the public work. If all bids are rejected, new bids may be solicited either by again utilizing the small works roster or by public advertisement for bids.)) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder. Bids may be solicited from all appropriate contractors on the roster, or, alternatively, from at least five contractors who have indicated the capability of performing the kind of work being contracted. If the estimated cost of the work is from one hundred thousand dollars to two hundred thousand dollars, and bids are not solicited from all appropriate contractors, all appropriate contractors must be notified that bids are being solicited. Detailed plans and specifications are not required as part of the bid invitation.

### WSR 01-08-009

#### PERMANENT RULES

### UTILITIES AND TRANSPORTATION COMMISSION

[Docket No. UE-991168, General Order No. R-478—Filed March 22, 2001, 10:46 a.m.]

In the matter of adopting WAC 480-100-388, 480-100-393, and 480-100-398, relating to electric service reliability.

1 STATUTORY OR OTHER AUTHORITY: The Washington Utilities and Transportation Commission takes this action pursuant to RCW 80.01.040.

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts this rule on the date this order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325 requires that the commission prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must include the identification of the reasons for adopting the rule, a summary of the comments received regarding the proposed rule, and responses reflecting the commission's consideration of the comments.

5 The commission often includes a discussion of those matters in its rule adoption order. In addition, most rule-making proceedings involve extensive work by commission staff

that includes summaries in memoranda of stakeholder comments, commission decisions, and staff recommendations in each of those areas.

6 In this docket, to avoid unnecessary duplication, the commission designates the discussion in this order as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda presented at the adoption hearing and at the open meetings where the commission considered whether to begin a rule making and whether to propose adoption of specific language. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

7 REFERENCE TO AFFECTED RULES: This rule does not repeal, amend, or suspend any sections of the Washington Administrative Code.

8 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed a preproposal statement of inquiry (CR-101) on September 22, 1999, at WSR 99-19-155.

9 ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT: The statement advised interested persons that the commission was considering entering a rule making on the reliability of electric service and electric systems of investor-owned electric companies. The commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to those on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) or appearing on lists of filing observers and parties of record in: Docket No. UE-990473, regarding rules relating to operations of electric companies; in Docket No. UE-981290, the legislative report on electric utility cost and reliability reports as required by HB 2831; and in Docket No. UE-980694, the legislative report on electricity issues required by ESSB 6560. In addition, the commission gave notice to organizations including: Washington cities (mayors/council members), Washington counties (council members), economic development districts/councils, hospital districts, port districts, educational service districts, electric reliability issues consumer complaint list, utility attorneys list, electric rule-making list, and utilities general rule-making list. Pursuant to the notice, the review included:

- Workshops with interested persons/stakeholders on October 13, 1999, March 8, 2000, and July 21, 2000.
- Developing draft rules using the information gathered from stakeholders.
- Circulating discussion drafts of rules on June 22, 2000, July 12, 2000, November 7, 2000, and December 12, 2000, and taking comments on them.
- Updating drafts to incorporate comments that were received.

10 NOTICE OF PROPOSED RULE MAKING: The commission filed a notice of proposed rule making (CR-102) on February 7, 2001, at WSR 01-04-081. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 01-04-081 at 9:30 a.m., Wednesday, March 14, 2001, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons

the opportunity to submit written comments to the commission.

11 COMMENTERS (WRITTEN COMMENTS): The commission received written comments from two Puget Sound Energy (PSE) customers and PSE.

12 The customer comments do not recommend changes in these rules. Rather they recommend that the commission adopt additional rules addressing two other elements of reliability: Reliability of supply; and vegetation management. Nor does the company comment recommend specific changes. After reviewing the comments staff did not recommend any changes to the rules filed under the CR-102. The commission received written comments from the following:

13 George F. Tyler, PSE customer, proposed that WAC 480-100-398 should require companies to include in reliability reports a description of any problems the companies have had with property owners or governmental agencies who have objected to removal of diseased trees or ornamental plantings. Staff did not recommend addition of such language because under the rule companies may already choose to provide such information in their reports if they believe it is important to explain why certain tree trimming was not done. In addition, the commission will have knowledge of any informal complaints filed with it regarding this matter. The commission decided not to add a provision to the rules that would require companies to include in reliability reports a description of any problems the companies have had with property owners or governmental agencies who have objected to removal of diseased trees or ornamental plantings.

14 Robert Kenny and Julie Glover, PSE customers, indicated that they support the rules "wholeheartedly," but believe the rules should also require utilities to file plans for acquiring conservation. Staff did not recommend adding language to require utilities to submit conservation plans, noting that electric company plans for meeting supply needs through conservation are included in the commission's integrated resource planning rules. The focus of these proposed rules is monitoring and reporting interruptions to service; the rules do not set standards or address the acquisition of the supply resources. The commission decided not to add language regarding conservation plans to the rules.

15 George Pohndorf, PSE, informed the commission that the requirement in the rules to "identify geographic areas of greatest reliability concern," may have some unintended consequences. First, it may communicate to customers that their reliability is poor when it really is adequate and reasonable, resulting in problems such as lower property values. Second, requiring investor-owned utilities to identify such areas but not requiring the same of publicly-owned utilities may give the publicly-owned utilities an unfair competitive advantage. PSE indicated that it intends to address these concerns by filing parts of its annual reports as confidential. Staff expressed concern that pockets of poor reliability might be hidden in average, system-wide statistics, and so recommended retaining the requirement in the proposed rules that companies should identify such areas. The commission has rules governing filing of materials claimed to be confidential; if PSE files portions of its reliability reports with a "confidential" designation, and requests are made for copies of those

records, the commission will follow its rules. The commission decided that PSE's concerns do not justify a change in the reporting requirements included in the proposed rules.

16 RULE-MAKING HEARING: The rule proposal was considered for adoption, pursuant to the notice, at a rule-making hearing scheduled during the commission's regularly scheduled open public meeting on March 14, 2001, before Chairwoman Marilyn Showalter and Commissioner Richard Hemstad. No interested persons made oral comments.

17 COMMISSION ACTION: After considering all of the information regarding this proposal, the commission adopted the proposed rules.

18 CHANGES FROM PROPOSAL: The commission adopted the proposed text noticed at WSR 01-04-081.

19 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: In reviewing the entire record, the commission determines that WAC sections should be adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

#### ORDER

#### 20 THE COMMISSION ORDERS:

21 WAC sections are adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

22 This order and the rules set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

23 The commission adopts the commission staff memoranda, presented when the commission considered filing a preproposal statement of inquiry, when it considered filing the formal notice of proposed rule making, and when it considered adoption of this proposal, in conjunction with the text of this order, as its concise explanatory statement of the reasons for adoption and for rejection of proposed changes, as required by RCW 34.05.025.

DATED at Olympia, Washington this 21st day of March, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
Marilyn Showalter, Chairwoman  
Richard Hemstad, Commissioner

#### NEW SECTION

**WAC 480-100-388 Electric service reliability definitions.** "Electric service reliability" means the continuity of electric service experienced by retail customers.

"Reliability statistic" means a number, which may include multiple components (for example, service interruptions, customers, and hours), that measures electric service reliability.

"Baseline reliability statistic" means a number calculated by the utility measuring aspects of electric service reliability in a specified year that may be used as a comparison for measuring electric service reliability in subsequent years.

"Sustained interruption" means an interruption to electric service that has a length of duration specified by the electric utility, but in any case not less than one minute.

"Power quality" means characteristics of electricity, primarily voltage and frequency, that must meet certain specifications for safe, adequate and efficient operations.

"Full-system" means all equipment and lines necessary to serve retail customers whether for the purpose of generation, transmission, distribution or individual service.

"Major event" means an event, such as a storm, that causes serious reliability problems, and that meets criteria established by the utility for such an event.

#### NEW SECTION

**WAC 480-100-393 Electric service reliability monitoring and reporting plan.** (1) Who must file. Electric utilities subject to commission jurisdiction must file a plan for monitoring and reporting electric service reliability information to the commission.

(2) When to file. The plan for monitoring and reporting electric service reliability information must be filed with the commission six months after the effective date of this rule, though utilities are encouraged to file the plan sooner. Any modification to the plan must be filed with the commission before the modification is implemented.

(3) What to file. The utility must file a plan for monitoring and reporting electric service reliability information to the commission. The plan, and any modification to it, must be accepted by the commission. The plan must include the following items:

(a) What reliability statistics and information the utility will report to the commission. The utility must select and define statistics that track full-system reliability, and information, which may include statistics, that tracks localized reliability and identifies areas of greatest reliability concern.

(b) When the utility will establish baseline reliability statistics to report to the commission. Prior to establishing baseline reliability statistics, the utility must report the best information available. The utility must establish baseline reliabil-

ity statistics within three years of the effective date of this rule.

(c) When the utility will file its annual electric service reliability report to the commission.

#### NEW SECTION

**WAC 480-100-398 Electric service reliability reports.** The electric utility must file an electric service reliability report with the commission at least once a year. The report must meet the following conditions:

(1) The report must be consistent with the electric service reliability monitoring and reporting plan filed under WAC 480-100-393. As set forth in the plan, in an identified year, baseline reliability statistics must be established and reported. In subsequent years, new reliability statistics must be compared to the baseline reliability statistics and to reliability statistics from all intervening years. The utility must maintain historical reliability information necessary to show trends for a minimum of seven years.

(2) The report must address any changes that the utility may make in the collection of data and calculation of reliability information after initial baselines are set. The utility must explain why the changes occurred and explain how the change is expected to affect comparisons of the newer and older information. Additionally, to the extent practical, the utility must quantify the effect of such changes on the comparability of new reliability statistics to baseline reliability statistics.

(3) The report must identify the utility's geographic areas of greatest reliability concern, explain their causes, and explain how the utility plans to address them.

(4) The report must identify the total number of customer complaints about reliability and power quality made to the utility during the year, and must distinguish between complaints about sustained interruptions and power quality. The report must also identify complaints that were made about major events.

#### **WSR 01-08-012**

#### **PERMANENT RULES**

#### **UTILITIES AND TRANSPORTATION COMMISSION**

[Docket No. TG-990161, General Order No. R-479—Filed March 23, 2001, 2:47 p.m.]

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 01-09 issue of the Register.

**WSR 01-08-015**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed March 23, 2001, 3:40 p.m., effective May 1, 2001]

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 1.

Effective Date of Rule: May 1, 2001.

March 23, 2001

Susan Bush

for Bonita H. Jacques, Chief

Office of Legal Affairs

Date of Adoption: March 23, 2001.

Purpose: WAC 388-478-0055 SSI standards, to update supplemental security income (SSI) standards for January 1, 2001. These standards were updated January 1, 2001 by emergency rule. This rule making is necessary to permanently adopt these rules. This rule will repeal WAC 388-478-0056, as the state supplement standards from that rules have been incorporated into this rule.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0055; and repealing WAC 388-478-0056.

Statutory Authority for Adoption: RCW 74.08.090, 74.04.057.

Adopted under notice filed as WSR 01-04-068 on February 5, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

**AMENDATORY SECTION** (Amending WSR 00-20-054, filed 9/29/00, effective 11/1/00)

**WAC 388-478-0055 SSI payment standards for eligible recipients.** (1) Supplemental Security Income (SSI) is a cash assistance program for needy individuals and couples who meet federal disability guidelines as aged, blind or disabled. Since the SSI program began in January 1974, the state of Washington has ~~((supplemented))~~ added to the federal benefit level with state funds, known as the SSI state supplement. ~~((Persons))~~ If you are found eligible for SSI, you will receive cash assistance based on the combined federal and state supplement benefit levels, minus countable income. An essential person is someone who lives with you and provides care and personal services that enable you to live in either your own home or the home of the essential person.

(2) Effective ~~((1,] November 1 through December 31, 2000))~~, January 1, 2001, the federal, state and combined benefit levels for an eligible individual and couple are:

(a) If you are living alone in area 1: King, Pierce, Snohomish, Thurston, and Kitsap Counties.

LIVING ALONE - In own household or alternate care, except nursing homes or medical institutions

	Federal Benefit Level	State Supplement Benefit Level	Combined Federal/State Benefit Level
Individual	\$ <del>((512.00))</del> <u>530.00</u>	\$ <del>((22.90))</del> <u>25.90</u>	\$ <del>((534.90))</del> <u>555.90</u>
Individual with: One essential person	\$ <del>((769.00))</del> <u>796.00</u>	\$ <del>((21.00))</del> <u>19.90</u>	\$ <del>((790.00))</del> <u>815.90</u>
Individual with: Multiple essential persons	\$ <del>((512))</del> <u>530</u> for the eligible individual plus \$257 for each essential person (no state supplement)		
Individual with an ineligible spouse	\$ <del>((512.00))</del> <u>530.00</u>	\$ <del>((167.20))</del> <u>166.10</u>	\$ <del>((679.20))</del> <u>696.10</u>
Couple	\$ <del>((769.00))</del> <u>796.00</u>	\$ <del>((21.00))</del> <u>19.90</u>	\$ <del>((790.00))</del> <u>815.90</u>
Couple with one or more essential persons	\$ <del>((769))</del> <u>796</u> for eligible couple plus \$257 for each essential person (no state supplement)		

(b) If you are living alone in area 2: All other counties.

LIVING ALONE - In own household or alternate care, except nursing homes or medical institutions

	Federal Benefit Level	State Supplement Benefit Level	Combined Federal/State Benefit Level
Individual	\$ <del>((512.00))</del> <u>530.00</u>	\$ <del>((2.45))</del> <u>5.45</u>	\$ <del>((514.45))</del> <u>535.45</u>

PERMANENT

LIVING ALONE - In own household or alternate care, except nursing homes or medical institutions

	Federal Benefit Level	State Supplement Benefit Level	Combined Federal/State Benefit Level
Individual with: One essential person	\$ <del>((769.00))</del> <u>796.00</u>	\$ 0.00	\$ <del>((769.00))</del> <u>796.00</u>
Individual with: Multiple essential persons	\$ <del>((512))</del> <u>530</u> for the eligible individual plus \$257 for each essential person (no state supplement)		
Individual with an ineligible spouse	\$ <del>((512.00))</del> <u>530.00</u>	\$ <del>((137.25))</del> <u>136.15</u>	\$ <del>((649.25))</del> <u>666.15</u>
Couple	\$ <del>((769.00))</del> <u>796.00</u>	\$ 0.00	\$ <del>((769.00))</del> <u>796.00</u>
Couple with one or more essential persons	\$ <del>((769))</del> <u>796</u> for eligible couple plus \$257 for each essential person (no state supplement)		

(c) If you are in shared living ~~((for both))~~ in either Area 1 ~~((and))~~ or 2.

SHARED LIVING - <u>In the home of another person</u>	Federal Benefit Level	State Supplement Benefit Level	Combined Federal/State Benefit Level
Individual	\$ <del>((341.34))</del> <u>353.34</u>	\$ <del>((4.81))</del> <u>3.71</u>	\$ <del>((346.15))</del> <u>357.05</u>
Individual with: One essential person	\$ <del>((512.00))</del> <u>530.00</u>	\$ <del>((5.30))</del> <u>4.20</u>	\$ <del>((517.30))</del> <u>534.20</u>
Individual with: Multiple essential persons	\$ <del>((341.34))</del> <u>353.34</u> for the eligible individual plus \$ <del>((170.67))</del> <u>170.66</u> for each essential person (no state supplement)		
Individual with an ineligible spouse	\$ <del>((341.34))</del> <u>353.24</u>	\$ <del>((102.76))</del> <u>101.66</u>	\$ <del>((444.10))</del> <u>455.00</u>
Couple	\$ <del>((512.67))</del> <u>530.67</u>	\$ <del>((5.30))</del> <u>4.20</u>	\$ <del>((517.97))</del> <u>534.87</u>
Couple with one or more essential persons	\$ <del>((512.67))</del> <u>530.67</u> for eligible couple plus \$ <del>((170.67))</del> <u>170.66</u> for each essential person (no state supplement)		

(d) If you are residing in a medical institution: Area 1 and 2

MEDICAL INSTITUTION	Federal Benefit Level	State Supplement Benefit Level	Combined Benefit Level
Individual	\$ 30.00	\$ 11.62	\$ 41.62

(e) Mandatory income level (MIL) for grandfathered claimant. ~~((“Grandfathered” refers to a person who))~~ You are “grandfathered” if you qualified for assistance from the state as aged, blind, or disabled, ((was)) were converted from the state to federal disability assistance under SSI in January 1974, and ((has)) have remained continuously eligible for SSI since that date.

~~((The))~~ If you are a MIL client, your combined federal/state SSI benefit level ((for MIL clients)) is the higher of the following:

(i) The state assistance standard ~~((they))~~ you received in December 1973, except ((for those converted in a “D” living arrangement (residing)) if you resided in a medical institution at the time of conversion((?)), plus the federal cost-of-living adjustments (COLA) since then; or

(ii) The current standard.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 388-478-0056 SSI state supplement standards.

**WSR 01-08-017  
PERMANENT RULES  
HIGHER EDUCATION  
COORDINATING BOARD**

[Filed March 26, 2001, 1:10 p.m.]

Date of Adoption: December 6, 2000.

Purpose: Implement the future teachers conditional scholarship for public school classified employees as authorized by the 1999-2000 state biennial budget.

Statutory Authority for Adoption: Chapter 28B.80 RCW.

Other Authority: Section 610(5), chapter 1, Laws of 2000 2nd sp. s.

Adopted under notice filed as WSR 00-19-103 on September 20, 2000.

PERMANENT



Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 8, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 8, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 23, 2001

John Klacik

Associate Director

### Chapter 250-63 WAC

#### FUTURE TEACHERS CONDITIONAL SCHOLARSHIP FOR PUBLIC SCHOOL CLASSIFIED K-12 EMPLOYEES

##### NEW SECTION

**WAC 250-63-010 Purpose.** The purpose of this act is to provide a demonstration project to enable Washington classified public K-12 employees to obtain their initial teaching certifications in order to become teachers in Washington's public K-12 schools.

##### NEW SECTION

**WAC 250-63-020 Program definitions.** (1) "Academic year" means the regular nine-month, three-quarter or two-semester period annually occurring between August 1st and June 30th.

(2) "Accredited" means an institution certified by the Northwest Association of Schools and Colleges or by a similar regional accrediting body.

(3) "Board" means the higher education coordinating board.

(4) "Classified public K-12 employees" means employees working for K-12 schools covered by chapter 41.56 RCW.

(5) "Conditional scholarship" means funds received from The Future Teachers Conditional Scholarship for Public School Classified Employees program. This is a loan that will be forgiven in exchange for teaching service in Washington K-12 public schools.

(6) "Continuous enrollment" means the period of time a recipient is enrolled without stopping, except for the equivalent of one term per year, such as a summer term.

(7) "Forgiven" or "to forgive" or "forgiveness" means that portion of the recipient's loan that does not need to be

repaid in exchange for the recipient having provided the specified teaching service in a Washington public K-12 school.

(8) "Full-time student" means a recipient enrolled for twelve or more credit hours, or the equivalent, per term.

(9) "Future teachers" means classified public K-12 employees who are working toward their initial teaching certifications.

(10) "Institution of higher education" means an accredited public or private college, community college or university which physically delivers classroom instruction within the state of Washington and whose program of study will advance students toward teacher certification requirements at the freshman or sophomore level; or whose coursework will lead to initial teaching certifications for students enrolled at the junior level or higher.

(11) "Loan equalization fee" means an additional amount charged to a recipient who fails to complete the required teaching service. This fee is added in order to make the cost of the program similar to the cost incurred by recipients borrowing from the primary federal student loan program for undergraduate students. This fee shall be determined annually by the board.

(12) "Loan repayment" means that portion of the conditional scholarship that is not forgiven due to teaching service and is instead repaid according to the terms of the promissory note by the recipient.

(13) "Recipients" means eligible student applicants selected to receive conditional scholarships.

(14) "Shortage areas" means either geographic or subject-matters areas as defined by the office of the superintendent of public instruction.

(15) "Teacher certification" means the initial license issued by the office of the superintendent of public instruction permitting an individual to be employed as a teacher in the state of Washington.

(16) "Teaching service" means employment as a certified teacher in a Washington public K-12 school on at least a half-time basis. This also includes comparable employment as a substitute teacher or part-time teaching positions.

(17) "Washington public K-12 school" means an elementary school, a middle school, junior high school or high school within the public school system referred to in Article IX of the state Constitution.

##### NEW SECTION

**WAC 250-63-030 Administration.** The higher education coordinating board shall administer the conditional scholarship program. When a duty or responsibility of the board is referenced in these regulations, the authority needed to discharge that responsibility lies with the executive director or his or her designee. The staff of the board, under the direction of the executive director, will manage the administrative functions relative to the program. The board shall have the following administrative responsibilities, encompassed within the board's enumerated powers and duties:

(1) Enter into agreements with participating institutions, and billing and collection agencies as may be necessary.

(2) Select applicants to receive conditional scholarships, with the assistance of a selection committee.

- (3) Adopt necessary rules and guidelines.
- (4) Empower the board staff to make professional judgment decisions on unique circumstances.
- (5) Work with the office of superintendent of public instruction and appropriate public school employee organizations to publicize the program directly to Washington public school classified K-12 employees.
- (6) Post additional information, including a fact sheet and an application, on the board's website at <http://www.hecb.wa.gov>.
- (7) Verify completion of teaching service from recipients in exchange for forgiveness of loan repayment.
- (8) Collect and manage repayments from recipients who do not fulfill their teaching obligations.

#### NEW SECTION

**WAC 250-63-040 Eligible applicants.** An eligible applicant is one who:

- (1) Is currently employed as a Washington classified public school K-12 employee covered by chapter 41.56 RCW or was an employee during the 1999-2000 school year.
- (2) Plans to enroll in an accredited Washington institution of higher education within three months of the time of notification of the conditional scholarship award. Applicants who are unsure they can meet this three-month expectation will be encouraged to apply and to indicate their circumstances on the application.
- (3) Plans to be employed as a teacher in a Washington public K-12 school after completion of the initial teacher certification.
- (4) Will not be pursuing a degree in theology.
- (5) Submits an application to the board by the requested deadline.

#### NEW SECTION

**WAC 250-63-050 Selection of recipients.** (1) Appointment of selection committee. The board will appoint a committee composed of educators and leaders in business and government.

(2) Role of selection committee. The committee will act on behalf of the board to select recipients and alternates from the pool(s) of eligible applicants who have submitted applications to the board. This committee will also advise board staff and the board on recommended changes in the program administration, including the application and selection procedures for future competitions.

(3) Selection of recipients and alternates. Once all initial eligibility criteria are met, preference will be given in the selection process to those classified K-12 public school employees closest to obtaining their initial Washington state teacher certifications. In addition, the committee will consider each of the following items in the selection process.

- (a) Applicant's academic ability.
- (b) Applicant's statement evidencing commitment to the teaching profession and the applicant's ability to serve as a positive role model as a Washington public school K-12 teacher.

(c) Applicant's length and quality of contributions to the Washington K-12 public school in his/her current position and any other previous positions.

(d) Recommendation from a current school teacher/official describing the applicant's potential as a future teacher.

(e) The committee will give preference in awarding as follows:

- (i) Eligible renewal applicants who are within two years of completing their initial teacher certification requirements.
  - (ii) All other eligible renewal applicants.
  - (iii) Eligible new applicants who are within two years of completing their initial teacher certification requirements.
  - (iv) All other new eligible applicants.
- (4) Duration of conditional scholarship awards.
- (a) During the first year, the board will initially make one-year awards to applicants selected for conditional scholarships.

(b) Based on the remaining availability of funds, the board may also make commitments to some recipients for additional years of study, with priority given to those recipients who are within two years of completing their initial teacher certification requirements.

#### NEW SECTION

**WAC 250-63-060 Eligible recipients.** In order to receive funding through the conditional scholarship the recipient must:

(1) Begin enrollment within three months of the date of the conditional scholarship award notification. Applicants who are unsure they can meet this three-month expectation will be encouraged to apply and to indicate their circumstances on the application. The board staff will have discretion to extend this period.

(2) Provide proof of enrollment to the board each term.

(3) If already enrolled, be in good standing and maintaining satisfactory academic progress according to the institution's normal requirements.

(4) Not be enrolled in or planning to pursue a degree in theology.

#### NEW SECTION

**WAC 250-63-070 Eligibility for renewal of awards.**

(1) This is a demonstration project for which there is no guarantee of additional funding beyond the 1999-2001 biennium.

(2) Renewal applications. If sufficient funds are available for renewal awards, previous recipients will be required to submit renewal applications to the board by the stated deadline. The renewal application will gather information from recipients such as:

(a) Confirmation that the applicant still plans to become a teacher in a Washington K-12 public school after completion of the initial teacher certification.

(b) Projected academic schedule of the applicant for the upcoming enrollment period.

(c) Verification that the applicant is in good standing and maintaining satisfactory academic progress according to the institution's normal requirements.

NEW SECTION

**WAC 250-63-080 Control of funds.** The higher education coordinating board may award conditional scholarships to eligible students from the funds appropriated for this purpose and from any required repayments to the fund.

## (1) Agreement with the board:

(a) Each conditional scholarship recipient shall enter into a loan agreement, hereafter known as the "promissory note," with the board agreeing to comply with the rules, regulations, and guidelines of the conditional scholarship program.

(b) The promissory note shall serve as the legal document verifying the recipient's understanding of the opportunity to have the loan forgiven in exchange for teaching service and the obligation to repay the loan if teaching service is not provided.

## (2) Award amounts:

(a) Recipients may be eligible to receive conditional scholarships for a maximum of the equivalent of five academic years of full-time study.

(b) The amount of conditional scholarships awarded individual full-time recipients shall not exceed four thousand dollars per academic year for recipients attending eligible four-year or graduate public or private colleges and universities, and two thousand dollars per academic year for recipients attending eligible two-year institutions.

(c) Recipients enrolling for summer coursework after the completion of an academic year of full-time eligibility may be eligible for additional summer award amounts equivalent to a third semester or fourth quarter. In this case, the recipients would be assumed to be beginning their second academic year of award eligibility. For example, for a student attending a semester college who received full-time enrollment awards of two thousand dollars each for fall, spring and summer, the student would be assumed to have received loans for the equivalent of 1.5 academic years.

(d) Recipients enrolling on less than a full-time basis shall receive the following prorated award amounts for all terms of part-time enrollment:

(i) Enrollment of 9.0 - 11.9 credit hours per term equals three-quarter enrollment. This shall be equal to an award amount of seventy-five percent of the full-time award amount.

(ii) Enrollment of 6.0 - 8.9 credit hours per term equals half-time enrollment. This shall be equal to an award amount of fifty percent of the full-time award amount.

(iii) Enrollment of 3.0 - 5.9 credit hours per term equals one-quarter enrollment. This shall be equal to an award amount of twenty-five percent of the full-time award amount.

(e) Recipients receiving awards for part-time enrollment shall have the assessment of their award records calculated on a prorated basis. For example, a recipient receiving awards on the basis of half-time enrollment for two academic years will have used one academic year of loan eligibility.

(3) Grace period. No interest accrues and no payments are required of the recipient during a six-month grace period. The grace period begins the first day of the month following whichever of the following dates comes first:

(a) The last day of the term of the recipient's program of education which culminates with the completion of the initial teacher certification requirements; or

(b) The last day of the term the recipient ceases continuous enrollment.

(4) Deferment of loans. No interest is charged to recipients during approved periods of deferment as approved by the board. Approved deferments include:

(a) The recipient's continuous enrollment in the educational program which culminates with the completion of the initial teacher certification requirements.

(b) The recipient has a temporary total disability or is unable to secure employment by reason of the care required by a dependent who is disabled. The deferment continues for a period not to exceed three years.

(c) The recipient returns to an approved educational program on at least a half-time basis to complete the initial teacher certification requirements after the loan has already gone into repayment.

(d) Other circumstances as determined by the board.

(5) Forbearance. The board staff may approve an additional limited deferment of payment of principal based on special circumstances, such as a financial hardship of the recipient. The recipient's loan account will be assessed interest during the period of forbearance.

(6) Cancellation of loans. In the event of a recipient's death or total and permanent disability, the recipient's unpaid indebtedness shall be fully canceled.

(7) Forgiveness of the loans.

(a) Loan forgiveness is granted at the higher rate of:

(i) One academic year of loan forgiveness for each two years of teaching service; or

(ii) One academic year of loan forgiveness for each year of teaching service in geographic or subject-matter shortage areas, as specified by the office of the superintendent of public instruction.

(b) Loan forgiveness for teaching service for periods less than an academic year shall be prorated based upon verification of teaching service of a minimum of three months, and then shall be prorated thereafter. No forgiveness shall be granted for teaching service of less than three months.

(c) For recipients receiving loans for the equivalent of a portion of an academic year, the teaching service required for loan forgiveness shall be prorated. The following two examples show how this works in practice.

(i) If a recipient received a loan amount for the equivalent of one-third academic year, the required teaching service for forgiveness of the loan is two-thirds of an academic year; or one-third of an academic year, if the recipient taught in a shortage area.

(ii) If a recipient received a loan amount for the equivalent of two and one-half academic years, the required teaching service for forgiveness of the loan is five academic years; or two and one-half academic years, if the recipient taught in a shortage area.

(8) Interest rates. The interest rate on new loans shall be determined annually by the board. The annual interest rate shall generally parallel the current rate for new loans in the primary federal student loan program for undergraduate students. Interest charges are assessed beginning at the conclu-

sion of the grace period for recipients not in deferment who are not providing teaching service.

(9) Loan equalization fee. Recipients who do not enter teaching service by the conclusion of the grace period and other approved loan deferments shall incur a loan equalization fee of not more than three percent of the remaining unforgiven loan balance. This fee shall be determined annually by the board. The loan equalization fee shall be added to the remaining principal balance and be repaid by the recipient.

(10) Repayment of the loan. Should the recipient not be eligible for loan forgiveness due to teaching service, the loan principal and the loan equalization fee, which will be added to the loan principal, must be fully repaid with interest beginning at the end of the grace period or loan deferment period, whichever is later, according to the following terms:

(a) The minimum monthly repayment rate shall be set by the board, but shall not be less than fifty dollars per month.

(b) The maximum period for repayment shall be ten years, with payments of principal and interest accruing quarterly, commencing the first quarter following the completion of recipient's grace period or loan deferral period, whichever date is later.

(11) Collection of repayments:

(a) The board is responsible for collection of repayments made and shall exercise due diligence in such collection, maintaining all necessary records to ensure that maximum repayments are made.

(b) The board is responsible to forgive all or parts of such repayments under the criteria established by the board and shall maintain all necessary records of forgiven payments.

(12) Establishment of loan account. All appropriations, receipts from the payment of the principal or interest, and any other subsidies to which the board as administrator is entitled which are paid by or on behalf of recipients under this section, shall be deposited with the board in the account authorized by RCW 28B.102.060. It shall be used to cover the costs of granting the conditional scholarships, maintaining necessary records and making collections. The board shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant conditional scholarships to eligible students.

### WSR 01-08-021

#### PERMANENT RULES

#### DEPARTMENT OF LICENSING

[Filed March 27, 2001, 12:32 p.m.]

Date of Adoption: March 27, 2001.

Purpose: Meet criteria supporting Governor Locke's Executive Order 97-02.

Citation of Existing Rules Affected by this Order: Repealing 1 WAC 308-93-073; and amending 9 WAC 308-93-060, 308-93-069, 308-93-070, 308-93-071, 308-93-078, 308-93-285, 308-93-350, 308-93-360, and 308-93-640.

Statutory Authority for Adoption: RCW 88.02.070.

Other Authority: RCW 88.02.100.

Adopted under notice filed as WSR 01-03-017 on January 5, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 9, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 9, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 21, 2001

Fred Stephens

Director

AMENDATORY SECTION (Amending WSR 98-16-030, filed 7/29/98, effective 8/29/98)

**WAC 308-93-060 Registration period. (1) What is the length of a vessel registration period?** The vessel registration period is July 1 of the current year through June 30 of the following year for purposes of ~~((chapter 88.02))~~ RCW 88.02.050.

Any vessels registered for the first time in Washington will be assessed the registration fee for the registration period in which the vessel is registered. In addition, excise tax in the amount prescribed in chapter 82.49 RCW will be assessed through the current registration period.

**(2) How will my excise tax be calculated if I purchase or transfer a vessel in a month other than July?** When registering a vessel in Washington for the first time and assigning a registration period of ~~((eleven))~~ fewer than twelve months ~~((or less))~~ or transferring ownership of a vessel for which the registration has expired, the annual excise tax shall be reduced by one-twelfth for each full month of the registration period ~~((they))~~ you did not own or possess the vessel. The registration fee ~~((shall))~~ will not be ~~((abated))~~ reduced. Excise tax on renewals will be assessed twelve months of excise tax.

AMENDATORY SECTION (Amending WSR 98-16-030, filed 7/29/98, effective 8/29/98)

**WAC 308-93-069 Application for certificate of ownership**~~((registration))~~—**Accompanied by.** ~~((Vessel owners shall submit with their application for certificate of ownership or registration all proper fees and excise tax and the following documentation when appropriate:~~

(1) Excise exemption affidavit; and/or

(2) A copy of the bill of sale or sales agreement; and/or

(3) Declaration of value form; and/or

~~(4) Previous ownership document properly released; and/or~~

~~(5) Proof of sales tax paid; and/or~~

~~(6) Manufacturer's statement of origin, factory invoice, or carpenter certificate; and/or~~

~~(7) Release of interest form; and/or~~

~~(8) Other verification of ownership approved by the department to include:~~

~~(a) A judgment from a district or superior court of any county of this state awarding ownership; or~~

~~(b) Document from an involuntary divestiture sale or auction; and/or~~

~~(9) Copy of certificate of documentation of vessel issued by the United States Coast Guard.~~

~~(10) Upon application for a vessel certificate of ownership an authorized agent or employee shall verify the application and supporting documents to ensure accuracy. If all requirements are not met, an authorized agent or employee shall refuse to accept the application.~~

~~(11) When the application has been received, the department may recheck the application. If there is an error which precludes issuance of the certificate of ownership the department shall delay issuance of certificate of ownership until proper documentation has been received.))~~

**(1) What documentation must accompany my application for certificate of ownership for my vessel?** Vessel owners must submit with their application for certificate of ownership all proper fees and excise tax and the following documentation:

(a) New vessels:

(i) Application for certificate of ownership to a vessel never before licensed or titled shall be accompanied by a manufacturer's statement of origin, carpenter's certificate, or a copy of the factory invoice.

(ii) The manufacturer's statement of origin, carpenter's certificate, or factory invoice must reflect the model year, make, length and hull identification number of the vessel.

(iii) The department shall not accept any manufacturer's statement of origin, carpenter's certificate, or factory invoice for the issuance of a certificate of ownership unless all persons named on the manufacturer's statement of origin, including dealers, have released or assigned their interest thereon, or on a release of interest form approved by the department.

(iv) Dealer-to-dealer transfers may be accomplished either by appropriate endorsement of the manufacturer's statement of origin, carpenter's certificate, or factory invoice, or release of interest form approved by the department. A complete chain of ownership shall be reflected from the original dealer named on the manufacturer's statement of origin to the retail selling dealer making the application.

(v) A copy of the factory invoice may be used in lieu of the manufacturer's statement of origin or carpenter's certificate only when such documents are not available and obtaining a replacement from the manufacturer would cause an undue amount of delay in titling the vessel. A certificate of fact describing why the statement of origin or carpenter's certificate is not available shall be accompanied by the photocopy of the factory invoice and any necessary releases of interest on a form approved by the department.

(b) Vessels with existing certificate of ownership from a foreign titling jurisdiction:

(i) Excise exemption affidavit;

(ii) A copy of the bill of sale or sales agreement;

(iii) Declaration of value form;

(iv) Previous ownership document properly released;

(v) Proof of sales tax paid;

(vi) Release of interest;

(vii) Other verification of ownership approved by the department to include:

(A) A judgment from a district or superior court of any county of this state awarding ownership; or

(B) Document from an involuntary divestiture sale or auction; and/or

(C) Copy of certificate of documentation of vessel issued by the United States Coast Guard.

(c) Vessels without existing certificate of ownership or from a nontitling jurisdiction:

(i) Excise exemption affidavit;

(ii) A copy of the bill of sale or sales agreement;

(iii) Declaration of value form;

(iv) Previous ownership document properly released;

(v) The registration, if it is from a nontitle state;

(vi) Proof of sales tax paid;

(vii) Manufacturer's statement of origin, factory invoice, or carpenter's certificate;

(viii) An affidavit in lieu of title;

(ix) Release of interest;

(x) Other verification of ownership approved by the department to include:

(A) A judgment from a district or superior court of any county of this state awarding ownership; or

(B) Document from an involuntary divestiture sale or auction; and/or

(C) Copy of certificate of documentation of vessel issued by the United States Coast Guard; and/or

(D) An affidavit certifying when and where the vessel was acquired or brought into the state.

**(2) Will the department accept an application if any information is found to be inaccurate?** Upon application for a vessel certificate of ownership an authorized agent or employee must verify the application and supporting documents to ensure accuracy. If all requirements are not met, an authorized agent or employee shall refuse to accept the application.

**AMENDATORY SECTION** (Amending WSR 98-16-030, filed 7/29/98, effective 8/29/98)

**WAC 308-93-070 Application for certificate of ownership/registration((—Contents)).** ((1) When Washington becomes the new state of principal use, Washington shall recognize the validity of a vessel number issued by any other issuing authority for a period of sixty days before requiring numbering in this state:

(2) Vessel owners applying for certificate of ownership or registration of a vessel shall submit an application, which includes:

(a) Expiration date of the certificate of registration;

~~(b) The name of each owner of the vessel and if the vessel is subject to security interest, the name of each secured party;~~

~~(c) The department assigned customer account number for each owner of the vessel including secured parties if available;~~

~~(d) The address at which one of the owners regularly receives mail;~~

~~(e) The mailing address of the first secured party;~~

~~(f) The Washington registration number if assigned;~~

~~(g) Make and model year;~~

~~(h) Length of vessel;~~

~~(i) Type of power (gasoline, diesel, etc.);~~

~~(j) Primary use (commercial, pleasure, etc.);~~

~~(k) Primary method of propulsion (inboard, sail, etc.);~~

~~(l) Type of vessel (runabout, cabin, etc.);~~

~~(m) Primary vessel construction (fiberglass, wood, etc.);~~

~~(n) County of moorage;~~

~~(o) Hull identification number, if one has been assigned;~~

~~(p) Latest purchase price and purchase year or, if the vessel was not acquired by purchase, a declaration of value and year of declaration. For the purposes of this section, purchase price or declared value includes the vessel, vessel motor, or engine, and all other equipment and accessories, excluding a boat trailer, purchased or acquired in a single transaction;~~

~~(q) United States Coast Guard document number, if applicable.~~

**(3)) (1) When am I required to register my vessel in Washington? Current foreign registration will be recognized for a period of sixty days. On or before the sixty-first day, if Washington is to be the principal state of use, you must apply for a Washington state certificate of ownership and/or registration.**

**(2) What information must be supplied on an application to obtain a Washington vessel certificate of ownership and/or registration? Vessel owners applying for certificate of ownership and/or registration of a vessel must submit an application, which includes:**

**(a) Expiration date of the certificate of registration;**

**(b) The name of each owner of the vessel and if the vessel is subject to security interest, the name of each secured party;**

**(c) The department-assigned customer account number for each owner of the vessel including secured parties if available;**

**(d) The address at which one of the owners regularly receives mail;**

**(e) The mailing address of the first secured party;**

**(f) The Washington registration number as assigned;**

**(g) Make and model year;**

**(h) Length of vessel;**

**(i) Type of power (gasoline, diesel, etc.);**

**(j) Primary use (commercial, pleasure, etc.);**

**(k) Primary method of propulsion (inboard, sail, etc.);**

**(l) Type of vessel (runabout, cabin, etc.);**

**(m) Primary vessel construction (fiberglass, wood, etc.);**

**(n) County of moorage;**

**(o) Hull identification number, if one has been assigned;**

~~(p) Latest purchase price and purchase year or, if the vessel was not acquired by purchase, a declaration of value and year of declaration.~~

~~For the purposes of this section, purchase price or declared value includes the vessel, vessel motor, or engine, and all other equipment and accessories, excluding a boat trailer, purchased or acquired in a single transaction;~~

~~(q) United States Coast Guard document number, if applicable.~~

**(3) If my vessel is homemade, what information must be supplied on an application for Washington certificate of ownership? In addition to the information listed above in subsection (2) of this section, upon original application for certificate of ownership and/or registration of a homemade vessel, the owner shall complete and sign a declaration of value form. The owner's signature must be notarized/certified in accordance with WAC 308-93-470.**

**AMENDATORY SECTION** (Amending WSR 98-16-030, filed 7/29/98, effective 8/29/98)

**WAC 308-93-071 Class "A" and Class "B" certificate of ownership. Is there more than one class of certificate of ownership for my vessel?** From June 30, 1985, through June 30, 1990, there were two classes of vessel certificate of ownership: Class "A" and Class "B."

Effective July 1, 1990, the "A" and "B" classifications of vessel certificate of ownership were discontinued. All vessel certificate of ownership, regardless of any classification previously assigned are considered to be exclusive evidence of ownership unless a person can provide sufficient evidence the certificate of ownership was issued in error or is invalid for some other reason.

**AMENDATORY SECTION** (Amending WSR 98-16-030, filed 7/29/98, effective 8/29/98)

**WAC 308-93-078 Temporary use of an unregistered vessel. ((A purchaser from a private party of)) May a vessel be operated on the waters of this state if it is not registered? An unregistered vessel may ((operate the vessel)) be operated on ((Washington)) the waters of this state for fifteen consecutive days from the date of purchase using the notarized bill of sale in lieu of a registration certificate. The notarized bill of sale shall be carried on the vessel and contain:**

**(1) The name and address of the purchaser;**

**(2) The model year, make, and hull identification number of the vessel;**

**(3) The date of sale; and**

**(4) The name, address and signature of the seller.**

**AMENDATORY SECTION** (Amending WSR 98-16-030, filed 7/29/98, effective 8/29/98)

**WAC 308-93-285 Vessel length measurement. (1) How is the length of my vessel calculated? The overall length of a vessel ((first)) provided by the owner on application for certificate of ownership ((shall)) must be rounded down to the nearest whole foot. Vessel measurement**

~~((shall))~~ must be from the tip of the bow to the stern of the vessel down the centerline but not including boomkins, swim ladders, outboard engines, or other extremities.

**(2) How do I change the recorded length of my vessel if incorrect?** Changing the recorded vessel length, ~~((except when))~~ unless incorrectly entered by the department requires:

(a) Verification of remeasurement ~~((on official letterhead document including the vessel description and signed by a representative of))~~ from:

- (i) A law enforcement agency; or
- (ii) A port agency; or
- (iii) The United States Coast Guard; or
- (iv) Authorized representatives of the department.

(b) Documentation from the vessel manufacturer providing the correct length for that model vessel.

(c) Verification must be on agency letterhead and include the vessel description and signature of an authorized representative.

**AMENDATORY SECTION** (Amending WSR 98-16-030, filed 7/29/98, effective 8/29/98)

**WAC 308-93-350 Erasures and alterations and incorrect information.** **(1) Will the department accept an application for certificate of ownership if the certificate of ownership or supporting documents have been altered?**

The department may refuse to accept any certificate of ownership when ownership or vessel information has been altered. A replacement ownership document may be required.

**(2) What does the department require when a certificate of ownership, an application for certificate of ownership or a supporting document has been altered?**

(a) The department may require an affidavit explaining any erasure or alteration on the application, certificate of ownership, or any supporting documentation.

~~((3))~~ (b) The department may require a notarized/certified release of interest when:

~~((a))~~ (i) A signature or name that has been altered or erased appears on an application; or

~~((b))~~ (ii) A security interest is named to be shown on the new certificate of ownership and the applicant claims there is no lien; or

~~((c))~~ (iii) A security interest is shown incorrectly or is altered on the application for certificate of ownership. In lieu of a release of interest, Washington licensed vessel dealers may attach an affidavit explaining the error in the security interest.

(c) If an erasure has been made on a title, a notarized/certified affidavit must be attached. The affidavit must state why and by whom the erasure was made. The one whose name was erased must sign a notarized/certified release of interest.

(d) If a name is erroneously shown on the title as the purchaser, the department may require a statement from the seller or owner (of record) that the sale was not completed.

**AMENDATORY SECTION** (Amending WSR 98-16-030, filed 7/29/98, effective 8/29/98)

**WAC 308-93-360 Application for certificate of ownership required. When is a certificate of ownership required?** An application for certificate of ownership is required when:

(1) A person purchases a new vessel unless otherwise exempt from chapter 88.02 RCW.

(2) There is a change of ownership due to:

- (a) Sale;
- (b) Gift;
- (c) Inheritance;
- (d) Trade;
- (e) Addition or deletion of an owner;
- (f) Proprietorship or partnership forming a corporation, whether or not the business name is changing; or
- (g) Proprietorship or partnership purchasing a corporation which will no longer be operated as a corporation, whether or not the business name is changed.

(3) There is a name change of:

- (a) The owner;
- (b) The secured party; or
- (c) A business entity as shown on the current certificate of ownership.

(4) There is no change in the owner of the vessel but the certificate of ownership needs to be reissued because:

(a) A lien has been satisfied and the lien holder's name needs to be removed;

(b) A lien holder's name needs to be added. If a secondary lien holder is being added, the address of only the primary lien holder will be recorded;

(c) There is a change of lien holders;

(d) There has been a structural change in the vessel that changes the physical description of the vessel on the current certificate of ownership; or

(e) The vessel hull identification number has been altered, or removed, or needs to be corrected on the vessel or on the certificate of ownership.

**AMENDATORY SECTION** (Amending WSR 98-16-029, filed 7/29/98, effective 7/30/98)

**WAC 308-93-640 Reciprocity.** ~~((1) A vessel owned by a resident of a foreign state which is already covered by a number in full force and effect issued to it pursuant to federal laws or a numbering system of such state shall be exempt from registration requirements for a period of sixty days in any twelve-month period but only))~~ **Is my foreign registration valid in Washington?** Current foreign registration will be recognized for a period of sixty days to the extent a similar reciprocity is granted for vessels registered in the state of Washington. However, on or before the sixty-first day of use in this state, the owner of a foreign vessel ~~((shall))~~ must obtain a two-month vessel identification document issued by the department, its agents or subagents in accordance with WAC 308-93-055 if the state of principal use is not changing to Washington and the vessel owner wishes to keep the vessel located on Washington waters.

~~((2)) When a vessel is removed to the state of Washington as a new state of principal use, Washington shall recognize the validity of a number awarded by any other issuing authority for a period of at least sixty days before requiring numbering in this state.))~~

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-93-073            New vessels.

**WSR 01-08-022**  
**PERMANENT RULES**  
**DEPARTMENT OF LICENSING**

[Filed March 27, 2001, 12:36 p.m.]

Date of Adoption: March 23, 2001.

Purpose: Meet criteria supporting Governor Locke's Executive Order 97-02.

Citation of Existing Rules Affected by this Order: Amending 5 [4 WAC 308-56A-021, 308-56A-065, 308-56A-310, and 308-93-390].

Statutory Authority for Adoption: RCW 46.01.110, 88.02.070.

Other Authority: RCW 88.02,100 [88.02.100].

Adopted under notice filed as WSR 01-03-072 on January 16, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5 [4], Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 5 [4], Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 21, 2001

Fred Stephens

Director

**AMENDATORY SECTION** (Amending WSR 00-20-065, filed 10/3/00, effective 11/3/00)

**WAC 308-56A-021 Assessment criteria for penalty fee.** (1) What is the penalty fee? When a used vehicle with a Washington certificate of ownership is sold, the purchaser has fifteen days to transfer the vehicle ownership into their name. If they wait until the 16th day or later from the date of

sale, a penalty fee may be assessed as described in RCW 46.16.101(6).

~~(2)~~ **Are there exceptions ~~((to))~~ when a penalty fee ~~((being))~~ may be assessed ~~((for late application))~~ when applying for certificate of ownership ~~((beginning))~~ on the 16th day from the date of sale or later as described in RCW 46.12.101(6)?** Yes, if:

(a) The vehicle was ~~((received by))~~ delivered to the purchaser after the date of sale indicated on the supporting documents;

(b) There are conflicting dates on supporting documents;

(c) There is no date on the certificate of ownership or other supporting documents;

(d) The date on the certificate of ownership has been altered;

(e) The purchaser is incarcerated or sequestered by a judiciary system;

(f) The purchaser files a seller's report of sale thinking they have filed an application to transfer certificate of ownership;

(g) ~~((A))~~ The purchaser ~~((fails to transfer ownership prior to selling the vehicle and the applicant))~~ of a vehicle sells it before transferring ownership into their name and the new purchaser can prove they ~~((have))~~ purchased the vehicle within fifteen days of making application; or

(h) The director determines other reasons are valid.

Note: Subsection (2)(a) through ~~((h))~~ (g) of this section require ~~((the applicant to sign))~~ an affidavit attesting to the actual date of delivery and reason for exception to the penalty.

~~((2))~~ **(3) When are penalty fees for late application for certificate of ownership not assessed?** Penalty fees are not assessed for late application for certificate of ownership under the following conditions:

(a) The vehicle is not motorized;

(b) The vehicle is sold by a Washington dealer (dealer report of sale box on the application is completed);

(c) A Washington record cannot be found;

(d) Department of licensing records indicate the vehicle has been destroyed;

(e) The vehicle is being titled as home made or assembled for the first time;

(f) The vehicle is acquired as a result of:

(i) Inheritance or community property;

(ii) Divorce settlement;

(iii) Other legal action affecting ownership of the vehicle;

(iv) Lease buyout;

(g) The vehicle is a snowmobile; or

(h) The director determines other reasons are valid.

**AMENDATORY SECTION** (Amending WSR 99-08-064, filed 4/5/99, effective 5/6/99)

**WAC 308-56A-065 Vehicles held in trust.** (1) How is a trust ~~((established under chapter 11.98 RCW))~~ shown on a certificate of ownership? Owners who choose to designate the trust on a certificate of ownership may:

(a) Show the registered owner name with the designation trustee;

PERMANENT



(b) Show the registered owner name with the designation **trustee** followed by the name of the trust as one owner. If necessary, the name of the trust will be abbreviated to comply with the department's data field size constraints on the automated vehicle field system and space limitations on the certificate of ownership; or

(c) The name of the trust only.

(2) **What trust documents do I need to present to apply for a certificate of ownership in the name of the trust?** You will need to provide a copy of the signed trust documents, showing the name of the trust, trustee(s) and successor trustees. Trusts established under chapter 23.90 RCW must also provide notarized/certified documentation from the secretary of state showing the trust is registered with the state of Washington.

(3) **If a vehicle is titled in the name of a trust, who represents the trust for title transactions?** ~~((The))~~ Any trustee ((shown on the certificate of ownership)) designated in the trust document represents the trust on all vehicle transactions with the department ((until such time as the)) unless that trustee is replaced or the trust is terminated.

(4) **What is required when a successor trustee is appointed?** If the name of the trustee who has been succeeded, is shown on the certificate of ownership the successor trustee must apply for a new certificate of ownership and provide documentation appointing them as trustee.

(5) **What is required when a trust is terminated?** ~~((The beneficiary))~~ The new owner of the vehicle must apply for a new certificate of ownership under chapter 46.12 RCW.

**AMENDATORY SECTION** (Amending WSR 99-13-150, filed 6/21/99, effective 7/22/99)

**WAC 308-56A-310 Personal property lien—Chattel, landlord.** (1) **What is a chattel lien?** For the purposes of this section a "chattel lien" means: A lien obtained by any person, firm or company who provides services or materials for a vehicle at the owner's request, in the event of nonpayment by the owner. A person or firm that provides services or material for a vehicle at the owner's request may obtain a lien on such vehicle. In the event of nonpayment the lien may be foreclosed as provided by law.

(2) **What documents does the department require to issue a certificate of ownership for a vehicle which has been processed through the chattel lien procedure?** The department requires, in addition to other documents required by chapters 46.01 and 46.12 RCW:

(a) A copy of a court order. The court order must state specifically that the lien shall be removed~~((+or~~

~~(b)))~~. The court order is required to complete subsection (3) of this section. If the court order does not indicate removal of the security interest, the new owner may:

(i) Negotiate with a secured party to obtain either a release of interest or a new security agreement; or

(ii) Petition the original court that issued the order, or higher court, to have the matter of the secured interest resolved; or

~~((e)))~~ (b) An affidavit of sale chattel/landlord lien form provided or approved by the department.

~~((If there is a lienholder, we require a release of interest from the lienholder. If no release of interest is obtained the lien will be shown on the new certificate of ownership.~~

~~(2))~~ (3) **When does the department require a court order to issue a certificate of ownership as a result of a chattel lien?** A court order is required when:

(a) The vehicle is no longer in the possession of the person/business who is claiming the chattel/landlord lien; or

(b) Someone other than the owner requested the services;

~~or~~

(c) There is an existing lien holder on record; or

(d) There is more than one lien claimed against the vehicle.

~~((3))~~ (4) **What is a landlord lien?** For the purposes of vehicle licensing and titling, a landlord lien is an encumbrance on a vehicle as security for the payment of moneys owing for rent.

(5) **What documents does the department require to issue a certificate of ownership for a vehicle, which has been processed through the landlord lien procedure?** The department requires, in addition to other documents required by chapters 46.01 and 46.12 RCW:

(a) A copy of a court order; or

(b) An affidavit of sale chattel/landlord lien form provided or approved by the department.

~~((4))~~ (6) **When does the department require a court order to issue a certificate of ownership as a result of a landlord lien?** A court order is required when:

(a) The vehicle is no longer in the possession of the person/business who is claiming the landlord lien; or

(b) There is more than one lien claimed against the vehicle; or

(c) There is more than one lien claimed against the vehicle.

**AMENDATORY SECTION** (Amending WSR 99-22-059, filed 11/1/99, effective 12/2/99)

**WAC 308-93-390 Vessels held in trust.** (1) **How is a trust~~((established under chapter 11.98 RCW,))~~ shown on a certificate of ownership?** Owners who choose to designate the trust on a certificate of ownership may:

(a) Show the registered owner name with the designation **trustee**;

(b) Show the registered owner name with the designation **trustee** followed by the name of the trust as one owner. If necessary, the name of the trust will be abbreviated to comply with the department's data field size constraints on the automated vessel field system and space limitations on the certificate of ownership; or

(c) The name of the trust only.

(2) **What trust documents do I need to present to apply for a certificate of ownership in the name of the trust?** ~~((In addition to documents required by chapters 88.02 RCW and 308-93 WAC))~~ You will need to provide a copy of the signed trust documents, showing the name of the trust,

trustee(s) and successor trustees. Trusts established under chapter 23.90 RCW must provide notarized/certified documentation from the secretary of state showing the trust is registered with the state of Washington.

(3) **If a vessel is titled in the name of a trust, who represents the trust for title transactions?** ~~((The))~~ Any trustee ~~((shown on the certificate of ownership or named))~~ designated in the trust document ~~((s))~~ represents the trust on all vessel transactions with the department ~~((until such time as the))~~ unless that trustee is replaced or the trust is terminated.

(4) **What is required when the succession of trustees** ~~((changes))~~ is appointed? ~~((When there is a change in the succession of trustees, the successor trustee shall do one of the following:-~~

(a) ~~If the certificate of ownership shows the registered owner name with the designation trustee or the registered owner name with the designation trustee followed by the name of the trust as one owner, the new trustee must apply for a new certificate of ownership and provide documentation appointing the new or successor trustee.~~

(b) ~~If the certificate of ownership is in the name of the trust only, the department does not require a new application for certificate of ownership provided the current trust documents indicate the new succession of trustees.)~~ If the name of the trustee who has been succeeded is shown on the certificate of ownership, the successor trustee must apply for a new certificate of ownership and provide documentation appointing them as trustee.

(5) **What is required when a trust is terminated?** ~~((The beneficiary))~~ If the termination of the trust results in a change of ownership for the vessel, the new owner must apply for a new certificate of ownership under chapter 88.02 RCW.

### WSR 01-08-023

#### PERMANENT RULES

#### DEPARTMENT OF HEALTH

[Filed March 28, 2001, 9:11 a.m.]

Date of Adoption: January 12, 2001.

Purpose: To implement RCW 43.70.235 regarding the certification of independent review organizations. Certified independent review organizations are qualified to receive referrals from the insurance commissioner under RCW 48.43.535 to make binding determinations related to health care coverage and payment disputes between health insurance carriers and their enrollees.

Statutory Authority for Adoption: RCW 43.70.235.

Other Authority: RCW 48.43.535.

Adopted under notice filed as WSR 00-23-118 on November 22, 2000.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 12, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 12, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

M. C. Selecky  
Secretary

### Chapter 246-305 WAC

#### CERTIFICATION OF INDEPENDENT REVIEW ORGANIZATIONS

##### NEW SECTION

**WAC 246-305-001 Purpose and scope.** (1) Purpose. These rules are adopted by the Washington state department of health to implement the provisions of RCW 43.70.235 regarding the certification of independent review organizations. Certified independent review organizations are qualified to receive referrals from the insurance commissioner under RCW 48.43.535 to make binding determinations related to health care coverage and payment disputes between health insurance carriers and their enrollees.

(2) Other applicable rules. Independent review also is subject to rules of the insurance commissioner implementing RCW 48.43.535.

(3) Applicability. These rules apply to independent review cases originating in Washington state under RCW 48.43.535, and to independent review organizations conducting these reviews.

##### NEW SECTION

**WAC 246-305-010 Definitions.** For the purpose of this chapter, the following words and phrases shall have the following meanings unless the context clearly indicates otherwise.

(1) "Adverse determination" means a decision by a health carrier to deny, modify, reduce, or terminate coverage of or payment for a health care service for an enrollee.

(2) "Applicant" means a person or entity seeking to become a Washington certified IRO (independent review organization).

(3) "Attending provider" includes "treating provider" or "ordering provider" as used in WAC 284-43-620 and 284-43-630.

(4) "Carrier" or "health carrier" has the same meaning in this chapter as in WAC 284-43-130.

(5) "Case" means a dispute relating to a carrier's decision to deny, modify, reduce, or terminate coverage of or payment for health care service for an enrollee, which has been

referred to a specific IRO by the insurance commissioner under RCW 48.43.535.

(6) "Clinical peer" means a physician or other health professional who holds an unrestricted license or certification and is in the same or similar specialty as typically manages the medical condition, procedures, or treatment under review. Generally, as a peer in a similar specialty, the individual must be in the same profession, i.e., the same licensure category, as the attending provider. In a profession that has organized, board-certified specialties, a clinical peer generally will be in the same formal specialty.

(7) "Clinical reviewer" means a medical reviewer, as defined in this section.

(8) "Conflict of interest" means violation of any provision of WAC 246-305-030, including, but not limited to, material familial, professional and financial affiliations.

(9) "Contract specialist" means a reviewer who deals with interpretation of health plan coverage provisions. If a clinical reviewer is also interpreting health plan coverage provisions, that reviewer must have the qualifications required of a contract specialist.

(10) "Department" means the Washington department of health.

(11) "Enrollee" means a "covered person" as defined in WAC 284-43-130. "Enrollee" also means a person lawfully acting on behalf of the enrollee, including, but not limited to, a parent or guardian.

(12) "Health care provider" or "provider" means a person practicing health care services consistent with Washington state law, or a person with valid credentials from another state for a similar scope of practice.

(13) "Independent review" means the process of review and determination of a case referred to an IRO under RCW 48.43.535.

(14) "Independent review organization" or "IRO" means an entity certified by the department under this chapter.

(15) "IRO," see independent review organization.

(16) "Material familial affiliation" means any relationship as a spouse, child, parent, sibling, spouse's parent, or child's spouse.

(17) "Material professional affiliation" includes, but is not limited to, any provider-patient relationship, any partnership or employment relationship, or a shareholder or similar ownership interest in a professional corporation.

(18) "Material financial affiliation" means any financial interest including employment, contract or consultation which generates more than five percent of total annual revenue or total annual income of an IRO or an individual director, officer, executive or reviewer of the IRO. This includes a consulting relationship with a manufacturer regarding technology or research support for a specific product.

(19) "Medical reviewer" means a physician or other health care provider who is assigned to an external review case by a certified IRO, consistent with this chapter.

(20) "Medical, scientific, and cost-effectiveness evidence" means published evidence on results of clinical practice of any health profession which complies with one or more of the following requirements:

(a) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet

nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;

(b) Peer-reviewed literature, biomedical compendia, and other medical literature that meet the criteria of the National Institute of Health's National Library of Medicine for indexing in Index Medicus, Excerpta Medicus (EMBASE), Medline, and MEDLARS data base Health Services Technology Assessment Research (HSTAR);

(c) Medical journals recognized by the Secretary of Health and Human Services, under Section 1861 (t)(2) of the Social Security Act;

(d) The American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluation, the American Dental Association Accepted Dental Therapeutics, and the United States Pharmacopoeia-Drug Information;

(e) Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes including the Federal Agency for Healthcare Research and Quality, National Institutes of Health, National Cancer Institute, National Academy of Sciences, Health Care Financing Administration, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services;

(f) Clinical practice guidelines that meet institute of medicine criteria; or

(g) In conjunction with other evidence, peer-reviewed abstracts accepted for presentation at major scientific or clinical meetings.

(21) "Referral" means receipt by an IRO of notification from the insurance commissioner that a case has been assigned to that IRO under provisions of RCW 48.43.535.

(22) "Reviewer" or "expert reviewer" means a clinical reviewer or a contract specialist, as defined in this section.

## NEW SECTION

**WAC 246-305-020 General requirements for certification.** In order to qualify for certification, an IRO must:

(1) Demonstrate expertise and a history of reviewing health care in terms of medical necessity, appropriateness, and the application of other health plan coverage provisions.

(2) Demonstrate the ability to handle a full range of review cases occurring in Washington. Certified IROs may contract with more specialized review organizations; however, the certified IRO must ensure that each review conducted meets all the requirements of this chapter.

(3) Demonstrate capability to review administrative and contractual coverage issues, as well as medical necessity and effectiveness and the appropriateness of experimental and investigational treatments.

(4) Comply with all conflict of interest provisions in WAC 246-305-030.

(5) Maintain and assign qualified expert reviewers in compliance with WAC 246-305-040.

(6) Conduct reviews, reach determinations and document determinations consistent with WAC 246-305-050 and 246-305-060.

(7) Maintain administrative processes and capabilities in compliance with WAC 246-305-070.

(8) File an application for certification meeting the requirements of WAC 246-305-080.

#### NEW SECTION

##### **WAC 246-305-030 Conflict of interest.** (1) An IRO:

(a) Must not be a subsidiary of, or in any way owned or controlled by, a carrier or an association of health care providers or carriers;

(b) Must provide information to the department on its own organizational affiliations and potential conflicts of interest at the time of application and when material changes occur;

(c) Must immediately turn down a case referred by the insurance commissioner if accepting it would constitute an organizational conflict of interest; and

(d) Must ensure that reviewers are free from any actual or potential conflict of interest in assigned cases.

(2) An IRO, as well as its reviewers, must not have any material professional, familial, or financial affiliation, as defined in WAC 246-305-010, with the health carrier, enrollee, enrollee's provider, that provider's medical or practice group, the facility at which the service would be provided, or the developer or manufacturer of a drug or device under review. An affiliation with any director, officer or executive of an IRO shall be considered to be an affiliation with the IRO.

(3) The following do not constitute violations of this section:

(a) Staff affiliation with an academic medical center or National Cancer Institute-designated clinical cancer research center;

(b) Staff privileges at a health facility;

(c) Maintaining a provider contract with a carrier which provides no more than five percent of the provider's or clinical group's annual revenue; or

(d) An IRO's receipt of a carrier's payment for independent reviews assigned by the insurance commissioner under RCW 48.43.535.

(4) Notwithstanding the provisions of subsection (3) of this section, a potential reviewer shall be considered to have a conflict of interest with regard to a facility or health plan, regardless of revenue from that source, if the potential reviewer is a member of a standing committee of: The facility, the health plan or a provider network that contracts with the health plan.

(5) A conflict of interest may be waived only if both the enrollee and the health plan agree in writing after receiving full disclosure of the conflict, and only if:

(a) The conflict involves a reviewer, and no alternate reviewer with necessary special expertise is available; or

(b) The conflict involves an IRO and the insurance commissioner determines that seeking a waiver of conflict is preferable to reassigning the review to a different IRO.

#### NEW SECTION

**WAC 246-305-040 Expert reviewers.** (1) Each IRO must maintain an adequate number and range of qualified expert reviewers in order to:

(a) Make determinations regarding the full range of independent review cases occurring in Washington under RCW 48.43.535; and

(b) Meet timelines specified in WAC 246-305-050(3) including those for expedited review.

(2) All reviewers shall be health care providers with the exception of contract specialists.

(3) IROs must maintain policies and practices that assure that all clinical reviewers:

(a) Hold a current, unrestricted license, certification, or registration in Washington, or current, unrestricted credentials from another state with substantially comparable requirements, as determined by the department and outlined in the November 2000 edition of the department of health publication, *Health Care Professional Credentialing Requirements*;

(b) Have at least five years of recent clinical experience;

(c) Are board-certified in the case of a medical doctor, a doctor of osteopathy, a podiatrist, or a member of another profession in which board certification exists as determined by the department of health; and

(d) Have the ability to apply scientific standards of evidence in judging research literature pertinent to review issues, as demonstrated through relevant training or professional experience.

(4) Contract specialists must be knowledgeable in health insurance contract law, as evidenced by training and experience, but do not need to be an attorney or have any state credential.

(5) Assignment of appropriate reviewers to a case.

(a) An IRO shall assign one or more expert reviewer to each case, as necessary to meet requirements of this subsection.

(b) Any reviewer assigned to a case must comply with the conflict of interest provisions in WAC 246-305-030.

(c) The IRO shall assign one or more clinical reviewers to each case. At least one clinical reviewer assigned to each case must meet each of the following requirements:

(i) Have expertise to address each of the issues that are the source of the dispute;

(ii) Be a clinical peer as defined in WAC 246-305-010(6);

(iii) Have the ability to evaluate alternatives to the proposed treatment.

(d) All clinical reviewers assigned must have at least five years of recent clinical experience dealing with the same health conditions under review or similar conditions. Exceptions may be made to this requirement in unusual situations when the only experts available for a highly specialized review are in academic or research life and do not meet the clinical experience requirement.

(e) If contract interpretation issues must be addressed, a contract specialist must be assigned to the review.

(f) Each IRO must have a policy specifying the number and qualifications of reviewers to be assigned to each case.

The number of expert reviewers should be dictated by what it takes to meet the requirements of this subsection.

(i) The number of expert reviewers should reflect the complexity of the case, the goal of avoiding unnecessary cost, and the need to avoid tie votes.

(ii) The IRO may consider, but shall not be bound by, recommendations regarding complexity from the carrier or attending provider.

(iii) Special attention should be given to situations such as review of experimental and investigational treatments that may benefit from an expanded panel.

## NEW SECTION

**WAC 246-305-050 Independent review process.** (1) Information for review.

(a) IROs must request as necessary, accept and consider the following information as relevant to a case referred:

(i) Information that the carrier is required to submit to the IRO under WAC 284-43-630, including information identified in that section that is initially missing or incomplete as submitted by the carrier.

(ii) Other medical, scientific, and cost-effectiveness evidence which is relevant to the case. For the purposes of this section, medical, scientific, and cost-effectiveness evidence has the meaning assigned in WAC 246-305-010.

(b) After referral of a case, an IRO must accept additional information from the enrollee, the carrier, or a provider acting on behalf of the enrollee or at the enrollee's request, provided the information is submitted within seven calendar days of the referral or, in the case of an expedited referral, within twenty-four hours. The additional information must be related to the case and relevant to statutory criteria.

(2) Completion of reviews: Once the insurance commissioner refers a review, the IRO must proceed to final determination unless requested otherwise by both the carrier and the enrollee.

(3) Time frames for reviews.

(a) An IRO must make its determination within the following time limits:

(i) If the review is not expedited, within fifteen days after receiving necessary information, or within twenty days after receiving the referral, whichever is earlier. In exceptional circumstances where information is incomplete, the determination may be delayed until no later than twenty-five days after receiving the referral.

(ii) If the review is expedited, within seventy-two hours after receiving all necessary information, or within eight days after receiving the referral, whichever is earlier. Expedited time frames apply when a condition could seriously jeopardize the enrollee's health or ability to regain maximum function, as determined consistent with WAC 284-43-620. If information on whether a referral is expedited is not provided to the IRO, the IRO may presume that it is not an expedited review, but the IRO has the option to seek clarification from the insurance commissioner.

(b) An IRO must provide notice to enrollees and the carrier of the result and basis for the determination, consistent with subsection (5) of this section, within two business days

of making a determination in regular cases and immediately in expedited cases.

(c) As used in this subsection, a day is a calendar day, except that if the period ends on a weekend or an official Washington state holiday, the time limit is extended to the next business day. A business day is any day other than Saturday, Sunday or an official Washington state holiday.

(4) Decision-making procedures.

(a) The independent review process is intended to be neutral and independent of influence by any affected party or by state government. The department may conduct investigations under the provisions of this chapter but the department has no involvement in the disposition of specific cases.

(b) Independent review is a paper review process. These rules do not establish a right to in-person participation or attendance by the enrollee, the health plan, or the attending provider nor to reconsideration of IRO determinations.

(c) An IRO shall present cases to reviewers in a way that maximizes the likelihood of a clear, unambiguous determination. This may involve stating or restating the questions for review in a clear and precise manner that encourages yes or no answers.

(d) If more than one reviewer is used, the IRO shall:

(i) Provide an opportunity for the reviewers to exchange ideas and opinions about the case with one another, if requested by a reviewer. This shall be done in a manner that avoids pressure on reviewers to take a position with which they do not agree and preserves a dissenting reviewer's opportunity to document the rationale for dissent in the case file.

(ii) Accept the majority decision of the clinical reviewers in determining clinical issues.

(e) When a case requires an interpretation regarding the application of health plan coverage provisions, that determination shall be made by a reviewer or reviewers who are qualified as contract specialists.

(f) An IRO may uphold an adverse determination if the patient or any provider refuses to provide relevant medical records that are available and have been requested with reasonable opportunity to respond. An IRO may overturn an adverse determination if the carrier refuses to provide relevant medical records that are available and have been requested with reasonable opportunity to respond.

(g) If reviewers are deadlocked, the IRO may add another reviewer if time allows.

(h) If all pertinent information has been disclosed and reviewers are unable to make a determination, the IRO shall decide in favor of the enrollee.

(5) Notification and documentation of determinations. An IRO must notify the enrollee and the carrier of the result and rationale for the determination, including its clinical basis unless the decision is wholly based on application of coverage provisions, within the time frame in subsection (3)(b) of this section.

(a) Documentation of the basis for the determination shall include references to support evidence, and if applicable, the rationale for any interpretation regarding the application of health plan coverage provisions.

(b) If the determination overrides the health plan's medical necessity or appropriateness standards, the rationale shall

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document why the health plan's standards are unreasonable or inconsistent with sound, evidence-based medical practice.

(c) The written report shall include the qualifications of reviewers but shall not disclose the identity of the reviewers.

(d) Notification of the determination shall be provided initially by phone, e-mail or fax, followed by a written report by mail. In the case of expedited reviews the initial notification shall be immediate and by phone.

#### NEW SECTION

**WAC 246-305-060 Criteria and considerations for independent review determinations.** (1) General criteria and considerations.

(a) An IRO's determination must use fair procedures and be consistent with the standards in RCW 43.70.235, 48.43.535, and this chapter.

(b) The expert reviewers from a certified IRO will make determinations regarding the medical necessity or appropriateness of, and the application of health plan coverage provisions to, health care services for an enrollee.

(c) The IRO must ensure that determinations are consistent with the scope of covered benefits as outlined in the medical coverage agreement.

(i) Clinical reviewers may override the health plan's medical necessity or appropriateness standards only if the standards are determined upon review to be unreasonable or inconsistent with sound, evidence-based medical practice.

(ii) Reviewers may make determinations about the application of general health plan coverage provisions to specific issues concerning health care services for an enrollee. For example, whether a specific service is excluded by more general benefit exclusion language may require independent interpretation.

(2) Medical necessity and appropriateness—Criteria and considerations. Only clinical reviewers may determine whether a service, which is the subject of an adverse decision, is medically necessary and appropriate. These determinations must be based upon their expert clinical judgment, after consideration of relevant medical, scientific, and cost-effectiveness evidence, and medical standards of practice in the state of Washington.

(a) Medical standards of practice include the standards appropriately applied to physicians or other health care providers, as pertinent to the case.

(b) In considering medical standards of practice within the state of Washington:

(i) Clinical reviewers may use national standards of care, absent evidence presented by the health plan or enrollee that the Washington standard of care is different.

(ii) A health care service or treatment should be considered part of the Washington standard of practice if reviewers believe that failure to provide it would be inconsistent with that degree of care, skill and learning expected of a reasonably prudent health care provider acting in the same or similar circumstances.

(c) Medical necessity will be a factor in most cases referred to an IRO, but not necessarily in all. See WAC 246-305-060(3).

(3) Health plan coverage provisions—Criteria and considerations. The following requirements shall be observed when a review requires making determinations about the application of health plan coverage provisions to issues concerning health care services for an enrollee.

(a) These determinations shall be made by one or more contract specialists meeting the requirements of WAC 246-305-040(4), except that a clinical determination of medical necessity or appropriateness, by itself, is not an interpretation of the scope of covered benefits and does not require a contract specialist.

(b) If the full health plan coverage agreement has not already been provided by the carrier pursuant to WAC 284-43-630 (2)(f) of the insurance commissioner, the IRO shall request additional provisions from the health plan coverage agreement in effect during the relevant period of the enrollee's coverage, as necessary to have an adequate context for determinations.

(c) In general, the IRO and its contract specialists may assume that the contractual health plan coverage provisions themselves are consistent with the Washington Insurance Code (Title 48 RCW), absent information to the contrary. Primary responsibility for determining consistency with the insurance code, when at issue, rests with the insurance commissioner.

(4) No provision of this chapter should be interpreted to establish a standard of medical care, or to create or eliminate any cause of action.

#### NEW SECTION

**WAC 246-305-070 Administrative processes and capabilities of independent review organizations.** (1) An IRO must maintain written policies and procedures covering all aspects of review.

(2) An IRO must ensure the confidentiality of medical records and other personal health information received for use in independent reviews, in accordance with applicable federal and state laws.

(3) An IRO must have a quality assurance mechanism that ensures the timeliness, quality of review and communication of determinations to enrollees and carriers. The mechanism must also ensure the qualifications, impartiality, and freedom from conflict of interest of the organization, its staff, and expert reviewers.

(a) The quality assurance program must include a written plan addressing scope and objectives, program organization, monitoring and oversight mechanisms, and evaluation and organizational improvement of IRO activities.

(b) Quality of reviews includes use of appropriate methods to match the case, confidentiality, and systematic evaluation of complaints for patterns or trends. Complaints must be recorded on a log, including nature of complaint and how resolved. The department reserves the right to examine both the complaints and the log.

(c) Organizational improvement efforts must include the implementation of action plans to improve or correct identified problems, and communication of the results of action plans to staff and reviewers.

(4) An IRO must maintain case logs and case files with full documentation of referrals, reviewers, questions posed, information considered (including sources of the information and citations of studies or criteria), determinations and their rationale, communication with parties in the dispute including notices given, and key dates in the process, for at least two years following the review.

(5) An IRO must maintain a training program for staff and expert reviewers, addressing at least:

- (a) Confidentiality;
- (b) Neutrality and conflict of interest;
- (c) Appropriate conduct of reviews;
- (d) Documentation of evidence for determination; and

(e) In the case of contract specialists, principles of health contract law and any provisions of Washington law determined to be essential.

(6) An IRO must maintain business hours, methods of contact (including by telephone), procedures for after-hours requests, and other relevant procedures to ensure timely availability to conduct expedited as well as regular reviews.

(7) An IRO shall not disclose reviewers' identities. The department will not require reviewers' identities as part of the certification application process but may examine identified information about reviewers as part of enforcement activities.

(8) An IRO shall promptly report any attempt at interference by any party, including a state agency, to the department.

(9) An IRO shall have a medical director who holds a current unrestricted license as a medical doctor or osteopathic physician and has had experience in direct patient care. The medical director shall provide guidance for clinical aspects of the independent review process and oversee the IRO's quality assurance and credentialing programs.

#### NEW SECTION

**WAC 246-305-080 Application for certification as an independent review organization.** (1) To be certified as an independent review organization under this chapter, an organization must submit to the department an application in the form required by the department. The application must include:

(a) For an applicant that is publicly held, the name of each stockholder or owner of more than five percent of any stock or options;

(b) The name of any holder of bonds or notes of the applicant that exceed one hundred thousand dollars;

(c) The name and type of business of each corporation or other organization that the applicant controls or is affiliated with and the nature and extent of the affiliation or control;

(d) The name and a biographical sketch of each director, officer, and executive of the applicant and any entity listed under (c) of this subsection and a description of any relationship the named individual has with:

- (i) A carrier;
- (ii) A utilization review agent;
- (iii) A nonprofit or for-profit health corporation;
- (iv) A health care provider;
- (v) A drug or device manufacturer; or

(vi) A group representing any of the entities described by (d)(i) through (v) of this subsection;

(e) The percentage of the applicant's revenues that the applicant anticipates will be derived from reviews conducted under RCW 48.43.535;

(f) A description of the areas of expertise of the health care professionals and contract specialists making review determinations for the applicant, as well as the IRO's policies and standards addressing qualifications, training, and assignment of all types of reviewers;

(g) The procedures that the independent review organization will use in making review determinations regarding reviews conducted under RCW 48.43.535;

(h) Attestations that all requirements will be met;

(i) Evidence of accreditations, certifications, and government IRO contracts that the applicant believes demonstrate compliance with certain requirements of this chapter.

(i) Applicants must authorize release of information from primary sources, including full reports of site visits, inspections and audits;

(ii) The department may require the applicant to indicate which documents demonstrate compliance with specific Washington state certification requirements under this chapter.

(j) Other documentation, including, but not limited to, legal and financial information, policies and procedures, and data that are pertinent to requirements of this chapter; and

(k) Any other reasonable application requirements demonstrating ability to meet all requirements for certification in Washington.

(2) Department investigation and verification activities regarding the applicant may include, but are not limited to:

(a) Review of application and filings for completeness and compliance with standards;

(b) On-site survey or examination;

(c) Primary-source verification with accreditation or regulatory bodies of compliance with requirements which are used to demonstrate compliance with certain standards in this chapter;

(d) Other means of determining regulatory and accreditation histories; and

(e) Exercising any power of the department under WAC 246-305-100.

#### NEW SECTION

**WAC 246-305-090 Ongoing requirements for independent review organizations.** A certified IRO shall:

(1) Comply with the provisions of RCW 43.70.235, 48.43.535(5), and this chapter;

(2) Cooperate with the department during investigations;

(3) Provide the department with information requested in a prompt manner;

(4) Conduct annual self-assessments of compliance with Washington certification requirements;

(5) File an annual statistical report with the department on a form specified by the department summarizing reviews conducted. The report shall include, but may not be limited to, volumes, types of cases, compliance with timelines for expedited and nonexpedited cases, determinations, number

and nature of complaints, and compliance with conflict of interests rules.

(6) Submit updated information to the department if at any time there is a material change in the information included in the application.

#### NEW SECTION

**WAC 246-305-100 Powers of department.** (1) The department may deny, suspend, revoke or modify certification of an IRO if the department has reason to believe the applicant, certified IRO, its agents, officers, directors, or any person with any interest therein has failed or refused to comply with the requirements established under this chapter.

(2) The department may conduct an on-site review, audit, and examine records to investigate complaints alleging that an applicant, certified IRO or reviewer committed conduct described in WAC 246-305-110.

#### NEW SECTION

**WAC 246-305-110 Grounds for action against an applicant or a certified IRO.** (1) The department may deny an application for certification or suspend, revoke or modify certification if the applicant, certified IRO, its agents, officers, directors, or any person with any interest therein:

(a) Knowingly or with reason to know makes a misrepresentation of, false statement of, or fails to disclose, a material fact to the department. This applies to any data attached to any record requested or required by the department or matter under investigation or in a self-inspection;

(b) Obtains or attempts to obtain certification by fraudulent means or misrepresentation;

(c) Fails or refuses to comply with the requirements of RCW 43.70.235, 48.43.535(5), or this chapter;

(d) Conducts business or advertising in a misleading or fraudulent manner;

(e) Refuses to allow the department access to records, or fails to promptly produce for inspection any book, record, document or item requested by the department, or willfully interferes with an investigation;

(f) Accepts referral of cases from the insurance commissioner under RCW 48.43.535 without certification or with certification which has been terminated or is subject to sanction;

(g) Was the holder of a license, certification or contract issued by the department or by any competent authority in any state, federal, or foreign jurisdiction that was terminated for cause and never reissued, or sanctioned for cause and the terms of the sanction have not been fulfilled;

(h) Had accreditation from a recognized national or state IRO accrediting body that was terminated for cause and never reissued, or sanctioned for cause and the terms of the sanction have not been fulfilled;

(i) Willfully prevents, interferes with, or attempts to impede in any way the work of any representative of the department and the lawful enforcement of any provision of this chapter. This includes, but is not limited to: Willful misrepresentation of facts during an investigation, or administrative proceeding or any other legal action; or use of threats or

harassment against any patient, client, customer, or witness, or use of financial inducements to any patient, client, customer, or witness to prevent or attempt to prevent him or her from providing evidence during an investigation, in an administrative proceeding, or any other legal action involving the department;

(j) Willfully prevents or interferes with any department representative in the preservation of evidence;

(k) Misrepresented or was fraudulent in any aspect of the conduct of business;

(l) Within the last five years, has been found in a civil or criminal proceeding to have committed any act that reasonably relates to the person's fitness to establish, maintain, or administer an IRO;

(m) Violates any state or federal statute, or administrative rule regulating the IRO;

(n) Fails to comply with an order issued by the secretary or designee;

(o) Uses interference, coercion, discrimination, reprisal, or retaliation against a patient, client, or customer exercising his or her rights;

(p) Offers, gives, or promises anything of value or benefit to any federal, state, or local employee or official for the purpose of influencing that employee or official to circumvent federal, state, or local laws, regulations, or ordinances governing the certification holder or applicant;

(2) A person, including, but not limited to, enrollees, carriers, and providers, may submit a written complaint to the department alleging that a certified IRO committed conduct described in this section.

(3) An applicant or certified IRO may contest a department decision or action according to the provisions of RCW 43.70.115, chapter 34.05 RCW, and chapter 246-10 WAC.

#### WSR 01-08-040

#### PERMANENT RULES

#### STATE BOARD OF EDUCATION

[Filed March 30, 2001, 12:58 p.m.]

Date of Adoption: October 27, 2000.

Purpose: HB 1070 allows up to four school districts to utilize an alternative construction contract method known as general contractor/construction management (GC/CM) in lieu of the required current design, bid, build process. New sections are needed in order to allow school construction projects that would otherwise be eligible to receive state assistance and that are approved to utilize GC/CM to receive state funding.

Citation of Existing Rules Affected by this Order: Amending chapters 180-25, 180-26, 180-27, 180-29, 180-31, 180-32, and 180-33 WAC.

Statutory Authority for Adoption: RCW 28A.525.020.

Adopted under notice filed as WSR 00-19-112 on September 20, 2000.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or



Recently Enacted State Statutes: New 7, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 7, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 30, 2001

Larry Davis

Executive Director

#### NEW SECTION

**WAC 180-25-012 Waiver of rules to facilitate alternative public works contracting procedures.** (1) Subject to factual determinations by the superintendent of public instruction, the provisions of chapters 180-25 through 180-33 WAC which supplement statutory requirements are hereby deemed waived to the extent any provision would prevent or delay the implementation of alternative public works contracting procedures pursuant to chapter 39.10 RCW.

(2) At the request of school district officials, the superintendent of public instruction or her/his designee shall factually determine on a case-by-case basis which provisions would prevent or delay the implementation of alternative public works contracting procedures, and advise officials in writing of the extent to which one or more provisions of chapters 180-25 through 180-33 WAC are hereby deemed to have been waived.

#### NEW SECTION

**WAC 180-26-012 Waiver of rules to facilitate alternative public works contracting procedures.** The provisions of this chapter may be deemed waived in accordance with WAC 180-25-012.

#### NEW SECTION

**WAC 180-27-012 Waiver of rules to facilitate alternative public works contracting procedures.** The provisions of this chapter may be deemed waived in accordance with WAC 180-25-012.

#### NEW SECTION

**WAC 180-29-012 Waiver of rules to facilitate alternative public works contracting procedures.** The provisions of this chapter may be deemed waived in accordance with WAC 180-25-012.

#### NEW SECTION

**WAC 180-31-012 Waiver of rules to facilitate alternative public works contracting procedures.** The provisions of this chapter may be deemed waived in accordance with WAC 180-25-012.

#### NEW SECTION

**WAC 180-32-012 Waiver of rules to facilitate alternative public works contracting procedures.** The provisions of this chapter may be deemed waived in accordance with WAC 180-25-012.

#### NEW SECTION

**WAC 180-33-012 Waiver of rules to facilitate alternative public works contracting procedures.** The provisions of this chapter may be deemed waived in accordance with WAC 180-25-012.

### WSR 01-08-043

#### PERMANENT RULES

#### DEPARTMENT OF

#### RETIREMENT SYSTEMS

[Filed March 30, 2001, 2:13 p.m.]

Date of Adoption: March 29, 2001.

**Purpose:** The rule clarifies that members who request funds from a defined benefit plan will not receive interest on their funds once the department issues a warrant. The rule also clarifies that members who request funds from a defined contribution plan will have their investments sold and then transferred to a noninterest bearing account until their check is cashed. This rule also clarifies what happens when withdrawal checks and warrants are not cashed.

**Citation of Existing Rules Affected by this Order:** Amending WAC 415-02-060.

**Statutory Authority for Adoption:** RCW 41.50.050(5).

**Other Authority:** RCW 43.08.062, 41.50.055(5), 41.50.260.

Adopted under notice filed as WSR 01-05-096 on February 20, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 29, 2001

John Charles

Director

**AMENDATORY SECTION** (Amending WSR 00-10-016, filed 4/21/00, effective 5/22/00)

**WAC 415-02-060** (~~(Refund of contributions—Application.)~~) **What happens if I do not cash a warrant or check?** (~~The department will cancel a member's request for refund of defined benefit plan member contributions if the refund warrant is not cashed within one hundred eighty days of the date on the warrant. There will be no earnings on returned contributions for the one hundred eighty day period that funds were held for distribution to the member.~~)

~~If the member does not cash a warrant for a distribution of defined contribution plan member contributions within one hundred eighty days of the date on the warrant, the contributions will be returned to the member's account with the same allocation as existed on the date of the warrant. There will be no earnings on returned contributions for the one hundred eighty day period that funds were held for distribution to the member.)~~ (1) Warrant for defined benefit retirement allowance. A warrant for your monthly retirement allowance will be canceled if it is not cashed within the time frame set by RCW 43.08.062. If the warrant is canceled, the department will attempt to contact you for instructions. You will not earn interest on the warrant amount pending payment.

(2) Warrant for defined benefit withdrawal. When you request a withdrawal of some or all of your defined benefit accumulated contributions:

(a) Once the department issues the warrant you will stop receiving interest.

(b) Whether payable to you or to a qualified investment account, the warrant will be canceled if it is not cashed within the time frame set by RCW 43.08.062.

(c) After the department receives notice that the warrant has been canceled, the department will attempt to contact you and ask for further instructions.

(3) Check for defined contribution distribution. When you request a withdrawal of some or all of your defined contribution fund:

(a) The requested amount will be liquidated and the department's third-party recordkeeper will transfer the funds into a noninterest bearing account.

(b) You will not receive interest, earnings, or losses after the third-party recordkeeper processes your request.

(c) Whether you request that the refund check be sent directly to you or to a qualified investment account, the check will be canceled if it is not cashed within one hundred eighty days from the date on the check.

(d) If the check is canceled:

(i) The funds will continue to receive no interest, earnings, or losses while the recordkeeper waits to receive instructions from you; and

(ii) The department or the third-party recordkeeper will attempt to contact you and ask for further instructions.

**WSR 01-08-045**

**PERMANENT RULES**

**DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(Children's Administration)

(Division of Program and Policy)

[Filed March 30, 2001, 4:34 p.m.]

Date of Adoption: March 30, 2001.

Purpose: The proposed rules replace WAC 388-70-510 to 388-70-595 as part of the department's rule migration and regulatory reform required under Executive Order 97-02. The proposed rules create part of a new chapter, WAC 388-27-0120 to 388-27-0390, Child welfare services—Adoption support for children. The proposed rules describe programs and funding requirements to a degree not previously described in rule, with respect to the adoption support program and reflect federal guidelines issued by the United States Department of Health and Human Services which determine federally funded adoption assistance.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-70-510, 388-70-520, 388-70-530, 388-70-540, 388-70-550, 388-70-560, 388-70-570, 388-70-580, 388-70-590, and 388-70-595.

Statutory Authority for Adoption: RCW 74.13.031.

Adopted under notice filed as WSR 00-17-189 on August 23, 2000.

Changes Other than Editing from Proposed to Adopted Version: An addition was made to WAC 388-27-0120 and 388-27-0135 to reflect federal guidelines in Policy Announcement ACYF-CB-PA-01-01 issued by the United States Department of Health and Human Services (DHHS). These guidelines must be used by states in determining a child's eligibility for federally funded adoption assistance. Where these WAC regulations conflict with the guidelines set forth in the federal policy announcement, the federal guidelines are to be used.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 2, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 42, Amended 0, Repealed 10.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 42, Amended 0, Repealed 10.

Effective Date of Rule: Thirty-one days after filing.

March 27, 2001

Susan Bush  
for Bonita H. Jacques, Chief  
Office of Legal Affairs

Effective Date of Rule: Thirty-one days after filing.

March 30, 2001

Brian Lindgren  
for Bonita H. Jacques, Chief  
Office of Legal Affairs

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 01-09 issue of the Register.

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 01-09 issue of the Register.

**WSR 01-08-046**

**PERMANENT RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Children's Administration)

[Filed March 30, 2001, 4:36 p.m.]

Date of Adoption: March 30, 2001.

Purpose: New chapter 388-60 WAC, Domestic violence perpetrator treatment program standards, clarify the language of the requirements for all programs providing domestic violence perpetrator treatment services, as well as add several new requirements. The rules also meet the intent of the Governor's Executive Order 97-02.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-60-005, 388-60-120, 388-60-130, 388-60-140, 388-60-150, 388-60-160, 388-60-170, 388-60-180, 388-60-190, 388-60-200, 388-60-210, 388-60-220, 388-60-230, 388-60-240, 388-60-250, and 388-60-260.

Statutory Authority for Adoption: RCW 26.50.150.

Adopted under notice filed as WSR 00-18-018 on November 6, 2000 and WSR 00-22-066 and November 15, 2000.

Changes Other than Editing from Proposed to Adopted Version: We added wording to WAC 388-60-0075 regarding development of policies regarding excused absences for program participants. We also changed the word "assessment" to "screening" in WAC 388-60-165 (2)(c) and added "consecutive" to WAC 388-60-255(2).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 74, Amended 0, Repealed 16.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 74, Amended 0, Repealed 16.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 74, Amended 0, Repealed 16.

**WSR 01-08-047**

**PERMANENT RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Children's Administration)

(Division of Program and Policy)

[Filed March 30, 2001, 4:38 p.m.]

Date of Adoption: March 30, 2001.

Purpose: The proposed rules replace chapter 388-70 WAC and parts of chapter 388-15 WAC as part of the department's rule migration and regulatory reform required under Executive Order 97-02. The proposed rules revise child welfare services, adoption, foster care, family reconciliation services, family support services, and add home based services. The proposed rules describe programs and funding requirements to a degree not previously described in rule, with respect to the foster care program. The new chapters being adopted are: Chapter 388-25 WAC, Child welfare services—Foster care; WAC 388-27-0005 to 388-27-0115, Child welfare services—Adoption services; and chapter 388-32 WAC, Child welfare services to prevent out-of-home placement and achieve family reconciliation.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-70-010, 388-70-012, 388-70-013, 388-70-022, 388-70-024, 388-70-031, 388-70-032, 388-70-033, 388-70-034, 388-70-035, 388-70-036, 388-70-037, 388-70-041, 388-70-042, 388-70-044, 388-70-048, 388-70-051, 388-70-054, 388-70-058, 388-70-062, 388-70-066, 388-70-068, 388-70-069, 388-70-075, 388-70-078, 388-70-080, 388-70-082, 388-70-084, 388-70-170, 388-70-410, 388-70-420, 388-70-430, 388-70-440, 388-70-460, 388-70-470, 388-70-480, 388-70-700, 388-15-150, 388-15-160, 388-15-220, and 388-15-570.

Statutory Authority for Adoption: RCW 74.13.031.

Adopted under notice filed as WSR 00-17-189 on August 23, 2000.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 10; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 119, Amended 0, Repealed 41.

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Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 119, Amended 0, Repealed 41.

Effective Date of Rule: Thirty-one days after filing.

March 27, 2001

Susan Bush

for Bonita H. Jacques, Chief

Office of Legal Affairs

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 01-10 issue of the Register.

**WSR 01-08-048**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed March 30, 2001, 4:43 p.m.]

Date of Adoption: January 24, 2001.

Purpose: Program 94 has been eliminated from the school district account code structure effective for the 2000-2001 school year. These rule amendments are required to remove references to Program 94 from three sections of the Office of the Superintendent of Public Instruction's rules.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-210, 392-140-903, and 392-140-956.

Statutory Authority for Adoption: RCW 28A.150.290 [28A.150.290], 28A.505.140.

Adopted under notice filed as WSR 01-01-024 on December 7, 2000.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

Dr. Terry Bergeson  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending Order 99-01, filed 3/25/99, effective 4/25/99)

**WAC 392-121-210 Definition—Basic education certificated instructional employee.** As used in this chapter,

"basic education certificated instructional employee" means a district certificated instructional employee or a contractor certificated instructional employee assigned in whole or in part to the following programs as defined in the accounting manual for public school districts in the state of Washington:

- (1) Basic education, program 01;
- (2) Vocational, basic, state, program 31;
- (3) Skills center, basic, state, program 45; and
- (4) ~~((Instruction support, program 94; and~~
- ~~(5)))~~ District-wide support, program 97.

AMENDATORY SECTION (Amending WSR 00-02-063, filed 1/3/00, effective 2/3/00)

**WAC 392-140-903 K-4 Staff enhancement—Definitions.** As used in WAC 392-140-900 through 392-140-913:

(1) "Report S-275" means the school district personnel report as defined in WAC 392-121-225.

(2) "Form SPI 1158" means the form provided by the superintendent of public instruction on which school districts report supplemental K-12 full-time equivalent (FTE) staff and/or supplemental K-4 FTE staff for the school year.

(3) "Report 1159" means the report produced by the superintendent of public instruction displaying the calculations of K-4 certificated instructional staffing and K-4 apportionment ratios and other information as necessary.

(4) "Form SPI 1160" means the form provided by the superintendent of public instruction on which school districts may select the period of enrollment the superintendent of public instruction shall use to calculate staffing ratios.

(5) "Form SPI 1230" means the form provided by the superintendent of public instruction on which school districts have the option of reporting 1989-90 FTE K-3 basic education classified instructional assistants pursuant to WAC 392-140-716 and 392-140-745.

(6) "Form SPI 1230K-4" means the form provided by the superintendent of public instruction on which school districts have the option of reporting 1989-90 FTE K-4 basic education classified instructional assistants after September 1, 1999.

(7) "FTE K-4 basic education enrollment" means the school district's K-4 full-time equivalent enrollment reported for basic education funding pursuant to WAC 392-121-122 for the month of October or such other period selected by the district on optional Form SPI 1160.

(8) "FTE basic education certificated instructional employee" means the FTE calculated pursuant to WAC 392-121-215 for a basic education certificated instructional employee assigned in whole or in part to the following programs as defined in the *Accounting Manual for Public School Districts in the State of Washington*:

- (a) Basic education, program 01;
- (b) Vocational, basic, state, program 31;
- (c) Skills center, basic, state, program 45; and
- (d) ~~((Instruction support, program 94; and~~
- ~~(e)))~~ District-wide support, program 97.

(9) "FTE K-4 basic education certificated instructional employee" means for a FTE basic education certificated instructional employee the following:

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(a) If the basic education certificated instructional employee serves only K-4 students, one hundred percent of the FTE assigned to basic education; or

(b) If the basic education certificated instructional employee serves K-4 students and students of one or more other grades, multiply the FTE assigned to basic education by:

(i) The proportion of time spent serving K-4 students to all time serving students;

(ii) The proportion of K-4 students served to all students served; or

(iii) Any combination of (i) or (ii) of this subsection as appropriate.

(10) "FTE K-4 basic education certificated instructional staff" means the sum of FTE K-4 basic education certificated instructional employees for a school district.

(11) "Basic education classified instructional assistant" means a person who is assigned in whole or in part to:

(a) Program 01 - basic education; 31 - vocational, basic, state; or 45 - skills center, basic, state; and

(b) Activity 27 - teaching; and

(c) Duty 910 - aide.

(12) "Basic education classified instructional assistant FTE" means the number determined for a basic education classified instructional assistant as follows:

(a) Determine the hours per year that the employee is assigned as a basic education classified instructional assistant; and

(b) Divide by 2080.

(13) "District FTE K-4 basic education classified instructional assistants" means the sum of a school district's FTE K-4 basic education classified instructional assistants.

(a) If the basic education classified instructional assistant serves only K-4 students, one hundred percent of the FTE determined pursuant to WAC 392-140-903(12).

(b) If the basic education classified instructional assistant serves K-4 students and students of one or more other grades, multiply the FTE determined pursuant to WAC 392-140-903(12) by:

(i) The proportion of time spent serving K-4 students to all time serving students;

(ii) The proportion of K-4 students served to all students served; or

(iii) Any combination of (b)(i) or (ii) of this subsection as appropriate.

(14) "Actual average salary for basic education classified instructional assistants" means the dollar amount determined for a school district for a school year as follows:

(a) For each basic education certificated instructional assistant reported on Report S-275 determine the assignment salary reported;

(b) Sum the dollar amounts determined pursuant to (a) of this subsection; and

(c) Divide the result of (b) of this subsection by the sum of the school district's FTE basic education classified instructional assistants as reported on Report S-275.

AMENDATORY SECTION (Amending Order 98-07, filed 9/28/99, effective 9/29/99)

**WAC 392-140-956 Learning improvement days—**  
**Other definitions.** As used in WAC 392-140-950 through 392-140-967:

(1) "Certificated instructional staff" means district certificated instructional employees and contractor certificated instructional employees as defined in WAC 392-121-205 and 392-121-206.

(2) "Base contract" means a contract protected by the continuing contract law, RCW 28A.405.300. The base contract does not include hours or compensation provided under a supplemental contract as defined in RCW 28A.400.200.

(3) "Number of days in the base contract" means the number of full work days in the school year for a full-time certificated instructional employee holding the position for the full school year. Days include paid leave. The number of hours in a full work day is determined by each school district. Days scheduled before September 1 can be counted in the school year if included and compensated in the base contract for the school year beginning September 1.

(4) "Selected state-funded programs" means the following programs as defined in the *Accounting Manual for Public School Districts in the State of Washington*:

01 Basic Education

21 Special Education-Supplemental-State

31 Vocational-Basic-State

45 Skills Center-Basic-State

55 Learning Assistance Program-State

65 Transitional Bilingual-State

74 Highly Capable

~~((94 Instruction Support))~~

97 District-wide Support

(5) "State institutional education programs" means the following programs:

26 Special Education-Institutions-State

56 State Institutions, Centers, and Homes-Delinquent

**WSR 01-08-055**

**PERMANENT RULES**

**DEPARTMENT OF**

**FINANCIAL INSTITUTIONS**

[Filed April 2, 2001, 2:27 p.m.]

Date of Adoption: April 2, 2001.

Purpose: To amend the regulations to reflect changes made to the statute in 1999 as a result of passage and enactment of HB 1092.

Citation of Existing Rules Affected by this Order: Amending WAC 208-680A-040, 208-680B-010, 208-680B-020, 208-680B-030, 208-680B-050, 208-680B-070, 208-680B-090, 208-680C-020, 208-680C-040, 208-680C-045, 208-680C-050, 208-680D-010, 208-680D-030, 208-680D-040, 208-680D-050, 208-680D-060, 208-680D-080, 208-680F-010, 208-680F-020, 208-680F-040, 208-680F-060, and 208-680F-070.

Statutory Authority for Adoption: RCW 18.44.410.

Adopted under notice filed as WSR 00-19-051 on October 4 [September 15], 2000.

Changes Other than Editing from Proposed to Adopted Version: References to the old RCW section numbers are corrected to reflect the new section numbers resulting from the codification of the 1999 changes to the statute.

The term "agent to the transaction" was changed to "third party to the transaction" to be consistent with usage throughout the rule, WAC 208-680A-040.

Specific cites to areas of the law were added to the section prohibiting the use of deceptive names, WAC 208-680C-050.

Limits the director's power to retain or instruct the licensee to retain a CPA or other person to review the trust account of a licensee when a new designated escrow officer is appointed to cases where the director finds that there is reason to believe a licensee is not in compliance with the requirements for trust accounting.

Retaining of copies of paid checks, electronic or otherwise, allowed as long as the copies display the endorsement on the check, which typically requires a copy of both sides of the check.

Provides for two methods of passing through the costs of third party services associated with the closing; either passing through the exact cost of the third party service, or performing the service as the escrow agent. In both cases, the cost for the service must bear a reasonable relationship to the value of the service provided.

Removes the provisions dealing with split escrows pending further work on this provision.

Limits the director's authority to seize original documents to those cases where the director finds that there is a danger that the original documents may be destroyed, altered, or removed to deny the director access, or where original documents are required to prepare a criminal referral.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 10, Amended 24, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

April 2, 2001

John L. Bley

Director

AMENDATORY SECTION (Amending WSR 96-21-082, filed 10/16/96, effective 11/16/96)

**WAC 208-680A-040 Definitions.** The terms and definitions used in chapter 18.44 RCW have the same meanings given therein when used in these rules.

"Third party to the transaction" means those persons providing professional services necessary for the closing of the escrow. "Third party to the transaction" includes, but is not limited to: Real estate brokers, lenders, mortgage brokers, attorneys engaged to review the escrow, tax facilitators or underlying lien holders.

"Applicant" means any person applying for an escrow officer license or any person or group of persons applying for an escrow agent license. The term "applicant" includes the officers and controlling persons of the applicant, as well as any escrow officer seeking to become an escrow agent's designated escrow officer or designated branch escrow officer.

"Cash deposit" means funds deposited, in lieu of an errors and omissions policy, in an account in a recognized Washington state depository which account is maintained separate and apart from the escrow agent's own funds. The funds shall be deposited in such a manner to permit only the director to withdraw from the principal amount. The escrow agent may withdraw any interest accumulated to the account.

"Closing" means the transfer of title of real or personal property or execution of a real estate contract whichever event occurs first.

"Completed escrow" means a transaction in which the escrow agent has fully discharged its duties to the principal((s)) parties to the transaction. This includes obtaining all necessary documents, obtaining required signatures, completing reconveyance or title elimination, and disbursing funds to the principal((s)) parties to the transaction, the agents to the transaction, and to third parties to the transaction as agreed by the principal((s)) parties in the escrow instructions or on the settlement form (such as HUD1 or HUD1A).

"Conversion" means an unauthorized assumption and exercise of the right of ownership over moneys, property, or things of value belonging to another, to the alteration of the condition of, or the exclusion of the owner's rights to such moneys, property, or things of value. It includes any unauthorized act which deprives an owner of his/her property permanently or for an indefinite time, including but not limited to theft, embezzlement, forgery, swindling, and unauthorized control.

"Escrow instructions" are the instructions, signed by the principal parties to the transaction that identify the duties and responsibilities of the escrow agent in carrying out the escrow, that identify the thing or things of value held by the escrow agent and the specified condition or set of conditions under which the thing or things of value are to be transferred.

"Investigation" means an examination undertaken for the purpose of detection of violations of chapter 18.44 RCW, and these rules or securing information lawfully required under chapter 18.44 RCW, and these rules. The director or his or her designee may make private or public investigations.

"Officers" of the escrow agent shall include the president, secretary, treasurer, vice-president, and any other per-

sons with control over management decisions of the escrow agent.

"Overdue instrument" means a negotiable instrument that is overdue as defined in RCW 62A.3-304.

"Permanent record" means any record required to be kept under RCW 18.44.400 for a period of six years from the completion of the escrow transaction.

"Principal parties" means the buyers and sellers in a purchase transaction, and the borrower in a refinance transaction.

"Reconveyance" means an instrument used to transfer title from an individual holding such title in trust to the equitable owner of real estate, when title is held as collateral security for a debt.

"Securities" means any stock, treasury bill, bond, debenture or collateral-trust certificate tendered in lieu of an errors and omissions policy. It does not mean or include any insurance or endowment policy, annuity contract or letter of credit.

"Split escrow" means a transaction in which two or more escrow agents act to effect and close an escrow transaction.

"Transfer of title" occurs at the time the seller executes a deed or bill of sale and such is delivered to the purchaser or recorded.

"Trust" means a fiduciary relationship whereby a thing of value is delivered to an escrow agent with the intention that such thing of value be administered by the escrow agent for the benefit of the principal parties to the transaction.

"Trust account" or "trust bank account" means a bank account holding funds of any party to the transaction.

"Unclaimed funds" (~~are those funds for which the rightful owner is unknown, or the location of payee is unknown, or stale dated checks which have not been cashed~~) means any funds that are abandoned under the Uniform Unclaimed Property Act, chapter 63.29 RCW.

AMENDATORY SECTION (Amending WSR 96-05-018, filed 2/12/96, effective 4/1/96)

**WAC 208-680B-010 Credit and character report.**

Any person making application for an escrow officer license after passing an examination, or making application to be a designated escrow officer, shall, as an integral part of the application, supply the director with satisfactory proof of applicant's character and credit rating. Such proof shall be obtained and provided by a recognized credit-reporting agency in a form approved by the department.

Any person making application for an escrow agent (~~certificate of registration~~) license shall, as an integral part of the application, supply the director with satisfactory proof of character and credit rating for the natural person making the application, principal officers, designated escrow officer, controlling persons and partners. Such proof shall be obtained and provided by a recognized credit-reporting agency in a form approved by the department.

NEW SECTION

**WAC 208-680B-015 License not transferable— Notice of change in principal officer or controlling person.**

(1) An escrow agent license may not be transferred.

(2) An escrow officer's license may not be transferred.

(3) Whenever a licensed escrow agent contemplates a transfer involving all or substantially all of its assets, the licensee shall provide written notice to the director at least thirty days prior to the effective date of the transfer. This notice must include a copy of the signed agreement between the parties, which provides in part:

(a) A stipulation that the transferee is responsible for obtaining a license prior to completion of the transfer;

(b) A stipulation that the transferee shall obtain and submit to the director evidence of financial responsibility in the form of the required bond or bonds and errors and omission insurance in compliance with RCW 18.44.201 prior to completion of the transfer;

(c) A stipulation indicating which of the parties shall:

(i) Make all payments due to principal parties on or before the effective date of the transfer;

(ii) Maintain and preserve the accounting and other records as required by RCW 18.44.400 and WAC 208-680D-020 and 208-680D-030;

(iii) Provide notice of the transfer to all principal parties who have pending escrows, or who have deposited funds with the escrow agent, or who have executed some other form of written agreement with the escrow agent; and

(d) A stipulation that the transferee is either restricted from using or authorized to use, the escrow agent's business name, unless waived by the director.

(4) At least thirty days prior to a change in a principal officer or controlling person of a licensed escrow agent, the licensee shall provide the director with all information required of a principal officer or controlling person when an application is made for a license. The director shall make a determination prior to completion of the change, whether the proposed new principal officer or controlling person meets the requirements for licensing.

AMENDATORY SECTION (Amending WSR 96-05-018, filed 2/12/96, effective 4/1/96)

**WAC 208-680B-020 Fingerprint identification.**

(1) Any person making application for an escrow officer license after passing an examination, or to be a designated escrow officer (~~(who has been convicted of a felony or misdemeanor within ten years of application)~~), shall, as an integral part of the application, submit fingerprint identification on a form provided by the department.

(2) Any person making application for an escrow agent (~~(certificate of registration who has been convicted of a felony or misdemeanor within ten years of application)~~) license shall, as an integral part of the application, submit fingerprint identification of the natural person making the application, principal officers, designated escrow officer and (~~(partners for those persons who have been convicted of a felony or misdemeanor within ten years of application)~~) controlling persons on a form provided by the department.

(3) The director or his/her designee may, at his/her discretion, request additional background information to ascertain an applicant's honesty, truthfulness, and good reputation including but not limited to: Residential address and telephone number, qualifications, employment history, a personal credit report, and other information that the director or his/her designee may deem appropriate under RCW 18.44.031(2). The department may require of any applicant, principal officer, designated escrow officer, controlling persons, and partners, such information as is deemed necessary to satisfy the director or his/her designee that the requirements set forth in RCW 18.44.031(2) have been met. The director may require that such information be reported in writing and signed by the reporting individuals.

(4) In the event that an escrow agent experiences a change in any principal officer(s) or controlling person(s), the escrow agent shall submit fingerprints and such other information as the director may request under subsection (3) of this section to the department thirty days prior to the effective date of the change in principal officer(s) or controlling person(s).

**AMENDATORY SECTION** (Amending WSR 96-05-018, filed 2/12/96, effective 4/1/96)

**WAC 208-680B-030** (~~Notice required of intention to take~~) **Escrow officer examination.** (1) Any person desiring to take an examination for an escrow officer license must file a completed application together with the correct fee, and supporting documents with the department. Dishonored checks will be considered as an incomplete application. The applicant will be assigned to the first available examination subsequent to determination of eligibility. The cutoff date for submission of a completed application for any specific examination is available upon request. An applicant shall forfeit all examination fees for any examination or examinations for which the applicant has applied and does not take for any reason, other than through the fault or mistake of the department.

(2) The escrow officer examination shall test the applicant's knowledge of the following:

(a) An appropriate knowledge of the English language;

(b) An understanding of the obligations between principal and agent;

(c) An understanding of the meaning and nature of encumbrances upon real property, including an understanding of the general purposes and legal effects of deeds, mortgages, deeds of trust, contracts of sale, exchanges, rental and option agreements, leases, earnest money agreements, personal property transfers, encumbrances, and other escrow documents;

(d) An understanding of arithmetic and the principles and practices of trust accounting; and

(e) An understanding of the Escrow Agent Registration Act and other applicable law such as the Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 and regulation X, 24 C.F.R. Part 3500.

(3) For purposes of this section, "an appropriate knowledge of the English language" is defined as a demonstrated ability to read and understand the general purposes and legal effects of deeds, mortgages, deeds of trust, contracts of sale,

exchanges, rental and option agreements, leases, earnest money agreements, personal property transfers, encumbrances, and other escrow documents as they are customarily drafted in the state of Washington.

(4) The escrow officer examination shall be in a form and a location prescribed by the director, with the advice of the escrow commission, and shall be given at least annually.

**AMENDATORY SECTION** (Amending WSR 96-05-018, filed 2/12/96, effective 4/1/96)

**WAC 208-680B-050 Successful applicants must apply for license.** Any person who has passed the examination for escrow officer must apply to become licensed within one year from the date of such examination in order to be eligible for such license. If an escrow officer license has not been issued within two years of successful completion of the examination, then the applicant must retake and successfully complete the examination. Failure to comply with this provision will necessitate the taking and passing of another examination.

**AMENDATORY SECTION** (Amending WSR 96-05-018, filed 2/12/96, effective 4/1/96)

**WAC 208-680B-070 Misuse of escrow officer license prohibited.** An escrow officer shall not permit the use of his or her license, whether for compensation or not, to enable any person to in fact establish and carry on an escrow agency wherein the escrow officer does not have full management and supervisory responsibilities as required by RCW ((18.44.200)) 18.44.071 and these regulations. Failure to adequately supervise any individual conducting escrow or assisting in escrow shall be a violation of this section and may constitute grounds for revocation of the escrow officer's license.

**AMENDATORY SECTION** (Amending WSR 96-05-018, filed 2/12/96, effective 4/1/96)

**WAC 208-680B-090 Dishonored checks and insufficient payment of fees.** Payment of any fee required under chapter 18.44 RCW by a check (~~which~~) that is dishonored, or is an insufficient payment, shall be considered a nonpayment and the license action for which the dishonored check, or insufficient payment, was tendered shall not be completed by the department.

**NEW SECTION**

**WAC 208-680B-100 Number of locations directly supervised by escrow officers simultaneously.** No designated escrow officer or designated branch escrow officer shall simultaneously supervise more than one location without the prior written consent of the department.

**NEW SECTION**

**WAC 208-680B-110 Escrow officers may only be designated to one company.** A designated escrow officer or



designated branch escrow officer may perform escrow services for only one escrow agent at a time without the prior written consent of the director or his/her designee. A designated escrow officer or designated branch escrow officer may only supervise those escrow agent(s), and the employees of escrow agent(s), for which the officer has been designated by the director or his/her designee.

#### NEW SECTION

**WAC 208-680B-120 Escrow agent's prohibition of designated escrow officer.** An escrow agent may not prohibit the designated escrow officer from accessing the escrow agent's trust account books and records unless it notifies the department of such prohibition within twenty-four hours of the prohibition. Such notification must include the reason for the prohibition, a current address and telephone number for the prohibited designated escrow officer, a request for a replacement designated escrow officer, and a notice that no escrow business will be conducted without a designated escrow officer unless prior written consent has been given by the director.

AMENDATORY SECTION (Amending WSR 96-05-018, filed 2/12/96, effective 4/1/96)

**WAC 208-680C-020 Office identification.** Any main or branch office of the escrow agent shall be identified by displaying the name, visible to the public, of the escrow agent as licensed at the address appearing on the office license. Any fixed physical location where an escrow agent holds itself out to the public as able to perform escrow services as defined in RCW 18.44.011(4) shall constitute an office.

AMENDATORY SECTION (Amending WSR 96-05-018, filed 2/12/96, effective 4/1/96)

**WAC 208-680C-040 Change of office location.** The escrow agent shall notify the department of any change of location or mailing address of the agent's office or branch office prior to engaging in business at the new location or address. Notification shall be made by filing a change of address application with the department at least ten business days prior to the change in business location or address, accompanied by all licenses issued to the former address or location, and all applicable fees.

AMENDATORY SECTION (Amending WSR 96-21-082, filed 10/16/96, effective 11/16/96)

**WAC 208-680C-045 Closure of office.** (1) **Effect of closure.** When the main office of an escrow agent closes, all branch offices must close. When a branch office closes and the main office remains licensed, the responsibility for records maintenance and trust accounting reverts to the main office.

(2) **Notification.** When either the main office or a branch office of an escrow agent closes, all responsible persons are jointly and severally obliged to notify the department within ((thirty days)) twenty-four hours of closure.

(a) "Responsible person" means: The designated escrow officer; the owner of the firm; a controlling person as defined in RCW ((18.44.010(9))) 18.44.011(12); and the officers, owners and partners of the entity. The department may allow a person other than a responsible person as defined in this subsection to assume these duties.

(b) ((The official)) Additional notifications ((to the department)) shall include:

(i) Delivery of all original escrow licenses for offices being closed to the department within five working days of office closure. All licenses returned must be dated and signed. If a branch office is closing, the branch office license must be returned to the department. If the main office is closing, all licenses issued to the main and all branch offices must be returned.

(ii) Within thirty days of office closure, an itemized accounting of funds held in trust at the time of closure, including the names of the principal(((s))) parties to the transaction, the escrow number, the amount of funds held and the purpose of the funds. If the trust bank account balance is zero, the escrow agent must provide a reconciliation of the trial balance supporting the zero balance.

(iii) Within twenty-four hours of office closure, the name, residence address and telephone number of the person responsible for the records.

(iv) Within thirty days of office closure, the street address where the records are located.

(c) All responsible persons are jointly and severally obliged to notify the department within thirty days of any change in the person responsible for the records or the place the records are maintained.

(3) **Maintenance of records after closure.** When an escrow office closes, the records must be maintained in the state of Washington for at least six years. The records shall be available upon demand of the department during business hours and maintained in a manner to be readily retrievable.

(4) **Trust account.** If the trust bank account contains client funds at the time of closure, the person responsible for the records shall provide the department with quarterly reconciliations of the trust bank account to the trial balance, in compliance with WAC 208-680E-011(9), until the trust bank account balance is zero. The responsible person shall submit the reconciliations for the periods ending March, June, September and December. These reconciliations are due within thirty days of the end of the preceding period.

AMENDATORY SECTION (Amending WSR 96-05-018, filed 2/12/96, effective 4/1/96)

**WAC 208-680C-050 Deceptive names prohibited.** At the discretion of the director or the director's designated representative, an escrow agent may not be issued a ((certificate)) license nor advertise in any manner using names or trade styles which are similar to currently issued ((certificates)) licenses or imply that the agent is a nonprofit organization, research organization, public bureau or public group, or are otherwise deceptive((or which uses or makes reference to the existence of financial responsibility)) or in violation of RCW 30.04.020, 31.12.025, 32.04.020(2), 33.08.010,

or any other statute that limits the use of names. A bona fide franchisee may be issued a ~~((certificate))~~ license using the name of the franchisor with the firm name of the franchisee.

AMENDATORY SECTION (Amending WSR 96-05-018, filed 2/12/96, effective 4/1/96)

**WAC 208-680D-010 Designated escrow officer responsibilities.** The designated escrow officer shall be responsible for the custody, safety, and correctness of entries of all required escrow records. The escrow officer retains this responsibility even though another person or persons may be assigned by the escrow officer the duties of preparation, custody, recording or disbursing.

The designated branch escrow officer shall bear ~~((responsibilities))~~ responsibility for the custody, safety and correctness of entries of all transactions at the branch office. The designated escrow officer shall bear responsibility for all actions of the designated branch escrow officer.

Prior to issuing a new ~~((certificate))~~ license reflecting a change of the designated escrow officer or branch designated escrow officer of a registered escrow agent, evidence must be submitted that the responsibility for preexisting escrows is transferred to the incoming designated escrow officer or incoming licensed branch ~~((designated))~~ escrow officer. Such evidence shall be a statement signed by both the outgoing designated escrow officer and the incoming designated escrow officer, listing all outstanding trust liabilities and certifying that funds in hand in the trust account maintained by the agent are adequate to meet all such trust liabilities. ~~((At the discretion of the))~~ In the case of a change in designated branch escrow officer, the outgoing and incoming ((branch)) designated branch escrow officers ((may)) must sign the statement.

When the director or his/her designee makes a determination that there is reason to believe that the licensee's trust accounting records may not be in compliance with the requirements of WAC 208-680E-011, the director or his/her designee may retain or instruct the licensee to retain a certified public accountant or other person acceptable to the director, to reconcile the trust account and report whether it has been maintained in compliance with WAC 208-680E-011 and report on the adequacy of the licensee's internal routine and controls prior to the acceptance of a new designated escrow officer or designated branch escrow officer.

AMENDATORY SECTION (Amending WSR 96-05-018, filed 2/12/96, effective 4/1/96)

**WAC 208-680D-020 Required records.** Escrow agents shall be required to keep the following transaction records as a minimum; and all records except the reconciled bank statements, shall identify the transaction to which they pertain by escrow number or other clearly identifying information:

- (1) Trust account records.
  - (a) ~~((Duplicate receipt book recording all receipts;~~
  - ~~(b) Prenumbered checks;~~
  - (c) ~~Trust account receipt and disbursement records;~~

~~(d) Duplicate bank deposit slips, either validated by the bank or bearing the signature of the designated escrow officer and the date of actual deposit;~~

~~(e)) Copies of all duplicate deposit slips validated by the bank or bearing the signature of the designated escrow officer and the date of actual deposit, wires, separate receipts, or other evidence of the deposit of funds into the trust account;~~

~~(b) Copies of all checks, wires, or other evidence of any disbursement from the trust account;~~

~~(c) Copies of all bank statements for the trust account, including all paid checks or copies of paid checks, electronic or otherwise, provided that such copies are made in such a manner that the endorsement on the paid check is visible and readable;~~

~~(d) Client's ledger containing an individual ledger sheet for each transaction: Provided however, That for computerized record systems, an individual ledger sheet need not be maintained in the transaction files until the closing of the transaction if the computer records demonstrate on a daily basis the status of the transaction funds;~~

~~(e) If a manual trust accounting system is employed to administer the trust account, copies of all written receipts and prenumbered checks.~~

~~(2) Other records.~~

~~(a) A transaction file shall be maintained to contain all agreements, contracts, documents, leases, escrow instructions, closing statements and correspondence for each transaction;~~

~~(b) Reconciled bank statements and cancelled checks for all bank accounts of the escrow agent, including but not limited to the pooled escrow trust accounts, individual escrow trust accounts, and general business operating accounts of the agent;~~

~~(c) All checks and receipts produced by any computerized accounting or record system must be sequentially numbered. The escrow agent shall retain the original of any voided or incomplete sequentially numbered check or receipt which was not issued.~~

AMENDATORY SECTION (Amending WSR 96-21-082, filed 10/16/96, effective 11/16/96)

**WAC 208-680D-030 Accuracy and accessibility of records.** (1) **Accuracy.** All records shall be accurate, posted and kept ~~((up-to-date))~~ current to the date of the most recent transaction.

(2) **Location.** The escrow agent must maintain all records available for inspection by the department for a minimum of six years at an address where the escrow agent is licensed to maintain an escrow office. Records of transactions may be stored at a remote location within the state of Washington after the escrow has been completed for at least one year. Records stored at a remote location shall be available upon demand of the department during business hours and maintained in a manner to be readily retrievable.

(3) **Permanent storage.** After completion of the escrow transaction records may be stored on permanent storage media, such as optical disk or microfilm, provided the retrieval process does not permit modification of the docu-

ments. "Retrieval process" means the on-site ability to view and print the document in its original form including signatures or other writing placed upon the original document. The escrow agent must have in its records a statement signed by the supplier of the permanent storage system that the system does not permit the user to modify a document after it has been permanently stored.

(4) **Restrictions on storage.** Transactions and accounting records may not be stored at a remote location or on permanent storage media as described in subsection (2) or (3) of this section if there are funds relating to the transaction, such as reconveyance (~~(of)~~) or holdbacks, remaining in the trust bank account.

**AMENDATORY SECTION** (Amending WSR 96-05-018, filed 2/12/96, effective 4/1/96)

**WAC 208-680D-040 Agreements and closings.** The escrow agent shall be responsible for the effecting and closing of escrow agreements between the principal parties. The agent shall as a minimum:

(1) Prepare or accept an instrument of escrow instructions among ~~((each))~~ the principal parties and the escrow agent ((based upon a written agreement)). The escrow instructions shall be signed by the principal((s)) parties. Escrow instructions shall contain any and all agreements between the principals and the escrow agent or incorporate other written agreements by reference. The escrow instructions shall not be modified except by written agreement signed by the principals and accepted by the escrow agent. ~~((The agent shall))~~

(2) Disclose in writing to the principal parties ((to the transaction)) when ((a profit, or the potential for a profit on)) fees ((and)) for services provided may be realized by the escrow agent. ((Justifiable costs for fees and services related to the transaction may include, but not be limited to courier fees, credit reports, postage, fax services, and copying of documents. A copy of the disclosure shall be maintained)) The disclosure must specifically identify the fees using the same terminology as that provided on the closing statement (for example HUD1 or HUD1A), and reflect the dollar amount associated with each item identified as a fee payable to the escrow agent. For purposes of this section, fees payable to the escrow agent shall mean any item payable directly to the escrow agent whether realized by the escrow agent as profit, potential for profit, or the offset of justifiable costs.

(3) Ensure that all fees and/or justifiable costs are for bona fide services performed by the escrow agent or contractually ordered by the escrow agent to be performed by a third party to the transaction and bear a reasonable relationship in value to the services performed. No justifiable costs known at the time of closing for services performed by a third party to the transaction may exceed the actual cost of the third-party service. When the cost of a third-party service cannot be known with certainty at the time of closing, an escrow agent may:

(a) Provide an estimate of the justifiable cost of the third-party service on the preliminary closing statement, disclose the actual justifiable cost of the third-party service on the final disclosure statement, and refund any amounts collected

in excess of the actual justifiable cost of the third-party service to the principal parties to the transaction; or

(b) Assume responsibility for performing the service and charge the principal parties to the transaction a one-time fee for performing the service. The one-time fee must be reasonably related to the value of the service provided. The escrow agent may contract with a third party to perform the service. The escrow agent must disclose to the principal parties to the transaction in the preliminary and final settlement statement that the fee is being paid to the escrow agent. The escrow agent may transfer such fees earned into the general account in compliance with WAC 208-680E-011 (12)(a).

(4) Comply with the instructions for completing the closing statement. All funds disbursed on the closing statement should be bona fide and supported with adequate documents.

(5) Maintain copies of the escrow instructions and closing statement (for example, HUD 1 or HUD 1A) in the transaction file.

~~((2))~~ (6) Require an addendum to the purchase agreement for any and all material changes in the terms of the transaction, including but not limited to, changes in the financing of the transaction.

~~((3))~~ (7) Provide the services and perform all acts pursuant to the escrow instructions.

~~((4))~~ (8) Provide a complete detailed closing statement (for example HUD1 or HUD1A) as it applies to each principal at the time the transaction is closed. The escrow agent shall retain a copy of all closing statements in the transaction file, even ((though)) if funds are not handled by the agent((; in the transaction file)). The closing statements (for example HUD1 or HUD1A) shall show:

(a) The date of closing.

(b) The total purchase price.

(c) An itemization of all adjustments, monies or things of value received or paid in compliance with requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2601, and Regulation X, 24 C.F.R. Section 3500 and all applicable rules and regulations. Such itemization must include the name of the person or company to whom each individual amount is paid, or from whom each individual amount is received.

~~((d))~~ ((To whom each item is debited and/or credited.

~~((e))~~ Date each adjustment was made.

~~((f))~~ A detail of debits and credits identified to each principal party.

(e) Names of payees, makers and assignees of all notes paid, made or assumed.

~~((g))~~ (9) Pay the net proceeds of sale directly to the seller unless otherwise provided in writing by the seller or a court of competent jurisdiction.

~~((h))~~ (10) Obtain original signatures of the principals on either the preliminary or final closing statement and maintain a copy of the signed closing statement in the transaction file.

~~((5))~~ ~~The escrow agent shall~~ (11) Provide a copy of the final closing statement to each principal party and to each real estate broker involved with the transaction.

AMENDATORY SECTION (Amending WSR 96-05-018, filed 2/12/96, effective 4/1/96)

**WAC 208-680D-050 Expeditious performance.** An escrow agent shall perform all acts required of the escrow agent ~~((by agreement))~~ as expeditiously as possible and within ~~((the))~~ any time period ~~((of the agreement))~~ identified in the escrow instructions. Intentional or negligent delay in such performance shall be considered in violation of RCW ~~((18.44.260(2)))~~ 18.44.430 (1)(i).

AMENDATORY SECTION (Amending WSR 96-21-082, filed 10/16/96, effective 11/16/96)

**WAC 208-680D-060 Disbursement of funds.** The escrow agent shall disburse funds as set forth in the escrow instructions. Disbursement of any money or other items in violation of the trust or before the happening of the conditions of the escrow agreement or escrow instructions is a violation of RCW ~~((18.44.260(5)))~~ 18.44.430 (1)(e). ~~((F))~~ Funds and other items or documents must be paid and/or disbursed immediately upon closing of the transaction or as specifically agreed to in writing by all of the principal parties: Provided, That funds are disbursed in compliance with RCW 18.44.400(3).

Upon written notice from any principal party that the ownership of the funds is in dispute or is unclear based on the written agreement of the parties, the escrow agent must hold such funds until receiving written notice from all principal parties that the dispute has been resolved. In lieu of holding such funds the escrow agent may interplead the funds into a court of competent jurisdiction pursuant to chapter 4.08 RCW. Upon notification of a bona fide dispute between the principal parties, the director may, at his/her discretion, order the escrow agent to interplead the funds into a court of competent jurisdiction.

~~((Funds and other items or documents must be paid and/or disbursed immediately upon closing of the transaction or as specifically agreed to in writing by the principals: Provided, That disbursement of funds may be withheld to allow for checks to clear.))~~ At no time may an escrow agent disburse or delay the disbursement of funds without the written consent of all principal parties.

AMENDATORY SECTION (Amending WSR 96-05-018, filed 2/12/96, effective 4/1/96)

**WAC 208-680D-080 Licensed escrow ~~((licensees'))~~ officers' responsibilities.** (1) It is the responsibility of every ~~((licensee))~~ licensed escrow officer to be knowledgeable of and keep current with chapter 18.44 RCW and the rules implementing chapter 18.44 RCW.

(2) It is the responsibility of every ~~((licensee))~~ licensed escrow officer to keep the department informed of his or her current home address.

(3) It is the ~~((licensee's))~~ licensed escrow officer's responsibility to ensure accessibility of their offices and records to representatives of the department.

NEW SECTION

**WAC 208-680D-090 Escrow instructions, agreements, disclosures—Prohibitions.** It is a violation of this section and RCW 18.44.301, for an escrow agent to:

- (1) Employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (2) Engage in any unfair or deceptive practice toward any person;
- (3) Obtain property by fraud or misrepresentation;
- (4) Knowingly make, publish, or disseminate any false, deceptive, or misleading information;
- (5) Knowingly receive or take possession for personal use of any property of any escrow business, other than in payment authorized by this chapter;
- (6) Omit to make a full and true entry in the books and accounts of the business with intent to defraud.

AMENDATORY SECTION (Amending WSR 96-05-018, filed 2/12/96, effective 4/1/96)

**WAC 208-680F-010 Bond.** Each ~~((certificated))~~ licensed escrow agent shall obtain and keep in effect a bond in an aggregate minimum amount of \$200,000 providing fidelity coverage on all corporate officers, escrow officers, partners, and employees engaged in escrow transactions. Such bond shall be structured to provide coverage for the total amount of all claims up to an aggregate minimum of \$200,000. A deductible of up to \$10,000 on the required fidelity bond is allowed, as long as an additional surety bond of \$10,000 is maintained by the escrow agent. In the event that a fidelity bond with no deductible is obtained by the escrow agent, no surety bond is required.

AMENDATORY SECTION (Amending WSR 96-05-018, filed 2/12/96, effective 4/1/96)

**WAC 208-680F-020 Errors and omissions policy.** Each ~~((certificated))~~ licensed escrow agent shall obtain and keep in effect an errors and omissions policy providing coverage in the minimum aggregate amount of \$50,000 or, alternatively, cash deposit or securities in the principal amount of \$50,000. Securities used as an alternative to an errors and omissions policy shall be effectively delivered to the director. For the purpose of fulfilling the requirements of chapter 18.44 RCW and these rules, the escrow agent shall execute an irrevocable assignment and any supporting documentation as required by the director. Securities which are stocks or other interest in the registered escrow agency are not acceptable securities for the purposes of fulfilling the requirements of chapter 18.44 RCW and these rules.

AMENDATORY SECTION (Amending WSR 96-21-082, filed 10/16/96, effective 11/16/96)

**WAC 208-680F-040 Return of cash deposit or securities.** (1) The cash deposit or securities shall be returned to the escrow agent upon the date of expiration, cancellation, or revocation of the escrow agent's ~~((certificate of registration))~~ license: Provided, That the director may hold the cash

deposit or securities for a longer period in order to satisfy any actions commenced under WAC 208-680F-050 prior to the expiration, cancellation, or revocation of the escrow agent's ((certificate of registration)) license.

(2) The cash deposit or securities shall be returned to an applicant within thirty days of the director's denial of an initial application for an escrow agent's ((certificate of registration)) license.

**AMENDATORY SECTION** (Amending WSR 96-05-018, filed 2/12/96, effective 4/1/96)

**WAC 208-680F-060 Cash deposit, securities—Full force and effect.** All escrow agents who assign, transfer, or set over a cash deposit or securities in lieu of an errors and omissions policy shall at all times keep in full force and effect as a condition precedent to the escrow agent's authority to transact escrow business, such deposit or securities in the principal amount of \$50,000. Failure to maintain the deposit or securities at the minimum level shall be sufficient grounds for the suspension or revocation of the escrow agent's ((certificate of registration)) license.

**AMENDATORY SECTION** (Amending WSR 96-05-018, filed 2/12/96, effective 4/1/96)

**WAC 208-680F-070 Cancellation of errors and omissions policy, new policy required.** In the event of cancellation or expiration of an errors and omissions policy or fidelity bond, the escrow agent shall file with the director satisfactory evidence of a new policy or bond. Failure to file a new policy or bond shall be sufficient grounds for the suspension or revocation of the escrow agent's ((certificate of registration)) license. During the time the escrow agent does not have an errors and omissions policy or fidelity bond coverage in effect, the escrow agent may not transact business pursuant to RCW ((18.44.050)) 18.44.201.

## Chapter 208-680G WAC

### EXAMINATIONS, INVESTIGATIONS, ENFORCEMENT, SANCTIONS, AND COSTS

#### NEW SECTION

**WAC 208-680G-010 Examinations.** (1) For the purposes of determining compliance with chapter 18.44 RCW and chapter 208-680 WAC, the director or designee, through their staff, may examine, wherever located, the records used in the business of every licensee and of every person who is engaged in the business described in RCW 18.44.021.

(2) The director or designee may make necessary inquiry of the business or personal affairs, or both, of each such person for the purposes of determining such compliance. In conducting examinations, the director or designee, through their staff, may request, require, or conduct the following:

(a) Access, during reasonable business hours, to the offices and places of business, books, accounts, papers, files, records, including electronic records, computers, safes, and

vaults of all such persons. Access must be given to both the trust account records and general business account records;

(b) Interview any person subject to RCW 18.44.020, or any employee or independent contractor of any person subject to RCW 18.44.020;

(c) Interview any principal party or agent to the transaction;

(d) The filing of statements in writing by any person, under oath or otherwise, as to all facts and circumstances concerning the matters under examination;

(e) Copy, or request to be copied, any items described in subsection (1) of this section;

(f) Analysis and review of any items described in subsection (1) of this section;

(g) Assistance, as necessary, from any employee or person subject to RCW 18.44.020;

(h) Meetings and exit reviews with owners, management, officers, or employees of any person subject to RCW 18.44.020;

(i) Preparation and delivery, as deemed necessary, of a report of examination requiring a response from the recipient.

(3) The frequency of examinations shall be made at the discretion of the director or designated person.

#### NEW SECTION

**WAC 208-680G-020 Investigations.** (1) The director or designated person may make at any time, public or private investigations within or outside of this state to determine whether any person has violated or is about to violate chapter 18.44 RCW, or any rule, regulation, or order under chapter 18.44 RCW, or to aid in the enforcement of chapter 18.44 RCW. For that purpose, the director or designee, through their staff, may conduct inquiries, interviews, and examinations of any person deemed relevant to the investigation.

(2) The director or designated person may investigate, as deemed relevant by the director, the escrow business or other business or personal financial records of any person subject to investigation under subsection (1) of this section. In conducting investigations, the director or designated person, may request, require, instruct, direct, order, subpoena, or conduct the following:

(a) Access during reasonable business hours, to any location where any escrow business records are located, including offices, places of business, personal residences, storage facilities, computers, safes, and vaults, for the purposes of obtaining, reviewing, or copying books, accounts, papers, files, or records, including electronic records, or records stored in any format;

(b) Administration of oaths or affirmations;

(c) Subpoena witnesses and compel their attendance at a time and place determined by the director or designated person, or subpoena the production of any evidence or matter which is relevant to the investigation, including the taking of such evidence, or existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence;

(d) Interview or interrogate, publicly or privately, under administration of oath or otherwise, any person subject to RCW 18.44.020, or any employee or independent contractor of any person subject to RCW 18.44.020;

(e) Interview or interrogate, publicly or privately, under administration of oath or otherwise, any principal party, agent to the transaction, or any person whose testimony is deemed relevant;

(f) The filing of statements, affidavits, or declarations in writing by any person, under administration of oath, notary or otherwise, as to all facts and circumstances concerning the matters under investigation;

(g) Copy, or request to be copied, any items described in (a) of this subsection, or when the director or his/her designee makes a determination that there is a danger that original records may be destroyed, altered, or removed to deny the director access, or that original documents are necessary for the preparation of a criminal referral, the director may take originals of any items described in (a) of this subsection, regardless of the source of such items. Originals and copies taken by the director may be held, returned, or forwarded to other regulatory or law enforcement officials as determined necessary by the director;

(h) Analysis and review of any items described in (a) of this subsection;

(i) Assistance, as necessary, from any employee or person subject to RCW 18.44.021;

(j) Meetings and exit reviews with owners, management, officers, or employees of any person subject to RCW 18.44.021;

(k) Meetings and sharing of information with other regulatory or law enforcement agencies;

(l) Preparation and delivery, as deemed necessary, of a report of investigation requiring a response from the recipient.

(3) For purposes of this section and RCW 18.44.420(1), "public" means open to the public as determined by the director.

(4) For purposes of this section and RCW 18.44.420(1), "private" means closed to the public or any person, including attorneys for witnesses, as determined by the director.

#### NEW SECTION

**WAC 208-680G-030 Enforcement.** The director, or designated person, may conduct the following types of enforcement activity:

(1) Enter orders, including temporary orders to cease and desist, compelling any person to cease and desist from the unlawful practice, and to take such affirmative action as in the judgment of the director will carry out the purposes of this chapter;

(2) Enter charges for violations of chapter 18.44 RCW and chapter 208-680 WAC;

(3) Bring an action, with or without prior administrative proceedings, in the superior court to enjoin the acts or practices and to enforce compliance with chapter 18.44 RCW, or any rule, regulation, or order of the director;

(4) Appoint a receiver or conservator to take over, operate, or liquidate any escrow office;

(5) Hold hearings; or

(6) Make referrals to other regulatory or law enforcement agencies.

#### NEW SECTION

**WAC 208-680G-040 Sanctions.** The director may impose the following sanctions:

(1) Denial, suspension, or revocation of license for any violation of RCW 18.44.260;

(2) Remove or prohibit from participation in the conduct of the affairs of any licensed escrow agent, any officer, controlling person, director, employee, or licensed escrow officer for any violation of RCW 18.44.260;

(3) Assess a fine of up to one hundred dollars per day for each day's violation of chapter 18.44 RCW, or these rules.

#### NEW SECTION

**WAC 208-680G-050 Examination and investigation fees and expense—Authority to retain specialists.** (1) The director may retain attorneys, appraisers, independent certified public accountants, or other professionals and specialists as examiners, auditors, or investigators, the cost of which shall be borne by the person who is the subject of the examination, audit, or investigation.

(2) The expense of required travel and services related to an examination or investigation outside this state shall be borne by the person examined or investigated. Such expense includes, but is not limited to, travel, lodging, and per diem expense.

#### WSR 01-08-056

#### PERMANENT RULES

#### DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT

[Filed April 2, 2001, 3:05 p.m.]

Date of Adoption: April 2, 2001.

Purpose: The purpose of this rule revision is to correct an inaccurate reference in WAC 365-195-900(1), changing the reference from RCW 36.70A.215 to RCW 36.70A.130. As this is a typographical error, there will be no substantive changes made to this adopted rule.

Citation of Existing Rules Affected by this Order: Amending WAC 365-195-900(1).

Statutory Authority for Adoption: RCW 36.70A.190 (4)(b).

Adopted under notice filed as WSR 01-03-166 on January 24, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

April 2, 2001

Ms. Busse Nutley

Deputy Director

**AMENDATORY SECTION** (Amending WSR 00-16-064, filed 7/27/00, effective 8/27/00)

**WAC 365-195-900 Background and purpose.** (1) Counties and cities planning under RCW 36.70A.040 are subject to continuing review and evaluation of their comprehensive land use plan and development regulations. Every five years they must take action to review and revise their plans and regulations, if needed, to ensure they comply with the requirements of the Growth Management Act. RCW ((36.70A.215)) 36.70A.130.

(2) Counties and cities must include the "best available science" when developing policies and development regulations to protect the functions and values of critical areas and must give "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries. RCW 36.70A.172(1). The rules in WAC 365-195-900 through 365-195-925 are intended to assist counties and cities in identifying and including the best available science in newly adopted policies and regulations and in this periodic review and evaluation and in demonstrating they have met their statutory obligations under RCW 36.70A.172(1).

(3) The inclusion of the best available science in the development of critical areas policies and regulations is especially important to salmon recovery efforts, and to other decision-making affecting threatened or endangered species.

(4) These rules are adopted under the authority of RCW 36.70A.190 (4)(b) which requires the department of community, trade, and economic development (department) to adopt rules to assist counties and cities to comply with the goals and requirements of the Growth Management Act.

**WSR 01-08-057**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed April 2, 2001, 3:32 p.m.]

Date of Adoption: March 30, 2001.

Purpose: The changes are being made to make these WACs consistent with WAC 415-112-477 (TRS). The changes clarify how to report reinstatement or payments in lieu of reinstatement. In addition, DRS is adding a definition of "reinstatement" to these WACs.

Citation of Existing Rules Affected by this Order: Amending WAC 415-108-467 and 415-110-467.

Statutory Authority for Adoption: RCW 41.50.050(5), 41.40.020.

Other Authority: RCW 41.35.010(6), 41.40.010(8).

Adopted under notice filed as WSR 01-05-077 on February 16, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 30, 2001

John Charles

Director

**AMENDATORY SECTION** (Amending WSR 98-09-059, filed 4/17/98, effective 5/18/98)

**WAC 415-108-467 Reinstatement or payment ((in lieu)) instead of reinstatement.** ~~((If an employer makes payments to an employee for periods where the employee was not employed and those payments are made upon reinstatement of the employee or in lieu of reinstatement, the payments are not earned for services rendered. However, RCW 41.40.010(8) specifically designates such payments as reportable compensation. The payments are only reportable to the extent that they are equivalent to the salary the employee would have earned had he or she been working.))~~ (1) Payments to an employee are not earned for services rendered if an employer makes them for periods during which the employee was not employed and the payments are made either upon reinstatement or instead of reinstatement. Nonetheless, RCW 41.40.010(8) specifically designates these payments as reportable compensation. The payments are only reportable to the extent that they are equivalent to the salary the employee would have earned had he or she been working. The payment will be prorated over the entire period that the employee was suspended, terminated, or otherwise absent from work.

(2) For purposes of subsection (1) of this section, "reinstatement" means that the employee is entitled to return to full employment rights by action of either:

(a) The employer; or

(b) A personnel board, personnel appeals board or court of law following a hearing.

PERMANENT

AMENDATORY SECTION (Amending WSR 01-01-059, filed 12/12/00, effective 1/12/01)

**WAC 415-110-467 Reinstatement or payment ((in lieu)) instead of reinstatement.** ~~((If an employer makes payments to an employee for periods where the employee was not employed and those payments are made upon reinstatement of the employee or in lieu of reinstatement, the payments are not earned for services rendered. However, RCW 41.35.010(6) specifically designates such payments as reportable compensation. The payments are only reportable to the extent that they are equivalent to the salary the employee would have earned had he or she been working.))~~  
(1) Payments to an employee are not earned for services rendered if an employer makes them for periods during which the employee was not employed and the payments are made either upon reinstatement or instead of reinstatement. Nonetheless, RCW 41.35.010(6) specifically designates these payments as reportable compensation. The payments are only reportable to the extent that they are equivalent to the salary the employee would have earned had he or she been working. The payment will be prorated over the entire period that the employee was suspended, terminated, or otherwise absent from work.

(2) For purposes of subsection (1) of this section, "reinstatement" means that the employee is entitled to return to full employment rights by action of either:

- (a) The employer; or
- (b) A personnel board, personnel appeals board or court of law following a hearing.

**WSR 01-08-071**  
**PERMANENT RULES**  
**PENINSULA COLLEGE**

[Filed April 3, 2001, 1:22 p.m.]

Date of Adoption: April 1, 2001.

Purpose: Updating Title 132A WAC.

Citation of Existing Rules Affected by this Order:  
 Amending WAC 132A-120-011 and 132A-120-021.

Statutory Authority for Adoption: RCW 28B.50.140 and chapter 28B.50 RCW.

Adopted under notice filed as WSR 01-03-116 on January 22, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

April 2, 2001

Bonnie Cauffman

Assistant Vice-President  
 for Human Resources

AMENDATORY SECTION (Amending WSR 99-15-072, filed 7/20/99, effective 8/20/99)

**WAC 132A-120-011 Student responsibilities.** Any student shall be subject to disciplinary action as provided in this chapter who, either interferes with((;)) or assists others in interfering with((;)) the personal rights or privileges of others or the educational purpose of the college; violates any provision of this policy; or who commits any of the personal, property, or other offenses which are hereafter enumerated.

(1) Personal offenses.

(a) Assault, reckless endangerment, intimidation or interference with another in the pursuit of educational goals.

(b) Disorderly or abusive behavior, refusal to follow instructions, or other conduct which interferes with the rights of others or which obstructs or disrupts the teaching, research, or administrative functions of the college.

(c) Illegal assembly, obstruction, disruption, or material and substantial interference with the conduct of classes, hearings, meetings, educational and administrative functions of the college; the private rights and privileges of others, or vehicular pedestrian traffic.

(d) Sexual harassment, engaging in unwelcome sexual advances, requesting sexual favors, or engaging in physical or verbal conduct of a sexual nature which offends the recipient, causes discomfort or humiliation, or interferes with job or academic performance.

(e) Filing a false complaint, accusing another student or a college employee of violating a provision of this policy.

(f) Creating a false alarm by setting off or tampering with any emergency safety equipment, alarm, or other device provided for the safety of individuals or college facilities.

(2) Property offenses.

(a) Theft of college property.

(b) Malicious mischief in causing either intentional or negligent damage to or destruction of any college facility or other public or personal property.

(c) Trespass: Either declining a legal order to vacate a college property or violating a legal prohibition of access to college facilities.

(d) Unauthorized use of college equipment and supplies or conversion of college equipment for personal gain. This includes intentionally and without authorization gaining access to a computer system or electronic data of another student, a faculty member, or the district, in violation of RCW 9A.52.130.

(3) Other offenses.

(a) Cheating and plagiarism, submitting to a faculty member any work which is untruthfully represented as the student's own work for the purpose of meeting the require-



ments of any assignment or task required by the faculty member as a part of the student's program of instruction.

(b) Forgery or the alteration of official records, whereby a student either forges or offers a forged document as authentic to any agent acting on behalf of Peninsula College.

(c) Refusal to provide identification in appropriate circumstances to any college employee acting in the lawful discharge of the employee's duties.

(d) Illegal entry into any administrative or employee office or otherwise locked or closed college facility, at any time, without permission of the employee or an appropriate agent of the college.

(e) The use, possession, or sale of any controlled substances (as defined in chapter 69.50 RCW, now or hereafter amended) on college owned or leased property except when the use or possession of a drug is prescribed as medication by an authorized medical professional.

(f) The use, possession, or sale of any form of alcoholic beverage, or being demonstrably under the influence of alcohol on college owned or leased property. (~~Excepted are sanctioned events, approved by the president or his or her designee and in compliance with state law.~~)

(g) The possession on college property of weapons, explosives, or dangerous chemicals, or the unauthorized use or possession of any device or substance which can be used to inflict bodily harm or cause damage to real or personal property.

(h) Smoking in any nonresidential building or in any campus location not designated for smoking.

**AMENDATORY SECTION** (Amending WSR 99-15-072, filed 7/20/99, effective 8/20/99)

**WAC 132A-120-021 Delegation of disciplinary authority.** The (~~director of student activities~~) vice-president of student services or designee shall have the authority to administer the disciplinary action prescribed in this chapter. The president shall be informed of all student dismissals, suspensions or probation proceedings by the (~~director of student activities~~) vice-president of student services.

**WSR 01-08-083**  
**PERMANENT RULES**  
**DEPARTMENT OF LICENSING**

[Filed April 4, 2001, 9:41 a.m.]

Date of Adoption: March 28, 2001.

Purpose: Meet criteria supporting Governor Locke's Executive Order 97-02.

Citation of Existing Rules Affected by this Order: Repealing 1 [WAC 308-78-060]; and amending 8 [WAC 308-78-010, 308-78-020, 308-78-030, 308-78-040, 308-78-045, 308-78-070, 308-78-080, and 308-78-090].

Statutory Authority for Adoption: RCW 82.42.100.

Adopted under notice filed as WSR 01-03-083 on January 16, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 8, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 3, Amended 8, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 15, 2001

Fred Stephens

Director

**AMENDATORY SECTION** (Amending Order PFT 90-05, filed 6/14/90, effective 7/15/90)

**WAC 308-78-010 Definitions.** (1) "Aircraft fuel" includes any combustible gas or liquid, which is normally defined as motor vehicle fuel under chapter 82.36 RCW and chapter 308-72 WAC or a special fuel under chapter 82.38 RCW(~~(:)~~) and chapter 308-78 WAC when (~~it is~~) used to propel an aircraft.

(2) "User" means any person other than a distributor who is (~~licensed~~) certified to acquire aircraft fuel without payment of the aircraft fuel tax at time of acquisition.

(3) "Local service commuter" means an air taxi operator who operates at least five round trips per week between two or more points; publishes flight schedules which specify the times, days of the week, and points between which it operates; and whose aircraft has a maximum capacity of sixty passengers or eighteen thousand pounds of useful load.

(4) (~~"Operation for testing and experimental purposes" shall include only those flights conducted under either an experimental, research and development, or special air worthiness certificate issued by the FAA or other documented experimental or testing flights including the flight of other aircraft used in the test or experimental flight.~~)

(~~5~~) "Private, nonstate funded airfield" means an airport not eligible to receive state funding under chapter 47.68 RCW.

(5) "Department" means the department of licensing.

**AMENDATORY SECTION** (Amending WSR 99-19-097, filed 9/20/99, effective 10/21/99)

**WAC 308-78-020 Bond requirements and collection.**

(1) (~~As an aircraft fuel tax distributor must I be bonded in order to receive a license?~~) Are bonds required for aircraft fuel distributors? Yes, every aircraft fuel (~~tax~~) distributor must be (~~licensed and~~) bonded as (~~is~~) provided in chapter 82.36 RCW and/or chapter 82.42 RCW.

(2) Can the department collect on bonds for unpaid aircraft fuel taxes? Yes, the department may execute bonds

on file under the provisions of chapters 82.36 and 82.42 RCW for unpaid aircraft fuel taxes ((~~owing under chapter 82.42 RCW~~)).

AMENDATORY SECTION (Amending WSR 99-19-097, filed 9/20/99, effective 10/21/99)

**WAC 308-78-030 Required reports.** (1) **What reports are required by the department for aircraft fuel tax and when are they due?** Every licensed distributor of aircraft fuel shall submit signed tax returns and schedules to the department ((~~of licensing~~)), on or before the 25th day of each month, or as required by the department. Forms shall be furnished or approved by the department.

(2) **What if the payment due date falls on a Saturday, Sunday or state legal holiday?** Payment is due by the state business day immediately preceding the due date. (For example, if the payment due date falls on Saturday, you must transfer the funds by Friday.)

(3) **Is a report due if I have no activity for the month?** Yes, a report shall be filed with the department for each calendar month even when no aircraft fuel was sold or used.

((3)) (4) **Can tax return information be made available to other government agencies?** Yes, the department routinely furnishes copies of schedules to government agencies or foreign jurisdictions.

#### NEW SECTION

**WAC 308-78-035 Minimum tax payment/refund.** **What is the minimum tax payment or refund?** Each tax return that declares a tax liability of ten dollars or less need not make remittance; conversely, a refund of ten dollars or less will not be allowed. A computation error on the tax return which results in an additional tax liability in the amount of ten dollars or less will be accepted without further collection action.

AMENDATORY SECTION (Amending WSR 99-19-097, filed 9/20/99, effective 10/21/99)

**WAC 308-78-040 Tax exempt ((~~transactions and invoice requirements~~)) sales by licensed distributors.** ((4)) **When may a licensed distributor sell aircraft fuel without collecting the aircraft fuel tax?** A licensed distributor may sell aircraft fuel without collecting the aircraft fuel tax, when delivery is made by the distributor to ((~~one~~)) any of the following:

- ((a)) (1) A destination outside the state;
- ((b)) (2) United States or foreign government agencies;
- ((c)) (3) Directly into the aircraft fuel tanks of equipment operated by air carriers, supplemental air carriers, and foreign flag carriers operating under part 121 of the Federal Aviation Regulations, and local service commuters;
- ((d)) (4) Another licensed distributor; ((~~e~~))
- ((e)) (5) To a purchaser who delivers the fuel for export ((~~purposes (fuel must be unloaded at a location outside the state)~~)) under RCW 82.42.030 ((~~in the state into:~~))
  - (i) ~~Purchaser's transportation equipment; and/or~~

((ii)) ~~A common/contract carrier employed by the purchaser at a location outside the state.~~

(2) ~~What invoices are required and how are they distributed?~~ An original invoice must be furnished to the purchaser; the selling distributor as required by RCW 82.42.040 and WAC 308-78-070 must keep a copy of the invoice.

(3) ~~What information must an invoice include?~~ The selling distributor must issue to the purchaser an invoice, which shall contain at least the following:

- (a) Name and address of seller;
- (b) Name and address of purchaser;
- (c) The date of delivery (month, day, and year);
- (d) The location of the point of shipment, in words;
- (e) The place of delivery, in words, if different from shipping point;
- (f) Purchaser's method of transporting fuel (either customer equipment, common carrier, or pipeline, if by common carrier, common carrier's name);
- (g) State or foreign jurisdiction of destination;
- (h) Name of product sold;
- (i) The quantity, in gallons, of product sold;
- (j) The price per gallon and total amount charged; and
- (k) The statement: "Ex Washington State Fuel Tax.") or 82.42.070; or
- (6) Into the bulk storage tank of a certified user.

AMENDATORY SECTION (Amending WSR 99-19-097, filed 9/20/99, effective 10/21/99)

**WAC 308-78-045 Tax exempt use and circumstances.** ((~~What are the conditions under which I can claim an exemption of aircraft fuel tax?~~)) Exemption from the aircraft fuel tax may be claimed for the uses specified in RCW 82.42.020 and 82.42.030 subject to the following conditions:

(1) Operation of aircraft by air carriers, supplemental air carriers, and foreign flag carriers, operating under part 121 of the Federal Aviation Regulations, and local service commuters.

(2) For testing and experimental purposes in the manufacture or remanufacture of aircraft and for flight operations of experimental testing following manufacture, repair prior to delivery to a customer or experimental testing of another aircraft.

(3) For aircraft crew training in Washington state for certified air carriers.

(4) When applying pesticides, herbicides or other agricultural chemicals and for flight operations as defined in RCW 82.42.020.) **What are the conditions under which a refund of aircraft fuel tax can be claimed?** Refund of the aircraft fuel tax paid may be claimed for the following uses or circumstances:

(1) Operation of aircraft by air carriers, supplemental air carriers, and foreign flag carriers, operating under part 121 of the Federal Aviation Administration Regulations, and local service commuters.

(2) Testing and experimental purposes in the manufacture or remanufacture of aircraft and for flight operations or experimental testing following manufacture, repair prior to

delivery to a customer, or experimental testing of another aircraft.

(3) Aircraft crew training in Washington state for certified air carriers.

(4) When applying pesticides, herbicides, or other agricultural chemicals under conditions defined in RCW 82.42.020.

(5) Exportation of fuel from this state for use outside this state under the same conditions as provided for the refund of motor vehicle fuel in chapter 82.36 RCW and special fuel in chapter 82.38 RCW.

(6) Use of fuel in nonhighway equipment, other than aircraft, as provided for the refund of motor vehicle fuel in chapter 82.36 RCW and special fuel in chapter 82.38 RCW.

(7) Sales to the United States or foreign government agencies by a distributor who has paid the aircraft fuel tax. The distributor shall file an exemption certificate provided by the department. This certificate shall contain an assignment to the distributor of the purchaser's right to a refund.

#### NEW SECTION

**WAC 308-78-046 Tax exempt losses. (1) What is considered a tax exempt loss?** You may claim an exemption if fuel is destroyed through fire, lightning, flood, wind storm, explosion, accident, or other casualty.

**(2) May I claim an exemption for losses due to leakage?** Yes, if the verified leakage is five hundred gallons or more.

**(3) May I claim an exemption for losses of aircraft fuel due to evaporation, shrinkage, or unknown causes?** No, aircraft fuel losses due to evaporation, shrinkage, or unknown causes are not permitted.

**(4) What is acceptable proof of loss?** Acceptable proof of loss will consist of the following:

(a) An affidavit by a person having direct knowledge of the circumstances of the loss, explaining the circumstances surrounding the loss, quantity of fuel lost, fuel salvaged, disposition of salvaged fuel, and procedures used in determining the quantity of fuel lost;

(b) A signed statement by a federal or jurisdictional official who has authority to investigate fuel losses, or a witness to the loss;

(c) A bill of lading or shipping document;

(d) A statement by the licensee establishing ownership of the fuel at the time of loss.

**(5) How long must I retain my evidence substantiating the loss?** Documentary evidence substantiating losses shall be retained by the licensee for five years.

**(6) Am I liable for fuel taxes if one of my employees or agents causes a loss of fuel?** Yes, charges for losses made by employees or agents who fail to satisfactorily account for fuel shall be invoiced inclusive of the fuel tax. Other losses shall be substantiated by proof acceptable to the department.

AMENDATORY SECTION (Amending WSR 99-19-097, filed 9/20/99, effective 10/21/99)

**WAC 308-78-070 Records. (1) What records must a distributor, certified user, or consumer of aircraft fuel maintain?** The following records must be maintained:

(a) Physical inventories of bulk storage facilities and mobile storage facilities taken at the close of each calendar month;

(b) A record of fuel receipts together with invoices, bills of lading, transfer documents, and other documents relative to the acquisition of fuel;

(c) A record of fuel disbursements supported by sales invoices and other documents relative to the disbursements of fuel;

(d) ~~((An original invoice shall be issued at the time of each sale, or delivery, and shall show:~~

~~(i) The name of the distributor;~~

~~(ii) The date of delivery;~~

~~(iii) The name and address of the purchaser (address not required on credit card deliveries);~~

~~(iv) The location of the storage facility from which the fuel was withdrawn;~~

~~(v) The type or grade of fuel;~~

~~(vi) The number of gallons sold or delivered;~~

~~(vii) The price per gallon and the total amount charged;~~

~~(viii) The statement: "Ex Washington Aircraft Fuel Tax" for tax exempt sales. The distributor or user license number must be shown for all deliveries other than those made directly into the aircraft fuel tanks of unlicensed exempt carriers;~~

~~(e))~~ A withdrawal record covering their own total usage during the month. The withdrawal record shall contain the date of withdrawal, the location of the storage facility from which the fuel was withdrawn, the type or grade of fuel, and the number of gallons withdrawn;

~~((f))~~ ~~(e)~~ Each person claiming an exemption from the aircraft fuel tax shall keep records of each flight or series of flights for which tax exempt use is claimed. Such records shall include:

(i) Flight or block time of each flight or series of flights;

(ii) Type of aircraft;

(iii) Purpose of each flight or series of flights;

(iv) Dates;

(v) Gallons consumed for each flight or series of flights.

**(2) How long must I retain my records?** Records shall be maintained and kept for a period of not less than five years in their original form. The department may make such examinations of the records, facilities, equipment, and aircraft of distributors, certified users and consumers of aircraft fuel as necessary in carrying out the provisions of this chapter.

#### NEW SECTION

**WAC 308-78-075 Invoices issued by licensees. (1) When is an invoice issued?** Every licensee shall issue an invoice at the time of sale, distribution or use. If an electronic invoice is issued, a paper copy of the invoice must be produced if required by the department or to support a refund claim.

**(2) What information must appear on each invoice?**

Each invoice must include the following information:

- (a) The name and address of the seller;
- (b) The name, address and aircraft fuel tax number, if applicable, of the purchaser for all deliveries other than those made directly into the aircraft fuel tanks of unlicensed exempt carriers;
- (c) The date of delivery (month, day and year);
- (d) The location of the point of shipment. Alphanumeric codes are not allowed;
- (e) The physical address of delivery, if different than the purchaser address, including the name of the state, Canadian Province, or foreign country. Alphanumeric codes are not allowed;
- (f) Name of carrier transporting fuel;
- (g) Name of product sold;
- (h) The gross number of U.S. gallons of product sold;
- (i) The price per gallon and the total amount charged;
- (j) A statement on the invoice indicating whether the fuel has been sold with or without the Washington state fuel tax;

(k) In the case of a delivery onto a federally recognized Indian reservation or onto Indian country, the invoice must identify the state within the contiguous United States, Hawaii, Alaska, District of Columbia, U.S. possession, or Canadian Province in which the delivery took place.

**(3) What happens if an invoice is lost or destroyed?** If an invoice is lost or destroyed, the seller shall issue a duplicate or copy containing all information that appeared on the original invoice. The copies shall be plainly marked "copy" or "duplicate."

**(4) What happens if an incorrect invoice is issued to the purchaser?** The seller must retrieve the incorrect invoice and issue a corrected invoice to the purchaser.

AMENDATORY SECTION (Amending WSR 99-19-097, filed 9/20/99, effective 10/21/99)

**WAC 308-78-080 Refunds.** (1) **What do I have to do to claim a refund for aircraft fuel?** In order to claim a refund for aircraft fuel tax, you shall file a claim upon forms provided by the department in the same manner and under the same conditions as provided for refund of motor vehicle fuel in RCW 82.36.310.

(2) ~~(What is considered a tax exempt refund? A refund of aircraft fuel tax, which has been collected, may be claimed on aircraft fuel that has been:~~

- ~~(a) Used for purposes exempted under RCW 82.42.020, or 82.42.030 and WAC 308-78-040, 308-78-045 and 308-78-060;~~
- ~~(b) Exported from this state for use outside this state under the same conditions as provided for refund of motor vehicle fuel in RCW 82.36.300. Any aircraft fuel carried from this state in the fuel tank of an aircraft shall not be considered as exported from this state;~~
- ~~(c) Used in nonhighway equipment, other than aircraft, as provided for refund of motor vehicle fuel in RCW 82.36.280;~~
- ~~(d) Sold to United States or foreign government agencies by a dealer who has paid the aircraft fuel tax. The dealer shall~~

~~file an exemption certificate provided by the department. This certificate shall contain an assignment to the dealer of the purchaser's right to a refund. Each invoice covering such sale shall clearly state the fuel has been sold without the aircraft fuel tax.~~

~~(3)) Is there a time limit to claim an aircraft fuel tax refund? Yes, claims for refund may not be filed later than thirteen months from the date of purchase of such aircraft fuel under the same conditions as provided for motor vehicle fuel in RCW 82.36.330.~~

~~((4)) (3) Can the department verify the validity of refund claims? Yes, the department may examine the books and records of the claimant in order to establish the validity of any claim for refund under the same conditions as provided for motor vehicle fuel in RCW 82.36.340.~~

AMENDATORY SECTION (Amending WSR 99-19-097, filed 9/20/99, effective 10/21/99)

**WAC 308-78-090 Mitigation of penalties and/or interest.** (1) **Under what circumstances may fee, a penalty and/or interest be ~~((waived)) mitigated?~~** The department ~~((, in its discretion,))~~ may mitigate, extinguish and/or adjust fees, penalties, and/or interest arising from late or missing fuel tax returns, unpaid or underpaid taxes, lack of complete records ~~((to support reported fuel usage, or)),~~ license revocation penalties ~~((, when reasonable cause is shown by the taxpayer or as indicated from the records on file with the department that failure to comply with the requirements of this chapter was not intentional or unreasonable))~~ and assessments.

(2) **How will the department determine whether fees, penalties and/or interest will be mitigated?** The department ~~((, in its discretion, and after review of records furnished and/or tax returns available, may take into consideration a taxpayer's history of underpayments and overpayments, late payment(s), late filing of tax returns, or incomplete records in arriving at its decision to mitigate))~~ will review records, account history or other information in arriving at its decision.

(3) **What happens if I do not pay my tax assessment on time?** You will be assessed additional penalties and/or interest.

~~((4) Under what circumstances may assessed late payment penalties and/or interest be mitigated? The department, in its discretion, may mitigate late payment penalties and/or interest if the taxpayer provides reasonable cause for failure to make payment within a thirty-day period after service of an assessment.))~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-78-060 Tax exempt losses.

PERMANENT

**WSR 01-08-010**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 [Filed March 23, 2001, 10:28 a.m.]

Date of Adoption: March 22, 2001.

**Purpose:** The purpose of these emergency rules is to clarify our current variance process to allow alternate materials, alternate design, and methods of construction to be approved provided a reasonable level of protection to life, safety, and health has been achieved. Also, these rules will allow for the sale of a manufactured/mobile home by a homeowner that purchased a manufactured/mobile home without receiving all the required insignia provided they identify it in the disclosure statement (similar to what is currently allowed for site-built homes), which is required prior to the sale of the home under these emergency rules.

**Citation of Existing Rules Affected by this Order:** Amending WAC 296-150M-0140.

**Statutory Authority for Adoption:** RCW 43.22.340, 43.22.400, 43.22.432, 43.22.433, 43.22.434, 43.22.480, and 43.22.485.

**Other Authority:** Chapter 43.22 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

**Reasons for this Finding:** Under current law it is unlawful for any person to lease, sell or offer for sale, within this state, manufactured/mobile homes unless the alterations done to the home meet the requirements of the rules provided for in chapter 296-150M WAC. Currently, the department does not have the ability to allow manufactured/mobile homeowners to sell their homes unless they have received all the necessary inspections and retain all of the insignia required by law. This is extremely problematic as it may create an unnecessary financial hardship on manufactured/mobile homeowners. This financial hardship may occur when the manufactured/mobile homeowner purchased a home with nonpermitted alterations or if they had or would like to complete alterations that provide the same or reasonable level of protection to life, safety, and health but are inconsistent with the rules adopted by the department.

The immediate adoption of these rules is necessary for the preservation of the general welfare by directly addressing public concern that the rules may create a severe financial hardship to manufactured/mobile homeowners. Further, this rule creates a greater level of flexibility and does not infringe on the necessary protection to life, safety, and health.

**Number of Sections Adopted in Order to Comply with Federal Statute:** New 0, Amended 0, Repealed 0; **Federal Rules or Standards:** New 0, Amended 0, Repealed 0; or **Recently Enacted State Statutes:** New 0, Amended 0, Repealed 0.

**Number of Sections Adopted at Request of a Nongovernmental Entity:** New 0, Amended 0, Repealed 0.

**Number of Sections Adopted on the Agency's Own Initiative:** New 0, Amended 1, Repealed 0.

**Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures:** New 0, Amended 1, Repealed 0.

**Number of Sections Adopted Using Negotiated Rule Making:** New 0, Amended 0, Repealed 0; **Pilot Rule Making:** New 0, Amended 0, Repealed 0; or **Other Alternative Rule Making:** New 0, Amended 1, Repealed 0.

**Effective Date of Rule:** Immediately.

March 22, 2001

Gary Moore

Director

AMENDATORY SECTION [(Amending WSR 00-17-148, filed 8/22/00)]

**WAC 296-150M-0140 Do you allow a variance from these rules for the use of alternate materials, alternate design and methods of construction?** (~~When altering a manufactured home, a~~) An applicant may apply to the director or designee for an order for a variance from the requirements of this chapter for alterations initiated after the expiration of any written warranty(ies) required by RCW 46.70.135 that ((the)) use ((of)) alternate materials, alternate design and methods of construction ((different from the requirements of this chapter)) by filing a written request with the department.

(1) Responsibilities of applicant. The applicant must submit ~~((in writing))~~ the following information ~~((and sign and date the request))~~ on a form approved by the department and pay the inspection fee in WAC 296-150M-3000.

(a) The applicant's name, address and phone number;

(b) The specific requirement or requirements from which the alternate material, alternate design or method of construction is requested;

(c) Justification why that the requirements of this chapter cannot be or were not ~~((be))~~ met ~~((without using alternate materials, alternate design or method of construction)); and~~

(d) How the use of alternate materials, alternate design or method of construction will achieve or has achieved ~~((the same result as the requirement and any specific alternative measures to be taken to show the alternate provides the same))~~ a reasonable level of protection to life, safety and health ((as the requirements)).

~~((The department has a form that you may use for your request.))~~ Contact the department at the address shown in the definition section for a copy of the approved form.

(2) Responsibilities of the department. The department will conduct an inspection and provide a written response to the applicant within thirty days of receipt of the written request. The written response will state the acceptance or denial of the request, including the reasons for the department's decision. At a minimum the department will base its decision based on:

(a) The applicant's request as described in subsection (1) of this section;

(b) Research into the request;

(c) Expert advice.

(3) Applicant's response to denials. The applicant may appeal the department's decision by following the procedure in WAC 296-150M-0100.

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

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

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

### NEW SECTION

**WAC 296-150M-0049 What must be done prior to the sale of a manufactured/mobile home by a homeowner?** (1) Prior to the sale of any manufactured/mobile home the homeowner must deliver to the buyer a completed property transfer disclosure statement including all the criteria specified in RCW 64.06.020 and any variance(s) granted according WAC 296-150M-0140, and:

(a) Have all department insignia required by this chapter; or

(b) Have all department insignia required by this chapter for alterations performed during ownership of the home and include in the property transfer disclosure statement all alterations that were known to have been performed by any previous owner of the home.

(2) Nothing in this section shall have any effect on any written warranty(ies) required by RCW 46.70.135.

(3) This section does not apply to unsafe manufactured/mobile homes that the use of which may constitute a hazard to life, safety, or health.

**Reviser's note:** The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: March 28, 2001, 6:00 p.m.

March 23, 2001

J. P. Koenings

Director

### NEW SECTION

**WAC 220-48-01500M Puget Sound bottom trawl closure in softshell crab areas.** Notwithstanding the provisions of WAC 220-48-015, effective 6:00 p.m. March 28, 2001 until further notice, it is unlawful to fish for or possess bottomfish taken for commercial purposes with bottom trawl and beam trawl gear in all waters of Marine Fish/Shellfish Management and Catch Reporting Areas 21A and 21B, and the portions of 20A within an area bounded by lines from Lilly Point to Birch Point and from the southwest corner of Point Roberts to Point Whitehorn to where these two lines are intersected by a line south from Kwomais Point in British Columbia and a line from Lilly Point to the north Alden Bank buoy are closed.

### WSR 01-08-011 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 01-44—Filed March 23, 2001, 1:11 p.m., effective March 28, 2001, 6:00 p.m.]

Date of Adoption: March 23, 2001.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-48-015.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: These actions are necessitated to prevent unacceptable handling mortality and resource loss when catching and handling soft shelled crab. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

### WSR 01-08-026 EMERGENCY RULES DEPARTMENT OF RETIREMENT SYSTEMS

[Filed March 28, 2001, 4:07 p.m.]

Date of Adoption: March 27, 2001.

Purpose: In rule adoption WSR 01-01-059, effective January 12, 2001, the department made an inadvertent omission in the adoption of WAC 415-111-220 affecting the current contribution rates for its teachers retirement system (TRS) Plan 3 retirement plans. This emergency adoption corrects the omission, and adds a newly approved provision for the school employees personnel system (SERS) Plan 3. The department is also making grammatical changes.

Citation of Existing Rules Affected by this Order: Amending WAC 415-111-220 Defined contribution rate election.

Statutory Authority for Adoption: RCW 41.50.050(5).

Other Authority: RCW 34.05.350, 41.34.040.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: RCW 41.34.040 provides Options A through C in the emergency rule shown below. In November 1996 the Employee Retirement Benefits Board (ERBB) approved the three additional rate options, D through F, codified in WAC 415-210-020 for TRS Plan 3. The department repealed WAC 415-210-020 at the same time it adopted the current version of WAC 415-111-220. The intent was to transfer the WAC 415-210-020 contribution rate options into WAC 415-111-220. This language was inadvertently omitted. The emergency adoption is necessary to restore codification for an existing program. In addition, on March 27, 2001, the ERBB approved the three additional rate options for SERS Plan 3. The emergency adoption is also necessary to put the SERS change into effect.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Immediately.

March 27, 2001

John Charles

Director

**AMENDATORY SECTION** (Amending WSR 01-01-059, filed 12/12/00, effective 1/12/01)

**WAC 415-111-220 How do I choose a defined contribution rate ((election))?** ((A Plan 3 member shall)) (1) If you are a member of the Teachers' Retirement System Plan 3 or the School Employees' Retirement System Plan 3, you are required to contribute from ((his or her)) your compensation according to one of the following rate structures ((described in RCW 41.34.040).

Pursuant to WAC 415-111-110, you bear the responsibility for completing):

<b>Option A</b>	<b>Contribution Rate</b>
All ages	5.0% fixed

<b>Option B</b>	
Up to age 35	5.0%
Age 35 to 44	6.0%
Age 45 and above	7.5%

<b>Option C</b>	
Up to age 35	6.0%
Age 35 to 44	7.5%
Age 45 and above	8.5%

<b>Option D</b>	
All ages	7.0%

<b>Option E</b>	
All ages	10.0%

<b>Option F</b>	
All ages	15.0%

**(2) How do I choose a contribution rate?** Under WAC 415-111-110, it is your responsibility to complete the correct form for ((making)) choosing a contribution rate ((election)) and submitting ((it)) the form in a timely manner to your employer as directed on the form.

((+)) (3) **Where do I get the form to make my election?** Your employer must provide the appropriate form to ((elect)) choose a contribution rate if you are enrolling ((into)) in Plan 3 or transferring from Plan 2 to Plan 3.

((2)) (4) **When do I have to ((elect)) choose a contribution rate?** You must irrevocably ((elect)) choose a contribution rate within ninety calendar days from your date of hire in an eligible position. However, if you are transferring from Plan 2 to Plan 3, you must ((elect)) choose a contribution rate ((when)) at the same time you transfer. The ninety-day period does not apply to a member transferring from Plan 2 to Plan 3.

(a) Once ((a member elects)) you choose a contribution rate, contributions will begin the first day of the pay cycle in which ((the member makes the election)) you make the choice.

(b) If ((it is determined that a member)) the department determines that you should be reported into Plan 3 membership retroactively, the ninety-day period starts from the date it is discovered ((as determined by the department, that the member)) that you should have been reported. The department will decide which date to use.

(c) If you are a Plan 3 member working in eligible positions for more than one employer, you may select a different contribution rate with each employer.

((3)) (5) **What happens if I do not ((make)) choose a contribution rate ((election))?** Pursuant to RCW 41.34-040, you will be irrevocably assigned to Option A if:

(a) You are a new employee or changing your employer, and do not ((make)) choose a contribution rate ((election)) within the ninety-day election period described in subsection ((2)) (4) of this section; or

(b) You are transferring from Plan 2 to Plan 3 and do not ((make)) choose a contribution rate ((election)) at the time of transfer. Contributions required under subsection (a) or (b) shall ((begin)) become effective the first day of the pay cycle in which you are assigned to Option A.

((4)) (6) **Can I change my contribution rate?** Once you elect a contribution rate or are defaulted into Option A,

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you cannot change your contribution rate unless you change employers. Each time you change employers, you will be allowed the ninety-day period described in subsection ((2)) (4) of this section to elect a new contribution rate. ~~((For the purposes of this section, employer is defined as each school district and each educational service district.))~~

**WSR 01-08-032  
EMERGENCY RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(Medical Assistance Administration)

(Filed March 29, 2001, 2:39 p.m., effective April 1, 2001)

Date of Adoption: March 29, 2001.

Purpose: These amendments change income standards to reflect the new federal poverty level (FPL). These changes will increase the number of people eligible for the medical programs based on the FPL, pregnant women, children and those eligible for Medicare cost sharing programs. Other changes are to correct and clarify the language in WAC 388-478-0065.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0065, 388-478-0075, and 388-478-0085.

Statutory Authority for Adoption: RCW 74.08.090, 74.04.050, 74.04.057, 74.09.530 and the poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under authority of Section 673(2) of the Omnibus Budget Reconciliation Act (42 U.S.C. 9902(2)).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The increase in FPL must go into effect by April 1, 2001, to comply with federal requirements.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Effective Date of Rule: April 1, 2001.

March 26, 2001

Susan Bush

for Bonita H. Jacques, Chief  
Office of Legal Affairs

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

**WAC 388-478-0065** ~~((TANF/SFA-related))~~ **Categorically needy income level (CNIL) and resource standards for families.** (1) The categorically needy income level (CNIL) standard for ~~((TANF-related))~~ family medical is the same as the grant payment standards for the TANF cash program as stated in WAC 388-478-0020.

(2) The countable resource standards for ~~((TANF/SFA-related-categorically-needy (CN)))~~ family medical are the same as those of the TANF/SFA cash program as stated in WAC 388-470-0005.

(3) For all medical programs an unborn child is counted as a household member when determining household size.

AMENDATORY SECTION (Amending WSR 00-17-085, filed 8/14/00, effective 9/14/00)

**WAC 388-478-0075 Medical programs—Monthly income standards based on the federal poverty level (FPL).** (1) The department bases the income standard upon the Federal Poverty Level (FPL) for the following medical programs:

(a) Children's health program up to one hundred percent of FPL;

(b) Pregnant women's program up to one hundred eighty-five percent of FPL;

(c) Children's categorically needy program up to two hundred percent of FPL; and

(d) The children's health insurance program (CHIP) is over two hundred percent of FPL but under two hundred fifty percent of FPL.

(2) Beginning April 1, ~~((2000))~~ 2001, the monthly FPL standards are:

FAMILY SIZE	100% FPL	185% FPL	200% FPL	250% FPL
1	\$ <del>((696))</del> 716	\$ <del>((1288))</del> 1325	\$ <del>((1392))</del> 1432	\$ <del>((1740))</del> 1790
2	\$ <del>((938))</del> 968	\$ <del>((1735))</del> 1790	\$ <del>((1875))</del> 1935	\$ <del>((2344))</del> 2419
3	\$ <del>((1180))</del> 1220	\$ <del>((2182))</del> 2256	\$ <del>((2359))</del> 2439	\$ <del>((2948))</del> 3048
4	\$ <del>((1421))</del> 1471	\$ <del>((2629))</del> 2722	\$ <del>((2842))</del> 2942	\$ <del>((3553))</del> 3678
5	\$ <del>((1663))</del> 1723	\$ <del>((3076))</del> 3187	\$ <del>((3325))</del> 3445	\$ <del>((4157))</del> 4307
6	\$ <del>((1905))</del> 1975	\$ <del>((3523))</del> 3653	\$ <del>((3809))</del> 3949	\$ <del>((4761))</del> 4936
7	\$ <del>((2146))</del> 2226	\$ <del>((3970))</del> 4118	\$ <del>((4292))</del> 4452	\$ <del>((5365))</del> 5565

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FAMILY SIZE	100% FPL	185% FPL	200% FPL	250% FPL
8	\$ ((2388)) <u>2478</u>	\$ ((4417)) <u>4584</u>	\$ ((4775)) <u>4955</u>	\$ ((5969)) <u>6194</u>
9	\$ ((2630)) <u>2730</u>	\$ ((4864)) <u>5094</u>	\$ ((5259)) <u>5459</u>	\$ ((6573)) <u>6823</u>
10	\$ ((2874)) <u>2981</u>	\$ ((5312)) <u>5515</u>	\$ ((5742)) <u>5962</u>	\$ ((7178)) <u>7453</u>
Add to the ten person standard for each person over ten:				
	\$ ((242)) <u>252</u>	\$ ((448)) <u>466</u>	\$ ((484)) <u>504</u>	\$ ((605)) <u>630</u>

(3) There are no resource limits for the programs under this section.

**AMENDATORY SECTION** (Amending WSR 00-17-085, filed 8/14/00, effective 9/14/00)

**WAC 388-478-0085 Medicare cost sharing programs—Monthly income and countable resources standards.** (1) The qualified Medicare beneficiary (QMB) program income standard is up to one hundred percent of the Federal Poverty Level (FPL). Beginning April 1, ((2000)) 2001, the QMB program's income standards are:

- (a) One person \$ ((696)) 716
- (b) Two persons \$ ((938)) 968

(2) The special low-income Medicare beneficiary (SLMB) program income standard is over one hundred percent of FPL, but under one hundred twenty percent of FPL. Beginning April 1, ((2000)) 2001, the SLMB program's income standards are:

	Minimum	Maximum
(a) One person	\$ ((696.01)) <u>716.01</u>	\$ ((835)) <u>859</u>
(b) Two persons	\$ ((938.01)) <u>968.01</u>	\$ ((1125)) <u>1161</u>

(3) The expanded special low-income Medicare beneficiary (ESLMB) program income standard is over one hundred twenty percent of FPL, but under one hundred thirty-five percent of FPL. Beginning April 1, ((2000)) 2001, the ESLMB program's income standards are:

	Minimum	Maximum
(a) One person	\$ ((835.01)) <u>859.01</u>	\$ ((940)) <u>967</u>
(b) Two persons	\$ ((1125.01)) <u>1161.01</u>	\$ ((1266)) <u>1307</u>

(4) The qualified disabled working individual (QDWI) program income standard is up to two hundred percent of FPL. Beginning April 1, ((2000)) 2001, the QDWI program's income standards are:

- (a) One person \$ ((1392)) 1432
- (b) Two persons \$ ((1875)) 1935

(5) The qualified individual (QI) program income standard is over one hundred thirty-five percent of FPL, but under one hundred seventy-five percent of FPL. Beginning April 1, ((2000)) 2001, the QI program's income standards are:

	Minimum	Maximum
(a) One person	\$ ((940.01)) <u>967.01</u>	\$ ((1218)) <u>1253</u>
(b) Two persons	\$ ((1266.01)) <u>1307.01</u>	\$ ((1641)) <u>1694</u>

(6) The resource standard for the Medicare cost sharing programs in this section is:

- (a) One person \$ 4000
- (b) Two persons \$ 6000

**WSR 01-08-039  
EMERGENCY RULES  
STATE BOARD OF EDUCATION**

[Filed March 30, 2001, 12:53 p.m., effective March 30, 2001]

Date of Adoption: March 30, 2001.

Purpose: To make necessary changes to WAC 180-33-042 Replacement option.

Citation of Existing Rules Affected by this Order: Amending WAC 180-33-042.

Statutory Authority for Adoption: RCW 28A.525.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: To adopt changes related to replacement of school buildings constructed after 1992.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: March 30, 2001.

March 30, 2001

Larry Davis

Executive Director

**EMERGENCY**

AMENDATORY SECTION [(Amending WSR 98-19-138, filed 9/23/98)]

**WAC 180-33-042 Replacement option.** A district with space eligible for modernization pursuant to WAC 180-33-015 and 180-33-025 may elect to replace such space through new construction in lieu of modernization. In such case, the district shall apply for a new school facility in accordance with applicable rules and regulations pertaining to new school plant facilities and the local board shall certify that after the new construction is finally completed:

(1) The existing building or space to be replaced will not be used for district instructional purposes; and

(2) The existing building or space will be ineligible for any future state financial assistance.

Further, if the existing building or space is subsequently returned by the district to instructional purposes in whole or in part, the district shall become ineligible for any state construction financial assistance for a period of ten years from the date that the executive director or the chief executive officer of the state board notifies the board during the course of an open public meeting or sends written notice to members of the board of the return of the building in whole or in part to instructional purposes. Districts exercising this election shall be limited in state assistance to the provision of WAC 180-33-040. In the event the district elects to replace a facility and construct a new facility with more space than the facility being replaced, the additional space, in order to be eligible for state assistance shall meet the eligibility requirements for new construction or the new construction component requirement of WAC 180-33-015 (1)(c): Provided, That no new construction in lieu of modernization project may qualify for additional state assistance pursuant to WAC 180-27-115 unless the facility being replaced would have qualified pursuant to such section for additional state assistance as a modernization project.

(3) The state board of education may waive the provisions of this section for a period it determines is appropriate to the particular situation. A waiver request must be submitted in writing to the superintendent of public instruction. The superintendent of public instruction shall review the waiver request and make a written recommendation to the state board of education to approve or deny the request. The waiver request shall include, but not be limited to the following information:

(a) Description of the district's planning process;

(b) Rationale why the need for the waiver request was not anticipated;

(c) The requested length of time of the waiver;

(d) The availability of funding for proposed projects;

(e) List of specific projects and timelines;

(f) List of the specific student groups that will use the facility; and

(g) Rationale why this is the best use of facilities and public funds.

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

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

**WSR 01-08-041**  
**EMERGENCY RULES**  
**STATE BOARD OF EDUCATION**

[Filed March 30, 2001, 1:04 p.m.]

Date of Adoption: March 30, 2001.

Purpose: The amendments would permit out-of-state candidates for teacher certificates who have completed preparation programs in subject areas other than those identified as endorsements in Washington to receive a Washington certificate which bears the out-of-state area of preparation.

Citation of Existing Rules Affected by this Order: Amending WAC 180-79A-257 Out-of-state candidates, 180-79A-265 Endorsements on teacher certificates for out-of-state candidates, 180-82-202 Certificates endorsements, 180-82-204 Endorsement requirements, and 180-82-210 Primary and supporting endorsements.

Statutory Authority for Adoption: RCW 28A.410.010.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Unanticipated barriers caused by recently adopted endorsement requirements to the recruitment of out-of-state teachers at a time of growing demand for teachers.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Effective Date of Rule: Immediately.

March 30, 2001

Larry Davis

Executive Director

AMENDATORY SECTION (Amending WSR 00-23-005, filed 11/2/00, effective 12/3/00)

**WAC 180-79A-257 Out-of-state candidates.** Candidates for certification from other states who meet the general certificate requirements described in WAC 180-79A-150 (1) and (2) shall be eligible for Washington certificates as follows:

(1) Initial and residency certificates. The initial certificate (residency certificate for teachers after August 31,

2000,) shall be issued by the superintendent of public instruction to any candidate who meets one of the following:

(a) Qualifies under provisions of the interstate compact.

(b) Holds the appropriate degree and, if applicable, credit hours and/or licensing as set forth in this chapter and has completed a state approved preparation program at a regionally accredited college or university in the professional field for which the certificate is to be issued and such additional professional fields as required by WAC 180-79A-150(4).

(c) Provided, That if a candidate does not meet the qualifications described in (a) or (b) of this subsection, an initial/residency certificate shall be issued to a candidate who holds an appropriate degree from a regionally accredited college or university and also holds or has held a certificate in the role, comparable to an initial/residency certificate, issued by another state and has practiced at the P-12 level in that respective role outside the state of Washington for three years.

(d) Provided further, That if a candidate for a teacher's certificate would qualify under (b) of this subsection, but for the fact that he or she has completed an approved teacher preparation program in a subject area that is not listed in chapter 180-82 WAC as a Washington endorsement, the candidate shall be issued a certificate that bears the out-of-state area of program preparation. It shall be noted on the certificate so issued that the subject area listed is not a Washington state endorsement.

(e) Holds an appropriate degree from a regionally accredited college or university and has practiced three years as an educational staff associate in that role in a state where such certificate was not required.

~~((e))~~ (f) Holds a valid Nationally Certified School Psychologist (NCSP) certificate issued by the National School Psychology Certification Board (NSPCB) after December 31, 1991, and applies for an initial educational staff associated school psychologist certificate.

(2) Continuing certificate. The continuing certificate shall be issued ~~((through August 31, 2000,))~~ to administrators and educational staff associates on verification that the candidate has met all requirements for initial and continuing certification in the state of Washington.

(3) Professional certificate. After August 31, 2000, the professional certificate shall be issued to out-of-state candidates if the candidate meets the child abuse course work requirement as described in WAC 180-79A-206 (3)(b) and if one of the following conditions is met:

(a) The candidate has completed an advanced level certification procedure approved by the state board of education as equivalent to the approved program procedure required in Washington; or

(b) The candidate holds a valid teaching certificate issued by the National Board for Professional Teaching Standards; or

(c) A Washington state college or university with an approved professional certificate program verifies that the candidate has met all the requirements of that institution's approved program. The college/university shall evaluate the candidate's background to determine whether or not course work or certification activities are equivalent to that college/university's approved program.

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 180-79A-265      Endorsements on teacher certificates for out-of-state candidates.

AMENDATORY SECTION (Amending WSR 00-18-061, filed 9/1/00, effective 10/2/00)

**WAC 180-82-202 Certificate endorsements.** Teacher certificates shall be endorsed as follows, except as otherwise provided in WAC 180-79A-257 (1)(d):

(1) **All levels:**

(a) Bilingual education, (supporting).

(b) Designated arts: Dance, (primary and supporting).

(c) Designated arts: Drama, (primary and supporting).

(d) Designated arts: Music: Choral, instrumental or general, (primary and supporting).

(e) Designated arts: Visual arts, (primary and supporting).

(f) Designated world languages, (primary and supporting).

(g) English as a second language, (primary and supporting).

(h) Health/fitness, (primary and supporting).

(i) Library media, (primary and supporting).

(j) Reading, (primary and supporting).

(k) Special education, (primary).

(2) **Early childhood:**

(a) Early childhood education, (primary and supporting).

(b) Early childhood special education, (primary).

(3) **Elementary education,** (primary).

(4) **Middle level,** (primary).

(5) **Secondary level:**

(a) Designated science: Biology, (primary and supporting).

(b) Designated science: Chemistry, (primary and supporting).

(c) Designated science: Earth science, (primary and supporting).

(d) Designated science: Physics, (primary and supporting).

(e) Designated vocational/technical: Agriculture education, business education, family and consumer sciences education, marketing education, and technology education, (primary).

(f) English, (primary and supporting).

(g) English/language arts, (primary).

(h) History, (primary and supporting).

(i) Mathematics, (primary and supporting).

(j) Science, (primary).

(k) Social studies, (primary).

(6) **Traffic safety** endorsements may be noted on certificates issued under chapter 180-79A WAC if the candidate meets the requirements of the regulations promulgated by the superintendent of public instruction pursuant to RCW 28A.220.020(3).

**AMENDATORY SECTION** (Amending WSR 00-09-047, filed 4/14/00, effective 5/15/00)

**WAC 180-82-204 Endorsement requirements.** (1) Candidates for all primary teaching endorsements shall complete college/university programs approved by the state board of education pursuant to chapter 180-78A WAC, which include methodology (See WAC 180-78A-264(5)) and field experience/internship (See WAC 180-78A-264(7)).

(2) Candidates for all supporting teaching endorsements shall complete college/university programs approved by the state board of education pursuant to chapter 180-78A WAC, which shall include methodology (see WAC 180-78A-264(5)). The requirement for field experience/internship for a supporting endorsement shall be at the discretion of the college/university: Provided, That in cases where programs require a field experience/internship the colleges and universities should make every attempt to allow the individual to complete field-based requirements for the endorsement within the confines of the individual's existing schedule.

(3) The state board of education shall approve teacher preparation programs for each endorsement program at Washington colleges and universities, pursuant to chapter 180-78A WAC.

(4) Candidates from out-of-state shall be required to present verification that they completed a state-approved program (~~((equivalent to a major)))~~ in a Washington endorsement area, except as otherwise provided in WAC 180-79A-257 (1)(d).

(5) Course work used to meet endorsement requirements must be completed through a regionally accredited college/university.

(6) Only course work in which an individual received a grade of C (2.0) or higher or a grade of pass on a pass-fail system of grading shall be counted toward the course work required for the approved endorsement program.

(7) Nothing within this chapter precludes a college or university from adopting additional requirements as conditions for recommendation, by such college or university, to the superintendent of public instruction for a particular subject area endorsement.

**AMENDATORY SECTION** (Amending WSR 99-23-023, filed 11/9/99, effective 12/10/99)

**WAC 180-82-210 Primary and supporting endorsements.** (1) All endorsements obtained under the requirements in chapter 180-82 WAC shall be designated as either primary or supporting endorsements on teaching certificates.

(2) All candidates for teaching certificates shall be required to obtain a primary endorsement, except as otherwise provided in WAC 180-79A-257 (1)(d).

(3) Primary endorsements shall require a minimum of forty-five quarter credit hours (thirty semester credit hours) of academic study (or its equivalent) in the endorsement area: Provided, That primary endorsements for broad area endorsements (i.e., English/language arts, science, and social studies) shall require sixty quarter credit hours (forty semester credit hours) of academic study (or its equivalent) in the endorsement area.

(4) Supporting endorsements shall require a minimum of twenty-four quarter credit hours (sixteen semester credit hours) of academic study (or its equivalent) in the endorsement area.

(5) The state board of education or its designee may establish performance/competency criteria for obtaining an endorsement.

**WSR 01-08-042**  
**EMERGENCY RULES**  
**STATE BOARD OF EDUCATION**

[Filed March 30, 2001, 1:07 p.m.]

Date of Adoption: March 30, 2001.

Purpose: To amend language in WAC 180-51-063 regarding the certificate of mastery and its effective date.

Citation of Existing Rules Affected by this Order: Amending WAC 180-51-063.

Statutory Authority for Adoption: RCW 28A.230.090.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: To clarify language contained in the WAC regarding the effective date of notation of passage of the certificate of mastery on the high school transcript.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Immediately.

March 30, 2001

Larry Davis

Executive Director

**AMENDATORY SECTION** (Amending WSR 00-13-039, filed 6/14/00, effective 7/15/00)

**WAC 180-51-063 Certificate of mastery—High school graduation requirement—Effective date.** (1) Pursuant to RCW 28A.655.060 (3)(c):

(a) The certificate of mastery shall be a graduation requirement, but not the only requirement for graduation from high school; and

(b) The state board of education is responsible for determining when the secondary Washington assessment of student learning has been implemented and is sufficiently valid and reliable.

(2)(a) The state board of education establishes the 2007-08 school year as the first year in which graduating high school students shall be required to have attained the state certificate of mastery in order to graduate, in addition to other state and local graduation requirements.

(b) The state board of education fully recognizes that a higher standard of validity and reliability must be applied when the result of the assessment affects the ability of an individual student to receive a high school diploma. Therefore, the state board of education will continue to monitor the high school level Washington assessment of student learning. If the board finds that the assessment is lacking in this higher level of validity or reliability, or both, by the beginning of the 2004-05 school year, the state board may change the effective date of the certificate of mastery, for state graduation purposes, to a later school year.

(c) Beginning the 2007-08 school year, the certificate of mastery shall consist of the subject areas under the student learning goals for which a Washington assessment of student learning secondary assessment has been implemented and declared valid and reliable for graduation purposes. It is expected that the initial certificate of mastery will be comprised of reading, writing, communications, and mathematics.

(d) Beginning the 2009-10 school year, the certificate of mastery shall include science if a Washington assessment of student learning secondary assessment has been implemented and declared valid and reliable for this subject area.

(e) As determined by the state board of education, in consultation with the legislature and the academic achievement and accountability commission, successful completion of the Washington assessment of student learning secondary assessment in social studies may be required to achieve the certificate of mastery or may lead to an endorsement on the high school transcript.

(f) As determined by the state board of education, in consultation with the legislature and the academic achievement and accountability commission, successful completion of the Washington assessment of student learning secondary assessment in arts and health and fitness may lead to an endorsement on the high school transcript.

(g) ~~(Beginning)~~ Effective with students ~~(in 2001)~~ who begin the ninth grade in 2003 (the graduating class of 2007), students who take the secondary Washington assessment of student learning and earn the certificate of mastery and/or meet the standard, attainment of the state certificate of mastery and/or meeting the standard shall be noted on the student's transcript pursuant to WAC 180-57-070.

(3) Notwithstanding WAC 180-18-055 and 180-51-107, subsection (2) of this section shall not be waived.

(4) The certificate of mastery shall not be a graduation requirement for students who receive home-based instruction

under RCW 28A.200.101(3) nor for students attending private schools under RCW 28A.195.010(6).

**WSR 01-08-072**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 01-45—Filed April 3, 2001, 1:22 p.m.]

Date of Adoption: April 2, 2001.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-33000J; and amending WAC 220-56-330.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: State/tribal allocation balances have been reached for Dungeness crab harvest in Marine Areas 7, 8-1, 8-2, 9, 10 and 12. In addition crab are entering a molt period in many of these areas. Closure of the recreational crab fisheries in Marine Areas 4, 5, 6, 11 and 13 on the historical softshell closure date is necessary because the actual softshell period is unknown and WDFW/tribal staff are unable to test crab condition in all these areas. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Immediately.

April 2, 2001

J. P. Koenings

Director

by Larry Peck

NEW SECTION

**WAC 220-56-33000K Personal use fishery—Allocation and softshell closures.** Notwithstanding the provisions of WAC 220-56-330:

(1) Effective immediately until further notice, it is unlawful to fish for crab for personal use in Puget Sound in those waters of Marine Area 7 and all waters of Marine Areas 8-1, 8-2 those waters of area 9 south of a line from Foul-weather Bluff to Olele Point and all waters of area 12.

(2) Effective 6:00 p.m. April 15, 2001 until further notice, it is unlawful to fish for crab for personal use in Puget Sound in those waters of Marine Areas 4, 5, 6, 9, and 10.

(3) Effective 6:00 p.m. April 15, 2001 until 8:00 a.m. July 16, 2001 it is unlawful to fish for crab for personal use in Puget Sound in those waters of Marine Areas 11 and 13.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-56-33000J Personal use fishery—Allocation closure. (00-250)

**WSR 01-08-073  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 01-46—Filed April 3, 2001, 1:24 p.m., effective April 6, 2001, 12:01 a.m.]

Date of Adoption: April 2, 2001.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-48-005.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The abundance and biology of sixgill sharks in Puget Sound is unknown, making it impossible to establish sustainable harvest levels for this resource. Existing policy of the Fish and Wildlife Commission direct a conservative approach to the management of groundfish, including sixgill sharks, in Puget Sound. Allowing a directed commercial fishery for sixgill sharks without required biological and abundance data would be contrary to this policy. There is insufficient time to enact permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: April 6, 2001, 12:01 a.m.

April 2, 2001  
J. P. Koenings  
Director  
by Larry Peck

**NEW SECTION**

**WAC 220-48-00500H Puget Sound bottomfish—General provisions.** Notwithstanding the provisions of Chapters 220-47, 220-48 and 220-49 effective 12:01 a.m. April 6, 2001 until further notice, it is unlawful to retain sixgill shark (*Hexanchus griseus*) taken by any commercial gear in all state waters east of the Bonilla-Tatoosh line.

EMERGENCY

## WSR 01-08-002

INTERPRETIVE STATEMENT  
PUBLIC DISCLOSURE COMMISSION

[Filed March 21, 2001, 3:08 p.m.]

## NOTICE OF ADOPTION OF INTERPRETIVE STATEMENTS

Title: Index of Interpretations 1991-2000.

Issuing Entity: Washington State Public Disclosure Commission.

Subject: Various interpretations by subject and date can be accessed via Internet at [www.pdc.wa.gov](http://www.pdc.wa.gov).Contact Person: Doug Ellis, Director of Public Outreach, Public Disclosure Commission, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735, e-mail [delis@pdc.wa.gov](mailto:delis@pdc.wa.gov).

## Index of Interpretations

(Revised October 4, 2000)

Number	Subject/Date
00-05	<u>Guidelines for Local Government Agencies, Including School Districts, in Election Campaigns</u> (September 29, 2000) (54KB in PDF format)
00-04	<u>Use of "Soft Money" for Issue Advocacy</u> (September 29, 2000) (28KB in PDF format)
00-03	<u>Use of Robes and Court rooms in Campaign Literature by District and Municipal Court Judges</u> (July 25, 2000) (17KB in PDF format) Also see Attorney General's Office memorandum on this subject
00-02	<u>Guidelines for Internet Contributions</u> (June 29, 2000) (12KB in PDF format)
00-01	<u>Reporting of Field Trips and Other Excursions</u> (April 25, 2000)
99-01	<u>The Eight-Day Period for Inspection of Campaign Books</u> (June 29, 1999)
98-01	<u>State Cards and Other Candidate Listings</u> (August 25, 1998)
96-04	<u>"Within 21 Days of a General Election," Definition, for Purposes of RCW 42.17.105(8)</u> (March 26, 1996) (Supersedes 92-02)
96-03	<u>L-2 Reporting Guide for Entertainment, Travel and Educational Expenditure</u> (January 23, 1996)
96-02	<u>Commercial Loans to a Candidate</u> (July 15, 1996)
96-01	<u>Participation in Fund Raising Events by State Officials During Legislative Freeze Period</u> (February 20, 1996)
95-05	<u>Fund Raising Through 900 Telephone Numbers</u> (October 24, 1995)
95-04	<u>Internal Political Communications of Membership Organizations</u> (October [24,] 1995)
95-03	<u>Definition of "Local Official" for Purposes of RCW 42.17.750</u> (June 27, 19[95])
95-02	<u>Transfers of Candidate Surplus Funds to Bona Fide Political Party and Cau[us] Political Committees</u> (June 27, 1995)
95-01	<u>Definition of "General Election"</u> (June 27, 1995)
94-02	<u>State and Local Party Organizations: Intra-Party Transfers and Federal Accounts of Party Organizations</u> (June 29, 1994)
94-01	<u>State and Local Party Organizations: Intra-Party Transfers and Federal Accounts of Party Organizations</u> (April 25, 1994) (Superseded by 94-02)
92-03	<u>Definition of "Open Press Conference" for Purposes of RCW 42.17.130</u> (August 25, 1992)
92-02	<u>"Within 21 Days of a General Election," Definition</u> (April 28, 1992) (Superseded by 96-04)

Number	Subject/Date
92-01	<u>Wearing Political Pins, Buttons, Etc. and RCW 42.17.130</u> (March 24, 1992)
91-03	<u>Library Displays of Campaign Materials and RCW 42.17.130</u> (August 27, 19[91])
91-02	<u>Legal Fees Related to Placing, or Not Placing, a Proposition on the Ballot</u> [(June) 25, 1991]
91-01	<u>Who is an "Officer" for Purposes of RCW 42.17.241 (1)(g)?</u> (April 23, 1991)

## WSR 01-08-004

## OFFICE OF THE GOVERNOR

[Filed March 22, 2001, 8:13 a.m.]

March 19, 2001

Mr. Arthur J. Schultheis

Diamond-S Farms Inc.

9451 SR 195

Colton, Washington 99113

*Re: Appeal of the January 12, 2001 denial by the Department of Ecology (the "Department") of that certain Petition for Adoption, Amendment, or Repeal of a State Administrative Rule, dated November 11, 2000, filed by Arthur J. Schultheis (the "Petition")*

Dear Mr. Schultheis:

Pursuant to RCW 34.05.330(3), I have fully reviewed your appeal of the Petition asking that I direct the Department of Ecology to amend its regulation affecting burning of grass seed fields on steep slopes, and the relevant statutes and regulations.

It is my policy to intervene in matters presented to me under RCW 34.05.330(3) only when I believe the administrative agency whose decision is at issue has abused its discretion or acted arbitrarily or capriciously. It is also my policy not to second-guess the thoughtful and deliberate decisions of a state agency, so long as those decisions are well founded and proper under the law. This is an extremely high standard of review.

After reviewing the record of the Department's actions and the arguments offered in your appeal, I have determine that the Department had a good-faith basis for its decision not to amend the regulation. The Department did not abuse its discretion or act arbitrarily or capriciously. The Department adopted this grass seed burning regulation, WAC 173-400-045, in 1998. The regulation phased out the proportion of fields that could be burned each year, leaving the longest phase-out for steep slopes, where potential safety impacts raised concern about reasonable alternatives. The purpose of the phase-out was to give farmers an opportunity to adapt to the new regulations. It was expected that farmers who burned grass seed crop residue on steep slopes would use the intervening years to gradually shift to other crops, or methods of residue management other than burning.

The appeal you submitted offers no substantiating evidence that you have used this transition time to alter practices on your steep slopes. Instead, it seems to contend that no other alternatives to those historically used are feasible.

Your conclusion that burning is environmentally desirable because it reduces erosion impacts on water quality and salmon habitat discounts the adverse effects of this practice on air quality. The Department carefully studied the environmental impacts of burning on both erosion and air quality. While some erosion will likely occur using mechanical residue management, that must be weighed against the benefits to air quality of a 73% overall emission reduction.

I understand that it may be anathema to ask a farmer to quit farming and rely on government programs such as the Conservation Reserve Program, and the Department did not suggest you do so. Your way of life is one to be cherished, and I deeply respect your desire to maintain it. However, I also note that many farmers who remain in farming are using the CRP. Mr. Fitzsimmons's suggestion that you consider enrolling your steep, erodible acres in the CRP should be construed as an effort to help you find the best combination of approaches that will enable you to keep profitably working your 1,150 acre farm.

For these reasons I must deny your appeal. Thank you for your extensive efforts in the development of new farming techniques and your and profound commitment to the farmers of our state.

Sincerely,

Gary Locke  
Governor

cc: Dennis W. Cooper, Code Reviser  
Tim Martin, Co-Chief Clerk, House of Representatives  
Cindy Zehnder, Co-Chief Clerk, House of Representatives  
Tony Cook, Secretary of the Senate  
Tom Fitzsimmons, Department of Ecology

**WSR 01-08-006**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Filed March 22, 2001, 10:12 a.m.]

In the Matter of the Acquisition ) No. G 01-11  
of CHARTER TITLE INSURANCE )  
CORPORATION ) NOTICE OF HEARING

TO:  
Patrick R. Lamb  
Carney, Badley, Smith & Spellman  
701 5th Avenue, Suite 2200  
Seattle, WA 98104-7091

John B. Martin, Vice President

Stewart Title Guaranty Company  
700 5th Avenue, Suite 5500  
Seattle, WA 98104-0585

Robert P. Oakland, Senior Vice President  
Stewart Title Guaranty Company  
700 5th Avenue, Suite 5500  
Seattle, WA 98104-0585

John W. Tagge, President  
Charter Title Insurance Corporation  
16300 Mill Creek Blvd., Suite 208  
Post Office Box 12489  
Mill Creek, WA 98082-0489

Charter Title Insurance Corporation is a Washington domestic title insurance company. It is not a member of an insurance holding company. It does not have any affiliates or subsidiaries.

Stewart Information Services Corporation proposes to acquire Charter Title Insurance Corporation. Stewart Information Services Corporation is the ultimate controlling person of a holding company system composed of a large number of companies engaged in the title insurance business throughout the United States.

The acquisition of a domestic Washington insurance company is controlled by Chapter 48.31B RCW. Pursuant to RCW 48.31B.015 and WAC 284-18-910, a Form "A" submission was made by the applicants. The Form "A" was deemed complete March 16, 2001. The determination that the Form "A" was complete begins the 60 day period within which the Insurance Commissioner must hold a hearing and decide whether to approve the change of control of the companies.

YOU ARE HEREBY NOTIFIED that a hearing will be held commencing Wednesday April 25, 2001 at 1:30 p.m. in the 2nd Floor Conference Room of the Insurance Commissioner's Office at 420 Golf Club Road, Lacey, Washington 98503, to consider the proposed acquisition of Charter Title Insurance Corporation.

The hearing will be held under the authority granted the Commissioner by Chapter 48.04 RCW and RCW 48.31B.015. RCW 48.31B.015 lists the findings which must be made before approval can be given to any proposed acquisition of control over a Washington domestic insurer.

The basic facts relied upon are those set forth in the Form "A" filed with the Commissioner. The complete Form "A" will be made part of the record of the hearing. The Commissioner has not taken, and will not take, any position on this matter prior to entry of the hearing order.

All parties may be represented at the hearing. They may examine witnesses and fully respond and present evidence and argument on all issues involved, as required by the Administrative Procedure Act. The hearing will be governed by the Administrative Procedure Act, Chapter 34.05 RCW, and the model rules of procedure contained in Chapter 10-08 WAC. A party who fails to attend or participate in any stage

MISC.



of the proceeding may be held in default in accordance with Chapter 34.05 RCW.

The Commissioner will be represented by James E. Tompkins, Assistant Deputy Commissioner, and Ron Pastuch, Financial Analyst.

Assistant Deputy Commissioner John B. Woodall has been designated to hear and determine this matter. His address is Office of the Insurance Commissioner, Post Office Box 40259, Olympia, Washington 98504-0259. His telephone number is (360) 407-0535.

ENTERED AT OLYMPIA, WASHINGTON, this 21st day of March, 2001.

MIKE KREIDLER  
Insurance Commissioner

By:

JOHN B. WOODALL  
Assistant Deputy Commissioner  
Company Supervision Division

**WSR 01-08-008**  
**NOTICE OF PUBLIC MEETINGS**  
**SKAGIT VALLEY COLLEGE**  
[Memorandum—March 22, 2001]

**NOTICE OF SPECIAL MEETING**

BOARD OF TRUSTEES  
COMMUNITY COLLEGE DISTRICT NO. 4  
SKAGIT VALLEY COLLEGE  
2405 East College Way  
Mount Vernon, WA 98273  
Monday, March 26, 2001  
4:30 p.m.  
Mount Vernon Campus Board Room

Chairperson, Dr. Barbara Andersen, has called a special meeting of the board of trustees for **Monday, March 26, 2001, 4:30 p.m.** This meeting is being held as a work session for the board of trustees. Business to be transacted will address board visioning and strategic planning. Action items, if any, made necessary by the foregoing discussion.

**WSR 01-08-013**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
[Filed March 23, 2001, 3:40 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 01-07 MAA.  
Subject: Correction of misprint in #Memo 00-70 (Policy Regarding Dentures).  
Effective Date: April 1, 2001.

Document Description: The purpose of this memorandum is to fix a misprint that appeared on a replacement page for the Medical Assistance Administration's (MAA) dental billing instructions that were attached to Numbered Memorandum 00-70 MAA.

To receive a copy of interpretive or policy statement, contact Kevin Sullivan, Regulatory Improvement Coordinator, DSHS, Medical Assistance Administration, Division of Program Support, P.O. Box 45533, Olympia, WA 98504, phone (360) 725-1344 or go to website <http://maa.dshs.wa.gov> (click on Numbered Memorandum link), TDD 1-800-848-5429, fax (360) 586-9727, e-mail <mailto:sullikm@dshs.wa.gov>.

March 8, 2001  
E. A. Myers, Acting Manager  
Regulatory Improvement Project

**WSR 01-08-014**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
[Filed March 23, 2001, 3:40 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 01-08 MAA.  
Subject: Updates to the prescription drug program.  
Effective Date: April 16, 2001, MAC updates; February 19, 2001, FUL pricing.

Document Description: This memorandum provided reimbursement updates to the Medical Assistance Administration's (MAA) prescription drug program. This memorandum also superseded 97-60 MAA by placing Clozaril 100 MG tablets in the state maximum allowable cost (SMAC) program and Clozaril 25 MG tablets in the automated maximum allowable cost (AMAC) program.

To receive a copy of the interpretive or policy statement, contact Kevin Sullivan, Regulatory Improvement Coordinator, DSHS, Medical Assistance Administration, Division of Program Support, P.O. Box 45533, Olympia, WA 98504, phone (360) 725-1344 or go to website <http://maa.dshs.wa.gov> (click on Numbered Memorandum link), TDD 1-800-848-5429, fax (360) 586-9727, e-mail <mailto:sullikm@dshs.wa.gov>.

March 15, 2001  
E. A. Myers, Acting Manager  
Regulatory Improvement Project

MISC.

**WSR 01-08-016**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed March 26, 2001, 12:20 p.m.]

**Minimum Wage Rate**

As per RCW 49.46.020, the Department of Labor and Industries has calculated the adjusted minimum wage rate to be \$6.72, effective January 1, 2001.

Please call (360) 902-5303 if you have any questions.

Rich Ervin  
 Acting Employment Standards  
 Program Manager

**WSR 01-08-018**  
**NOTICE OF PUBLIC MEETINGS**  
**WASHINGTON STATE LOTTERY**

(Lottery Commission)

[Memorandum—March 26, 2001]

**AMENDED 2001 MEETING AND STUDY SESSION SCHEDULE**  
**LOTTERY COMMISSION**

Following is the Year 2001 Amended Meeting and Study Session schedule for the Washington State Lottery Commission:

May 17 and 18	Vancouver, Washington
July 20	Everett, Washington
September 20 and 21	Spokane, Washington
November 16	Yakima, Washington

**WSR 01-08-019**  
**NOTICE OF PUBLIC MEETINGS**  
**BELLINGHAM TECHNICAL COLLEGE**

[Memorandum—March 27, 2001]

The board of trustees of Bellingham Technical College will meet on Friday, March 30, 2001, 6 p.m. to 10 p.m., at the Marina Restaurant, 985 Thomas J. Glenn Drive, Bellingham, WA, in a special session to evaluate presidential applicants and determine finalists. Action may be taken, if necessary, as a result of board discussion. Call 738-3105 ext. 334 for information.

**WSR 01-08-020**  
**OFFICE OF THE GOVERNOR**

[Filed March 27, 2001, 11:00 a.m.]

March 23, 2001

Ms. Karen Lindholdt  
 Center for Justice  
 35 West Main, Suite 300  
 Spokane, Washington 99201

*Re: RCW 34.05.330(3) appeal of the January 12, 2001 denial by the Washington Department of Ecology (the "Department") of that certain petition to adopt a regulation regarding wheat stubble burning, dated November 14, 2000 (the "Petition").*

Thank you for your letter dated February 5, 2001 and received by my office on February 6, 2001, appealing the Department's January 12, 2001 decision denying the Petition.

Pursuant to RCW 34.05.330(3), I have carefully reviewed your appeal, including all attachments submitted, and the relevant statutes and regulations, and affirm the Department's decision.

It is my policy to intervene in matters presented to me under RCW 34.05.330(3) only when I believe the agency whose decision is at issue has abused its discretion or acted arbitrarily or capriciously. It is also my policy not to second-guess the thoughtful and deliberate decisions of a state agency, so long as those decisions are well founded and proper under the law. This is an extremely high standard of review.

I have concluded that the Department complied with its obligations under the Washington Clean Air Act, RCW 70.94 and has a proper basis under that statute to deny the petition. I have responded to each of your arguments in turn:

1. The Department has a legal duty to promulgate rules and adopt regulations for wheat stubble burning in accordance with Washington's Clean Air Act.

The Department has adopted regulations - Ch. 173-430 WAC - concerning agricultural burning. These regulations establish requirements that correspond to the State Clean Air Act (RCW 70.94), directives for application of Best Management Practices, use of permits by all growers choosing to burn, and criteria for granting such permits. You assert that the Department must base its regulations on a health-based assessment or cost-benefit analysis of wheat stubble burning. As Mr. Fitzsimmons' denial of your petition notes, the Department has not ruled out future rule-making, but believes its current approach complies with the Act. The Department is applying its regulations in taking enforcement action, in controlling the discretion of local authorities to determine acceptable days for burning, and in conducting research on emissions from wheat stubble burning. Thus, amendment of the rule is a discretionary act and the Department is justified in choosing to delay acting until it is fully prepared to do so in an effective and efficient manner.

2. The Department's regulations are ineffective and Washington residents are suffering irreparable harm.

The Department has been making improvements to its wheat stubble burn reduction program for several years. Most recently, the agency added additional staff and equipment to its Eastern Regional Office for the specific purpose of enhancing enforcement of burn limitations, added monitoring stations to gather more complete data about particulates, and incorporated wind direction as a specific determinant of allowable burn days. Reductions in burned acreage and

increases in enforcement actions counter the assertion that the regulations - supplemented by the voluntary agreement with the Washington Association of Wheat Growers - are ineffective.

While I sympathize with the many area residents, including those you represent, who have suffered health effects from field burning smoke, emissions from wheat field burning has not violated the current standards for particulates adopted by the Department. As recently as last month, an official with the United States Environmental Protection Agency stated that Washington's agricultural burning reduction program is the best in the region, and said it was unlikely that other adjacent states' programs could be brought up to Washington's level.

3. The Department's reasons for denying your petition are inaccurate and not supported by the record.

You contend that because Department Director Tom Fitzsimmons entered into a voluntary Memorandum of Understanding with the Washington Association of Wheat Growers and declined to concur with a mediated agreement reached by Save our Summers and Department staff, he has demonstrated an appearance of a conflict of interest and has chosen to exclusively represent the wheat farmers. It is fully within the Department's discretion to seek approaches to pollution reduction that are acceptable to the regulated community as well as the affected public. While in this instance your clients are dissatisfied with the approach taken, the strategy that the Department has taken and explained by Mr. Fitzsimmons in his denial, are valid under state and federal law and rule.

Thank you for your extensive efforts to improve air quality and public health. While the state has not taken all the steps you would choose, it appears that much of the recent progress in limiting wheat field burning has benefited from the pressure you have exerted and your sustained commitment.

Sincerely,

Gary Locke  
Governor

- cc: Dennis W. Cooper, Code Reviser
- Tim Martin, Co-Chief Clerk, House of Representatives
- Cindy Zehnder, Co-Chief Clerk, House of Representatives
- Tony Cook, Secretary of the Senate
- Tom Fitzsimmons, Department of Ecology

**WSR 01-08-024**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed March 28, 2001, 4:03 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 01-10 MAA.

Subject: Regional support networks contact lists for psychiatric hospitalization.

Effective Date: April 1, 2001.

Document Description: Attached to this memorandum are two tables listing the regional support network contacts for psychiatric hospitalization. Table 1 was inadvertently omitted from Numbered Memorandum 01-03 MAA, published on February 1, 2001.

To receive a copy of the interpretive or policy statement, contact Kevin Sullivan, Regulatory Improvement Coordinator, DSHS, Medical Assistance Administration, Division of Program Support, P.O. Box 45533, Olympia, WA 98504, phone (360) 725-1344 or go to website <http://maa.dshs.wa.gov> (click on Numbered Memorandum link), TDD 1-800-848-5429, fax (360) 586-9727, e-mail <mailto:sullikm@dshs.wa.gov>.

March 26, 2001

E. A. Myers, Acting Manager  
Regulatory Improvement Project

**WSR 01-08-025**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed March 28, 2001, 4:04 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Billing Instruction.  
 Subject: Maternity case management services.  
 Effective Date: April 1, 2001.

Document Description: This manual describes DSHS guidelines for maternity case management services delivered to medical assistance clients. Included in this document are the following sections: About the Program, Client Eligibility, Provider Qualifications, Provider Responsibility, MCM Provider Pre-Application and Application process, Billing, Fee Schedule, Claim Form Instructions and Samples.

To receive a copy of the interpretive or policy statement, contact Kevin Sullivan, Regulatory Improvement Coordinator, DSHS, Medical Assistance Administration, Division of Program Support, P.O. Box 45533, Olympia, WA 98504, phone (360) 725-1344 or go to website <http://maa.dshs.wa.gov> (click on Numbered Memorandum link), TDD 1-800-848-5429, fax (360) 586-9727, e-mail <mailto:sullikm@dshs.wa.gov>.

March 26, 2001

E. A. Myers, Acting Manager  
Regulatory Improvement Project

MISC.

**WSR 01-08-030**

**NOTICE OF PUBLIC MEETINGS  
UNIVERSITY OF WASHINGTON**

[Memorandum—March 27, 2001]

College of Forest Resources, Division of Management &  
Engineering, Faculty Meetings  
Committee Chair: Professor Rick Gustafson

Spring Quarter 2001 Meeting Schedule

Date	Time	Place
Thursday, April 5	9:30 a.m. - 10:30 a.m.	Anderson Hall, Room 22
Thursday, April 19	9:30 a.m. - 10:30 a.m.	Anderson Hall, Room 22
Thursday, April 26	9:30 a.m. - 10:30 a.m.	Anderson Hall, Room 22
Thursday, May 3	9:30 a.m. - 10:30 a.m.	Anderson Hall, Room 22
Thursday, May 17	9:30 a.m. - 10:30 a.m.	Anderson Hall, Room 22
Thursday, May 24	9:30 a.m. - 10:30 a.m.	Anderson Hall, Room 22
Thursday, May 31	9:30 a.m. - 10:30 a.m.	Anderson Hall, Room 22

Contact: Ann Corboy, (206) 543-2751, acorboy@u.washington.edu.

**WSR 01-08-035**

**NOTICE OF PUBLIC MEETINGS  
WESTERN WASHINGTON UNIVERSITY**

[Memorandum—March 30, 2001]

**NOTICE OF CANCELLATION**

BOARD OF TRUSTEES STUDY SESSION  
WESTERN WASHINGTON UNIVERSITY  
MARCH 28, 2001

Seattle, Washington

10:45 a.m.

The study session scheduled for March 28, 2001, in Seattle, Washington, has been cancelled.

**WSR 01-08-036**

**NOTICE OF PUBLIC MEETINGS  
DEPARTMENT OF  
INFORMATION SERVICES**

[Memorandum—March 28, 2001]

K-20 Network Technical Steering Committee  
Meeting Schedule—2001

Following are the dates, times, and locations of the K-20 Network Technical Steering Committee meetings for the year 2001.

The meetings will be held on the second Thursday of each month, from 1:30 - 3:30, in the DIS Board Room in the Forum Building, 605 East 11th Avenue, Olympia, WA.

**WSR 01-08-069**

**NOTICE OF PUBLIC MEETINGS  
EASTERN WASHINGTON UNIVERSITY**

[Memorandum—April 3, 2001]

EASTERN WASHINGTON UNIVERSITY

BOARD OF TRUSTEES

April 6, 2001—10:00 a.m.

Riverpoint

Room 118

Eastern Washington University strives to satisfy all requests for special access needs for persons with disabilities. Requests for such accommodation are welcome and may be made by calling the President's Office, (509) 359-6598.

**WSR 01-08-070**

**NOTICE OF PUBLIC MEETINGS  
SEATTLE COMMUNITY COLLEGES**

[Memorandum—March 29, 2001]

Revised Regular Board of Trustees Meeting Schedule—2001  
Seattle Community College District VI

The Seattle Community College District VI board of trustees meeting locations for May and July have been revised to:

- May 15 South Seattle Community College  
6000 16th Avenue S.W.  
Seattle, WA 98106
- July 17 Sand Point Education Center  
6208 60th Avenue N.E.  
Seattle, WA 98115

**BOARD OF TRUSTEES**

**2001 REGULAR MEETING SCHEDULE**

Approved by the Board of Trustees 12/5/00

The board of trustees meetings begin with a worksession or reception at 12 noon. Regular meeting agenda sessions will begin at 1:00 p.m. **Exceptions to worksession start times are noted below.** Dates and locations of the meetings are noted below.

- | DATE        | LOCATION   |
|-------------|--|
| January 16  | Holly Park (SSCC)<br>7058 32nd Avenue South<br>Seattle, WA 98118               |
| February 20 | North Seattle Community College<br>9600 College Way North<br>Seattle, WA 98103 |
| March 13    | Seattle Central Community College<br>1701 Broadway<br>Seattle, WA 98122        |
| April 17    | Duwamish Branch (SSCC)<br>6770 East Marginal Way South<br>Seattle, WA 98108    |

MISC.

May 15 South Seattle Community College  
6000 16th Avenue S.W.  
Seattle, WA 98106

June 19 Seattle Vocational Institute (SCCC)  
2120 South Jackson Street  
Seattle, WA 98144

July 17 Sand Point Education Center (NSCC)  
6208 60th Avenue N.E.  
Seattle, WA 98115

August No meeting

September 11 SCCD (Siegal Center)  
1:00 p.m. 1500 Harvard Avenue  
Seattle, WA 98122

October 2 North Seattle Community College  
9600 College Way North  
Seattle, WA 98103

November 6 Seattle, Maritime Academy (SCCC)  
4455 Shilshole Avenue N.W.  
Seattle, WA 98107

December 4 SCCD (Siegal Center)  
1500 Harvard Avenue  
Seattle, WA 98122

**WSR 01-08-075**  
**OFFICE OF THE GOVERNOR**

[Filed April 3, 2001, 1:34 p.m.]

April 2, 2001

Francis J. Walker  
Attorney at Law  
2723 Hillside Drive  
Olympia, Washington 98501

*Re: Appeal of the January 16, 2001 denial by the Department of Fish and Wildlife (the "Department") of that certain Petition for Adoption, Amendment, or Repeal of a State Administrative Rule, dated June 16, 2000, filed by Kevin G. Byrd on behalf of the Association for the Protection of Hammersly, Eld & Totten Inlets (APHETI) with respect to WAC 220-77-040 and WAC 220-77-020(11) (the "Petition")*

Dear Mr. Walker:

Pursuant to RCW 34.05.330(3), I have fully reviewed your appeal of the Petition. It is my policy to intervene in matters presented to me under RCW 34.05.330(3) only when I believe the administrative agency whose decision is at issue has abused its discretion or acted arbitrarily or capriciously. It is also my policy not to second-guess the thoughtful and deliberate decisions of a state agency, so long as those decisions are well founded and proper under the law. This is an extremely high standard of review.

After reviewing the record of the Department's actions and the arguments offered in your appeal, I have determined that the Department had a good-faith basis for its decision not to amend or repeal the regulations. The Department did not abuse its discretion or act arbitrarily or capriciously. Accordingly, I have denied your appeal.

Pursuant to RCW 77.12.047 and RCW 77.115.010, the Department has statutory authority to adopt rules regulating the prevention and suppression of diseases and pests affecting shellfish, and, with Department of Agriculture, to protect the aquaculture industry from aquatic diseases or maladies.

Based on that authority, the Department adopted a comprehensive group of aquaculture disease control rules (WAC 220-77). The rules include a definition of "established species" which is a species that has been propagated through aquaculture for at least ten years or a species naturally reproducing in Washington (WAC 220-77-020(11)). The rules state that "established species from existing import areas with current disease free tissue certification from areas of origin free of Class A shellfish diseases are eligible for continued importation" (WAC 220-77-040(3)).

Your argument appears to be that the Department has no authority to make this rule because it confers an exemption from disease control measures, relating to the importation of shellfish, "based solely on the time it has been commercially harvested or reproduced in Washington State."

The Department clearly has rule making authority relating to "regulating the prevention and suppression of diseases and pests affecting...shellfish" (RCW 77.12.047), and to the development of a program of disease inspection and control for aquatic farmers, and that the program may include import and transfer requirements (RCW 77.115.010).

Accordingly, the Department has created a category of aquaculture, "established species" that may be imported into Washington, provided that the imported species meet the disease control conditions specified in 220-77-040(3). The Department acted consistently with its statutory responsibilities. The determining factor in regulating a species is not time, but certification that the species in question comes from a disease free area.

For these reasons I must deny your appeal. Thank you for your extensive efforts to protect the indigenous species of marine life in Puget Sound, and your and profound commitment to the environment of our state.

Sincerely,

Gary Locke  
Governor

cc: Dennis W. Cooper, Code Reviser  
Tim Martin, Co-Chief Clerk, House of Representatives  
Cindy Zehnder, Co-Chief Clerk, House of Representatives  
Tony Cook, Secretary of the Senate  
Jeff Koenigs, Department of Fish and Wildlife

**Reviser's note:** The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 01-08-079**

**DEPARTMENT OF LICENSING**

[Filed April 3, 2001, 3:34 p.m.]

NOTICE OF PUBLIC HEARING

WASHINGTON STATE DEPARTMENT OF LICENSING

Announcement of Public Hearing  
Marine Fuel Use Study

The Economic Analysis Unit within the Office of Budget and Program Support will hold a public hearing April 27, 2001, in Room 413 of the Highways-Licenses Building, 1125 Washington Street, Olympia, WA 98504-8001. The hearing will be held from 10:00 to 11:00 a.m. The purpose of the hearing is to present findings of a study conducted by BST Associates for the Department of Licensing. The study estimated the proportion of gasoline fuel used for marine recreational purposes between September 1999 and October 2000. Public comments will be accepted.

**WSR 01-08-094**

INTERPRETIVE STATEMENT

**DEPARTMENT OF ECOLOGY**

[Filed April 4, 2001, 10:56 a.m.]

INTERPRETIVE STATEMENT

Pursuant to RCW 34.05.230(12) for miscellaneous filings, the water quality program within the Department of Ecology submits this descriptive statement for the Water Quality Program Policy 1-11 guiding the development of the list of impaired waterbodies for the year 2002 that is required under the federal Clean Water Act (Section 303(d) list).

The state will be required under the amended Clean Water Act (CWA) and implementing regulations to prepare a four-part list every four years containing waterbody segments that do not meet state surface water quality standards, National Toxic Rule criteria or Human Health criteria ("the water quality standards"). Guidance on how to collect and assess information for impaired water bodies has been developed in Water Quality Program Policy 1-11. Ecology staff will use this policy to review and evaluate information against the current water quality standards in order to make revisions to the last list approved by EPA. Ecology will first seek new information from the public and will then propose the revised list for public comment in December 2001.

The evaluation policies in this guidance were developed to identify only those waterbody segments for which there is good documentation that water quality standards are not being met. Waterbodies with standards violations because of natural conditions and with no significant human contribution will generally not be proposed for listing. We will not

exercise the option to include waters on the list that currently meet standards but are considered likely to be impaired by the next listing effort in 2006.

Policies were also developed to guide assignment of impaired water bodies to the appropriate part of the required four-part list. Only those placed on Part 1 will be prioritized and scheduled for developing total maximum daily loads (TMDLs).

The Department of Ecology is accepting comments on this policy through May 18, 2001. The final policy will be made available by June 15, 2001. At that time, data consistent with the policy will be accepted for evaluation in developing the 2002 list.

This policy and related documents can be viewed and copied at the following Department of Ecology website [ecy.wa.gov/programs/wq/TMDL/303\(d\)](http://ecy.wa.gov/programs/wq/TMDL/303(d)).

Questions, requests for paper copies and written comments should be directed to Nora Jewett, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, (360) 407-6479, [njew461@ecy.wa.gov](mailto:njew461@ecy.wa.gov).

April 3, 2001

Megan White, P.E., Manager  
Water Quality Program

**WSR 01-08-097**

NOTICE OF PUBLIC MEETINGS

**DEPARTMENT OF LICENSING**

(Real Estate Commission)

[Memorandum—April 4, 2001]

This notice is to amend the Washington Real Estate Commission's 2001 regular meeting schedule for the September meeting from September 25, 2001, to September 18, 2001.

MISC.

**Table of WAC Sections Affected**

**KEY TO TABLE**

This table covers the current calendar year through this issue of the Register and should be used to locate rules amended, adopted, or repealed subsequent to the publication date of the latest WAC or Supplement.

- Symbols:**
- AMD = Amendment of existing section
  - A/R = Amending and recodifying a section
  - DECOD = Decodification of an existing section
  - NEW = New section not previously codified
  - OBJECT = Notice of objection by Joint Administrative Rules Review Committee
  - PREP = Preproposal comments
  - RE-AD = Readoption of existing section
  - RECOD = Recodification of previously codified section
  - REP = Repeal of existing section
  - RESCIND = Rescind of existing section
  - REVIEW = Review of previously adopted rule
  - SUSP = Suspending an existing section

- Suffixes:**
- C = Continuance of previous proposal
  - E = Emergency action
  - P = Proposed action
  - S = Supplemental notice
  - W = Withdrawal of proposed action
  - XA = Expedited adoption
  - XR = Expedited repeal
  - No suffix means permanent action

**WAC #** Shows the section number under which an agency rule is or will be codified in the Washington Administrative Code.

**WSR #** Shows the issue of the Washington State Register where the document may be found; the last three digits identify the document within the issue.

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
3- 20-100	NEW-P	01-05-034	16-202-1022	NEW-P	01-06-052	16-238-100	NEW-E	01-05-003
4- 25-410	AMD-P	01-07-033	16-202-1023	NEW-P	01-06-052	16-238-110	NEW-E	01-05-003
4- 25-520	AMD-P	01-07-034	16-202-1024	NEW-P	01-06-052	16-321	PREP	01-06-019
4- 25-521	AMD-P	01-07-035	16-202-1025	NEW-P	01-06-052	16-328	PREP	01-03-140
4- 25-600	AMD-P	01-07-036	16-202-2000	REP-P	01-06-053	16-328-010	AMD-P	01-07-098
4- 25-610	AMD-P	01-07-037	16-202-2001	NEW-P	01-06-053	16-328-011	NEW-P	01-07-098
4- 25-620	REP-P	01-07-037	16-202-2002	NEW-P	01-06-053	16-333	PREP	01-03-139
4- 25-622	AMD-P	01-07-038	16-202-2003	NEW-P	01-06-053	16-333-040	AMD-P	01-07-097
4- 25-626	AMD	01-03-012	16-202-2004	NEW-P	01-06-053	16-333-041	NEW-P	01-07-097
4- 25-630	REP-P	01-07-037	16-202-2005	NEW-P	01-06-053	16-333-045	AMD-P	01-07-097
4- 25-631	PREP	01-06-002	16-202-2006	NEW-P	01-06-053	16-333-085	AMD-P	01-07-097
4- 25-640	AMD-P	01-07-039	16-202-2007	NEW-P	01-06-053	16-400-040	AMD-P	01-07-095
4- 25-650	AMD-P	01-07-040	16-202-2008	NEW-P	01-06-053	16-400-100	AMD-P	01-07-095
4- 25-720	AMD-P	01-07-041	16-202-2009	NEW-P	01-06-053	16-400-210	AMD-P	01-07-095
4- 25-721	AMD-P	01-07-042	16-202-2010	NEW-P	01-06-053	16-401	PREP	01-02-101
4- 25-722	REP-P	01-07-043	16-202-2011	NEW-P	01-06-053	16-401-021	AMD-P	01-07-099
4- 25-730	AMD	01-03-011	16-202-2012	NEW-P	01-06-053	16-401-026	AMD-P	01-07-099
16-143	PREP	01-08-100	16-202-2013	NEW-P	01-06-053	16-401-027	NEW-P	01-07-099
16-143-005	NEW	01-03-049	16-202-2014	NEW-P	01-06-053	16-401-031	AMD-P	01-07-099
16-202-1000	REP-P	01-06-052	16-202-2015	NEW-P	01-06-053	16-401-032	NEW-P	01-07-099
16-202-1001	NEW-P	01-06-052	16-202-2016	NEW-P	01-06-053	16-401-041	AMD-P	01-07-099
16-202-1002	NEW-P	01-06-052	16-202-2017	NEW-P	01-06-053	16-403	PREP	01-03-133
16-202-1003	NEW-P	01-06-052	16-202-2018	NEW-P	01-06-053	16-403	PREP	01-04-093
16-202-1004	NEW-P	01-06-052	16-202-2019	NEW-P	01-06-053	16-403-141	AMD-P	01-08-068
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16-202-1011	NEW-P	01-06-052	16-228-2020	PREP	01-06-021	16-470-916	AMD-P	01-07-096
16-202-1012	NEW-P	01-06-052	16-228-2030	PREP	01-06-021	16-470-917	NEW-P	01-07-096
16-202-1013	NEW-P	01-06-052	16-228-2040	PREP	01-06-021	16-470-921	AMD-P	01-07-096
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16-202-1015	NEW-P	01-06-052	16-238-020	NEW-E	01-05-003	16-516-170	NEW-P	01-04-088
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16-202-1017	NEW-P	01-06-052	16-238-060	NEW-E	01-05-003	16-555-020	AMD-P	01-05-132
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16-202-1021	NEW-P	01-06-052	16-238-090	NEW-E	01-05-003	16-602-010	REP-P	01-08-087

TABLE

Table of WAC Sections Affected

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16-602-020	REP-P	01-08-087	51- 11-1532	AMD	01-03-010	51- 42-1118	NEW	01-02-098
16-602-025	AMD-P	01-08-087	51- 11-1701	REP	01-03-010	51- 42-1119	NEW	01-02-098
16-602-026	AMD-P	01-08-087	51- 11-2000	REP	01-03-010	51- 42-1120	NEW	01-02-098
16-602-027	REP-P	01-08-087	51- 11-2001	REP	01-03-010	51- 42-1121	NEW	01-02-098
16-602-030	REP-P	01-08-087	51- 11-2002	REP	01-03-010	51- 42-1122	NEW	01-02-098
16-602-040	REP-P	01-08-087	51- 11-2003	REP	01-03-010	51- 42-1123	NEW	01-02-098
16-602-045	REP-P	01-08-087	51- 11-2004	REP	01-03-010	51- 42-1124	NEW	01-02-098
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51- 11-0101	AMD	01-03-010	51- 11-2007	REP	01-03-010	51- 42-1301	NEW	01-02-098
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51- 11-0502	AMD	01-03-010	51- 11-2009	REP	01-03-010	51- 44-0105	NEW	01-02-096
51- 11-0503	AMD	01-03-010	51- 11-99902	AMD	01-03-010	51- 44-0200	AMD	01-02-096
51- 11-0504	AMD	01-03-010	51- 11-99903	AMD	01-03-010	51- 44-1007	AMD	01-02-096
51- 11-0505	AMD	01-03-010	51- 11-99904	AMD	01-03-010	51- 44-1102	NEW	01-02-096
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51- 11-0605	AMD	01-03-010	51- 13-304	AMD	01-02-099	51- 44-6300	AMD-W	01-05-031
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51- 11-0628	AMD	01-03-010	51- 40-0313	AMD	01-02-095	51- 45-10100	NEW-W	01-05-031
51- 11-0630	AMD	01-03-010	51- 40-0403	AMD-W	01-05-028	51- 46-001	REP-W	01-05-029
51- 11-0701	AMD	01-03-010	51- 40-0804	AMD-W	01-05-028	51- 46-002	REP-W	01-05-029
51- 11-1001	AMD	01-03-010	51- 40-0902	AMD	01-02-095	51- 46-003	REP-W	01-05-029
51- 11-1002	AMD	01-03-010	51- 40-1003	AMD	01-02-095	51- 46-007	REP-W	01-05-029
51- 11-1003	AMD	01-03-010	51- 40-1004	AMD	01-02-095	51- 46-008	REP-W	01-05-029
51- 11-1004	AMD	01-03-010	51- 40-1103	AMD-W	01-05-028	51- 46-0100	REP-W	01-05-029
51- 11-1005	AMD	01-03-010	51- 40-1104	AMD	01-02-095	51- 46-0101	REP-W	01-05-029
51- 11-1006	AMD	01-03-010	51- 40-1105	AMD	01-02-095	51- 46-0102	REP-W	01-05-029
51- 11-1007	AMD	01-03-010	51- 40-1106	AMD	01-02-095	51- 46-0103	REP-W	01-05-029
51- 11-1008	AMD	01-03-010	51- 40-1202	NEW	01-02-095	51- 46-0200	AMD	01-02-097
51- 11-1009	AMD	01-03-010	51- 40-1203	AMD	01-02-095	51- 46-0205	REP-W	01-05-029
51- 11-1132	AMD	01-03-010	51- 40-1505	NEW-W	01-05-028	51- 46-0215	REP-W	01-05-029
51- 11-1201	REP	01-03-010	51- 40-1600	NEW-W	01-05-028	51- 46-0218	REP-W	01-05-029
51- 11-1210	REP	01-03-010	51- 40-1616	AMD-W	01-05-028	51- 46-0300	REP-W	01-05-029
51- 11-1312	AMD	01-03-010	51- 40-1700	NEW-W	01-05-028	51- 46-0301	REP-W	01-05-029
51- 11-1313	AMD	01-03-010	51- 40-1800	NEW-W	01-05-028	51- 46-0310	REP-W	01-05-029
51- 11-1322	AMD	01-03-010	51- 40-1900	NEW-W	01-05-028	51- 46-0311	REP-W	01-05-029
51- 11-1323	AMD	01-03-010	51- 40-2000	NEW-W	01-05-028	51- 46-0313	REP-W	01-05-029
51- 11-1331	AMD	01-03-010	51- 40-2100	NEW-W	01-05-028	51- 46-0314	REP-W	01-05-029
51- 11-1334	AMD	01-03-010	51- 40-2106	NEW-W	01-05-028	51- 46-0316	REP-W	01-05-029
51- 11-1401	AMD-W	01-07-073	51- 40-2200	NEW-W	01-05-028	51- 46-0392	REP-W	01-05-029
51- 11-1410	AMD	01-03-010	51- 40-2300	NEW-W	01-05-028	51- 46-0400	REP-W	01-05-029
51- 11-1411	AMD	01-03-010	51- 40-2900	AMD	01-02-095	51- 46-0402	REP-W	01-05-029
51- 11-1412	AMD	01-03-010	51- 40-2929	AMD-W	01-05-028	51- 46-0412	REP-W	01-05-029
51- 11-1414	AMD	01-03-010	51- 40-3102	AMD	01-02-095	51- 46-0413	REP-W	01-05-029
51- 11-1415	AMD	01-03-010	51- 40-31200	AMD	01-02-095	51- 46-0500	REP-W	01-05-029
51- 11-1416	NEW	01-03-010	51- 42-0405	NEW	01-02-098	51- 46-0501	REP-W	01-05-029
51- 11-1423	AMD	01-03-010	51- 42-1101	AMD-W	01-05-030	51- 46-0502	REP-W	01-05-029
51- 11-1433	AMD	01-03-010	51- 42-1103	AMD	01-02-098	51- 46-0505	REP-W	01-05-029
51- 11-1435	AMD	01-03-010	51- 42-1105	AMD	01-02-098	51- 46-0507	REP-W	01-05-029
51- 11-1438	AMD	01-03-010	51- 42-1109	NEW	01-02-098	51- 46-0509	REP-W	01-05-029
51- 11-1439	NEW	01-03-010	51- 42-1110	NEW	01-02-098	51- 46-0512	REP-W	01-05-029
51- 11-1443	NEW	01-03-010	51- 42-1111	NEW	01-02-098	51- 46-0513	REP-W	01-05-029
51- 11-1454	AMD	01-03-010	51- 42-1112	NEW	01-02-098	51- 46-0514	REP-W	01-05-029
51- 11-1512	AMD	01-03-010	51- 42-1113	NEW	01-02-098	51- 46-0515	REP-W	01-05-029
51- 11-1513	AMD	01-03-010	51- 42-1114	NEW	01-02-098	51- 46-0516	REP-W	01-05-029
51- 11-1521	AMD	01-03-010	51- 42-1115	NEW	01-02-098	51- 46-0517	REP-W	01-05-029
51- 11-1530	AMD	01-03-010	51- 42-1116	NEW	01-02-098	51- 46-0518	REP-W	01-05-029
51- 11-1531	AMD	01-03-010	51- 42-1117	NEW	01-02-098	51- 46-0519	REP-W	01-05-029

TABLE



Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
51-46-0520	REP-W	01-05-029	51-56-0700	NEW-W	01-05-029	132W-104-110	REP-P	01-04-004
51-46-0521	REP-W	01-05-029	51-56-0800	NEW-W	01-05-029	132W-104-110	REP	01-07-059
51-46-0522	REP-W	01-05-029	51-56-0900	NEW-W	01-05-029	132W-104-111	REP-P	01-04-004
51-46-0523	REP-W	01-05-029	51-56-1300	NEW-W	01-05-029	132W-104-111	REP	01-07-059
51-46-0524	REP-W	01-05-029	51-56-1400	NEW-W	01-05-029	132W-104-120	REP-P	01-04-004
51-46-0525	REP-W	01-05-029	51-56-1500	NEW-W	01-05-029	132W-104-120	REP	01-07-059
51-46-0600	REP-W	01-05-029	51-56-201300	NEW-W	01-05-029	132W-104-130	REP-P	01-04-004
51-46-0603	AMD	01-02-097	51-57-001	NEW-W	01-05-029	132W-104-130	REP	01-07-059
51-46-0604	REP-W	01-05-029	51-57-002	NEW-W	01-05-029	132W-105-010	NEW-P	01-07-058
51-46-0608	REP-W	01-05-029	51-57-003	NEW-W	01-05-029	132W-105-020	NEW-P	01-07-058
51-46-0609	REP-W	01-05-029	51-57-007	NEW-W	01-05-029	132W-105-030	NEW-P	01-07-058
51-46-0610	REP-W	01-05-029	51-57-008	NEW-W	01-05-029	132W-105-040	NEW-P	01-07-058
51-46-0700	REP-W	01-05-029	51-57-790000	NEW-W	01-05-029	132W-105-050	NEW-P	01-07-058
51-46-0701	REP-W	01-05-029	51-57-895000	NEW-W	01-05-029	132W-105-060	NEW-P	01-07-058
51-46-0704	REP-W	01-05-029	132A-120-011	AMD-P	01-03-116	132W-105-070	NEW-P	01-07-058
51-46-0710	REP-W	01-05-029	132A-120-011	AMD	01-08-071	132W-105-080	NEW-P	01-07-058
51-46-0713	REP-W	01-05-029	132A-120-021	AMD-P	01-03-116	132W-108	PREP	01-03-103
51-46-0793	REP-W	01-05-029	132A-120-021	AMD	01-08-071	132W-108-001	REP-P	01-04-004
51-46-0800	REP-W	01-05-029	132G-120-010	AMD-P	01-08-082	132W-108-001	REP	01-07-059
51-46-0810	REP-W	01-05-029	132G-120-015	NEW-P	01-08-082	132W-108-005	REP-P	01-04-004
51-46-0814	REP-W	01-05-029	132G-120-020	REP-P	01-08-082	132W-108-005	REP	01-07-059
51-46-0815	REP-W	01-05-029	132G-120-030	AMD-P	01-08-082	132W-108-010	REP-P	01-04-004
51-46-0900	REP-W	01-05-029	132G-120-040	AMD-P	01-08-082	132W-108-010	REP	01-07-059
51-46-0903	REP-W	01-05-029	132G-120-060	AMD-P	01-08-082	132W-108-080	REP-P	01-04-004
51-46-1000	REP-W	01-05-029	132G-120-061	AMD-P	01-08-082	132W-108-080	REP	01-07-059
51-46-1003	REP-W	01-05-029	132G-120-062	AMD-P	01-08-082	132W-108-090	REP-P	01-04-004
51-46-1012	REP-W	01-05-029	132G-120-063	AMD-P	01-08-082	132W-108-090	REP	01-07-059
51-46-1300	REP-W	01-05-029	132G-120-064	AMD-P	01-08-082	132W-108-100	REP-P	01-04-004
51-46-1301	REP-W	01-05-029	132G-120-065	AMD-P	01-08-082	132W-108-100	REP	01-07-059
51-46-1302	REP-W	01-05-029	132G-120-070	AMD-P	01-08-082	132W-108-110	REP-P	01-04-004
51-46-1303	REP-W	01-05-029	132G-120-080	AMD-P	01-08-082	132W-108-110	REP	01-07-059
51-46-1304	REP-W	01-05-029	132G-120-090	AMD-P	01-08-082	132W-108-120	REP-P	01-04-004
51-46-1305	REP-W	01-05-029	132G-120-100	AMD-P	01-08-082	132W-108-120	REP	01-07-059
51-46-1400	REP-W	01-05-029	132G-120-110	AMD-P	01-08-082	132W-108-130	REP-P	01-04-004
51-46-1401	REP-W	01-05-029	132G-120-120	REP-P	01-08-082	132W-108-130	REP	01-07-059
51-46-1491	REP-W	01-05-029	132G-120-130	AMD-P	01-08-082	132W-108-140	REP-P	01-04-004
51-46-97120	REP-W	01-05-029	132G-120-140	AMD-P	01-08-082	132W-108-140	REP	01-07-059
51-46-97121	REP-W	01-05-029	132K-122-020	PREP	01-03-125	132W-108-230	REP-P	01-04-004
51-46-97122	REP-W	01-05-029	132K-122-020	AMD-P	01-07-062	132W-108-230	REP	01-07-059
51-46-97123	REP-W	01-05-029	132K-122-100	PREP	01-03-126	132W-108-240	REP-P	01-04-004
51-46-97124	REP-W	01-05-029	132K-122-100	AMD-P	01-07-061	132W-108-240	REP	01-07-059
51-46-97125	REP-W	01-05-029	132W-104	PREP	01-03-103	132W-108-250	REP-P	01-04-004
51-46-97126	REP-W	01-05-029	132W-104-010	REP-P	01-04-004	132W-108-250	REP	01-07-059
51-46-97127	REP-W	01-05-029	132W-104-010	REP	01-07-059	132W-108-260	REP-P	01-04-004
51-46-97128	REP-W	01-05-029	132W-104-020	REP-P	01-04-004	132W-108-260	REP	01-07-059
51-46-97129	REP-W	01-05-029	132W-104-020	REP	01-07-059	132W-108-270	REP-P	01-04-004
51-47-001	REP-W	01-05-029	132W-104-030	REP-P	01-04-004	132W-108-270	REP	01-07-059
51-47-002	REP-W	01-05-029	132W-104-030	REP	01-07-059	132W-108-280	REP-P	01-04-004
51-47-003	REP-W	01-05-029	132W-104-040	REP-P	01-04-004	132W-108-280	REP	01-07-059
51-47-007	REP-W	01-05-029	132W-104-040	REP	01-07-059	132W-108-290	REP-P	01-04-004
51-47-008	REP-W	01-05-029	132W-104-050	REP-P	01-04-004	132W-108-290	REP	01-07-059
51-56-001	NEW-W	01-05-029	132W-104-050	REP	01-07-059	132W-108-300	REP-P	01-04-004
51-56-002	NEW-W	01-05-029	132W-104-060	REP-P	01-04-004	132W-108-300	REP	01-07-059
51-56-003	NEW-W	01-05-029	132W-104-060	REP	01-07-059	132W-108-310	REP-P	01-04-004
51-56-007	NEW-W	01-05-029	132W-104-070	REP-P	01-04-004	132W-108-310	REP	01-07-059
51-56-008	NEW-W	01-05-029	132W-104-070	REP	01-07-059	132W-108-320	REP-P	01-04-004
51-56-0100	NEW-W	01-05-029	132W-104-080	REP-P	01-04-004	132W-108-320	REP	01-07-059
51-56-0200	NEW-W	01-05-029	132W-104-080	REP	01-07-059	132W-108-330	REP-P	01-04-004
51-56-0300	NEW-W	01-05-029	132W-104-090	REP-P	01-04-004	132W-108-330	REP	01-07-059
51-56-0400	NEW-W	01-05-029	132W-104-090	REP	01-07-059	132W-108-340	REP-P	01-04-004
51-56-0500	NEW-W	01-05-029	132W-104-100	REP-P	01-04-004	132W-108-340	REP	01-07-059
51-56-0600	NEW-W	01-05-029	132W-104-100	REP	01-07-059	132W-108-350	REP-P	01-04-004

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Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
132W-108-350	REP	01-07-059	132W-115-170	NEW-P	01-07-058	132W-120-300	REP	01-07-059
132W-108-360	REP-P	01-04-004	132W-115-180	NEW-P	01-07-058	132W-120-310	REP-P	01-04-004
132W-108-360	REP	01-07-059	132W-115-190	NEW-P	01-07-058	132W-120-310	REP	01-07-059
132W-108-400	REP-P	01-04-004	132W-115-200	NEW-P	01-07-058	132W-120-320	REP-P	01-04-004
132W-108-400	REP	01-07-059	132W-115-210	NEW-P	01-07-058	132W-120-320	REP	01-07-059
132W-108-410	REP-P	01-04-004	132W-115-220	NEW-P	01-07-058	132W-120-330	REP-P	01-04-004
132W-108-410	REP	01-07-059	132W-116	PREP	01-03-103	132W-120-330	REP	01-07-059
132W-108-420	REP-P	01-04-004	132W-116-010	REP-P	01-04-004	132W-120-400	REP-P	01-04-004
132W-108-420	REP	01-07-059	132W-116-010	REP	01-07-059	132W-120-400	REP	01-07-059
132W-108-430	REP-P	01-04-004	132W-116-020	REP-P	01-04-004	132W-125-010	NEW-P	01-07-058
132W-108-430	REP	01-07-059	132W-116-020	REP	01-07-059	132W-125-020	NEW-P	01-07-058
132W-108-440	REP-P	01-04-004	132W-116-040	REP-P	01-04-004	132W-125-030	NEW-P	01-07-058
132W-108-440	REP	01-07-059	132W-116-040	REP	01-07-059	132W-129	PREP	01-06-011
132W-108-450	REP-P	01-04-004	132W-116-050	REP-P	01-04-004	132W-130	PREP	01-06-010
132W-108-450	REP	01-07-059	132W-116-050	REP	01-07-059	132W-134	PREP	01-06-010
132W-108-460	REP-P	01-04-004	132W-116-065	REP-P	01-04-004	132W-135-010	REP-P	01-04-004
132W-108-460	REP	01-07-059	132W-116-065	REP	01-07-059	132W-135-010	REP	01-07-059
132W-108-470	REP-P	01-04-004	132W-117-010	NEW-P	01-07-058	132W-140	PREP	01-06-010
132W-108-470	REP	01-07-059	132W-117-020	NEW-P	01-07-058	132W-140	PREP	01-06-011
132W-108-480	REP-P	01-04-004	132W-117-030	NEW-P	01-07-058	132W-149	PREP	01-06-011
132W-108-480	REP	01-07-059	132W-117-040	NEW-P	01-07-058	132W-164	PREP	01-06-011
132W-109-010	NEW-P	01-07-058	132W-117-050	NEW-P	01-07-058	132W-168	PREP	01-06-010
132W-109-020	NEW-P	01-07-058	132W-117-060	NEW-P	01-07-058	132W-276	PREP	01-03-103
132W-109-030	NEW-P	01-07-058	132W-117-070	NEW-P	01-07-058	132W-276-001	REP-P	01-04-004
132W-109-040	NEW-P	01-07-058	132W-117-080	NEW-P	01-07-058	132W-276-001	REP	01-07-059
132W-109-050	NEW-P	01-07-058	132W-117-090	NEW-P	01-07-058	132W-276-005	REP-P	01-04-004
132W-109-060	NEW-P	01-07-058	132W-117-100	NEW-P	01-07-058	132W-276-005	REP	01-07-059
132W-109-070	NEW-P	01-07-058	132W-117-110	NEW-P	01-07-058	132W-276-010	REP-P	01-04-004
132W-109-085	NEW-P	01-07-058	132W-117-120	NEW-P	01-07-058	132W-276-010	REP	01-07-059
132W-112	PREP	01-03-103	132W-117-130	NEW-P	01-07-058	132W-276-060	REP-P	01-04-004
132W-112-001	NEW-P	01-07-058	132W-117-140	NEW-P	01-07-058	132W-276-060	REP	01-07-059
132W-112-010	NEW-P	01-07-058	132W-117-150	NEW-P	01-07-058	132W-276-070	REP-P	01-04-004
132W-112-020	NEW-P	01-07-058	132W-117-160	NEW-P	01-07-058	132W-276-070	REP	01-07-059
132W-112-030	NEW-P	01-07-058	132W-117-170	NEW-P	01-07-058	132W-276-080	REP-P	01-04-004
132W-112-040	NEW-P	01-07-058	132W-117-180	NEW-P	01-07-058	132W-276-080	REP	01-07-059
132W-112-050	NEW-P	01-07-058	132W-117-190	NEW-P	01-07-058	132W-276-090	REP-P	01-04-004
132W-112-060	NEW-P	01-07-058	132W-117-200	NEW-P	01-07-058	132W-276-090	REP	01-07-059
132W-112-070	NEW-P	01-07-058	132W-117-210	NEW-P	01-07-058	132W-276-100	REP-P	01-04-004
132W-112-080	NEW-P	01-07-058	132W-117-220	NEW-P	01-07-058	132W-276-100	REP	01-07-059
132W-112-090	NEW-P	01-07-058	132W-117-230	NEW-P	01-07-058	132W-276-110	REP-P	01-04-004
132W-112-100	NEW-P	01-07-058	132W-117-240	NEW-P	01-07-058	132W-276-110	REP	01-07-059
132W-112-110	NEW-P	01-07-058	132W-117-250	NEW-P	01-07-058	132W-277-010	NEW-P	01-07-058
132W-112-120	NEW-P	01-07-058	132W-117-260	NEW-P	01-07-058	132W-277-020	NEW-P	01-07-058
132W-112-130	NEW-P	01-07-058	132W-117-270	NEW-P	01-07-058	132W-277-030	NEW-P	01-07-058
132W-112-140	NEW-P	01-07-058	132W-117-280	NEW-P	01-07-058	132W-277-040	NEW-P	01-07-058
132W-115	PREP	01-03-103	132W-120-010	REP-P	01-04-004	132W-277-050	NEW-P	01-07-058
132W-115-010	NEW-P	01-07-058	132W-120-010	REP	01-07-059	132W-277-060	NEW-P	01-07-058
132W-115-020	NEW-P	01-07-058	132W-120-030	REP-P	01-04-004	132W-277-070	NEW-P	01-07-058
132W-115-030	NEW-P	01-07-058	132W-120-030	REP	01-07-059	132W-277-080	NEW-P	01-07-058
132W-115-040	NEW-P	01-07-058	132W-120-040	REP-P	01-04-004	132W-277-090	NEW-P	01-07-058
132W-115-050	NEW-P	01-07-058	132W-120-040	REP	01-07-059	132W-277-100	NEW-P	01-07-058
132W-115-060	NEW-P	01-07-058	132W-120-050	REP-P	01-04-004	132W-277-110	NEW-P	01-07-058
132W-115-070	NEW-P	01-07-058	132W-120-050	REP	01-07-059	132W-277-120	NEW-P	01-07-058
132W-115-080	NEW-P	01-07-058	132W-120-060	REP-P	01-04-004	132W-277-130	NEW-P	01-07-058
132W-115-090	NEW-P	01-07-058	132W-120-060	REP	01-07-059	132W-277-140	NEW-P	01-07-058
132W-115-100	NEW-P	01-07-058	132W-120-070	REP-P	01-04-004	132W-300	PREP	01-06-056
132W-115-110	NEW-P	01-07-058	132W-120-070	REP	01-07-059	132W-325	PREP	01-03-103
132W-115-120	NEW-P	01-07-058	132W-120-100	REP-P	01-04-004	132W-325-010	NEW-P	01-07-058
132W-115-130	NEW-P	01-07-058	132W-120-100	REP	01-07-059	136-130-030	AMD	01-05-009
132W-115-140	NEW-P	01-07-058	132W-120-130	REP-P	01-04-004	136-130-040	AMD-P	01-06-017
132W-115-150	NEW-P	01-07-058	132W-120-130	REP	01-07-059	136-130-050	AMD	01-05-009
132W-115-160	NEW-P	01-07-058	132W-120-300	REP-P	01-04-004	136-130-060	AMD	01-05-009

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136-161-020	AMD	01-05-009	173-340-357	NEW	01-05-024	173-400-116	AMD-P	01-04-072
136-161-030	AMD	01-05-009	173-340-360	AMD	01-05-024	173-400-117	NEW-P	01-04-072
136-161-040	AMD	01-05-009	173-340-370	NEW	01-05-024	173-400-118	NEW-P	01-04-072
136-161-050	AMD	01-05-009	173-340-380	NEW	01-05-024	173-400-131	AMD-P	01-04-072
136-161-070	AMD	01-05-009	173-340-390	NEW	01-05-024	173-400-136	AMD-P	01-04-072
136-163-050	AMD	01-05-009	173-340-400	AMD	01-05-024	173-400-141	AMD-P	01-04-072
136-167-040	AMD-P	01-06-017	173-340-410	AMD	01-05-024	173-400-151	AMD-P	01-04-072
136-170-030	AMD	01-05-008	173-340-420	AMD	01-05-024	173-400-171	AMD-P	01-04-072
136-210-030	AMD	01-05-009	173-340-430	AMD	01-05-024	173-401-300	AMD-P	01-04-072
136-210-040	AMD	01-05-009	173-340-440	AMD	01-05-024	173-401-615	AMD-P	01-04-072
136-210-050	AMD	01-05-009	173-340-450	AMD	01-05-024	173-409	PREP-W	01-08-053
137-04-010	AMD	01-03-079	173-340-510	AMD	01-05-024	173-415	PREP-W	01-08-053
137-04-020	AMD	01-03-079	173-340-515	NEW	01-05-024	173-481	PREP-W	01-08-053
137-52-010	AMD	01-04-001	173-340-520	AMD	01-05-024	173-503-010	NEW	01-07-027
137-104-010	NEW	01-04-044	173-340-530	AMD	01-05-024	173-503-020	NEW	01-07-027
137-104-020	NEW	01-04-044	173-340-545	NEW	01-05-024	173-503-030	NEW	01-07-027
137-104-030	NEW	01-04-044	173-340-550	AMD	01-05-024	173-503-040	NEW	01-07-027
137-104-040	NEW	01-04-044	173-340-600	AMD	01-05-024	173-503-050	NEW	01-07-027
137-104-050	NEW	01-04-044	173-340-610	AMD	01-05-024	173-503-060	NEW	01-07-027
137-104-060	NEW	01-04-044	173-340-700	AMD	01-05-024	173-503-070	NEW	01-07-027
137-104-070	NEW	01-04-044	173-340-702	AMD	01-05-024	173-503-080	NEW	01-07-027
137-104-080	NEW	01-04-044	173-340-703	NEW	01-05-024	173-503-090	NEW	01-07-027
139-05	PREP	01-08-033	173-340-704	AMD	01-05-024	173-503-100	NEW	01-07-027
173-09-010	REP	01-05-035	173-340-705	AMD	01-05-024	180-25-012	NEW	01-08-040
173-09-020	REP	01-05-035	173-340-706	AMD	01-05-024	180-26-012	NEW	01-08-040
173-09-030	REP	01-05-035	173-340-708	AMD	01-05-024	180-27-012	NEW	01-08-040
173-09-040	REP	01-05-035	173-340-709	NEW	01-05-024	180-27-070	AMD-P	01-05-089
173-18	PREP-W	01-08-061	173-340-710	AMD	01-05-024	180-29-012	NEW	01-08-040
173-20	PREP-W	01-08-061	173-340-720	AMD	01-05-024	180-31-012	NEW	01-08-040
173-22	PREP-W	01-08-061	173-340-730	AMD	01-05-024	180-32-012	NEW	01-08-040
173-204	PREP-W	01-08-053	173-340-740	AMD	01-05-024	180-33-012	NEW	01-08-040
173-321-010	AMD	01-05-024	173-340-745	AMD	01-05-024	180-33-023	AMD-P	01-05-088
173-321-020	AMD	01-05-024	173-340-747	NEW	01-05-024	180-33-042	PREP	01-05-130
173-321-040	AMD	01-05-024	173-340-7490	NEW	01-05-024	180-33-042	AMD-E	01-08-039
173-321-050	AMD	01-05-024	173-340-7491	NEW	01-05-024	180-50-115	AMD-W	01-08-065
173-321-060	AMD	01-05-024	173-340-7492	NEW	01-05-024	180-50-117	NEW-W	01-08-065
173-321-070	AMD	01-05-024	173-340-7493	NEW	01-05-024	180-51-060	PREP	01-05-124
173-321-080	AMD	01-05-024	173-340-7494	NEW	01-05-024	180-51-061	PREP	01-05-125
173-322	AMD	01-05-024	173-340-750	AMD	01-05-024	180-51-063	PREP	01-05-092
173-322-020	AMD	01-05-024	173-340-760	AMD	01-05-024	180-51-063	AMD-E	01-08-042
173-322-030	AMD	01-05-024	173-340-800	AMD	01-05-024	180-51-075	AMD-W	01-04-025
173-322-040	AMD	01-05-024	173-340-810	AMD	01-05-024	180-52	PREP	01-05-123
173-322-050	AMD	01-05-024	173-340-820	AMD	01-05-024	180-52-041	PREP	01-05-122
173-322-060	AMD	01-05-024	173-340-830	AMD	01-05-024	180-57-005	AMD-W	01-04-024
173-322-070	AMD	01-05-024	173-340-840	AMD	01-05-024	180-57-010	REP-W	01-04-024
173-322-090	AMD	01-05-024	173-340-850	AMD	01-05-024	180-57-020	AMD-W	01-04-024
173-322-100	AMD	01-05-024	173-340-900	NEW	01-05-024	180-57-030	REP-W	01-04-024
173-322-110	AMD	01-05-024	173-400-030	AMD-P	01-04-072	180-57-040	REP-W	01-04-024
173-322-120	AMD	01-05-024	173-400-035	NEW-P	01-04-072	180-57-050	AMD-W	01-04-024
173-340-100	AMD	01-05-024	173-400-040	AMD-P	01-04-072	180-57-055	AMD-W	01-04-024
173-340-120	AMD	01-05-024	173-400-050	AMD-P	01-04-072	180-57-070	AMD-P	01-05-090
173-340-130	AMD	01-05-024	173-400-060	AMD-P	01-04-072	180-57-080	REP-W	01-04-024
173-340-140	AMD	01-05-024	173-400-070	AMD-P	01-04-072	180-78A-015	REP	01-04-021
173-340-200	AMD	01-05-024	173-400-075	AMD-P	01-04-072	180-78A-209	AMD	01-03-151
173-340-210	AMD	01-05-024	173-400-100	AMD-P	01-04-072	180-78A-264	AMD	01-03-153
173-340-300	AMD	01-05-024	173-400-102	AMD-P	01-04-072	180-78A-535	AMD-P	01-04-019
173-340-310	AMD	01-05-024	173-400-105	AMD-P	01-04-072	180-78A-545	REP	01-04-021
173-340-320	AMD	01-05-024	173-400-110	AMD-P	01-04-072	180-78A-550	REP	01-04-021
173-340-330	AMD	01-05-024	173-400-112	AMD-P	01-04-072	180-78A-555	REP	01-04-021
173-340-340	AMD	01-05-024	173-400-113	AMD-P	01-04-072	180-78A-560	REP	01-04-021
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180- 79A-124	AMD	01-03-153	192-270-010	NEW-P	01-05-118	208-460-160	NEW-P	01-05-072
180- 79A-130	AMD-P	01-05-093	192-270-015	NEW-E	01-05-071	208-460-170	NEW-P	01-05-072
180- 79A-145	AMD-P	01-04-019	192-270-015	NEW-P	01-05-118	208-512	PREP-W	01-03-106
180- 79A-155	AMD-P	01-04-022	192-270-020	NEW-E	01-05-071	208-512-045	AMD-P	01-03-107
180- 79A-206	AMD	01-03-153	192-270-020	NEW-P	01-05-118	208-512-045	AMD	01-06-024
180- 79A-211	AMD	01-03-152	192-270-025	NEW-E	01-05-071	208-512-110	AMD-P	01-03-107
180- 79A-250	AMD-P	01-04-019	192-270-025	NEW-P	01-05-118	208-512-110	AMD	01-06-024
180- 79A-257	PREP	01-05-126	192-270-030	NEW-E	01-05-071	208-512-115	AMD-P	01-03-107
180- 79A-257	AMD-E	01-08-041	192-270-030	NEW-P	01-05-118	208-512-115	AMD	01-06-024
180- 79A-265	PREP	01-05-147	192-270-035	NEW-E	01-05-071	208-512-116	AMD-P	01-03-107
180- 79A-265	REP-E	01-08-041	192-270-035	NEW-P	01-05-118	208-512-116	AMD	01-06-024
180- 82-130	AMD-P	01-05-091	192-270-040	NEW-E	01-05-071	208-512-117	AMD-P	01-03-107
180- 82-135	NEW	01-04-020	192-270-040	NEW-P	01-05-118	208-512-117	AMD	01-06-024
180- 82-135	NEW-W	01-08-066	192-270-045	NEW-E	01-05-071	208-512-240	AMD-P	01-03-107
180- 82-202	PREP	01-05-127	192-270-045	NEW-P	01-05-118	208-512-240	AMD	01-06-024
180- 82-202	AMD-E	01-08-041	192-270-050	NEW-E	01-05-071	208-512-280	AMD-P	01-03-107
180- 82-204	PREP	01-05-128	192-270-050	NEW-P	01-05-118	208-512-280	AMD	01-06-024
180- 82-204	AMD-E	01-08-041	192-270-055	NEW-E	01-05-071	208-512-300	AMD-P	01-03-107
180- 82-210	PREP	01-05-129	192-270-055	NEW-P	01-05-118	208-512-300	AMD	01-06-024
180- 82-210	AMD-E	01-08-041	192-270-060	NEW-E	01-05-071	208-514-140	AMD-P	01-03-107
180- 85-075	AMD-P	01-04-019	192-270-060	NEW-P	01-05-118	208-514-140	AMD	01-06-024
182- 20-001	AMD	01-04-080	192-270-065	NEW-E	01-05-071	208-528-040	AMD-P	01-03-107
182- 20-010	AMD	01-04-080	192-270-065	NEW-P	01-05-118	208-528-040	AMD	01-06-024
182- 20-100	AMD	01-04-080	192-270-070	NEW-E	01-05-071	208-532-050	AMD-P	01-03-107
182- 20-160	AMD	01-04-080	192-270-070	NEW-P	01-05-118	208-532-050	AMD	01-06-024
182- 20-200	AMD	01-04-080	192-320-075	NEW-P	01-05-117	208-544-025	AMD-P	01-03-107
182- 20-400	AMD	01-04-080	196- 12-030	AMD-P	01-04-094	208-544-025	AMD	01-06-024
182- 25-010	AMD-P	01-05-107	196- 12-035	NEW-P	01-04-094	208-544-037	AMD-P	01-03-107
183- 04-010	NEW-P	01-04-033	196- 23-070	NEW-P	01-04-050	208-544-037	AMD	01-06-024
183- 04-020	NEW-P	01-04-033	196- 33-100	NEW-P	01-05-033	208-544-037	REP-P	01-07-081
183- 04-030	NEW-P	01-04-033	196- 33-200	NEW-P	01-05-033	208-544-039	AMD-P	01-03-107
183- 04-040	NEW-P	01-04-033	196- 33-300	NEW-P	01-05-033	208-544-039	AMD	01-06-024
183- 04-050	NEW-P	01-04-033	196- 33-400	NEW-P	01-05-033	208-544-039	AMD-P	01-07-081
183- 04-060	NEW-P	01-04-033	196- 33-500	NEW-P	01-05-033	208-544-050	REP-P	01-07-081
183- 04-070	NEW-P	01-04-033	204- 38-030	AMD-P	01-05-097	208-544-065	NEW-P	01-07-081
183- 04-080	NEW-P	01-04-033	204- 38-040	AMD-P	01-05-097	208-556-080	AMD-P	01-03-107
183- 04-090	NEW-P	01-04-033	204- 38-050	AMD-P	01-05-097	208-556-080	AMD	01-06-024
183- 04-100	NEW-P	01-04-033	204- 96-010	AMD-E	01-03-078	208-586-135	AMD-P	01-03-107
183- 04-110	NEW-P	01-04-033	204- 96-010	AMD	01-05-098	208-586-135	AMD	01-06-024
183- 06-010	NEW-P	01-04-033	208-418-010	NEW-P	01-07-082	208-586-135	REP-P	01-07-081
183- 06-020	NEW-P	01-04-033	208-418-020	AMD-P	01-07-082	208-586-140	AMD-P	01-03-107
183- 06-030	NEW-P	01-04-033	208-418-040	AMD-P	01-07-082	208-586-140	AMD	01-06-024
192- 16-011	REP-E	01-05-071	208-418-050	AMD-P	01-07-082	208-586-140	AMD-P	01-07-081
192- 16-011	REP-P	01-05-118	208-418-060	REP-P	01-07-082	208-586-150	NEW-P	01-07-081
192- 16-017	REP-E	01-05-071	208-418-070	AMD-P	01-07-082	208-620-190	AMD-P	01-07-083
192- 16-017	REP-P	01-05-118	208-418-090	NEW-P	01-07-082	208-620-191	NEW-P	01-07-083
192- 16-021	REP-P	01-05-117	208-418-100	NEW-P	01-07-082	208-620-192	NEW-P	01-07-083
192- 16-061	REP	01-03-009	208-460-010	NEW-P	01-05-072	208-630-021	AMD-P	01-07-083
192- 16-070	REP-P	01-04-082	208-460-020	NEW-P	01-05-072	208-630-022	AMD-P	01-07-083
192-150-050	NEW-E	01-05-071	208-460-030	NEW-P	01-05-072	208-630-023	AMD-P	01-07-083
192-150-050	NEW-P	01-05-118	208-460-040	NEW-P	01-05-072	208-630-02303	NEW-P	01-07-083
192-150-060	NEW-P	01-05-117	208-460-050	NEW-P	01-05-072	208-630-02305	NEW-P	01-07-083
192-150-065	NEW-E	01-05-071	208-460-060	NEW-P	01-05-072	208-660-010	AMD-P	01-07-083
192-150-065	NEW-P	01-05-118	208-460-070	NEW-P	01-05-072	208-660-060	AMD-P	01-07-083
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192-150-085	NEW-P	01-05-118	208-460-090	NEW-P	01-05-072	208-660-062	NEW-P	01-07-083
192-150-100	NEW-P	01-04-082	208-460-100	NEW-P	01-05-072	208-680A-040	AMD	01-08-055
192-170-050	NEW-P	01-05-117	208-460-110	NEW-P	01-05-072	208-680B-010	AMD	01-08-055
192-180-012	NEW-P	01-05-117	208-460-120	NEW-P	01-05-072	208-680B-015	NEW	01-08-055
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208-680B-070	AMD	01-08-055	220- 44-05000C	NEW-E	01-03-088	220- 56-285	AMD	01-06-036
208-680B-080	AMD-P	01-07-083	220- 47-301	AMD-P	01-02-085	220- 56-28500Y	NEW-E	01-07-007
208-680B-081	NEW-P	01-07-083	220- 47-301	AMD	01-07-015	220- 56-28500Y	REP-E	01-07-007
208-680B-082	NEW-P	01-07-083	220- 48-00500H	NEW-E	01-08-073	220- 56-290	REP	01-06-036
208-680B-090	AMD	01-08-055	220- 48-015	AMD-P	01-05-070	220- 56-295	REP	01-06-036
208-680B-100	NEW	01-08-055	220- 48-01500	NEW-E	01-08-011	220- 56-305	REP	01-06-036
208-680B-110	NEW	01-08-055	220- 52-04000V	NEW-E	01-04-009	220- 56-315	AMD	01-07-024
208-680B-120	NEW	01-08-055	220- 52-04000	NEW-E	01-04-030	220- 56-315	AMD-W	01-07-080
208-680C-020	AMD	01-08-055	220- 52-04000	REP-E	01-04-030	220- 56-320	AMD	01-06-036
208-680C-040	AMD	01-08-055	220- 52-04000	REP-E	01-04-076	220- 56-325	AMD	01-06-036
208-680C-045	AMD	01-08-055	220- 52-04000X	NEW-E	01-04-076	220- 56-330	AMD	01-06-036
208-680C-050	AMD	01-08-055	220- 52-04000X	REP-E	01-05-044	220- 56-33000J	REP-E	01-08-072
208-680D-010	AMD	01-08-055	220- 52-04000Y	NEW-E	01-05-044	220- 56-33000K	NEW-E	01-08-072
208-680D-020	AMD	01-08-055	220- 52-04000Y	REP-E	01-05-044	220- 56-350	AMD	01-06-036
208-680D-030	AMD	01-08-055	220- 52-04600I	REP-E	01-04-030	220- 56-35000H	REP-E	01-06-035
208-680D-040	AMD	01-08-055	220- 52-04600K	NEW-E	01-04-030	220- 56-35000I	NEW-E	01-06-035
208-680D-050	AMD	01-08-055	220- 52-04600K	REP-E	01-04-076	220- 56-36000G	NEW-E	01-04-046
208-680D-060	AMD	01-08-055	220- 52-04600	NEW-E	01-04-076	220- 56-36000G	REP-E	01-04-046
208-680D-080	AMD	01-08-055	220- 52-04600	REP-E	01-05-044	220- 56-380	AMD	01-06-036
208-680D-090	NEW	01-08-055	220- 52-04600N	NEW-E	01-05-044	220- 56-38000A	NEW-E	01-06-035
208-680D-100	NEW-W	01-08-067	220- 52-051	AMD	01-03-016	220- 56-38000A	REP-E	01-06-035
208-680E-011	AMD-W	01-08-067	220- 52-071	AMD-P	01-02-086	220- 56-38000A	REP-E	01-07-006
208-680F-010	AMD	01-08-055	220- 52-071	AMD	01-07-021	220- 56-38000B	NEW-E	01-07-006
208-680F-020	AMD	01-08-055	220- 52-073	AMD-P	01-02-086	220- 56-38000Z	REP-E	01-07-006
208-680F-040	AMD	01-08-055	220- 52-073	AMD	01-07-021	220- 69-240	AMD-P	01-02-085
208-680F-060	AMD	01-08-055	220- 52-07300B	REP-E	01-03-014	220- 69-240	AMD-P	01-02-086
208-680F-070	AMD	01-08-055	220- 52-07300C	NEW-E	01-03-014	220- 69-240	AMD	01-07-015
208-680G-010	NEW	01-08-055	220- 52-07300C	REP-E	01-03-043	220- 88C-010	NEW-S	01-02-082
208-680G-020	NEW	01-08-055	220- 52-07300D	NEW-E	01-03-043	220- 88C-010	NEW	01-07-016
208-680G-030	NEW	01-08-055	220- 52-07300D	REP-E	01-03-062	220- 88C-020	NEW-S	01-02-082
208-680G-040	NEW	01-08-055	220- 52-07300E	NEW-E	01-03-062	220- 88C-020	NEW	01-07-016
208-680G-050	NEW	01-08-055	220- 52-07300E	REP-E	01-03-093	220- 88C-030	NEW-S	01-02-082
210- 03-010	NEW-P	01-06-060	220- 52-07300F	NEW-E	01-03-093	220- 88C-030	NEW	01-07-016
210- 03-020	NEW-P	01-06-060	220- 52-07300F	REP-E	01-04-010	220- 88C-040	NEW-S	01-02-082
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210- 03-040	NEW-P	01-06-060	220- 52-07300G	REP-E	01-04-049	220- 88C-050	NEW-S	01-02-082
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246-221-100	AMD	01-05-110	246-680	PREP	01-08-091	250-44-110	AMD-P	01-06-065
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308- 63-100	AMD	01-03-141	308- 94-105	NEW-P	01-06-049	308-390-204	NEW-P	01-07-084
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308- 78-010	AMD	01-08-083	308- 94A-025	AMD-P	01-08-050	308-390-301	NEW-P	01-07-084
308- 78-020	AMD-P	01-03-083	308- 94A-030	AMD-P	01-08-050	308-390-302	NEW-P	01-07-084
308- 78-020	AMD	01-08-083	308- 96A-005	AMD-P	01-08-050	308-390-303	NEW-P	01-07-084
308- 78-030	AMD-P	01-03-083	308- 96A-010	AMD-P	01-08-050	308-390-304	NEW-P	01-07-084
308- 78-030	AMD	01-08-083	308- 96A-015	AMD-P	01-08-050	308-390-305	NEW-P	01-07-084
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308- 78-035	NEW	01-08-083	308- 96A-066	REP-P	01-04-017	308-390-307	NEW-P	01-07-084
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308- 78-040	AMD	01-08-083	308- 96A-068	REP-P	01-04-017	308-390-309	NEW-P	01-07-084
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308- 78-070	AMD-P	01-03-083	308- 96A-099	AMD-W	01-07-029	308-390-400	NEW-P	01-07-084
308- 78-070	AMD	01-08-083	308- 96A-099	AMD-P	01-08-051	308-390-401	NEW-P	01-07-084
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308- 78-080	AMD	01-08-083	308- 96A-145	AMD-P	01-05-106	308-390-501	NEW-P	01-07-084
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308-400-100	REP-P	01-07-084	314- 08-480	REP-S	01-06-062	314- 14-130	REP	01-03-085
308-400-110	REP-P	01-07-084	314- 08-490	REP-S	01-06-062	314- 14-140	REP	01-03-085
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308-410-020	REP-P	01-07-084	314- 08-530	REP-S	01-06-062	314- 14-170	REP	01-03-085
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308-410-060	REP-P	01-07-084	314- 08-560	REP-S	01-06-062	314- 16-030	REP	01-06-014
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314- 04-006	REP	01-03-086	314- 09-005	NEW	01-03-087	314- 16-070	REP	01-06-014
314- 04-007	REP	01-03-086	314- 09-010	NEW	01-03-087	314- 16-075	REP	01-06-014
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314- 08-010	REP-S	01-06-062	314- 10-020	REP	01-06-014	314- 16-120	REP	01-06-014
314- 08-020	REP-S	01-06-062	314- 11-005	NEW	01-06-014	314- 16-122	REP	01-06-014
314- 08-030	REP-S	01-06-062	314- 11-015	NEW	01-06-014	314- 16-125	REP	01-06-014
314- 08-040	REP-S	01-06-062	314- 11-020	NEW	01-06-014	314- 16-145	REP	01-06-014
314- 08-050	REP-S	01-06-062	314- 11-025	NEW	01-06-014	314- 16-160	AMD	01-06-014
314- 08-070	REP-S	01-06-062	314- 11-030	NEW	01-06-014	314- 17-005	NEW	01-03-085
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314- 08-100	REP-S	01-06-062	314- 11-045	NEW	01-06-014	314- 17-020	NEW	01-03-085
314- 08-110	REP-S	01-06-062	314- 11-050	NEW	01-06-014	314- 17-025	NEW	01-03-085
314- 08-120	REP-S	01-06-062	314- 11-055	NEW	01-06-014	314- 17-030	NEW	01-03-085
314- 08-130	REP-S	01-06-062	314- 11-060	NEW	01-06-014	314- 17-035	NEW	01-03-085
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314- 08-170	REP-S	01-06-062	314- 11-085	NEW	01-06-014	314- 17-055	NEW	01-03-085
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314- 08-190	REP-S	01-06-062	314- 11-095	NEW	01-06-014	314- 17-065	NEW	01-03-085
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314- 08-210	REP-S	01-06-062	314- 11-105	NEW	01-06-014	314- 17-075	NEW	01-03-085
314- 08-220	REP-S	01-06-062	314- 11-110	NEW	01-06-014	314- 17-080	NEW	01-03-085
314- 08-230	REP-S	01-06-062	314- 12-020	AMD	01-03-087	314- 17-085	NEW	01-03-085
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314- 08-270	REP-S	01-06-062	314- 12-130	REP	01-06-014	314- 17-105	NEW	01-03-085
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314- 08-310	REP-S	01-06-062	314- 13-010	NEW	01-06-015	314- 29-005	NEW	01-03-086
314- 08-320	REP-S	01-06-062	314- 13-015	NEW	01-06-015	314- 29-010	NEW	01-03-086
314- 08-330	REP-S	01-06-062	314- 13-020	NEW	01-06-015	314- 42-010	PREP	01-06-061
314- 08-340	REP-S	01-06-062	314- 13-025	NEW	01-06-015	314- 42-020	NEW-S	01-06-062
314- 08-350	REP-S	01-06-062	314- 13-030	NEW	01-06-015	314- 42-025	NEW-S	01-06-062
314- 08-360	REP-S	01-06-062	314- 13-040	NEW	01-06-015	314- 42-030	NEW-S	01-06-062
314- 08-370	REP-S	01-06-062	314- 14-010	REP	01-03-085	314- 42-040	NEW-S	01-06-062
314- 08-380	REP-S	01-06-062	314- 14-020	REP	01-03-085	314- 42-045	NEW-S	01-06-062
314- 08-390	REP-S	01-06-062	314- 14-030	REP	01-03-085	314- 42-050	NEW-S	01-06-062
314- 08-400	REP-S	01-06-062	314- 14-040	REP	01-03-085	314- 42-060	NEW-S	01-06-062
314- 08-410	REP-S	01-06-062	314- 14-050	REP	01-03-085	314- 42-065	NEW-S	01-06-062
314- 08-415	REP-S	01-06-062	314- 14-060	REP	01-03-085	314- 42-070	NEW-S	01-06-062
314- 08-420	REP-S	01-06-062	314- 14-070	REP	01-03-085	314- 42-075	NEW-S	01-06-062
314- 08-430	REP-S	01-06-062	314- 14-080	REP	01-03-085	314- 42-080	NEW-S	01-06-062
314- 08-440	REP-S	01-06-062	314- 14-090	REP	01-03-085	314- 42-085	NEW-S	01-06-062

TABLE

**Table of WAC Sections Affected**

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
314- 42-090	NEW-S	01-06-062	356- 15-125	AMD	01-08-005	388- 13-020	REP	01-03-089
314- 42-100	NEW-S	01-06-062	356- 15-140	AMD-C	01-02-089	388- 13-030	REP	01-03-089
314- 42-105	NEW-S	01-06-062	356- 15-140	AMD	01-07-057	388- 13-040	REP	01-03-089
314- 70-020	REP	01-06-014	356- 18-140	AMD-C	01-02-089	388- 13-050	REP	01-03-089
314- 70-040	REP	01-06-014	356- 18-140	AMD	01-07-057	388- 13-060	REP	01-03-089
314- 70-050	REP	01-06-014	356- 18-220	AMD-C	01-02-089	388- 13-070	REP	01-03-089
315- 04-085	NEW-S	01-08-037	356- 18-220	AMD	01-07-057	388- 13-085	REP	01-03-089
315- 06-040	PREP	01-04-040	356- 22-220	AMD-W	01-07-056	388- 13-090	REP	01-03-089
315- 06-040	AMD-P	01-08-038	356- 30-320	AMD-C	01-02-088	388- 13-100	REP	01-03-089
315- 34	PREP	01-07-013	356- 30-320	AMD	01-07-055	388- 13-110	REP	01-03-089
315- 36	PREP	01-07-004	356- 30-331	AMD-C	01-02-088	388- 13-120	REP	01-03-089
317- 21-010	REP	01-05-036	356- 30-331	AMD	01-07-055	388- 14-010	REP	01-03-089
317- 21-020	REP	01-05-036	356- 30-331	AMD-P	01-08-062	388- 14-020	REP	01-03-089
317- 21-030	REP	01-05-036	356- 46-150	NEW-P	01-08-062	388- 14-030	REP	01-03-089
317- 21-040	REP	01-05-036	356- 49-040	AMD-C	01-02-089	388- 14-035	REP	01-03-089
317- 21-050	REP	01-05-036	356- 49-040	AMD	01-07-057	388- 14-040	REP	01-03-089
317- 21-060	REP	01-05-036	356- 56-210	AMD	01-03-003	388- 14-045	REP	01-03-089
317- 21-070	REP	01-05-036	356- 56-220	AMD	01-03-003	388- 14-050	REP	01-03-089
317- 21-100	REP	01-05-036	363-116-300	AMD-P	01-08-081	388- 14-100	REP	01-03-089
317- 21-110	REP	01-05-036	365-195-900	AMD-P	01-03-166	388- 14-200	REP	01-03-089
317- 21-120	REP	01-05-036	365-195-900	AMD	01-08-056	388- 14-201	REP	01-03-089
317- 21-140	REP	01-05-036	365-197-010	NEW-P	01-03-165	388- 14-202	REP	01-03-089
317- 21-300	REP	01-05-036	365-197-020	NEW-P	01-03-165	388- 14-203	REP	01-03-089
317- 21-305	REP	01-05-036	365-197-030	NEW-P	01-03-165	388- 14-205	REP	01-03-089
317- 21-310	REP	01-05-036	365-197-040	NEW-P	01-03-165	388- 14-210	REP	01-03-089
317- 21-315	REP	01-05-036	365-197-050	NEW-P	01-03-165	388- 14-220	REP	01-03-089
317- 21-320	REP	01-05-036	365-197-060	NEW-P	01-03-165	388- 14-250	REP	01-03-089
317- 21-325	REP	01-05-036	365-197-070	NEW-P	01-03-165	388- 14-260	REP	01-03-089
317- 21-330	REP	01-05-036	365-197-080	NEW-P	01-03-165	388- 14-270	REP	01-03-089
317- 21-335	REP	01-05-036	388- 05-0001	NEW-P	01-08-077	388- 14-271	REP	01-03-089
317- 21-340	REP	01-05-036	388- 05-0005	NEW-P	01-08-077	388- 14-272	REP	01-03-089
317- 21-345	REP	01-05-036	388- 05-0010	NEW-P	01-08-077	388- 14-273	REP	01-03-089
317- 21-400	REP	01-05-036	388- 11-011	REP	01-03-089	388- 14-274	REP	01-03-089
317- 21-410	REP	01-05-036	388- 11-015	REP	01-03-089	388- 14-276	REP	01-03-089
317- 21-500	REP	01-05-036	388- 11-045	REP	01-03-089	388- 14-300	REP	01-03-089
317- 21-510	REP	01-05-036	388- 11-048	REP	01-03-089	388- 14-310	REP	01-03-089
317- 21-520	REP	01-05-036	388- 11-065	REP	01-03-089	388- 14-350	REP	01-03-089
317- 21-530	REP	01-05-036	388- 11-067	REP	01-03-089	388- 14-360	REP	01-03-089
317- 21-550	REP	01-05-036	388- 11-100	REP	01-03-089	388- 14-365	REP	01-03-089
317- 21-560	REP	01-05-036	388- 11-120	REP	01-03-089	388- 14-370	REP	01-03-089
317- 21-900	REP	01-05-036	388- 11-135	REP	01-03-089	388- 14-376	REP	01-03-089
317- 21-910	REP	01-05-036	388- 11-140	REP	01-03-089	388- 14-385	REP	01-03-089
332- 10-020	AMD-P	01-04-061	388- 11-143	REP	01-03-089	388- 14-386	REP	01-03-089
332- 10-020	AMD	01-07-049	388- 11-145	REP	01-03-089	388- 14-387	REP	01-03-089
332- 10-040	AMD-P	01-04-061	388- 11-150	REP	01-03-089	388- 14-388	REP	01-03-089
332- 10-040	AMD	01-07-049	388- 11-155	REP	01-03-089	388- 14-390	REP	01-03-089
356- 06-045	AMD-C	01-02-088	388- 11-170	REP	01-03-089	388- 14-395	REP	01-03-089
356- 06-045	AMD	01-07-055	388- 11-180	REP	01-03-089	388- 14-410	REP	01-03-089
356- 10-040	AMD-C	01-02-089	388- 11-205	REP	01-03-089	388- 14-415	REP	01-03-089
356- 10-040	AMD	01-07-057	388- 11-210	REP	01-03-089	388- 14-420	REP	01-03-089
356- 14-067	AMD-C	01-02-089	388- 11-215	REP	01-03-089	388- 14-421	REP	01-03-089
356- 14-067	AMD	01-07-057	388- 11-220	REP	01-03-089	388- 14-422	REP	01-03-089
356- 14-075	AMD-C	01-02-089	388- 11-280	REP	01-03-089	388- 14-423	REP	01-03-089
356- 14-075	AMD	01-07-057	388- 11-300	REP	01-03-089	388- 14-424	REP	01-03-089
356- 14-085	AMD-C	01-02-089	388- 11-305	REP	01-03-089	388- 14-427	REP	01-03-089
356- 14-085	AMD	01-07-057	388- 11-310	REP	01-03-089	388- 14-435	REP	01-03-089
356- 14-110	AMD-C	01-02-089	388- 11-310	REP	01-03-089	388- 14-435	REP	01-03-089
356- 14-110	AMD	01-07-057	388- 11-320	REP	01-03-089	388- 14-440	REP	01-03-089
356- 14-120	AMD-C	01-02-089	388- 11-325	REP	01-03-089	388- 14-450	REP	01-03-089
356- 14-120	AMD	01-07-057	388- 11-330	REP	01-03-089	388- 14-460	REP	01-03-089
356- 14-120	AMD	01-07-057	388- 11-335	REP	01-03-089	388- 14-480	REP	01-03-089
356- 15-125	AMD-E	01-04-051	388- 11-340	REP	01-03-089	388- 14-490	REP	01-03-089
356- 15-125	AMD-P	01-04-079	388- 13-010	REP	01-03-089	388- 14-495	REP	01-03-089

**TABLE**



Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-15-133	NEW-W	01-07-072	388-25-0280	NEW	01-08-047	388-27-0135	NEW	01-08-045
388-15-134	REP-W	01-07-072	388-25-0285	NEW	01-08-047	388-27-0140	NEW	01-08-045
388-15-135	NEW-W	01-07-072	388-25-0290	NEW	01-08-047	388-27-0145	NEW	01-08-045
388-15-141	NEW-W	01-07-072	388-25-0295	NEW	01-08-047	388-27-0150	NEW	01-08-045
388-15-150	REP	01-08-047	388-25-0300	NEW	01-08-047	388-27-0155	NEW	01-08-045
388-15-160	REP	01-08-047	388-25-0305	NEW	01-08-047	388-27-0160	NEW	01-08-045
388-15-220	REP	01-08-047	388-25-0310	NEW	01-08-047	388-27-0165	NEW	01-08-045
388-15-570	REP	01-08-047	388-25-0315	NEW	01-08-047	388-27-0170	NEW	01-08-045
388-25-0005	NEW	01-08-047	388-25-0320	NEW	01-08-047	388-27-0175	NEW	01-08-045
388-25-0010	NEW	01-08-047	388-25-0325	NEW	01-08-047	388-27-0180	NEW	01-08-045
388-25-0015	NEW	01-08-047	388-25-0330	NEW	01-08-047	388-27-0185	NEW	01-08-045
388-25-0020	NEW	01-08-047	388-25-0335	NEW	01-08-047	388-27-0190	NEW	01-08-045
388-25-0025	NEW	01-08-047	388-25-0340	NEW	01-08-047	388-27-0195	NEW	01-08-045
388-25-0030	NEW	01-08-047	388-25-0345	NEW	01-08-047	388-27-0200	NEW	01-08-045
388-25-0035	NEW	01-08-047	388-25-0350	NEW	01-08-047	388-27-0205	NEW	01-08-045
388-25-0040	NEW	01-08-047	388-25-0355	NEW	01-08-047	388-27-0210	NEW	01-08-045
388-25-0045	NEW	01-08-047	388-25-0360	NEW	01-08-047	388-27-0215	NEW	01-08-045
388-25-0050	NEW	01-08-047	388-25-0365	NEW	01-08-047	388-27-0220	NEW	01-08-045
388-25-0055	NEW	01-08-047	388-25-0370	NEW	01-08-047	388-27-0225	NEW	01-08-045
388-25-0060	NEW	01-08-047	388-25-0375	NEW	01-08-047	388-27-0230	NEW	01-08-045
388-25-0065	NEW	01-08-047	388-25-0380	NEW	01-08-047	388-27-0235	NEW	01-08-045
388-25-0070	NEW	01-08-047	388-25-0385	NEW	01-08-047	388-27-0240	NEW	01-08-045
388-25-0075	NEW	01-08-047	388-25-0390	NEW	01-08-047	388-27-0245	NEW	01-08-045
388-25-0080	NEW	01-08-047	388-25-0395	NEW	01-08-047	388-27-0250	NEW	01-08-045
388-25-0085	NEW	01-08-047	388-25-0400	NEW	01-08-047	388-27-0255	NEW	01-08-045
388-25-0090	NEW	01-08-047	388-25-0405	NEW	01-08-047	388-27-0260	NEW	01-08-045
388-25-0095	NEW	01-08-047	388-25-0410	NEW	01-08-047	388-27-0265	NEW	01-08-045
388-25-0100	NEW	01-08-047	388-25-0415	NEW	01-08-047	388-27-0270	NEW	01-08-045
388-25-0105	NEW	01-08-047	388-25-0420	NEW	01-08-047	388-27-0275	NEW	01-08-045
388-25-0110	NEW	01-08-047	388-25-0425	NEW	01-08-047	388-27-0280	NEW	01-08-045
388-25-0115	NEW	01-08-047	388-25-0430	NEW	01-08-047	388-27-0285	NEW	01-08-045
388-25-0120	NEW	01-08-047	388-25-0435	NEW	01-08-047	388-27-0290	NEW	01-08-045
388-25-0125	NEW	01-08-047	388-25-0440	NEW	01-08-047	388-27-0295	NEW	01-08-045
388-25-0130	NEW	01-08-047	388-25-0445	NEW	01-08-047	388-27-0300	NEW	01-08-045
388-25-0135	NEW	01-08-047	388-25-0450	NEW	01-08-047	388-27-0305	NEW	01-08-045
388-25-0140	NEW	01-08-047	388-25-0455	NEW	01-08-047	388-27-0310	NEW	01-08-045
388-25-0145	NEW	01-08-047	388-25-0460	NEW	01-08-047	388-27-0315	NEW	01-08-045
388-25-0150	NEW	01-08-047	388-27-0005	NEW	01-08-047	388-27-0320	NEW	01-08-045
388-25-0155	NEW	01-08-047	388-27-0010	NEW	01-08-047	388-27-0325	NEW	01-08-045
388-25-0160	NEW	01-08-047	388-27-0015	NEW	01-08-047	388-27-0330	NEW	01-08-045
388-25-0170	NEW	01-08-047	388-27-0020	NEW	01-08-047	388-27-0335	NEW	01-08-045
388-25-0175	NEW	01-08-047	388-27-0025	NEW	01-08-047	388-27-0340	NEW	01-08-045
388-25-0180	NEW	01-08-047	388-27-0030	NEW	01-08-047	388-27-0345	NEW	01-08-045
388-25-0185	NEW	01-08-047	388-27-0035	NEW	01-08-047	388-27-0350	NEW	01-08-045
388-25-0190	NEW	01-08-047	388-27-0040	NEW	01-08-047	388-27-0355	NEW	01-08-045
388-25-0195	NEW	01-08-047	388-27-0045	NEW	01-08-047	388-27-0360	NEW	01-08-045
388-25-0200	NEW	01-08-047	388-27-0050	NEW	01-08-047	388-27-0365	NEW	01-08-045
388-25-0205	NEW	01-08-047	388-27-0055	NEW	01-08-047	388-27-0370	NEW	01-08-045
388-25-0210	NEW	01-08-047	388-27-0060	NEW	01-08-047	388-27-0375	NEW	01-08-045
388-25-0215	NEW	01-08-047	388-27-0065	NEW	01-08-047	388-27-0380	NEW	01-08-045
388-25-0220	NEW	01-08-047	388-27-0070	NEW	01-08-047	388-27-0385	NEW	01-08-045
388-25-0225	NEW	01-08-047	388-27-0075	NEW	01-08-047	388-27-0390	NEW	01-08-045
388-25-0230	NEW	01-08-047	388-27-0080	NEW	01-08-047	388-31-010	REP-P	01-04-070
388-25-0235	NEW	01-08-047	388-27-0085	NEW	01-08-047	388-31-015	REP-P	01-04-070
388-25-0240	NEW	01-08-047	388-27-0090	NEW	01-08-047	388-31-020	REP-P	01-04-070
388-25-0245	NEW	01-08-047	388-27-0100	NEW	01-08-047	388-31-025	REP-P	01-04-070
388-25-0250	NEW	01-08-047	388-27-0105	NEW	01-08-047	388-31-030	REP-P	01-04-070
388-25-0255	NEW	01-08-047	388-27-0110	NEW	01-08-047	388-31-035	REP-P	01-04-070
388-25-0260	NEW	01-08-047	388-27-0115	NEW	01-08-047	388-32-0005	NEW	01-08-047
388-25-0265	NEW	01-08-047	388-27-0120	NEW	01-08-045	388-32-0010	NEW	01-08-047
388-25-0270	NEW	01-08-047	388-27-0125	NEW	01-08-045	388-32-0015	NEW	01-08-047
388-25-0275	NEW	01-08-047	388-27-0130	NEW	01-08-045	388-32-0020	NEW	01-08-047

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Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-86-100	REP-W	01-03-001	388-148-0070	NEW-W	01-08-064	388-148-0380	NEW-W	01-08-064
388-86-100	REP	01-06-028	388-148-0075	NEW-W	01-08-064	388-148-0385	NEW-W	01-08-064
388-87-027	REP	01-06-032	388-148-0080	NEW-W	01-08-064	388-148-0390	NEW-W	01-08-064
388-87-035	REP	01-06-029	388-148-0085	NEW-W	01-08-064	388-148-0395	NEW-W	01-08-064
388-87-036	REP	01-03-084	388-148-0090	NEW-W	01-08-064	388-148-0400	NEW-W	01-08-064
388-87-060	REP	01-06-033	388-148-0095	NEW-W	01-08-064	388-148-0405	NEW-W	01-08-064
388-96-010	AMD-P	01-06-057	388-148-0100	NEW-W	01-08-064	388-148-0410	NEW-W	01-08-064
388-96-218	AMD-P	01-06-057	388-148-0105	NEW-W	01-08-064	388-148-0415	NEW-W	01-08-064
388-96-310	AMD-P	01-06-057	388-148-0110	NEW-W	01-08-064	388-148-0420	NEW-W	01-08-064
388-96-369	AMD-P	01-06-057	388-148-0115	NEW-W	01-08-064	388-148-0425	NEW-W	01-08-064
388-96-384	AMD-P	01-06-057	388-148-0120	NEW-W	01-08-064	388-148-0430	NEW-W	01-08-064
388-96-559	AMD-P	01-06-057	388-148-0125	NEW-W	01-08-064	388-148-0435	NEW-W	01-08-064
388-96-708	AMD-P	01-06-057	388-148-0130	NEW-W	01-08-064	388-148-0440	NEW-W	01-08-064
388-96-709	AMD-P	01-06-057	388-148-0135	NEW-W	01-08-064	388-148-0445	NEW-W	01-08-064
388-96-710	AMD-P	01-06-057	388-148-0140	NEW-W	01-08-064	388-148-0450	NEW-W	01-08-064
388-96-713	AMD-P	01-06-057	388-148-0145	NEW-W	01-08-064	388-148-0455	NEW-W	01-08-064
388-96-714	AMD-P	01-06-057	388-148-0150	NEW-W	01-08-064	388-148-0460	NEW-W	01-08-064
388-96-723	AMD-P	01-06-057	388-148-0155	NEW-W	01-08-064	388-148-0465	NEW-W	01-08-064
388-96-732	NEW-P	01-06-057	388-148-0160	NEW-W	01-08-064	388-148-0470	NEW-W	01-08-064
388-96-740	AMD-P	01-06-057	388-148-0165	NEW-W	01-08-064	388-148-0475	NEW-W	01-08-064
388-96-776	AMD-P	01-06-057	388-148-0170	NEW-W	01-08-064	388-148-0480	NEW-W	01-08-064
388-96-777	AMD-P	01-06-057	388-148-0175	NEW-W	01-08-064	388-148-0485	NEW-W	01-08-064
388-96-780	AMD-P	01-06-057	388-148-0180	NEW-W	01-08-064	388-148-0490	NEW-W	01-08-064
388-96-802	NEW-P	01-06-057	388-148-0185	NEW-W	01-08-064	388-148-0495	NEW-W	01-08-064
388-96-803	NEW-P	01-06-057	388-148-0190	NEW-W	01-08-064	388-148-0500	NEW-W	01-08-064
388-96-901	AMD-P	01-06-057	388-148-0195	NEW-W	01-08-064	388-148-0505	NEW-W	01-08-064
388-146-0010	NEW-W	01-07-071	388-148-0200	NEW-W	01-08-064	388-148-0510	NEW-W	01-08-064
388-146-0020	NEW-W	01-07-071	388-148-0205	NEW-W	01-08-064	388-148-0515	NEW-W	01-08-064
388-146-0030	NEW-W	01-07-071	388-148-0210	NEW-W	01-08-064	388-148-0520	NEW-W	01-08-064
388-146-0040	NEW-W	01-07-071	388-148-0215	NEW-W	01-08-064	388-148-0525	NEW-W	01-08-064
388-146-0045	NEW-W	01-07-071	388-148-0220	NEW-W	01-08-064	388-148-0530	NEW-W	01-08-064
388-146-0050	NEW-W	01-07-071	388-148-0225	NEW-W	01-08-064	388-148-0535	NEW-W	01-08-064
388-146-0060	NEW-W	01-07-071	388-148-0230	NEW-W	01-08-064	388-148-0540	NEW-W	01-08-064
388-146-0070	NEW-W	01-07-071	388-148-0235	NEW-W	01-08-064	388-148-0545	NEW-W	01-08-064
388-146-0080	NEW-W	01-07-071	388-148-0240	NEW-W	01-08-064	388-148-0550	NEW-W	01-08-064
388-146-0090	NEW-W	01-07-071	388-148-0245	NEW-W	01-08-064	388-148-0555	NEW-W	01-08-064
388-146-0100	NEW-W	01-07-071	388-148-0250	NEW-W	01-08-064	388-148-0560	NEW-W	01-08-064
388-146-0110	NEW-W	01-07-071	388-148-0255	NEW-W	01-08-064	388-148-0565	NEW-W	01-08-064
388-146-0120	NEW-W	01-07-071	388-148-0260	NEW-W	01-08-064	388-148-0570	NEW-W	01-08-064
388-146-0130	NEW-W	01-07-071	388-148-0265	NEW-W	01-08-064	388-148-0575	NEW-W	01-08-064
388-146-0140	NEW-W	01-07-071	388-148-0270	NEW-W	01-08-064	388-148-0580	NEW-W	01-08-064
388-146-0150	NEW-W	01-07-071	388-148-0275	NEW-W	01-08-064	388-148-0585	NEW-W	01-08-064
388-146-0160	NEW-W	01-07-071	388-148-0280	NEW-W	01-08-064	388-148-0590	NEW-W	01-08-064
388-146-0170	NEW-W	01-07-071	388-148-0285	NEW-W	01-08-064	388-148-0595	NEW-W	01-08-064
388-146-0180	NEW-W	01-07-071	388-148-0290	NEW-W	01-08-064	388-148-0600	NEW-W	01-08-064
388-146-0190	NEW-W	01-07-071	388-148-0295	NEW-W	01-08-064	388-148-0605	NEW-W	01-08-064
388-146-0200	NEW-W	01-07-071	388-148-0300	NEW-W	01-08-064	388-148-0610	NEW-W	01-08-064
388-146-0210	NEW-W	01-07-071	388-148-0305	NEW-W	01-08-064	388-148-0615	NEW-W	01-08-064
388-146-0220	NEW-W	01-07-071	388-148-0310	NEW-W	01-08-064	388-148-0620	NEW-W	01-08-064
388-148-0005	NEW-W	01-08-064	388-148-0315	NEW-W	01-08-064	388-148-0625	NEW-W	01-08-064
388-148-0010	NEW-W	01-08-064	388-148-0320	NEW-W	01-08-064	388-148-0630	NEW-W	01-08-064
388-148-0015	NEW-W	01-08-064	388-148-0325	NEW-W	01-08-064	388-148-0635	NEW-W	01-08-064
388-148-0020	NEW-W	01-08-064	388-148-0330	NEW-W	01-08-064	388-148-0640	NEW-W	01-08-064
388-148-0025	NEW-W	01-08-064	388-148-0335	NEW-W	01-08-064	388-148-0645	NEW-W	01-08-064
388-148-0030	NEW-W	01-08-064	388-148-0340	NEW-W	01-08-064	388-148-0650	NEW-W	01-08-064
388-148-0035	NEW-W	01-08-064	388-148-0345	NEW-W	01-08-064	388-148-0655	NEW-W	01-08-064
388-148-0040	NEW-W	01-08-064	388-148-0350	NEW-W	01-08-064	388-148-0660	NEW-W	01-08-064
388-148-0045	NEW-W	01-08-064	388-148-0355	NEW-W	01-08-064	388-148-0665	NEW-W	01-08-064
388-148-0050	NEW-W	01-08-064	388-148-0360	NEW-W	01-08-064	388-148-0670	NEW-W	01-08-064
388-148-0055	NEW-W	01-08-064	388-148-0365	NEW-W	01-08-064	388-148-0675	NEW-W	01-08-064
388-148-0060	NEW-W	01-08-064	388-148-0370	NEW-W	01-08-064	388-148-0680	NEW-W	01-08-064
388-148-0065	NEW-W	01-08-064	388-148-0375	NEW-W	01-08-064	388-148-0685	NEW-W	01-08-064

TABLE





Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-160-0615	NEW-W	01-07-070	388-273-0035	NEW-P	01-04-070	388-472-0040	NEW-P	01-07-051
388-160-0625	NEW-W	01-07-070	388-310-0900	AMD-P	01-03-060	388-472-0050	NEW-P	01-07-051
388-160-0635	NEW-W	01-07-070	388-310-0900	AMD-E	01-03-132	388-474-0001	AMD	01-06-042
388-160-0645	NEW-W	01-07-070	388-310-1000	AMD-P	01-03-060	388-478-0015	AMD-P	01-08-044
388-160-070	REP-W	01-07-070	388-310-1000	AMD-E	01-03-132	388-478-0055	AMD-P	01-04-068
388-160-080	REP-W	01-07-070	388-310-1050	AMD-P	01-03-060	388-478-0055	AMD	01-08-015
388-160-090	REP-W	01-07-070	388-310-1050	AMD-E	01-03-132	388-478-0056	REP-P	01-04-068
388-160-100	REP-W	01-07-070	388-310-1300	AMD-E	01-05-007	388-478-0056	REP	01-08-015
388-160-110	REP-W	01-07-070	388-310-2000	NEW	01-03-042	388-478-0065	PREP	01-08-027
388-160-120	REP-W	01-07-070	388-330-010	REP-W	01-07-071	388-478-0065	AMD-E	01-08-032
388-160-130	REP-W	01-07-070	388-330-020	REP-W	01-07-071	388-478-0075	PREP	01-08-027
388-160-140	REP-W	01-07-070	388-330-030	REP-W	01-07-071	388-478-0075	AMD-E	01-08-032
388-160-150	REP-W	01-07-070	388-330-035	REP-W	01-07-071	388-478-0085	PREP	01-08-027
388-160-160	REP-W	01-07-070	388-330-040	REP-W	01-07-071	388-478-0085	AMD-E	01-08-032
388-160-170	REP-W	01-07-070	388-330-050	REP-W	01-07-071	388-484-0005	AMD	01-04-016
388-160-180	REP-W	01-07-070	388-330-060	REP-W	01-07-071	388-484-0010	NEW	01-04-016
388-160-190	REP-W	01-07-070	388-400-0005	AMD	01-03-121	388-488	PREP	01-03-024
388-160-200	REP-W	01-07-070	388-400-0015	REP	01-03-121	388-490	PREP	01-06-027
388-160-210	REP-W	01-07-070	388-400-0020	REP-P	01-03-120	388-502-0010	AMD	01-07-076
388-160-220	REP-W	01-07-070	388-400-0020	REP	01-07-001	388-502-0020	AMD	01-07-076
388-160-230	REP-W	01-07-070	388-400-0030	AMD-P	01-03-040	388-502-0160	AMD	01-05-100
388-160-240	REP-W	01-07-070	388-400-0030	AMD-E	01-03-041	388-505-0210	AMD-P	01-07-012
388-160-250	REP-W	01-07-070	388-400-0030	AMD	01-06-031	388-505-0220	AMD-P	01-07-012
388-160-260	REP-W	01-07-070	388-404-0005	AMD	01-03-121	388-505-0595	REP	01-06-043
388-160-270	REP-W	01-07-070	388-406	PREP	01-06-027	388-512-1210	REP-W	01-06-046
388-160-280	REP-W	01-07-070	388-408-0005	AMD	01-03-121	388-512-1215	REP	01-06-042
388-160-290	REP-W	01-07-070	388-408-0010	AMD	01-03-121	388-512-1220	REP	01-06-042
388-160-300	REP-W	01-07-070	388-408-0015	AMD	01-03-121	388-512-1225	REP	01-06-042
388-160-310	REP-W	01-07-070	388-408-0020	AMD	01-03-121	388-512-1230	REP	01-06-042
388-160-320	REP-W	01-07-070	388-408-0025	AMD	01-03-121	388-512-1235	REP	01-06-042
388-160-340	REP-W	01-07-070	388-408-0030	AMD	01-03-121	388-512-1240	REP	01-06-042
388-160-350	REP-W	01-07-070	388-414	PREP	01-06-027	388-512-1245	REP	01-06-042
388-160-360	REP-W	01-07-070	388-414-0001	AMD-P	01-04-074	388-512-1250	REP	01-06-042
388-160-370	REP-W	01-07-070	388-414-0001	AMD	01-07-054	388-512-1255	REP	01-06-042
388-160-380	REP-W	01-07-070	388-416	PREP	01-06-027	388-512-1260	REP	01-06-042
388-160-390	REP-W	01-07-070	388-416-0005	AMD-P	01-08-058	388-512-1265	REP	01-06-042
388-160-400	REP-W	01-07-070	388-418	PREP	01-06-027	388-512-1275	REP	01-06-042
388-160-410	REP-W	01-07-070	388-418-0005	AMD-S	01-08-059	388-517-0400	NEW	01-06-033
388-160-420	REP-W	01-07-070	388-418-0007	NEW-S	01-08-059	388-535	PREP	01-07-018
388-160-430	REP-W	01-07-070	388-432-0005	NEW	01-03-066	388-535-1230	AMD-P	01-03-154
388-160-440	REP-W	01-07-070	388-434	PREP	01-06-027	388-535-1230	AMD	01-07-077
388-160-460	REP-W	01-07-070	388-438	PREP	01-07-018	388-538	PREP	01-07-008
388-160-470	REP-W	01-07-070	388-438-0110	AMD	01-05-041	388-543-1150	PREP	01-05-027
388-160-480	REP-W	01-07-070	388-444-0075	AMD	01-05-006	388-543-2800	PREP	01-05-027
388-160-490	REP-W	01-07-070	388-448	PREP	01-04-069	388-544	PREP	01-07-018
388-160-500	REP-W	01-07-070	388-450	PREP	01-06-027	388-546-0001	NEW	01-03-084
388-160-510	REP-W	01-07-070	388-450-0125	REP-P	01-08-044	388-546-0100	NEW	01-03-084
388-160-520	REP-W	01-07-070	388-450-0190	AMD-P	01-03-038	388-546-0150	NEW	01-03-084
388-160-530	REP-W	01-07-070	388-450-0190	AMD-E	01-03-039	388-546-0200	NEW	01-03-084
388-160-540	REP-W	01-07-070	388-450-0190	AMD	01-06-030	388-546-0250	NEW	01-03-084
388-160-550	REP-W	01-07-070	388-452	PREP	01-06-027	388-546-0300	NEW	01-03-084
388-160-560	REP-W	01-07-070	388-454	PREP	01-08-029	388-546-0400	NEW	01-03-084
388-200-1050	REP-P	01-07-051	388-454-0005	AMD	01-03-121	388-546-0450	NEW	01-03-084
388-200-1300	REP-P	01-07-051	388-454-0006	NEW-E	01-06-025	388-546-0500	NEW	01-03-084
388-200-1350	REP-P	01-07-051	388-454-0010	AMD	01-03-121	388-546-0600	NEW	01-03-084
388-222-001	REP	01-03-066	388-468-0005	PREP	01-08-028	388-546-0700	NEW	01-03-084
388-222-010	REP	01-03-066	388-470	PREP	01-06-027	388-546-0800	NEW	01-03-084
388-222-020	REP	01-03-066	388-472-0005	PREP	01-03-119	388-546-1000	NEW	01-03-084
388-273-0010	NEW-P	01-04-070	388-472-0005	AMD-P	01-07-051	388-546-5000	NEW	01-06-029
388-273-0020	NEW-P	01-04-070	388-472-0010	NEW-P	01-07-051	388-546-5100	NEW	01-06-029
388-273-0025	NEW-P	01-04-070	388-472-0020	NEW-P	01-07-051	388-546-5200	NEW	01-06-029
388-273-0030	NEW-P	01-04-070	388-472-0030	NEW-P	01-07-051	388-546-5300	NEW	01-06-029



Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-865-0307	NEW-P	01-07-116	388-865-0610	NEW-P	01-07-116	415-110-467	AMD	01-08-057
388-865-0310	NEW-P	01-07-116	388-865-0620	NEW-P	01-07-116	415-111-220	PREP	01-07-078
388-865-0315	NEW-P	01-07-116	388-865-0630	NEW-P	01-07-116	415-111-220	AMD-E	01-08-026
388-865-0320	NEW-P	01-07-116	388-865-0640	NEW-P	01-07-116	415-112	PREP	01-05-075
388-865-0325	NEW-P	01-07-116	390-16-011	PREP	01-03-164	415-112-727	AMD-P	01-07-079
388-865-0330	NEW-P	01-07-116	390-16-011	AMD-P	01-07-105	415-210	PREP	01-05-075
388-865-0335	NEW-P	01-07-116	390-16-012	PREP	01-03-163	415-610	PREP	01-04-028
388-865-0340	NEW-P	01-07-116	390-16-012	AMD-P	01-07-110	415-620	PREP	01-04-028
388-865-0345	NEW-P	01-07-116	390-16-041	PREP	01-07-111	415-630	PREP	01-04-028
388-865-0350	NEW-P	01-07-116	390-16-105	PREP	01-03-161	415-630-025	NEW-P	01-08-076
388-865-0355	NEW-P	01-07-116	390-16-105	AMD-P	01-07-106	415-630-030	PREP	01-04-028
388-865-0360	NEW-P	01-07-116	390-16-111	PREP	01-03-159	415-630-030	AMD-E	01-04-029
388-865-0363	NEW-P	01-07-116	390-16-111	AMD-P	01-07-107	415-630-030	AMD-P	01-08-076
388-865-0365	NEW-P	01-07-116	390-16-115	PREP	01-07-113	415-640	PREP	01-04-028
388-865-0400	NEW-P	01-07-116	390-16-120	PREP	01-07-104	415-650	PREP	01-04-028
388-865-0405	NEW-P	01-07-116	390-16-125	PREP	01-07-114	415-660	PREP	01-04-028
388-865-0410	NEW-P	01-07-116	390-16-150	PREP	01-03-162	415-670	PREP	01-04-028
388-865-0415	NEW-P	01-07-116	390-16-150	REP-P	01-07-108	415-680	PREP	01-04-028
388-865-0420	NEW-P	01-07-116	390-16-155	PREP	01-07-112	415-690	PREP	01-04-028
388-865-0425	NEW-P	01-07-116	390-16-190	PREP	01-07-115	415-695	PREP	01-04-028
388-865-0430	NEW-P	01-07-116	390-16-309	PREP	01-03-081	417-01-105	AMD-E	01-05-101
388-865-0435	NEW-P	01-07-116	390-16-311	PREP	01-03-082	417-01-105	PREP	01-05-102
388-865-0436	NEW-P	01-07-116	390-24-200	PREP	01-03-160	417-01-110	PREP	01-05-102
388-865-0440	NEW-P	01-07-116	390-24-200	AMD-P	01-07-109	417-01-115	PREP	01-05-102
388-865-0445	NEW-P	01-07-116	391-25	PREP	01-04-073	417-01-125	AMD-E	01-05-101
388-865-0450	NEW-P	01-07-116	391-35	PREP	01-04-073	417-01-125	PREP	01-05-102
388-865-0452	NEW-P	01-07-116	392-121-210	AMD	01-08-048	417-01-127	NEW-E	01-05-101
388-865-0454	NEW-P	01-07-116	392-122-322	PREP	01-03-099	417-01-130	PREP	01-05-102
388-865-0456	NEW-P	01-07-116	392-122-900	PREP	01-03-099	417-01-135	PREP	01-05-102
388-865-0458	NEW-P	01-07-116	392-125-080	AMD-E	01-03-098	417-01-150	AMD-E	01-05-101
388-865-0460	NEW-P	01-07-116	392-125-080	AMD-P	01-06-063	417-01-150	PREP	01-05-102
388-865-0462	NEW-P	01-07-116	392-136-020	AMD-P	01-06-064	417-01-155	PREP	01-05-102
388-865-0464	NEW-P	01-07-116	392-140-600	AMD	01-04-023	417-06	PREP	01-05-102
388-865-0466	NEW-P	01-07-116	392-140-605	AMD	01-04-023	420-04-010	NEW	01-04-052
388-865-0468	NEW-P	01-07-116	392-140-609	AMD	01-04-023	420-04-015	NEW	01-04-052
388-865-0470	NEW-P	01-07-116	392-140-613	AMD	01-04-023	420-04-020	NEW	01-04-052
388-865-0472	NEW-P	01-07-116	392-140-616	AMD	01-04-023	420-04-030	NEW	01-04-052
388-865-0474	NEW-P	01-07-116	392-140-625	AMD	01-04-023	420-04-040	NEW	01-04-052
388-865-0476	NEW-P	01-07-116	392-140-626	AMD	01-04-023	420-04-050	NEW	01-04-052
388-865-0478	NEW-P	01-07-116	392-140-660	AMD	01-04-023	420-04-060	NEW	01-04-052
388-865-0480	NEW-P	01-07-116	392-140-675	AMD	01-04-023	420-04-070	NEW	01-04-052
388-865-0482	NEW-P	01-07-116	392-140-903	AMD	01-08-048	420-04-080	NEW	01-04-052
388-865-0484	NEW-P	01-07-116	392-140-956	AMD	01-08-048	420-04-085	NEW	01-04-052
388-865-0500	NEW-P	01-07-116	392-141-200	PREP	01-03-099	420-04-100	NEW	01-04-052
388-865-0501	NEW-P	01-07-116	392-151-090	AMD-P	01-03-097	420-12-010	NEW	01-04-052
388-865-0502	NEW-P	01-07-116	392-151-095	AMD-P	01-03-097	420-12-020	NEW	01-04-052
388-865-0504	NEW-E	01-06-040	399-10-010	AMD-P	01-03-143	420-12-030	NEW	01-04-052
388-865-0505	NEW-P	01-07-116	399-30-030	AMD-P	01-03-143	420-12-040	NEW	01-04-052
388-865-0510	NEW-P	01-07-116	399-30-040	AMD-P	01-03-143	420-12-050	NEW	01-04-052
388-865-0515	NEW-P	01-07-116	399-30-042	AMD-P	01-03-143	420-12-060	NEW	01-04-052
388-865-0525	NEW-P	01-07-116	399-50-040	AMD-P	01-03-143	420-12-070	NEW	01-04-052
388-865-0530	NEW-P	01-07-116	415-02-030	PREP	01-05-074	420-12-075	NEW	01-04-052
388-865-0535	NEW-P	01-07-116	415-02-060	AMD-P	01-05-096	420-12-080	NEW	01-04-052
388-865-0540	NEW-P	01-07-116	415-02-060	AMD	01-08-043	420-12-085	NEW	01-04-052
388-865-0545	NEW-P	01-07-116	415-100-055	PREP	01-05-094	420-12-090	NEW	01-04-052
388-865-0546	NEW-P	01-07-116	415-103	PREP	01-06-048	434-260-220	AMD-P	01-06-023
388-865-0550	NEW-P	01-07-116	415-104-215	AMD-P	01-07-079	434-260-225	AMD-P	01-06-023
388-865-0555	NEW-P	01-07-116	415-108-326	AMD-P	01-07-079	434-260-300	AMD-P	01-06-023
388-865-0557	NEW-P	01-07-116	415-108-467	AMD-P	01-05-077	434-260-305	AMD-P	01-06-023
388-865-0560	NEW-P	01-07-116	415-108-467	AMD	01-08-057	434-260-307	NEW-P	01-06-023
388-865-0565	NEW-P	01-07-116	415-110-326	AMD-P	01-07-079	434-260-309	NEW-P	01-06-023
388-865-0600	NEW-P	01-07-116	415-110-467	AMD-P	01-05-077	448-13	PREP	01-08-049

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Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
458-12-015	REP-XR	01-07-094	480-62-070	REP	01-04-026	480-70-091	NEW	01-08-012
458-12-020	REP-XR	01-07-094	480-62-080	REP	01-04-026	480-70-096	NEW	01-08-012
458-12-085	REP-XR	01-07-094	480-62-085	REP	01-04-026	480-70-100	REP	01-08-012
458-20-169	AMD-P	01-03-091	480-62-090	REP	01-04-026	480-70-101	NEW	01-08-012
458-20-178	PREP	01-07-093	480-62-100	REP	01-04-026	480-70-106	NEW	01-08-012
458-20-17801	PREP	01-07-093	480-62-120	REP	01-04-026	480-70-110	REP	01-08-012
458-20-228	AMD	01-05-022	480-62-125	NEW	01-04-026	480-70-111	NEW	01-08-012
458-20-22802	AMD-P	01-03-105	480-62-130	NEW	01-04-026	480-70-116	NEW	01-08-012
458-20-22802	AMD	01-07-017	480-62-135	NEW	01-04-026	480-70-120	REP	01-08-012
458-20-240	PREP	01-08-060	480-62-140	NEW	01-04-026	480-70-121	NEW	01-08-012
458-20-24001	AMD-P	01-08-034	480-62-145	NEW	01-04-026	480-70-126	NEW	01-08-012
458-20-24001A	NEW-P	01-08-034	480-62-150	NEW	01-04-026	480-70-130	REP	01-08-012
458-20-247	AMD-P	01-04-048	480-62-155	NEW	01-04-026	480-70-131	NEW	01-08-012
458-20-247	AMD	01-08-003	480-62-160	NEW	01-04-026	480-70-136	NEW	01-08-012
458-40-660	PREP	01-06-034	480-62-165	NEW	01-04-026	480-70-140	REP	01-08-012
468-300-010	AMD-P	01-04-078	480-62-170	NEW	01-04-026	480-70-141	NEW	01-08-012
468-300-020	AMD-P	01-04-078	480-62-200	NEW	01-04-026	480-70-146	NEW	01-08-012
468-300-040	AMD-P	01-04-078	480-62-205	NEW	01-04-026	480-70-150	REP	01-08-012
468-300-220	AMD-P	01-04-078	480-62-210	NEW	01-04-026	480-70-151	NEW	01-08-012
478-116-010	AMD-P	01-08-074	480-62-215	NEW	01-04-026	480-70-155	REP	01-08-012
478-116-040	REP-P	01-08-074	480-62-220	NEW	01-04-026	480-70-156	NEW	01-08-012
478-116-046	REP-P	01-08-074	480-62-225	NEW	01-04-026	480-70-160	REP	01-08-012
478-116-051	AMD-P	01-08-074	480-62-230	NEW	01-04-026	480-70-161	NEW	01-08-012
478-116-101	AMD-P	01-08-074	480-62-235	NEW	01-04-026	480-70-166	NEW	01-08-012
478-116-111	AMD-P	01-08-074	480-62-240	NEW	01-04-026	480-70-170	REP	01-08-012
478-116-114	AMD-P	01-08-074	480-62-245	NEW	01-04-026	480-70-171	NEW	01-08-012
478-116-121	AMD-P	01-08-074	480-62-250	NEW	01-04-026	480-70-176	NEW	01-08-012
478-116-145	AMD-P	01-08-074	480-62-300	NEW	01-04-026	480-70-180	REP	01-08-012
478-116-151	AMD-P	01-08-074	480-62-305	NEW	01-04-026	480-70-181	NEW	01-08-012
478-116-163	AMD-P	01-08-074	480-62-310	NEW	01-04-026	480-70-186	NEW	01-08-012
478-116-201	AMD-P	01-08-074	480-62-315	NEW	01-04-026	480-70-190	REP	01-08-012
478-116-211	AMD-P	01-08-074	480-62-320	NEW	01-04-026	480-70-191	NEW	01-08-012
478-116-245	AMD-P	01-08-074	480-62-325	NEW	01-04-026	480-70-196	NEW	01-08-012
478-116-255	AMD-P	01-08-074	480-62-999	NEW	01-04-026	480-70-200	REP	01-08-012
478-116-291	AMD-P	01-08-074	480-70-001	NEW	01-08-012	480-70-201	NEW	01-08-012
478-116-301	AMD-P	01-08-074	480-70-006	NEW	01-08-012	480-70-206	NEW	01-08-012
478-116-311	AMD-P	01-08-074	480-70-010	REP	01-08-012	480-70-210	REP	01-08-012
478-116-411	AMD-P	01-08-074	480-70-011	NEW	01-08-012	480-70-211	NEW	01-08-012
478-116-605	AMD-P	01-08-074	480-70-016	NEW	01-08-012	480-70-216	NEW	01-08-012
478-136-030	AMD-P	01-06-009	480-70-020	REP	01-08-012	480-70-220	REP	01-08-012
478-156-014	REP-XR	01-07-064	480-70-021	NEW	01-08-012	480-70-221	NEW	01-08-012
478-250-050	AMD-P	01-07-014	480-70-026	NEW	01-08-012	480-70-226	NEW	01-08-012
478-250-070	AMD-P	01-07-014	480-70-030	REP	01-08-012	480-70-230	REP	01-08-012
478-276-020	AMD-P	01-07-014	480-70-031	NEW	01-08-012	480-70-231	NEW	01-08-012
478-276-060	AMD-P	01-07-014	480-70-036	NEW	01-08-012	480-70-236	NEW	01-08-012
478-276-070	AMD-P	01-07-014	480-70-040	REP	01-08-012	480-70-240	REP	01-08-012
478-276-080	AMD-P	01-07-014	480-70-041	NEW	01-08-012	480-70-241	NEW	01-08-012
478-276-100	AMD-P	01-07-014	480-70-046	NEW	01-08-012	480-70-245	REP	01-08-012
478-276-120	AMD-P	01-07-014	480-70-050	REP	01-08-012	480-70-246	NEW	01-08-012
478-276-140	AMD-P	01-07-014	480-70-051	NEW	01-08-012	480-70-250	REP	01-08-012
478-355-010	AMD-P	01-03-122	480-70-055	REP	01-08-012	480-70-251	NEW	01-08-012
478-355-010	AMD	01-08-007	480-70-056	NEW	01-08-012	480-70-256	NEW	01-08-012
478-355-030	AMD-P	01-03-122	480-70-060	REP	01-08-012	480-70-260	REP	01-08-012
478-355-030	AMD	01-08-007	480-70-061	NEW	01-08-012	480-70-261	NEW	01-08-012
478-355-040	AMD-P	01-03-122	480-70-066	NEW	01-08-012	480-70-262	NEW	01-08-012
478-355-040	AMD	01-08-007	480-70-070	REP	01-08-012	480-70-266	NEW	01-08-012
480-62-010	REP	01-04-026	480-70-071	NEW	01-08-012	480-70-270	REP	01-08-012
480-62-020	REP	01-04-026	480-70-076	NEW	01-08-012	480-70-271	NEW	01-08-012
480-62-030	REP	01-04-026	480-70-080	REP	01-08-012	480-70-276	NEW	01-08-012
480-62-040	REP	01-04-026	480-70-081	NEW	01-08-012	480-70-280	REP	01-08-012
480-62-050	REP	01-04-026	480-70-086	NEW	01-08-012	480-70-281	NEW	01-08-012
480-62-060	REP	01-04-026	480-70-090	REP	01-08-012	480-70-286	NEW	01-08-012

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
480-70-290	REP	01-08-012	480-70-540	REP	01-08-012	480-90-126	REP-P	01-02-084
480-70-291	NEW	01-08-012	480-70-550	REP	01-08-012	480-90-128	NEW-P	01-02-084
480-70-296	NEW	01-08-012	480-70-560	REP	01-08-012	480-90-131	REP-P	01-02-084
480-70-300	REP	01-08-012	480-70-570	REP	01-08-012	480-90-133	NEW-P	01-02-084
480-70-301	NEW	01-08-012	480-70-700	REP	01-08-012	480-90-136	REP-P	01-02-084
480-70-306	NEW	01-08-012	480-70-710	REP	01-08-012	480-90-138	NEW-P	01-02-084
480-70-310	REP	01-08-012	480-70-720	REP	01-08-012	480-90-141	REP-P	01-02-084
480-70-311	NEW	01-08-012	480-70-730	REP	01-08-012	480-90-143	NEW-P	01-02-084
480-70-316	NEW	01-08-012	480-70-740	REP	01-08-012	480-90-146	REP-P	01-02-084
480-70-320	REP	01-08-012	480-70-750	REP	01-08-012	480-90-148	NEW-P	01-02-084
480-70-321	NEW	01-08-012	480-70-760	REP	01-08-012	480-90-151	REP-P	01-02-084
480-70-325	REP	01-08-012	480-70-770	REP	01-08-012	480-90-153	NEW-P	01-02-084
480-70-326	NEW	01-08-012	480-70-780	REP	01-08-012	480-90-156	REP-P	01-02-084
480-70-330	REP	01-08-012	480-70-790	REP	01-08-012	480-90-158	NEW-P	01-02-084
480-70-331	NEW	01-08-012	480-70-999	NEW	01-08-012	480-90-161	REP-P	01-02-084
480-70-335	REP	01-08-012	480-80-010	AMD-P	01-02-102	480-90-163	NEW-P	01-02-084
480-70-336	NEW	01-08-012	480-80-035	NEW-P	01-02-102	480-90-166	REP-P	01-02-084
480-70-339	NEW	01-08-012	480-80-047	REP-P	01-02-102	480-90-168	NEW-P	01-02-084
480-70-340	REP	01-08-012	480-80-048	REP-P	01-02-102	480-90-171	REP-P	01-02-084
480-70-341	NEW	01-08-012	480-80-049	REP-P	01-02-102	480-90-173	NEW-P	01-02-084
480-70-346	NEW	01-08-012	480-80-120	REP-P	01-02-102	480-90-176	REP-P	01-02-084
480-70-350	REP	01-08-012	480-80-325	NEW-P	01-02-102	480-90-178	NEW-P	01-02-084
480-70-351	NEW	01-08-012	480-80-326	NEW-P	01-02-102	480-90-181	REP-P	01-02-084
480-70-360	REP	01-08-012	480-80-390	REP-P	01-02-102	480-90-183	NEW-P	01-02-084
480-70-361	NEW	01-08-012	480-90-001	NEW-P	01-02-084	480-90-188	NEW-P	01-02-084
480-70-366	NEW	01-08-012	480-90-003	NEW-P	01-02-084	480-90-191	REP-P	01-02-084
480-70-370	REP	01-08-012	480-90-008	NEW-P	01-02-084	480-90-193	NEW-P	01-02-102
480-70-371	NEW	01-08-012	480-90-011	REP-P	01-02-084	480-90-203	NEW-P	01-02-084
480-70-376	NEW	01-08-012	480-90-013	NEW-P	01-02-084	480-90-208	NEW-P	01-02-084
480-70-380	REP	01-08-012	480-90-016	REP-P	01-02-084	480-90-211	REP-P	01-02-084
480-70-381	NEW	01-08-012	480-90-018	NEW-P	01-02-084	480-90-213	NEW-P	01-02-084
480-70-386	NEW	01-08-012	480-90-021	REP-P	01-02-084	480-90-218	NEW-P	01-02-084
480-70-390	REP	01-08-012	480-90-023	NEW-P	01-02-084	480-90-223	NEW-P	01-02-084
480-70-391	NEW	01-08-012	480-90-026	REP-P	01-02-084	480-90-228	NEW-P	01-02-084
480-70-396	NEW	01-08-012	480-90-028	NEW-P	01-02-084	480-90-233	NEW-P	01-02-084
480-70-400	REP	01-08-012	480-90-031	REP-P	01-02-084	480-90-238	NEW-P	01-02-084
480-70-401	NEW	01-08-012	480-90-032	REP-P	01-02-084	480-90-303	NEW-P	01-02-084
480-70-405	REP	01-08-012	480-90-033	NEW-P	01-02-084	480-90-308	NEW-P	01-02-084
480-70-406	NEW	01-08-012	480-90-036	REP-P	01-02-084	480-90-313	NEW-P	01-02-084
480-70-410	REP	01-08-012	480-90-041	REP-P	01-02-084	480-90-323	NEW-P	01-02-084
480-70-411	NEW	01-08-012	480-90-043	REP-P	01-02-084	480-90-328	NEW-P	01-02-084
480-70-416	NEW	01-08-012	480-90-046	REP-P	01-02-084	480-90-333	NEW-P	01-02-084
480-70-420	REP	01-08-012	480-90-051	REP-P	01-02-084	480-90-338	NEW-P	01-02-084
480-70-421	NEW	01-08-012	480-90-056	REP-P	01-02-084	480-90-343	NEW-P	01-02-084
480-70-426	NEW	01-08-012	480-90-061	REP-P	01-02-102	480-90-348	NEW-P	01-02-084
480-70-430	REP	01-08-012	480-90-066	REP-P	01-02-084	480-90-353	NEW-P	01-02-084
480-70-431	NEW	01-08-012	480-90-071	REP-P	01-02-084	480-90-999	NEW-P	01-02-084
480-70-436	NEW	01-08-012	480-90-072	REP-P	01-02-084	480-100-001	NEW-P	01-02-083
480-70-440	REP	01-08-012	480-90-076	REP-P	01-02-084	480-100-003	NEW-P	01-02-083
480-70-441	NEW	01-08-012	480-90-081	REP-P	01-02-084	480-100-008	NEW-P	01-02-083
480-70-446	NEW	01-08-012	480-90-086	REP-P	01-02-084	480-100-011	REP-P	01-02-083
480-70-451	NEW	01-08-012	480-90-091	REP-P	01-02-084	480-100-013	NEW-P	01-02-083
480-70-456	NEW	01-08-012	480-90-096	REP-P	01-02-084	480-100-016	REP-P	01-02-083
480-70-461	NEW	01-08-012	480-90-101	REP-P	01-02-084	480-100-018	NEW-P	01-02-083
480-70-466	NEW	01-08-012	480-90-103	NEW-P	01-02-084	480-100-021	REP-P	01-02-083
480-70-471	NEW	01-08-012	480-90-106	REP-P	01-02-084	480-100-023	NEW-P	01-02-083
480-70-476	NEW	01-08-012	480-90-108	NEW-P	01-02-084	480-100-026	REP-P	01-02-083
480-70-481	NEW	01-08-012	480-90-113	NEW-P	01-02-084	480-100-028	NEW-P	01-02-083
480-70-486	NEW	01-08-012	480-90-116	REP-P	01-02-084	480-100-031	REP-P	01-02-083
480-70-500	REP	01-08-012	480-90-118	NEW-P	01-02-084	480-100-032	REP-P	01-02-083
480-70-510	REP	01-08-012	480-90-121	REP-P	01-02-084	480-100-033	NEW-P	01-02-083
480-70-530	REP	01-08-012	480-90-123	NEW-P	01-02-084	480-100-036	REP-P	01-02-083

**Table of WAC Sections Affected**

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
480-100-041	REP-P	01-02-083	480-100-311	REP-P	01-02-083	516- 24-001	AMD-P	01-05-086
480-100-043	REP-P	01-02-083	480-100-313	NEW-P	01-02-083	516- 24-050	REP-P	01-05-086
480-100-046	REP-P	01-02-083	480-100-318	NEW-P	01-02-083	516- 24-060	REP-P	01-05-086
480-100-051	REP-P	01-02-083	480-100-328	NEW-P	01-02-083	516- 24-110	AMD-P	01-05-086
480-100-056	REP-P	01-02-083	480-100-333	NEW-P	01-02-083	516- 24-115	REP-P	01-05-086
480-100-061	REP-P	01-02-102	480-100-338	NEW-P	01-02-083	516- 24-130	AMD-P	01-05-086
480-100-066	REP-P	01-02-083	480-100-343	NEW-P	01-02-083	516- 25-001	NEW-P	01-05-086
480-100-071	REP-P	01-02-083	480-100-353	NEW-P	01-02-083	516- 60-001	REP-W	01-08-031
480-100-072	REP-P	01-02-083	480-100-358	NEW-P	01-02-083	516- 60-002	REP-W	01-08-031
480-100-076	REP-P	01-02-083	480-100-363	NEW-P	01-02-083			
480-100-081	REP-P	01-02-083	480-100-368	NEW-P	01-02-083			
480-100-086	REP-P	01-02-083	480-100-373	NEW-P	01-02-083			
480-100-091	REP-P	01-02-083	480-100-378	NEW-P	01-02-083			
480-100-096	REP-P	01-02-083	480-100-383	NEW-P	01-02-083			
480-100-101	REP-P	01-02-083	480-100-388	NEW-P	01-04-081			
480-100-103	NEW-P	01-02-083	480-100-388	NEW	01-08-009			
480-100-108	NEW-P	01-02-083	480-100-393	NEW-P	01-04-081			
480-100-111	REP-P	01-02-083	480-100-393	NEW	01-08-009			
480-100-113	NEW-P	01-02-083	480-100-398	NEW-P	01-04-081			
480-100-116	REP-P	01-02-083	480-100-398	NEW	01-08-009			
480-100-118	NEW-P	01-02-083	480-100-999	NEW-P	01-02-083			
480-100-121	REP-P	01-02-083	480-120-011	AMD-P	01-03-100			
480-100-123	NEW-P	01-02-083	480-120-015	NEW-P	01-03-100			
480-100-126	REP-P	01-02-083	480-120-016	AMD-P	01-03-100			
480-100-128	NEW-P	01-02-083	480-120-022	REP-P	01-02-102			
480-100-131	REP-P	01-02-083	480-120-023	REP-P	01-02-102			
480-100-133	NEW-P	01-02-083	480-120-024	REP-P	01-02-102			
480-100-136	REP-P	01-02-083	480-120-025	REP-P	01-02-102			
480-100-138	NEW-P	01-02-083	480-120-026	AMD-P	01-03-100			
480-100-141	REP-P	01-02-083	480-120-027	REP-P	01-02-102			
480-100-143	NEW-P	01-02-083	480-120-028	NEW-P	01-03-100			
480-100-146	REP-P	01-02-083	480-120-029	NEW-P	01-03-100			
480-100-148	NEW-P	01-02-083	480-120-032	AMD-P	01-03-100			
480-100-151	REP-P	01-02-083	480-120-033	AMD-P	01-03-100			
480-100-153	NEW-P	01-02-083	480-120-036	REP-P	01-03-100			
480-100-156	REP-P	01-02-083	480-120-043	NEW-P	01-02-102			
480-100-161	REP-P	01-02-083	480-120-049	NEW-P	01-03-100			
480-100-163	NEW-P	01-02-083	480-120-066	REP-P	01-02-102			
480-100-166	REP-P	01-02-083	480-120-076	REP-P	01-03-100			
480-100-168	NEW-P	01-02-083	480-120-091	REP-P	01-03-100			
480-100-171	REP-P	01-02-083	480-120-096	REP-P	01-03-100			
480-100-173	NEW-P	01-02-083	480-120-136	AMD-P	01-03-100			
480-100-176	REP-P	01-02-083	480-120-530	AMD-P	01-03-100			
480-100-178	NEW-P	01-02-083	480-120-531	NEW-P	01-03-100			
480-100-181	REP-P	01-02-083	480-120-541	NEW-P	01-02-102			
480-100-183	NEW-P	01-02-083	480-120-542	NEW-P	01-02-102			
480-100-186	REP-P	01-02-083	480-120-543	NEW-P	01-02-102			
480-100-188	NEW-P	01-02-083	480-120-544	NEW-P	01-02-102			
480-100-191	REP-P	01-02-083	480-120-545	NEW-P	01-03-100			
480-100-193	NEW-P	01-02-102	480-121-061	NEW-P	01-02-102			
480-100-201	REP-P	01-02-083	480-121-062	NEW-P	01-02-102			
480-100-203	NEW-P	01-02-083	480-121-063	NEW-P	01-02-102			
480-100-206	REP-P	01-02-083	480-121-064	NEW-P	01-02-102			
480-100-208	NEW-P	01-02-083	504- 15-650	AMD-P	01-08-085			
480-100-211	REP-P	01-02-083	504- 50-010	NEW-P	01-08-084			
480-100-213	NEW-P	01-02-083	504- 50-020	NEW-P	01-08-084			
480-100-218	NEW-P	01-02-083	504- 50-030	NEW-P	01-08-084			
480-100-223	NEW-P	01-02-083	504- 50-040	NEW-P	01-08-084			
480-100-228	NEW-P	01-02-083	504- 50-050	NEW-P	01-08-084			
480-100-233	NEW-P	01-02-083	504- 50-060	NEW-P	01-08-084			
480-100-251	REP-P	01-02-083	504- 50-070	NEW-P	01-08-084			
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