

DECEMBER 6, 1989

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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 (206) 753-7470 (SCAN 234-7470).

## REPLICATION OF OFFICIAL DOCUMENTS

All documents appearing in the Washington State Register are prepared and printed at public expense. There are no restrictions on the republication of official documents appearing in the Washington State Register. All news services are especially encouraged to give wide publicity to all documents printed in the Washington State Register.

## 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

The maximum allowable interest rate applicable for the month of December 1989 pursuant to RCW 19.52.020 is twelve point zero percent (12.0%).

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.

The maximum allowable retail installment contract service charge applicable for calendar year 1989 pursuant to RCW 63.14.130(1)(a) is thirteen and one-half percent (13.50%).

The maximum allowable retail installment contract service charge for the purchase of a motor vehicle pursuant to RCW 63.14.130(2)(a) is fourteen point two five percent (14.25%) for the fourth calendar quarter of 1989.

The maximum allowable retail installment contract service charge for the purchase of a vessel pursuant to RCW 63.14.130(3)(a) is fourteen point two five percent (14.25%) for the fourth calendar quarter of 1989.

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# WASHINGTON STATE REGISTER

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# STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

## 1. ARRANGEMENT OF THE REGISTER

Documents are arranged within each issue of the Register according to the order in which they are filed in the code reviser's office during the pertinent filing period. The three part number in the heading distinctively identifies each document, and the last part of the number indicates the filing sequence within an issue's material.

## 2. PROPOSED, ADOPTED, AND EMERGENCY RULES OF STATE AGENCIES AND INSTITUTIONS OF HIGHER EDUCATION

The three types of rule-making actions taken under the Administrative Procedure Act (chapter 34.05 RCW) may be distinguished by the size and style of type in which they appear.

- (a) **Proposed rules** are those rules pending permanent adoption by an agency and are set forth in eight point type.
- (b) **Adopted rules** have been permanently adopted and are set forth in ten point type.
- (c) **Emergency rules** have been adopted on an emergency basis and are set forth in ten point oblique type.

## 3. 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 and bracketed 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.

## 4. EXECUTIVE ORDERS, COURT RULES, NOTICES OF PUBLIC MEETINGS

Material contained in the Register other than rule-making actions taken under the APA 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.

## 5. EFFECTIVE DATE OF RULES

- (a) Permanently adopted agency rules normally take effect thirty 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.

## 6. 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].

## 7. INDEX AND TABLES

A combined subject matter and agency index and a table of WAC sections affected may be found at the end of each issue.

1989 – 1990

DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

Issue No.	Closing Dates <sup>1</sup>			Distribution Date	First Agency Hearing Date <sup>3</sup>
	Non-OTS & 30 p. or more	Non-OTS & 11 to 29 p.	OTS <sup>2</sup> or 10 p. max. Non-OTS		
<i>For Inclusion in—</i>	<i>File no later than—</i>			<i>Count 20 days from—</i>	<i>For hearing on or after</i>
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89-16	Jul 5	Jul 19	Aug 2	Aug 16	Sep 5
89-17	Jul 26	Aug 9	Aug 23	Sep 6	Sep 26
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89-22	Oct 4	Oct 18	Nov 1	Nov 15	Dec 5
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90-23	Oct 24	Nov 7	Nov 21	Dec 5	Dec 25
90-24	Nov 7	Nov 21	Dec 5	Dec 19	Jan 2, 1991

<sup>1</sup>All documents are due at the code reviser's office by 5:00 p.m. 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.

## WSR 89-22-027

## EMERGENCY RULES

## DEPARTMENT OF LABOR AND INDUSTRIES

[Order 89-10—Filed October 26, 1989, 11:31 a.m.]

Date of Adoption: October 26, 1989.

Purpose: To ensure a healthful and safe workplace for all employees in Washington state. State-initiated changes to comply with Washington State SSB 5681 which amends chapter 49.26 RCW relating to asbestos projects, to correct terminology and to make new legislative requirements available in WAC standards for enforcement.

Citation of Existing Rules Affected by this Order: Amending WAC 296-62-07703, 296-62-07707, 296-62-07712, 296-62-07721, 296-62-07753, 296-65-001, 296-65-003, 296-65-005, 296-65-010, 296-65-015, 296-65-020, 296-65-025 and 296-65-030.

Statutory Authority for Adoption: Chapters 34.04 [34.05] and 49.17 RCW and chapter 1-21 WAC.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: These amendments are being adopted to comply with 1989 Washington State SSB 5681. Emergency adoption is necessary to provide immediate safety and health protection to the worker in Washington state.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: These rules were initially adopted emergency on July 1, 1989, and effective for 120 days (October 28, 1989). The rules were subsequently taken to public hearing on August 10, 1989, permanently adopted on October 10, 1989, and effective November 24, 1989. This emergency adoption is being filed to cover the period October 28, 1989, through November 24, 1989.

Effective Date of Rule: Immediately.

October 26, 1989

Joseph A. Dear

Director

**AMENDATORY SECTION** (Amending Order 87-24 [89-03], filed 11/30/87 [5/15/89])

WAC 296-62-07703 DEFINITIONS. For the purpose of WAC 296-62-077 through 296-62-07753:

(1) "Action level" means an airborne concentration of asbestos of 0.1 fiber per cubic centimeter (f/cc) of air calculated as an eighthour time-weighted average.

(2) "Air lock" means a system for ingress or egress to minimize air movement between a contaminated area and an uncontaminated area, consisting of an enclosure with two curtained doorways at least six feet apart unless space prohibits.

(3) "Asbestos" includes chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated and/or altered.

(4) "Authorized person" means any person authorized by the employer and required by work duties to be present in regulated areas.

(5) "Clean room" means an uncontaminated room having facilities for the storage of employees' street clothing and uncontaminated materials and equipment.

(6) ("~~Competent person" means one who is capable of identifying existing asbestos hazards in the workplace and who has the authority to take prompt corrective measures to eliminate them, as specified in WAC 296-155-012(4). The duties of the competent person include at least the following: Establishing the negative-pressure enclosure, ensuring its integrity, and controlling entry to and exit from the enclosure, supervising any employee exposure monitoring required by the standard, ensuring that all employees working within such an enclosure wear the appropriate personal protective equipment, are trained in the use of appropriate methods of exposure control, and use the hygiene facilities and decontamination procedures specified in the standard, and ensuring that engineering controls in use are in proper operating condition and are functioning properly. To be designated as a competent person, the worker must satisfactorily complete a training course in accordance with WAC 296-62-07712(3).~~") "Certified asbestos supervisor" means an individual certified by the department under WAC 296-65-012. This person shall be capable of identifying existing asbestos hazards in the workplace and have the authority to take prompt corrective measures to eliminate them, as specified in WAC 296-62-020(6). The duties of the asbestos supervisor include at least the following: Establishing the negative-pressure enclosure, mini-enclosure, glove bag, or any other engineering control used in an asbestos removal or encapsulation operation; ensuring the integrity of the control being used; supervising any employee monitoring required by the standard; ensuring that all employees involved in removal or encapsulation of asbestos wear the appropriate protective equipment; are trained in the use of appropriate methods of exposure control, and use the hygiene facilities and decontamination procedures specified in the standard; and ensuring that engineering controls in use are in proper operating condition and are functioning properly.

(7) "Curtained doorway" means overlapping plastic sheeting curtains, at least four mils in thickness, constructed and used at entrance and exit of regulated areas, and designed to restrict the movement of air from one area to another.

(8) "Decontamination area" means an enclosed area adjacent and connected to the regulated area and consisting of an equipment room, shower area, and clean room, which is used for the decontamination of workers, materials, and equipment contaminated with asbestos.

(9) "Demolition" means the wrecking or taking out of any loadsupporting structural member and any related razing, removing or stripping of asbestos products.

(10) "Department" means the department of labor and industries.

(11) "Director" means the director of the department of labor and industries or his/her authorized representatives.

(12) "Employee exposure" means that exposure to airborne asbestos that would occur if the employee were not using respiratory protective equipment.

(13) "Equipment room" means a contaminated room located within the decontamination area that is supplied with impermeable bags or containers for the disposal of contaminated protective clothing and equipment.

(14) "Fiber" means a particulate form of asbestos, five micrometers or longer, with a length-to-diameter ratio of at least three to one.

(15) "High-efficiency particulate air (HEPA) filter" means a filter capable of trapping and retaining at least 99.97 percent of all monodispersed particles of 0.3 micrometers mean aerodynamic diameter or larger.

(16) "Regulated area" means an area established by the employer to demarcate areas where airborne concentrations of asbestos exceed, or can reasonably be expected to exceed, the permissible exposure limit. The regulated area may take the form of (a) a temporary enclosure, as required by WAC 296-62-07711, or (b) an area demarcated in any manner that minimizes the number of employees exposed to asbestos.

(17) "Removal" means the taking out or stripping of asbestos or materials containing asbestos.

(18) "Renovation" means the modifying of any existing structure, or portion thereof, where exposure to airborne asbestos may result.

(19) "Repair" means overhauling, rebuilding, reconstructing, or reconditioning of structure or substrates where asbestos is present.

(20) (~~"Small-scale, short duration operations" means tasks involving less than ten linear feet and less than eleven square feet of material. This means a total of eleven square feet of material whether on flat surfaces or not and includes pipes. Regardless of pipe diameter, runs cannot exceed ten linear feet.~~)

(21) "Structural member" means any load-supporting or nonload-supporting member of a facility such as beams, walls and ceilings.

**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.

#### AMENDATORY SECTION (Amending Order 87-24, filed 11/30/87)

~~WAC 296-62-07707 IDENTIFICATION. ((The employer shall determine if materials to be worked on or removed contain asbestos. Determinations shall be documented (e.g., laboratory analysis report, manufacturer's product information), maintained on file and made available upon request to the director. A determination shall not be required when an employer assumes that the suspect material contains asbestos and handles the material in accordance with WAC 296-62-077 through 296-62-07753.)) (1) Before authorizing or allowing any~~

construction, renovation, remodeling, maintenance, repair, or demolition project an owner or owner's agent shall perform or cause to be performed a good faith inspection to determine whether materials to be worked on or removed contain asbestos. The inspection shall be documented by written report maintained on file, and made available upon request to the director.

Note: Such good faith inspection is not required if the owner or owner's agent is reasonably certain that asbestos will not be disturbed by the project or the owner or owner's agent assumes that the suspect material contains asbestos and handles the material in accordance with WAC 296-62-077 through 296-62-07753.

(2) The owner or owner's agent shall make available to any contractor submitting a bid to undertake any construction, renovation, remodeling, maintenance, repair, or demolition project, the written report documenting the inspection required by subsection (1) of this section or a written statement either of the reasonable certainty of nondisturbance of asbestos or of assumption of the presence of asbestos.

(3) Any owner or owner's agent who fails to comply with subsections (1) and (2) of this section shall be subject to a mandatory fine of not less than two hundred fifty dollars for each violation. Each day the violation continues shall be considered a separate violation. In addition, any construction, renovation, remodeling, maintenance, repair, or demolition which was started without meeting the requirements of this section shall be halted immediately and cannot be resumed before meeting such requirements.

(4) No contractor may commence any construction, renovation, remodeling, maintenance, repair, or demolition project without receiving a copy of the written response or statement required in subsection (2) of this section. Any contractor who begins any project without the copy of the written report or statement shall be subject to a mandatory fine of not less than two hundred fifty dollars per day. Each day the violation continues shall be considered a separate violation.

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

#### AMENDATORY SECTION (Amending Order 87-24 [89-03], filed 11/30/87 [5/15/89])

WAC 296-62-07712 REQUIREMENTS FOR ASBESTOS REMOVAL, DEMOLITION, AND RENOVATION OPERATIONS. (1) ((Except when proper glove bag techniques are used as described in Appendix J WAC 296-62-07753)). The employer, wherever feasible, shall establish negative-pressure enclosures having a minimum of one air exchange every fifteen minutes within the enclosure before commencing removal, demolition, and renovation operations. A sufficient amount of air shall be exhausted to create a pressure of -0.02 inches of water within the enclosure with respect to the area outside the enclosure.

(2) The employer shall designate a certified asbestos supervisor ((competent person to perform or)) who shall perform, or directly supervise the following duties:

- (a) Set up the enclosure,  
 (b) Ensure the integrity of the enclosure,  
 (c) Control entry to and exit from the enclosure,  
 (d) Supervise all employee exposure monitoring required by this section;  
 (e) Ensure that employees working within the enclosure wear protective clothing and respirators as required by WAC 296-62-07715 and 296-62-07717;  
 (f) Ensure that employees are trained in the use of engineering controls, work practices, and personal protective equipment;

(g) Ensure that employees use the hygiene facilities and observe the decontamination procedures specified in WAC 296-62-07719; and

(h) Ensure that engineering controls including HEPA filters are functioning properly.

(3) In addition to the qualifications specified in WAC 296-6207703, the certified asbestos supervisor (~~competent person~~) shall be trained in all aspects of asbestos abatement, the contents of this standard, the identification of asbestos and their removal procedures, and other practices for reducing the hazard. Such training shall be obtained in a comprehensive course conducted by an approved asbestos supervisor course as specified in WAC 296-65-007. The certified asbestos supervisor shall meet all requirements as specified in WAC 296-65-012. ~~((an EPA asbestos training center, or an equivalent training course recognized by the department as complying with the requirements of this subsection. Every competent person shall also maintain a valid asbestos worker certificate as specified in WAC 296-62-010.))~~

(4) Exceptions:

(a) For small-scale, short-duration operations, such as pipe repair, valve replacement, installing electrical conduits, installing or removing drywall, roofing, and other general building maintenance or renovation, the employer is not required to comply with the requirements of WAC 296-62-07712(1). Employers wishing to take advantage of the exemption in this subsection shall comply with WAC 296-62-07753, Appendix J.

(b) A certified asbestos supervisor shall not be required for projects consisting of less than 48 square feet or 10 lineal feet of asbestos-containing material.

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

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

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

#### AMENDATORY SECTION (Amending Order 87-24 [89-03], filed 11/30/87 [5/15/89])

WAC 296-62-07721 COMMUNICATION OF HAZARDS TO EMPLOYEES. (1) Upon written or oral request, a copy of the written report required in WAC 296-62-07707 and 296-65-020 shall be given to the collective bargaining representatives or employee representatives of any employee who may be exposed to any asbestos or asbestos-containing material. A copy of

the written report shall be posted conspicuously at the location where employees report to work.

(2) Warning signs.

(a) Warning signs shall be provided and displayed at each regulated area. In addition, warning signs shall be posted at all approaches to regulated areas so that an employee may read the signs and take necessary protective steps before entering the area. (b) The warning signs required by (a) of this subsection shall bear the following information:

DANGER  
 ASBESTOS  
 CANCER AND LUNG DISEASE HAZARD  
 AUTHORIZED PERSONNEL ONLY  
 RESPIRATORS AND PROTECTIVE CLOTHING ARE REQUIRED  
 IN THIS AREA

(3) ((2)) Warning labels.

(a) Warning labels shall be affixed to all products containing asbestos including raw materials, mixtures, scrap, waste, debris, and other products containing asbestos fibers, and to their containers including waste containers. Where feasible, installed asbestos products shall contain a visible label.

(b) Labels shall be printed in large, bold letters on a contrasting background.

(c) The labels shall comply with the requirements of WAC 296-62-05411, and shall include the following information:

DANGER  
 CONTAINS ASBESTOS FIBERS  
 AVOID CREATING DUST  
 CANCER AND LUNG DISEASE HAZARD  
 AVOID BREATHING AIRBORNE ASBESTOS FIBERS

(d) Where minerals to be labeled are only tremolite, anthophyllite, or actinolite, the employer may replace the term "asbestos" with the appropriate mineral name.

(4) ((3)) Material safety data sheets. Employers who are manufacturers or importers of asbestos, or asbestos products shall comply with the requirements regarding development of material safety data sheets as specified in WAC 296-62-05413, except as provided by subsection (5) ((4)) of this section.

(5) The provisions for labels required by subsection (3) ((2)) of this section or for material safety data sheets required by subsection (4) ((3)) of this section do not apply where:

(a) Asbestos fibers have been modified by a bonding agent, coating binder, or other material, provided that the manufacturer can demonstrate that during any reasonably foreseeable use, handling, storage disposal, processing, or transportation, no airborne concentrations of fibers of asbestos in excess of the action level and/or excursion limit will be released; or

(b) Asbestos is present in a product in concentrations less than 0.1 percent by weight.

(6) ((5)) Employee information and training.

(a) The employer shall institute a training program for all employees who are exposed to airborne concentrations of asbestos at or above the action level and/or

excursion limit and ensure their participation in the program.

(b) Training shall be provided prior to or at the time of initial assignment, unless the employee has received equivalent training within the previous twelve months, and at least annually thereafter.

(c) The training program shall be conducted in a manner which the employee is able to understand. The employer shall ensure that each employee is informed of the following:

(i) The health effects associated with asbestos;

(ii) The relationship between smoking and exposure to asbestos in producing lung cancer;

(iii) Methods of recognizing asbestos and the quantity, location, manner of use, release, and storage of asbestos and the specific nature of operations which could result in exposure to asbestos;

(iv) The engineering controls and work practices associated with the employee's job assignment;

(v) The specific procedures implemented to protect employees from exposure to asbestos such as appropriate work practices, housekeeping procedures, hygiene facilities, decontamination procedures, emergency and clean-up procedures, personal protective equipment to be used, and waste disposal procedures, and any necessary instructions in the use of these controls and procedures;

(vi) The purpose, proper use, and limitations of respirators and protective clothing;

(vii) The purpose and a description of the medical surveillance program required by WAC 296-62-07725; and

(viii) The content of this standard, including appendices.

(d) Access to information and training materials.

(i) The employer shall make a copy of this standard and its appendices readily available without cost to all affected employees.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the director.

(7) ((6)) Certification.

(a) All individuals working ~~((on))~~ or supervising asbestos projects, as defined in WAC 296-65-003(4) shall be certified as required by WAC 296-65-010, WAC 296-65-012, and 296-65-030.

(b) In cases excepted under WAC 296-65-030 ~~(2)~~ ~~((+))~~ and ~~(3)~~ ~~((2))~~, all employees shall be trained according to subsection ~~(6)~~ ~~((5))~~ of this section.

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

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

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

**AMENDATORY SECTION** (Amending Order 87-24, filed 11/30/87)

WAC 296-62-07753 APPENDIX J—WORK PRACTICES AND ENGINEERING CONTROLS

FOR SMALL-SCALE, SHORT-DURATION ASBESTOS RENOVATION AND MAINTENANCE ~~((OPERATIONS))~~ ACTIVITIES—NONMANDATORY. This appendix is not mandatory, in that employers may choose to comply with all of the requirements of WISHA's standard for occupational exposure to asbestos during construction activities, WAC 296-62-077 through 296-62-07753. However, employers wishing to be exempted from the requirements of WAC 296-62-07712 shall comply with the provisions of this appendix when performing small-scale, short-duration renovation or maintenance operations. WISHA anticipates that employers in the electrical, carpentry, utility, plumbing, and interior construction trades may wish to avail themselves of the final standard's exemptions for small-scale, short-duration renovation and maintenance ~~((operations))~~ activities.

(1) Definition of small-scale, short-duration ~~((operations))~~ activities. For the purposes of this appendix, small-scale, short-duration renovation and maintenance activities are tasks ~~((involving less than ten linear feet and less than eleven square feet of material. This means a total of eleven square feet of material whether on flat surfaces or not and includes pipes. Regardless of pipe diameter, runs cannot exceed ten linear feet. The tasks include))~~ such as, but ~~((are))~~ not limited to:

Removal of asbestos-containing insulation on pipes;

Removal of small quantities of asbestos-containing insulation on beams or above ceilings;

Replacement of an asbestos-containing gasket on a valve;

Installation or removal of a small section of drywall;

Installation of electrical conduits through or proximate to asbestos-containing materials.

Evidence in the record suggests that the use of certain engineering and work practice controls is capable of reducing employee exposures to asbestos to levels below the action level (0.1 f/cc). Several controls and work practices, used either singly or in combination, can be employed effectively to reduce asbestos exposures during small maintenance and renovation operations. These include:

Wet methods;

Removal methods;

Use of glove bags;

Removal of entire asbestos insulated pipes or structures;

Use of mini-enclosures;

Enclosure of asbestos materials; and

Maintenance programs.

This appendix describes these controls and work practices in detail.

(2) Preparation of the area before renovation or maintenance activities. The first step in preparing to perform a small-scale, short-duration asbestos renovation or maintenance task, regardless of the abatement method that will be used, is the removal from the work area of all objects that are movable to protect them from asbestos contamination. Objects that cannot be removed must be covered completely with a 6-mil-thick polyethylene plastic sheeting before the task begins. If objects

have already been contaminated, they should be thoroughly cleaned with a high-efficiency particulate air (HEPA) filtered vacuum or be wet wiped before they are removed from the work area or completely encased in plastic.

(3) **Wet methods.** Whenever feasible, and regardless of the abatement method to be used (e.g., removal, enclosure, use of glove bags), wet methods must be used during small-scale, short-duration maintenance and renovation activities that involve disturbing asbestos-containing materials. Handling asbestos materials wet is one of the most reliable methods of ensuring that asbestos fibers to not become airborne, and this practice should therefore be used whenever feasible. Wet methods can be used in the great majority of workplace situations. Only in cases where asbestos work must be performed on live electrical equipment, on live steam lines, or in other areas where water will seriously damage materials or equipment may dry removal be performed. Amended water or another wetting agent should be applied by means of an airless sprayer to minimize the extent to which the asbestos-containing material is disturbed.

Asbestos-containing materials should be wetted from the initiation of the maintenance or renovation operation and wetting agents should be used continually throughout the work period to ensure that any dry asbestos-containing material exposed in the course of the work is wet and remains wet until final disposal.

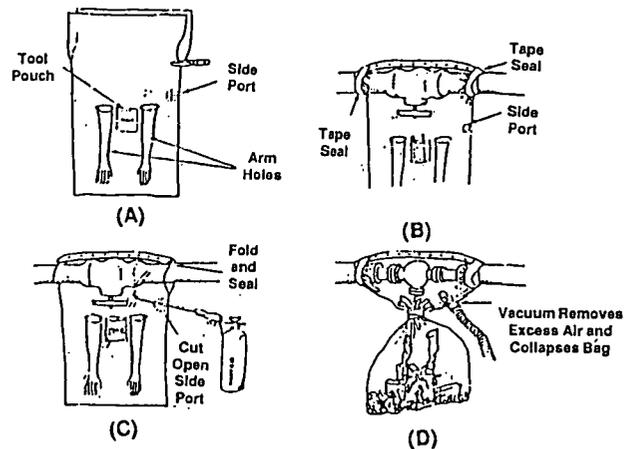
(4) **Removal of small amount of asbestos-containing materials.** Several methods can be used to remove small amounts of asbestos-containing materials during small-scale, short-duration renovation or maintenance tasks. These include the use of glove bags, the removal of an entire asbestos-covered pipe or structure, and the construction of mini-enclosures. The procedures that employers must use for each of these operations if they wish to avail themselves of the final rule's exemptions are described in the following subsections.

(5) **Glove bags.** The use of glove bags to enclose the work area during small-scale, short-duration maintenance or renovation activities will result in employee exposures to asbestos that are below the action level of 0.1 f/cc. This appendix provides requirements for glove bag procedures to be followed by employers wishing to avail themselves of the standard's exemptions for each activities. WISHA has determined that the use of these procedures will reduce the eight-hour time-weighted average (TWA) exposures of employees involved in these work operations to levels below the action level and will thus provide a degree of employee protection equivalent to that provided by compliance with all provisions of the final rule.

(a) **Glove bag installation.** Glove bags are approximately forty-inch-wide times sixty-four-inch-long bags fitted with arms through which the work can be performed (see Figure J-1(A)). When properly installed and used, they permit workers to remain completely isolated from the asbestos material removed or replaced inside the bag. Glove bags can thus provide a flexible, easily installed, and quickly dismantled temporary small

work area enclosure that is ideal for small-scale asbestos renovation or maintenance jobs.

Figure J-1. Diagrams showing proper use of glove bags in small-scale, short-duration maintenance and renovation operations



These bags are single use control devices that are disposed of at the end of each job. The bags are made of transparent 6-mil-thick polyethylene plastic with arms made of material such as Tyvek\* (the same material used to make the disposable protective suits used in major asbestos removal, renovation, and demolition operations and in protective gloves). Glove bags are readily available from safety supply stores or specialty asbestos removal supply houses. Glove bags come pre-labeled with the asbestos warning label prescribed by WISHA and EPA for bags used to dispose of asbestos waste.

(b) **Glove bag equipment and supplies.** Supplies and materials that are necessary to use glove bags effectively include:

(i) Tape to seal the glove bag to the area from which asbestos is to be removed;

(ii) Amended water or other wetting agents;

(iii) An airless sprayer for the application of the wetting agent;

(iv) Bridging encapsulant (a paste-like substance for coating asbestos) to seal rough edges of any asbestos-containing materials that remain within the glove bag at the points of attachment after the rest of the asbestos has been removed;

(v) Tools such as razor knives, nips, and wire brushes (or other tools suitable for cutting wire, etc.);

(vi) A HEPA filter-equipped vacuum for evacuating the glove bag (to minimize the release of asbestos fibers) during removal of the bag from the work area and for cleaning any material that may have escaped during the installation of the glove bag; and

(vii) HEPA-equipped cartridge respirators for use by the employees involved in the removal of asbestos with the glove bag.

(c) **Glove bag work practices.** The proper use of glove bags requires the following steps:

(i) Glove bags must be installed so that they completely cover the pipe or other structure where asbestos work is to be done. Glove bags are installed by cutting

the sides of the glove bag to fit the size of the pipe from which asbestos is to be removed. The glove bag is attached to the pipe by folding the open edges together and securely sealing them with tape. All openings in the glove bag must be sealed with duct tape or equivalent material. The bottom seam of the glove bag must also be sealed with duct tape or equivalent to prevent any leakage from the bag that may result from a defect in the bottom seam (Figure J-1(B)).

(ii) The employee who is performing the asbestos removal with the glove bag must don a half-mask dual-cartridge HEPA-equipped respirator; respirators and protective clothing should be worn by employees who are in close contact with the glove bag and who may thus be exposed as a result of small gaps in the seams of the bag or holes punched through the bag by a razor knife or a piece of wire mesh.

(iii) The removed asbestos material from the pipe or other surface that has fallen into the enclosed bag must be thoroughly wetted with a wetting agent (applied with an airless sprayer through the precut port provided in most glove bags or applied through a small hole cut in the bag) (Figure J-1(C)).

(iv) Once the asbestos material has been thoroughly wetted, it can be removed from the pipe, beam or other surface. The choice of tool to use to remove the asbestos-containing material depends on the type of material to be removed. Asbestos-containing materials are generally covered with painted canvas and/or wire mesh. Painted canvas can be cut with a razor knife and peeled away from the asbestos-containing material underneath. Once the canvas has been peeled away, the asbestos-containing material underneath may be dry, in which case it should be resprayed with a wetting agent to ensure that it generates as little dust as possible when removed. If the asbestos-containing material is covered with wire mesh, the mesh should be cut with nips, tin snips, or other appropriate tool and removed.

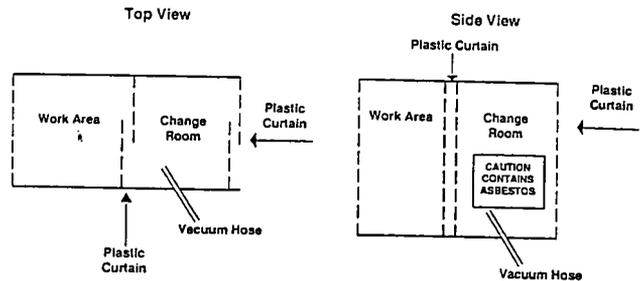
A wetting agent must then be used to spray any layer of dry material that is exposed beneath the mesh, the surface of the stripped underlying structure, and the inside of the glove bag.

(v) After removal of the layer of asbestos-containing material, the pipe or surface from which asbestos has been removed must be thoroughly cleaned with a wire brush and wet wiped with a wetting agent until no traces of the asbestos-containing material can be seen.

(vi) Any asbestos-containing insulation edges that have been exposed as a result of the removal or maintenance activity must be encapsulated with bridging encapsulant to ensure that the edges do not release asbestos fibers to the atmosphere after the glove bag has been removed.

(vii) When the asbestos removal and encapsulation have been completed, a vacuum hose from a HEPA-filtered vacuum must be inserted into the glove bag through the port to remove any air in the bag that may contain asbestos fibers. When the air has been removed from the bag, the bag should be squeezed tightly (as close to the top as possible), twisted and sealed with tape, to keep the asbestos materials safely in the bottom of the bag. The HEPA vacuum can then be removed

from the bag and the glove bag itself can be removed from the work area to be disposed of properly (Figure J-1(D)).



(6) Mini-enclosures. In some instances, such as removal of asbestos from a small ventilation system or from a short length of duct, a glove bag may not be either large enough or of the proper shape to enclose the work area. In such cases, a mini-enclosure can be built around the area where small-scale, short-duration asbestos maintenance or renovation work is to be performed (Figure J-2). Such an enclosure should be constructed of 6-mil-thick polyethylene plastic sheeting and can be small enough to restrict entry to the asbestos work area to one worker.

For example, a mini-enclosure can be built in a small utility closet when asbestos-containing duct covering is to be removed. The enclosure is constructed by:

(a) Affixing plastic sheeting to the walls with spray adhesive and tape;

(b) Covering the floors with plastic and sealing the plastic covering the floor to the plastic on the walls;

(c) Sealing and penetrations such as pipes or electrical conduits with tape; and

(d) Constructing a small change room (approximately three feet square) made of 6-mil-thick polyethylene plastic supported by two-inch by four-inch lumber (the plastic should be attached to the lumber supports with staples or spray adhesive and tape).

The change room should be contiguous to the mini-enclosure, and is necessary to allow the worker to vacuum off his protective coveralls and remove them before leaving the work area. While inside the enclosure, the worker should wear Tyvek<sup>1</sup> disposable coveralls and use the appropriate HEPA filtered dual cartridge respiratory protection.

The advantages of mini-enclosures are that they limit the spread of asbestos contamination, reduce the potential exposure of bystanders and other workers who may be working in adjacent areas, and are quick and easy to install. The disadvantage of mini-enclosures is that they may be too small to contain the equipment necessary to create a negative pressure within the enclosure; however, the double layer of plastic sheeting will serve to restrict the release of asbestos fibers to the area outside the enclosure.

(7) Removal of entire structures. When pipes are insulated with asbestos-containing materials, removal of the entire pipe may be more protective, easier, and more

cost-effective than stripping the asbestos insulation from the pipe. Before such a pipe is cut, the asbestos-containing insulation must be wrapped with 6-mil polyethylene plastic and securely sealed with duct tape of equivalent. This plastic covering will prevent asbestos fibers from becoming airborne as a result of the vibration created by the power saws used to cut the pipe. If possible, the pipes should be cut at locations that are not insulated to avoid disturbing the asbestos. If a pipe is completely insulated with the asbestos-containing materials, small sections should be stripped using the glove-bag method described above before the pipe is cut at the stripped sections.

(8) **Enclosure.** The decision to enclose rather than remove asbestos-containing material from an area depends on the building owner's preference, i.e., for removal or containment. Owners consider such factors as cost effectiveness, the physical configuration of the work area, and the amount of traffic in the area when determining which abatement method to use.

If the owner chooses to enclose the structure rather than to remove the asbestos-containing material insulating it, a solid structure (airtight walls and ceilings) must be built around the asbestos covered pipe or structure to prevent the release of asbestos-containing materials into the area beyond the enclosure and to prevent disturbing these materials by casual contact during future maintenance operations.

Such a permanent (i.e., for the life of the building) enclosure should be built of new construction materials and should be impact resistant and airtight. Enclosure walls should be made of tongue-and-groove boards, boards with spine joints, or gypsum boards having taped seams. The underlying structure must be able to support the weight of the enclosure. (Suspended ceilings with laid in panels do not provide airtight enclosures and should not be used to enclose structures covered with asbestos-containing materials.) All joints between the walls and ceiling of the enclosure should be caulked to prevent the escape of asbestos fibers. During the installation of enclosures, tools that are used (such as drills or rivet tools) should be equipped with HEPA-filtered vacuums. Before constructing the enclosure, all electrical conduits, telephone lines, recessed lights, and pipes in the area to be enclosed should be moved to ensure that the enclosure will not have to be reopened later for routine or emergency maintenance. If such lights or other equipment cannot be moved to a new location for logistic reasons, or if moving them will disturb the asbestos-containing materials, removal rather than enclosure of the asbestos-containing materials is the appropriate control method to use.

(9) **Maintenance program.** An asbestos maintenance program must be initiated in all facilities that have asbestos-containing materials. Such a program should include:

Development of an inventory of all asbestos-containing materials in the facility;

Periodic examination of all asbestos-containing materials to detect deterioration;

Written procedures for handling asbestos materials during the performance of small-scale, short-duration maintenance and renovation activities;

Written procedures for asbestos disposal; and

Written procedures for dealing with asbestos-related emergencies.

Members of the building's maintenance engineering staff (electricians, heating/air conditioning engineers, plumbers, etc.) who may be required to handle asbestos-containing materials should be trained in safe procedures. Such training should include at a minimum:

Information regarding types of asbestos and its various uses and forms;

Information on the health effects associated with asbestos exposure;

Descriptions of the proper methods of handling asbestos-containing materials; and

Information on the use of HEPA-equipped dual cartridge respiratory and other personal protection during maintenance activities.

(10) **Prohibited activities.** The training program for the maintenance engineering staff should describe methods of handling asbestos-containing materials as well as routine maintenance activities that are prohibited when asbestos-containing materials are involved. For example, maintenance staff employees should be instructed:

Not to drill holes in asbestos-containing materials;

Not to hang plants or pictures on structures covered with asbestos-containing materials;

Not to sand asbestos-containing floor tile;

Not to damage asbestos-containing materials while removing furniture or other objects;

Not to install curtains, drapes, or dividers in such a way that they damage asbestos-containing materials;

Not to dust floors, ceilings, moldings or other surfaces in asbestos-contaminated environments with a dry brush or sweep with a dry broom;

Not to use an ordinary vacuum to clean up asbestos-containing debris;

Not to remove ceiling tiles below asbestos-containing materials without wearing the proper respiratory protection, clearing the area of other people, and observing asbestos removal waste disposal procedures;

Not to remove ventilation system filters dry; and

Not to shake ventilation system filters.

\* Mention of trade names or commercial products does not constitute endorsement or recommendation for use.

<sup>1</sup> Mention of trade names or commercial products does not constitute endorsement or recommendation for use.

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

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

**AMENDATORY SECTION** (Amending Order 85-30, filed 10/22/85)

WAC 296-65-001 **PURPOSE AND SCOPE.** This standard regulates asbestos removal and encapsulation, requires ~~((minimum training for asbestos workers and~~

~~establishes a training certification and notification program for asbestos projects)) contractors certification, specifies minimum training for supervisors and workers on asbestos projects, requires notification of asbestos projects, and establishes a training course approval program. This standard applies to the removal or encapsulation of any asbestos-containing material with the exception of those materials containing less than one percent asbestos by volume.~~

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

**AMENDATORY SECTION** (Amending Order 87-24, filed 11/30/87)

· WAC 296-65-003 **DEFINITIONS.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this ((chapter)) standard.

(1) "Approved" means approved by the department.

(2) "Asbestos" includes different forms of chrysotile, amosite, crocidolite, tremolite, anthophyllite and actinolite.

(3) "Asbestos fiber" means asbestos fiber as defined in WAC 296-62-07703.

(4) "Asbestos project" includes the construction, demolition, repair, remodeling, maintenance or renovation of any public or private building or structure, mechanical piping equipment or system involving the demolition, removal, encapsulation, salvage, or disposal of material or outdoor activity releasing or likely to release asbestos fibers into the air. Removal of vinyl asbestos tile (VAT), and asphaltic roofing materials is excluded from this definition, unless these items are removed by mechanical methods such as chipping, grinding, sanding, or sawing. Also excluded is any project in which there is a disturbance of asbestos or less than one square foot of total surface area of asbestos containing material (ACM), but this latter exclusion does not pertain to any disturbance of asbestos during a project dealing with pipe insulation.

~~(5) ("Auxiliary project" means a work activity which does not directly involve an asbestos project but which may disturb or expose asbestos or asbestos-containing materials.~~

~~(6)) "Certified asbestos contractor" means any partnership, firm, association, corporation or sole proprietorship, registered under chapter 18.27 RCW, that submits a bid, or contracts to remove or encapsulate asbestos for another, and is certified by the department to remove or encapsulate asbestos.~~

~~(6) "Certificate" means ((the)) a certificate issued by the department.~~

~~(7) "Certified asbestos supervisor" means an individual who is certified by the department under WAC 296-65-012.~~

~~(8) "Certified asbestos worker" means an individual ((who has successfully completed an approved asbestos training course and has received the certificate.~~

~~(8) "Contractor" includes any partnership, firm, association, corporation or sole proprietorship that contracts to perform the removal or encapsulation of asbestos)) certified by the department under WAC 296-65-010.~~

~~(9) "Department" means the department of labor and industries.~~

~~(10) "Demolition" means the activity of razing a structure which includes the wrecking ((or))<sub>2</sub> removal, or dismantling of any load-supporting structural member of ((a)) any facility including any related handling operations.~~

~~(11) "Direct on-site supervision" means the supervision of no more than three workers by a certified asbestos ((worker)) supervisor who is physically present at all times at the asbestos project. It includes the authority to immediately correct any deficiencies on the project.~~

~~(12) "Director" means the director of the department of labor and industries or the director's designee.~~

~~(13) "Emergency project" means a project that was not planned but results from a sudden unexpected event and includes operations which are necessitated by non-routine failures of equipment or systems.~~

~~(14) "Encapsulation" means the application of an encapsulant to asbestos containing materials to control the release of asbestos fibers into the air. The ((encapsulant)) encapsulation process either creates a membrane over the surface (bridging encapsulant)<sub>2</sub> or penetrates the material and binds its components together (penetrating encapsulant).~~

~~((+3)) (15) "HEPA filtration" means high efficiency particulate air filtration found in respirators and vacuum systems capable of filtering 0.3 micron particles with 99.97% efficiency.~~

~~((+4)) (16) "NESHAP" means the National Emission Standards for Hazardous Air Pollutants.~~

~~((+5)) (17) "Owner" means the person who owns any public or private building, structure, facility, or mechanical system, or the remnants thereof, or the agent of such person but does not include individuals who work on asbestos projects in their own single-family residences, no part of which is use for commercial purposes.~~

~~(18) "Person" means any individual, partnership, firm, association, corporation, sole proprietorship, or the state of Washington or its political subdivisions.~~

~~((+6) "Removal includes the stripping of any asbestos containing materials from the surface or components of a facility:~~

~~(17) "Renovation" includes altering in any way one or more facility components. Operations in which load-supporting structural members are wrecked or removed are excluded.~~

~~(18) "Repair" includes the restoration of asbestos containing insulation that has been damaged, usually located on pipes, boilers, tanks, turbines, ducts or other facility components. Repair usually consists of the application of duct tape, rewettable glass cloth, canvas, cement or other suitable material to seal exposed areas where asbestos fibers may be released. Repair of previously encapsulated asbestos containing materials may involve filling damaged areas with nonasbestos substitutes and reencapsulating. Repair of enclosures around asbestos containing materials is contemplated by this term.~~

~~(19) "Structural component" includes any pipe, duct, boiler, tank, reactor, turbine or furnace at or in a facility or any structural member of a facility.~~

~~(20) "Structural member" means any load-supporting or non-load-supporting member of a facility such as beams, walls, and ceilings.~~

~~(21) "Structure" means an entire facility, building or major portion thereof, such as a building wing.)~~

(19) "Revocation" means a permanent withdrawal of a certification issued by the department.

(20) "Suspension" means a temporary withdrawal of a certification issued by the department. No suspension shall be less than six months or longer than one year.

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

#### AMENDATORY SECTION (Amending Order 87-24, filed 11/30/87)

WAC 296-65-005 ASBESTOS WORKERS TRAINING COURSE CONTENT. An approved ~~((basic))~~ asbestos worker training course shall consist of at least thirty hours of training. ~~((The))~~ This initial training course shall provide, at a minimum, information on the following topics:

(1) The physical characteristics of asbestos including types, fiber size, aerodynamic characteristics and physical appearance.

(2) Examples of different types of asbestos and asbestos containing materials. Real asbestos shall be used only for observation by trainees and shall be enclosed in sealed unbreakable containers.

(3) The health hazards of asbestos including the nature of asbestos related diseases, routes of exposure, dose-response relationships, synergism between cigarette smoking and asbestos exposure, latency period of diseases, hazards to immediate family, and the health basis for asbestos standards.

(4) Employee personal protective equipment including the classes and characteristics of respirator types, limitations of respirators, proper selection, inspection, donning, use, maintenance and storage procedure, methods for field checking of the facepiece-to-face seal (positive and negative pressure checks), qualitative and quantitative fit testing procedures, variability between field and laboratory protection factors, factors that alter respirator fit (e.g., eye glasses and facial hair), the components of a proper respiratory protection program, respirator program administrator, requirements on oil lubricated reciprocating piston compressors for breathing air, and selection and use of personal protective clothing. Qualitative or quantitative fit testing shall be performed on at least one student for demonstration purposes, and in accordance with WAC 296-62-07715 and 296-62-07739.

(5) Use, storage and handling of launderable clothing, nonslip footwear, gloves, eye protection and hard hats.

(6) Medical monitoring procedures and requirements, including the provisions of WAC 296-62-071 through 296-62-07121 and 296-62-07725, any additional recommended procedures and tests, benefits of medical monitoring and employee access to records.

(7) Air monitoring procedures and requirements specified in WAC 296-62-07709, including a description of

equipment, sampling methods and strategies, reasons for air monitoring, types of samples, including area, personal and clearance samples, current standards with proposed changes if any, employee observation and notification, recordkeeping and employee access to records, interpretation of air monitoring results, and analytical methods for bulk and air samples.

(8) State-of-the-art work practices for asbestos removal and encapsulation activities including purpose, proper construction and maintenance of barriers and decontamination enclosure systems, posting of warning signs, electrical and ventilation system lock-out, proper working techniques and tools with vacuum attachments for minimizing fiber release, use of wet methods and surfactants, use of negative pressure ventilation equipment for minimizing employee exposure to asbestos fibers and contamination prevention, scoring and breaking techniques for rigid asbestos products, glove bag techniques, use of HEPA vacuums and proper clean-up and disposal procedures. Work practice requirements for removal, encapsulation, enclosure ~~((and))~~, repair, and waste transportation shall be discussed individually. Appropriate work practices for both indoor and outdoor asbestos projects shall be included.

(9) Personal hygiene including entry and exit procedures for the work area, use of showers and prohibition of eating, drinking, smoking and chewing (gum or tobacco) in the work area.

(10) Additional safety hazards that may be encountered during asbestos removal and encapsulation activities and hazard abatement; including electrical hazards, scaffold and ladder hazards, slips, trips and falls, confined spaces, noise, and heat stress.

(11) The requirements, procedures and standards established by:

(a) The Environmental Protection Agency, 40 CFR Part 61, Subparts A and M.

(b) Washington state department of ecology.

(c) Local air pollution control agencies.

(d) Washington state department of labor and industries, division of industrial safety and health, chapter 49.17 RCW (Washington Industrial Safety and Health Act), chapter 49.17 RCW (Health and safety-Asbestos), and ensuing regulations.

(12) Actual worksite considerations.

(13) The instruction required by this section shall include, at a minimum, hands-on training for the following:

(a) Glove bag techniques;

(b) The opportunity to don respirators including half facepiece and full facepiece air purifying respirators, powered air purifying respirators (PAPR), and Type-C supplied-air respirators ~~((Qualitative or quantitative fit testing shall be performed on each student in accordance with WAC 296-62-07715 and 296-62-07739))~~;

(c) Removal ~~((and repair))~~ of sprayed-on ~~((material))~~ or troweled-on material, and pipe lagging;

(d) Basic construction of a decontamination unit, and proper entry and exit;

(e) Suit-up in protective clothing consisting of coveralls, foot coverings and head coverings.

(14) Asbestos containing materials shall not be used for hands-on training.

(15) In recognition that asbestos abatement is an evolving industry, the department reserves the right to require additional subjects to be taught and to specify the amount of time which shall be allotted to adequately cover required subjects. To assure adequate coverage of required material, each sponsor shall be provided and required to incorporate into their training course, a detailed outline of subject matter developed by the department.

**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 296-65-007 ASBESTOS SUPERVISOR TRAINING COURSE CONTENT.** An approved asbestos supervisor training course shall consist of at least thirty hours of training. This initial training course shall include lectures, demonstrations, at least six hours of hands-on training, course review and a written examination. Audio-visual materials, where appropriate, are recommended to complement lectures. The training course shall provide, at a minimum, information on the following topics:

(1) The physical characteristics of asbestos, and asbestos containing materials including identification of asbestos, aerodynamic characteristics, typical uses, physical appearance, hazard assessment considerations, and a summary of abatement control options.

(2) Health effects related to asbestos exposure including the nature of asbestos related diseases, routes of exposure, dose-response relationships and the lack of a safe level of exposure, synergism between asbestos exposure and cigarette smoking, latency period, hazards to the immediate family and the health basis for the standard.

(3) Employee personal protective equipment including the classes and characteristics of respirator types, limitations of respirators, proper selection, inspection, donning, use, maintenance, and storage procedures, methods for field checking of the facepiece-to-face seal (positive and negative pressure checks), variability between field and laboratory protection factors, quantitative and qualitative fit test requirements, factors that alter respirator fit (facial hair, scars, etc.), the components of a proper respirator program, requirements for oil lubricated reciprocating compressors, maintenance of Type "C" systems, standards for breathing air, selection and use of personal protective clothing, use, storage, and handling of nondisposable clothing, and regulations covering personal protective equipment.

(4) State-of-the-art work practices for asbestos removal and encapsulation activities including purpose, proper construction and maintenance of barriers and decontamination enclosure systems, posting of warning signs, electrical and ventilation system lock-out, proper

working techniques and tools with vacuum attachments for minimizing fiber release, use of wet methods and surfactants, use of negative pressure ventilation equipment for minimizing employee exposure to asbestos fibers and contamination prevention, scoring and breaking techniques for rigid asbestos products, glove bag techniques, use of HEPA vacuums and proper clean-up and disposal procedures. Work practice requirements for removal, encapsulation, and repair shall be discussed separately. Appropriate work practices for both indoor and outdoor asbestos projects shall be included.

(5) Personal hygiene including entry and exit procedures for the work area, use of showers and prohibition of eating, drinking, smoking, and chewing (gum and tobacco) in the work area. Potential exposures, such as family exposure shall also be included.

(6) Additional safety hazards that may be encountered during asbestos abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants other than asbestos, fire and explosion hazards, scaffold and ladder hazards, slips, trips, and falls, confined space entry requirements, and noise hazards.

(7) Medical monitoring procedures and requirements, including the provisions of WAC 296-62-071 through 296-62-07121 and 296-62-07725, any additional recommended procedures and tests, benefits of medical monitoring and recordkeeping requirements.

(8) Air monitoring procedures and requirements specified in WAC 296-62-07709, including a description of equipment, sampling methods and strategies, reasons for air monitoring, types of samples, including area, personal and clearance samples, a description of aggressive sampling, current standards with proposed changes if any, employee observation and notification, recordkeeping, interpretation of air monitoring results, specifically from analyses performed by polarized light, phase contrast, and electron microscopy.

(9) The requirements, procedures, and standards established by:

(a) The Environmental Protection Agency, 40 CFR Part 61, Subparts A and M.

(b) The Washington state department of ecology.

(c) Local air pollution control agencies.

(d) Washington state department of labor and industries, division of industrial safety and health, chapter 49.17 RCW (Washington Industrial Safety and Health Act), chapter 49.26 RCW (Health and safety—Asbestos), and ensuing regulations.

(10) Actual worksite considerations.

(11) Insurance and liability issues including contractor issues, industrial insurance coverage and exclusions, third party liabilities and defenses, private insurance coverage and exclusions, recordkeeping recommended for legal and insurance purposes.

(12) Supervisory techniques for asbestos abatement projects including supervisory practices to enforce and reinforce the required work practices and discourage unsafe work practices.

(13) Contract specifications including a discussion of the key elements to be included in contract specifications.

(14) Hands-on training for the following:

- (a) Calibration of air-sampling equipment;
- (b) Routine maintenance of air-purifying and air-supplied respirators;

(c) Setup of a decontamination unit including calculating the number of negative air machines needed as well as proper placement of the machines within the enclosure; and

(d) Quantitative and qualitative fit-testing protocols.

(15) In recognition that asbestos abatement is an evolving industry, the department reserves the right to require additional subjects to be taught and to specify the amount of time which shall be allotted to adequately cover required subjects. To assure adequate coverage of required material, each sponsor shall be provided and required to incorporate into their training course, a detailed outline of subject matter developed by the department.

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

AMENDATORY SECTION (Amending Order 85-30, filed 10/22/85)

WAC 296-65-010 ASBESTOS WORKER CERTIFICATION. (1) For the purposes of this section "individual" means any natural person.

(2) ~~((Individuals shall pass, in a manner approved by the department, a written examination relevant to the safe performance of asbestos related activities:~~

~~(a) Upon successful completion of an approved training course the department will issue a certificate.~~

~~(b) To be considered timely, an application for an asbestos worker certificate must be received by the department no later than 60 days after the completion date of an approved training course)) To qualify for an asbestos worker certificate, an individual must do the following:~~

~~(a) Successfully complete an approved asbestos worker training course;~~

~~(b) Achieve a score of at least seventy percent on a one hundred question multiple choice examination approved by the department but administered by the training course sponsor;~~

~~(c) Submit to the department a timely application validated by an approved training course sponsor. To be considered timely, an application must be received by the department not later than sixty days after the completion of the course. In the event that an application is not timely, the individual shall be required to pass, with the score of at least seventy percent, an examination administered by the department. A nonrefundable fifty dollar assessment shall be charged to take this examination; and~~

~~(d) Pay the fee prescribed in WAC 296-65-025.~~

(3) Individuals shall not perform any asbestos ~~((project))~~ abatement work prior to issuance of the certificate.

~~((The))~~ (4) Certificate shall be issued and mailed to the individual applicants and shall be valid for ~~((two))~~ one year~~((s))~~ from the date of issuance.

~~((4))~~ (5) Certified asbestos workers shall attend a ~~((7))~~ seven-hour refresher course prior to certificate renewal.

(a) The course shall, at a minimum, adequately review the subjects required by WAC 296-65-005, update information on state-of-the-art procedures and equipment, and review regulatory changes and interpretations. Specific subjects may be required by the department.

(b) An application for renewal of the certificate must be ~~((accompanied by proof of attendance in an approved))~~ validated by the refresher training course instructor.

~~((To be considered timely, the certificate renewal application must be received by the department no later than 60 days after the certificate expiration date))~~ The refresher course must be taken prior to expiration of the certificate, but may not be taken more than sixty days prior to expiration of the original or current certificate.

~~((The certificate renewal application must be received by the department no later than the expiration date of the current certificate. Applicants missing this renewal deadline shall be required to pass, with a score of seventy percent, an examination administered by the department. A nonrefundable fifty dollar fee will be charged to take this examination.~~

~~((Individuals whose certificates have been expired for more than six months will be required to retake the entire thirty-hour basic course.~~

~~((5))~~ (6) The certificate shall be available for inspection at all times during an asbestos project.

~~((6))~~ (7) The department may suspend or revoke a certificate ~~((for failure of the holder to comply with any applicable health or safety standards))~~ as provided in WAC 296-65-050 and chapter 296-350 WAC.

NEW SECTION

WAC 296-65-012 ASBESTOS SUPERVISOR CERTIFICATION. (1) For the purposes of this section, "individual" means any natural person.

(2) To qualify for an asbestos supervisor certificate, an individual must do the following:

(a) Be a certified asbestos worker as prescribed in WAC 296-65-010 for at least one year;

(b) Successfully complete an approved asbestos supervisor training course;

(c) Achieve a score of at least seventy percent on a one hundred question multiple choice examination approved by the department but administered by the training course sponsor;

(d) Submit to the department a timely application validated by an approved training course sponsor. To be considered timely, an application must be received by the department not later than sixty days after the completion of the course. In the event that an application is not timely, the individual shall be required to pass, with a score of at least seventy percent, an examination administered by the department. A nonrefundable fifty dollar assessment shall be charged to take this examination; and

(e) Pay the fee prescribed in WAC 296-65-025.

(3) Individuals shall not supervise any asbestos abatement work prior to issuance of the certificate.

(4) Certificates shall be issued and mailed to the individual applicants and shall be valid for one year from the date of issuance.

(5) Certified asbestos supervisors shall attend a seven-hour supervisor refresher course prior to certificate renewal. It shall not be necessary to also take a worker refresher course.

(a) The course shall, at a minimum, adequately review the subjects required by WAC 296-65-007, update information on state-of-the-art procedures and equipment, and review regulatory changes and interpretations. Specific subjects may be required by the department.

(b) An application for renewal of the certificate must be validated by the refresher training course instructor.

(c) The refresher course must be taken prior to expiration of the certificate, but may not be taken more than sixty days prior to expiration of the original or current certificate.

(d) The certificate renewal application must be received by the department no later than the expiration date of the current certificate. Applicants missing this renewal deadline shall be required to pass, with a score of seventy percent, an examination administered by the department. A nonrefundable fifty dollar fee will be charged to take this examination.

(e) Individuals whose certificates have been expired for more than six months will be required to retake the entire thirty-hour basic course.

(6) The certificate shall be available for inspection at all times during an asbestos project.

(7) The department may suspend or revoke a certificate as provided in WAC 296-65-050 and chapter 296-350 WAC.

(8) Individuals who have completed the "competent person" training previously recognized by the department after January 1, 1987, need not comply with the requirements set forth in subsection (2) of this section and shall be issued asbestos supervisor certificates provided the following conditions are met:

(a) Be a certified asbestos worker as prescribed in WAC 296-65-010 for at least one year;

(b) Provide documentation of successful completion of a recognized "competent person" training course;

(c) Pass, with a score of at least seventy percent, an examination administered by the department. A nonrefundable fifty dollar assessment shall be charged to take this examination; and

(d) This subsection shall expire on June 30, 1990. Thereafter any individual who has completed "competent person" training shall obtain an asbestos supervisor certificate by complying with the requirements set forth in subsection (2) of this section.

**AMENDATORY SECTION** (Amending Order 87-24, filed 11/30/87)

WAC 296-65-015 TRAINING COURSE ((~~CERTIFICATION~~)) APPROVAL. (1) Basic and refresher asbestos training courses may be ((~~provided~~)) sponsored

by any individual, person, ((~~environmental health consulting firm, union, trade association, educational institution, public health organization, individual governmental agency,~~)) or other entity having department approval.

((~~(1)~~)) (2) Prior to receiving department approval, each course shall be evaluated by the department for the breadth of knowledge and experience required to properly train asbestos workers or supervisors. Course content shall be carefully scrutinized for adequacy and accuracy. Training techniques shall be evaluated by the department.

((~~(2)~~)) (3) Sponsors of basic and refresher training courses proposed for approval must submit:

(a) Background information about course sponsors;

(b) Course locations and fees;

(c) Copies of course handouts;

(d) A detailed description of course content and the amount of time allotted to each major topic;

(e) A description of teaching methods to be utilized and a list of all audio-visual materials; the department may, in its discretion, request that copies of the materials be provided for review. Any audio-visual materials provided to the department will be returned to the applicant;

(f) A list of all personnel involved in course preparation and presentation and a description of the background, special training and qualifications of each. The department may, in its discretion, require proposed instructors to pass an examination on subjects related to their respective topics of instruction;

(g) A description of student evaluation methods and a copy of the required written examination including the scoring methodology to be used in grading the examination;

(h) A description of course evaluation methods; and

(i) Any restrictions on attendance (language, class size, affiliation, etc.).

((~~(3)~~)) (4) Application for training course approval and course materials shall be submitted to the department at least ((~~forty-five~~)) sixty days prior to the requested approval date. Materials may be mailed to:

Asbestos Certification Program

Department of Labor and

Industries, HC-412

805 Plum Street S.E.

P.O. Box 207

Olympia, Washington 98504

((~~(4)~~ ~~Upon~~)) (5) Following approval of a basic or refresher asbestos training course, the department will issue the course sponsor ((~~a certificate. The certificate~~)) an approval which is valid for one year from the date of issuance. Application for renewal must follow the procedures described in subsections ((~~(2) and~~)) (3) and (4) of this section.

((~~(5)~~)) (6) To be considered timely, the training course ((~~certificate~~)) approval renewal must be received by the department no later than ((~~sixty~~)) thirty days ((~~after~~)) before the certificate expiration date.

((~~(6)~~)) (7) Any changes to a training course must be approved by the department in advance.

~~((7))~~ (8) The course sponsor shall provide the department with a list of all persons who have completed a basic or refresher training course. The list must be provided no later than ten days after a course is completed and must include the name and address of each trainee.

~~((8))~~ (9) The course sponsor must notify the department, in writing, at least ~~((one week))~~ thirty days before a training course is scheduled to begin. The notification must include the date, time and address where the training will be conducted.

~~((9))~~ (10) A representative of the department may, at the department's discretion, attend a training course as an observer to verify that the training course is conducted in accordance with the program approved by the department.

~~((10))~~ ~~The department may suspend or revoke the certification of a training course if its sponsor fails to maintain the course content and quality as initially approved.~~

(11) Course sponsors conducting training outside the state of Washington shall reimburse the department for reasonable travel expenses associated with department audits of the training courses. Reasonable travel expenses are defined as current state of Washington per diem and travel allowance rates including airfare and/or surface transportation rates. Such reimbursement shall be paid within thirty days of receipt of the billing notice.

(12) The training course sponsor shall limit each class to a maximum of thirty participants.

~~((12))~~ (13) The instructor to student ratio shall not exceed one-to-ten for any of the training required by WAC 296-65-005(13).

(14) The department may terminate the training course approval, if in the department's judgment the sponsor fails to maintain the course content and quality as initially approved.

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

## NEW SECTION

WAC 296-65-017 CONTRACTOR CERTIFICATION. (1) In order to obtain certification, an asbestos contractor must submit an application to the department. The application shall provide the following information:

(a) A list of asbestos projects conducted by the contractor during the previous twelve months. Such list shall include for each project:

- (i) Project name;
- (ii) Location;
- (iii) Brief description;

(iv) Identity of any citations or enforcement actions issued for violations of asbestos regulations by any local, state, or federal jurisdiction relative to each individual project; and

(v) Name of the on-site project manager or supervisor.

(b) A list of asbestos supervisors (include certification number) working for the company.

(c) A statement certifying that the contractor has read and understands all applicable Washington state rules and regulations regarding asbestos abatement and will comply with them.

(d) A statement certifying that the applicant contractor's asbestos license or accreditation issued by any other state or jurisdiction has not been revoked, suspended, or denied by that state or jurisdiction.

(2) Upon approval, the department will issue the contractor a certificate. Denial of approval shall be in writing.

(3) Certificates shall be valid for a period of twelve months. Certificates may be extended during department review of a renewal application.

Note: In circumstances where it is necessary to coordinate an expiration date with the date of expiration of a contractor registration issued under chapter 18.27 RCW, certificates may be valid for less than one year. In such circumstances, the certificate fee prescribed in WAC 296-65-025 shall be prorated accordingly.

(4) The application for certificate renewal shall contain the information specified in subsection (1) of this section.

(5) Applications for renewal must be received by the department not less than sixty days before the certificate expires.

(6) The department may suspend or revoke the certificate as provided in WAC 296-65-050 and chapter 296-350 WAC.

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

## AMENDATORY SECTION (Amending Order 87-24, filed 11/30/87)

WAC 296-65-020 NOTIFICATION REQUIREMENTS. ~~((A copy of any notice of intention to demolish or renovate a facility required to be filed with a federal, state, or local air pollution control agency shall be sent directly to the department by each person whose employees, if any, are renovating or demolishing any structure. Notices must be received within the same time periods required by the federal, state or local agency and may be mailed to:~~

~~Asbestos Certification Program  
Department of Labor and  
Industries, HC-412  
805 Plum Street S.E.  
P.O. Box 207  
Olympia, Washington 98504.~~

(1) Before any person or individual begins an asbestos project involving more than forty-eight square feet or ten linear feet, unless the surface area of the pipe is greater than forty-eight square feet, of asbestos containing material, written notification shall be provided to the department. Notices shall include:

- (a) Name and address of the owner and contractor.
- (b) Description of the facility including size, age, and prior use of the facility.
- (c) Amount of asbestos containing material to be removed or encapsulated.

(d) Location of the facility.

(e) Exact starting and completion dates of the asbestos project, including shifts during which abatement work will be accomplished. These dates must correspond to the dates specified in the contract. Any change in these dates or work shifts shall be communicated to the department by an amended notice.

(f) Nature of the project and methods used to remove or encapsulate the material.

(2) Failure to provide such notification will result in the loss of the exemption specified in WAC 296-65-030.

(3) Notices must be received by the department no later than ten days prior to the start of the project. Notices shall be sent directly to the department of labor and industries regional office having jurisdiction on the project.

(4) The director may waive the prenotification requirement upon written request of an owner for large-scale, on-going projects. In granting such a waiver, the director shall require the owner to provide prenotification if significant changes in personnel, methodologies, equipment, work site, or work procedures occur or are likely to occur. The director shall further require annual resubmittal of such notification.

(5) The director, upon review of an owner's report, work practices, or other data available as a result of inspections, audits, or other authorized activities, may reduce the size threshold for prenotification required by this section. Such a change shall be based on the director's determination that significant problems in personnel, methodologies, equipment, work site, or work procedures are creating the potential for violations of this chapter.

(6) Emergency projects which disturb or release asbestos into the air shall be reported to the department within three working days after commencement of the project in a manner otherwise required under this chapter. The employees, the employees' collective bargaining representative or employee representative, if any, and other persons at the project area shall be notified of the emergency as soon as possible by the person undertaking the emergency project. A notice describing the nature of the emergency project shall be clearly posted adjacent to the work area.

(7) Incremental phasing in the conduct or design of asbestos projects or otherwise conducting or designing asbestos projects of a size less than the threshold exemption specified in subsection (1) of this section, with the intent of avoiding the notification requirements, is a violation of this chapter.

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.

#### AMENDATORY SECTION (Amending Order 87-24, filed 11/30/87)

WAC 296-65-025 (~~(CERTIFICATE)~~) FEES. (1) A nonrefundable administrative fee of twenty-five dollars shall be assessed for each initial or renewal asbestos worker certificate application. The fee (check or money order) must accompany the certificate application and be made payable to the department. An application form may be obtained from any approved training course instructor or directly from the department.

(2) A nonrefundable administrative fee of (~~one hundred fifty~~) thirty-five dollars shall be assessed for each initial or renewal (~~application for training course approval. A check or money order shall accompany any application made under the provisions of WAC 296-65-015 and be made payable to the department.~~) asbestos supervisor certificate application. The fee (check or money order) must accompany the certificate application and be made payable to the department. An application form may be obtained from any approved training course instructor or directly from the department.

(3) A nonrefundable administrative fee of one thousand dollars shall be assessed for each initial or renewal contractor certificate application. The fee (check or money order) must accompany the certificate application and be made payable to the department. An application form may be obtained from the department.

Note: In circumstances where it is necessary to coordinate an expiration date with the date of expiration of a contractor registration issued under chapter 18.27 RCW, certificates may be valid for less than one year. In such circumstances, the certificate fee prescribed in WAC 296-65-025 shall be prorated accordingly.

(4) A nonrefundable administrative fee of one thousand dollars shall be assessed for each initial and renewal application for training course approval. A check or money order shall accompany any application made under the provisions of WAC 296-65-015.

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.

#### AMENDATORY SECTION (Amending Order 87-06, filed 4/27/87)

WAC 296-65-030 METHODS OF COMPLIANCE. (1) (~~No contractor, employee, or other individual is eligible to work on an asbestos project unless properly issued a certificate by the department, except in the case of an asbestos project undertaken by any partnership, firm, corporation or sole proprietorship in its own facility and by its own employees under the direct on-site supervision of a certified asbestos worker.~~)

Note: This exception does not apply to the state of Washington or its political subdivisions.

(2) ~~No person may assign any employee, contract with or permit any individual or person to remove or encapsulate asbestos in any facility unless performed by~~

~~a certified asbestos worker except in the case of an asbestos project undertaken by any partnership, firm, corporation or sole proprietorship in its own facility and by its own employees under the direct on-site supervision of a certified asbestos worker.~~

~~Note:)) Before submitting a bid or working on an asbestos abatement project, any person or individual shall obtain an asbestos contractor certificate as provided in WAC 296-65-017 and shall have in its employ at least one certified asbestos supervisor responsible for supervising all asbestos projects undertaken by the contractor.~~

~~(2) A certified asbestos supervisor will not be required on projects involving less than forty-eight square feet or ten linear feet of asbestos containing material unless the surface area of the pipe is greater than forty-eight square feet.~~

~~(3) No employee or other individual is eligible to do work or supervise an asbestos project without being issued a certificate by the department except, in the case of an asbestos project undertaken by any partnership, firm, association, corporation, or sole proprietorship, and conducted in its own facility, and by its own employees under the direct, on-site supervision of a certified asbestos supervisor. This exception does not apply to the state of Washington or its political subdivisions.~~

~~((3)(a)) (4) No person may assign any employee, contract with, or permit any individual, to remove or encapsulate asbestos in any facility, without the project being performed by a certified asbestos worker and under the direct, on-site supervision of a certified asbestos supervisor, except, in the case of an asbestos project undertaken by any partnership, firm, association, corporation, or sole proprietorship, and conducted in its own facility and by its own employees under the direct, on-site supervision of a certified asbestos supervisor.~~

~~(5) Any partnership, firm, association, corporation, or sole proprietorship that begins any construction, renovation, remodeling, maintenance, repair or demolition project without meeting the requirements of WAC 296-62-07707 and the notification requirements as provided in subsection (6) of this section, shall lose the exemptions provided in subsections (3) and (4) of this section.~~

~~(6) In cases excepted under subsections ((+)) (3) and ((2)) (4) of this section(, the partnership, firm, corporation, or sole proprietorship shall annually submit a written description to the department which includes at least the following information):~~

~~(a) Direct on-site supervision by a certified asbestos supervisor shall be required for asbestos projects performed at one project location by workers who are not certified.~~

~~(b) If a project is conducted using only certified workers, or if a certified worker functions as a foreman or lead person, supervision can be performed in the regular course of a supervisor's duties and need not be direct and on-site.~~

~~(c) The partnership, firm, association, corporation, or sole proprietorship shall annually submit to the department, a written description which includes at least the following information:~~

~~(i) The kinds of asbestos projects expected to be undertaken during a period of time not to exceed one year from the date of submission;~~

~~(ii) The procedures to be used in undertaking the asbestos projects;~~

~~(iii) Methods of compliance with ((~~chapters 296-62, 296-65, and 296-155~~ WAC)) applicable department regulations;~~

~~(iv) Methods of compliance with any additional procedures required by law for the safe demolition, removal, encapsulation, salvage, and disposal of asbestos; ((~~and~~))~~

~~(v) A copy of the written inspection report or statement as required by WAC 296-62-07707; and~~

~~(vi) The name, address and certification number of the supervising certified asbestos ((~~worker~~)) supervisor.~~

~~((~~b~~)) (7) The written descriptions required ((~~by~~)) in this section shall be submitted to the department prior to ((~~commencement of work~~)) commencing any project described.~~

~~((~~4~~)) (8) A further written description must be submitted to the department prior to commencing a project, if previously unidentified or new asbestos projects are proposed during the one year period covered by written description submitted to the department in accordance with ((~~WAC 296-65-030(3), previously unidentified or new asbestos projects are proposed~~)) subsection (6) of this section.~~

~~((~~5~~)) (9) Written descriptions, shall be mailed to:~~

Asbestos Certification Program,  
Department of Labor and  
Industries, HC-412  
805 Plum Street S.E.  
P.O. Box 207  
Olympia, Washington 98504

~~(10) In addition to losing the exemption in subsection (5) of this section, any partnership, firm, association, corporation, or sole proprietorship who fails to comply with subsections (6) through (9) of this section shall be subject to a mandatory fine of not less than two hundred fifty dollars for each violation. Each day the violation continues shall be considered a separate violation. In addition, any construction, renovation, remodeling, maintenance, repair or demolition which was started without meeting the requirements of this section shall be halted immediately and cannot be resumed before meeting such requirements.~~

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

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

#### NEW SECTION

WAC 296-65-035 RECIPROCITY. (1) The department may recognize certifications issued by another state for asbestos workers or supervisors provided that:

(a) The worker is in possession of a currently valid certification from the other state; and

(b) The department evaluates the other state's qualification procedures and determines the certification to be equivalent to the minimum requirements of this chapter.

(2) When the department's evaluation of another state's qualification procedures identifies that equivalent requirements are met, the department is authorized to issue a Washington state certification upon receipt of a completed application.

(3) When the department's evaluation of another state's qualification procedures identifies deficiencies, the department may require specific supplemental training and/or examination before issuing a Washington state certification.

(4) Workers or supervisors certified by another state may renew their certification for a Washington certification by successfully completing a Washington state approved standard seven-hour refresher course and submitting application to the department in compliance with this chapter.

#### NEW SECTION

**WAC 296-65-050 DENIAL, SUSPENSION, AND REVOCATION OF CERTIFICATES.** (1) The department may deny, suspend, or revoke a certificate for failure of the holder to comply with any requirements of this chapter, or any applicable health and safety standards and regulations.

(2) In addition to any civil penalty imposed under WAC 296-62-07707 and 296-65-030, the department may suspend or revoke any certificate issued under this chapter for a period of not less than six months upon the following grounds:

(a) The certificate was obtained through error or fraud; or

(b) The holder thereof is judged to be incompetent to carry out the work for which the certificate was issued.

(3) Before any certificate may be denied, suspended, or revoked, the holder thereof shall be given written notice of the department's intention to do so, mailed by registered mail, return receipt requested, to the holder's last known address. The notice shall enumerate the allegations against such holder and shall give him or her the opportunity to request a conference before the department. At such conference, the department and the holder shall have opportunity to produce witnesses and give testimony.

(4) A denial, suspension, or revocation order may be appealed to the board of industrial insurance appeals within fifteen working days after the denial, suspension, or revocation order is entered. The notice of appeal may be filed with the department or the board of industrial

insurance appeals. The board of industrial insurance appeals shall hold the hearing in accordance with procedures established in RCW 49.17.140. Any party aggrieved by an order of the board of industrial insurance appeals may obtain superior court review in the manner provided in RCW 49.17.150.

**WSR 89-22-081  
PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Public Assistance)**

[Filed October 31, 1989, 4:16 p.m.]

Original Notice.

Title of Rule: Adjudicative proceedings, see below.

Purpose: To conform program rules on adjudicative proceeding to the new Administrative Procedure Act, chapter 34.05 RCW, and other recent statutory changes.

Other Identifying Information: This proposal was adopted as emergency rules effective November 1, 1989.

Statutory Authority for Adoption: See below; see also RCW 34.05.220 (1)(a).

Statute Being Implemented: Chapter 34.05 RCW, primarily sections in the 400 series.

Summary: This proposal conforms adjudicative proceeding to the new Administrative Procedure Act, chapter 34.05 RCW, and recent statutory changes.

Reasons Supporting Proposal: To comply with statutory law and to achieve greater procedural uniformity in adjudicative proceedings in programs the department administers. See below.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David L. Henry, Office of Appeals, OB-43, Olympia, 98504, (206) 753-3898.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: Same as above. See also below.

Proposal Changes the Following Existing Rules: The Administrative Procedure Act, chapter 34.05 RCW, at section 250 requires the Chief Administrative Law Judge, Office of Administrative Hearings, to adopt model rules of procedure under the act. RCW 34.05.220 (1)(a) permits an agency to adopt its own rules. An agency must adopt as much of the model rules as is reasonable and state the reasons for any variation in the order of rule adoption. Variations from the model rules are described below.

<u>Washington Administrative Code (WAC)</u>	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	<u>Statutory authority (RCW or Session Law Chapter)</u>	<u>Additional reasons for proposal and variations from Model Rules</u>
388-11-100		Amend		74.08.090	<ol style="list-style-type: none"> <li>The scope of the rule is broadened to include objection to a notice and finding of parental responsibility. See chapter 55, Laws of 1989.</li> <li>Housekeeping. See RCW 34.05.461(1)(c) and RCW 74.20A.055 as amended by section 152, chapter 175, Laws of 1989.</li> </ol>
388-11-105			Repeal	Same	The section is being repealed because it conflicts with RCW 34.05.464(5). See also RCW 74.20A.055 as amended by section 152, chapter 175, Laws of 1989.
<u>Washington Administrative Code (WAC)</u>	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	<u>Statutory authority (RCW or Session Law Chapter)</u>	<u>Additional reasons for proposal and variations from Model Rules</u>
388-11-180		Amend		Same	Housekeeping
388-11-185			Repeal	Same	This section would limit discovery to the devices stated in it by operation of RCW 34.05.446(2), (3). General DSHS adjudicative proceeding rules do not contain such limits (see WAC 388-08-464). Thus, repeal of this rule broadens discovery rights in this program and makes them the same as those in chapter 388-08 WAC.
388-13-050		Amend		Same	Housekeeping. See RCW 74.20A.270 as amended by sections 156 and 157, chapter 175, Laws of 1989.
388-13-060		Amend		Same	Same
388-13-070		Amend		Same	Same
388-13-080			Repeal	Same	Same as WAC 388-11-105 (see above).
388-13-110		Amend		Same	Pursuant to RCW 34.05.440(3) the department has adopted 14 days as the general time to file a motion to vacate a dismissal of the proceedings for reason of default. The general period is contained in WAC 388-08-440. This rule in chapter 388-11 is being repealed to make WAC 388-08-440 apply to this program in the interest of achieving greater procedural uniformity among programs.
388-13-120		Amend		Same	Housekeeping and to achieve greater procedural uniformity among department programs.
<u>Washington Administrative Code (WAC)</u>	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	<u>Statutory authority (RCW or Session Law Chapter)</u>	<u>Additional reasons for proposal and variations from Model Rules</u>
388-14-260		Amend		Same	Same
388-14-270		Amend		Same	Housekeeping
388-14-385		Amend		Same	Same
388-14-390		Amend		Same	Housekeeping and to achieve greater procedural uniformity among department programs.
388-14-415		Amend		Same	<ol style="list-style-type: none"> <li>Required by section 16, chapter 360, Laws of 1989.</li> <li>Housekeeping</li> </ol>

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

Hearing Location: Auditorium, Office Building No. 2, 12th and Franklin, Olympia, Washington, on January 4, 1990, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Department of Social and Health Services, Office of Issuances, Mailstop OB-33H, Olympia, Washington 98504, by January 4, 1990.

Date of Intended Adoption: January 15, 1990.

October 31, 1989  
Leslie F. James, Director  
Administrative Services

AMENDATORY SECTION (Amending Order 2689, filed 8/30/88)

WAC 388-11-100 DUTY OF THE ADMINISTRATIVE LAW JUDGE. (1) In hearings held under this chapter to contest a notice and finding of financial responsibility or a notice and finding of parental responsibility, the administrative law judge shall determine:

(a) The responsible parent's obligation to provide support under RCW 74.20A.057;

(b) The net monthly income of the responsible parent and any residential parent;

(c) The responsible parent's share of the basic support obligation and any adjustments to that share, as warranted by his or her circumstances;

(d) If requested by a party, the responsible parent's share of any special child-rearing expenses;

(e) The responsible parent's obligation to provide medical support under WAC 388-11-215;

(f) The responsible parent's accrued debt and order payments thereon; and

(g) The responsible parent's total current and future support obligation as a sum certain and order payments thereon.

(2) The administrative law judge shall allow the office of support enforcement to orally amend the notice (~~and finding of financial responsibility~~) at the hearing to conform to the evidence. The administrative law judge may grant a continuance, when deemed necessary, to allow the responsible parent additional time to present rebutting evidence and/or argument as to the amendment.

(3) (~~Except as provided for under WAC 388-11-185,)~~ The administrative law judge shall not require the office of support enforcement to produce or obtain information, documents, or witnesses to assist the responsible parent in proof of defenses to liability. However, this rule shall not apply to relevant, nonconfidential information or documents that the office of support enforcement has in its possession.

(~~(4) The administrative law judge shall issue an initial decision and order within twenty days of the close of the hearing record.~~)

AMENDATORY SECTION (Amending Order 2689, filed 8/30/88)

WAC 388-11-180 PROCEDURAL REFERENCE. Hearings held under this chapter shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 74.20A.055 (~~shall be subject to the provisions of~~), and chapters (~~10-08 and~~) 388-08 and 388-11 WAC (~~to the extent these provisions are relevant and consistent with the rules adopted under~~). If any provision of this chapter conflicts with or is inconsistent with chapter 388-08 WAC, the provision in this chapter governs.

REPEALER

The following sections of the Washington Administration Code are repealed:

WAC 388-11-105 REVIEW OF INITIAL DECISION.

WAC 388-11-185 DISCOVERY.

**Reviser's note:** The typographical error in the above repealer appeared in the original copy of the repealer and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 1465, filed 12/14/79)

WAC 388-13-050 PETITION FOR HEARING AFTER TWENTY DAYS—STAY. (1) The person, firm, corporation, association, political subdivision or any officer or agent thereof served with a notice of support debt at any time within one year from the date of service of said notice may petition the secretary or the secretary's designee for a hearing, as provided for but not previously granted (~~pursuant to~~) under WAC 388-13-070, upon a showing of any of the grounds enumerated in RCW 4.72.010 or CR 60. A copy of said petition shall also be served by certified mail, return receipt requested, or by service in the manner of a summons in a civil action on the district field office of the office of support enforcement. The filing of the petition shall not stay any collection action being taken, but the debtor may petition the secretary or the secretary's designee for an order staying collection action pending final decision of the secretary or the secretary's designee or the courts on an appeal made (~~pursuant to~~) under chapter (~~34-04~~) 34.05 RCW.

(2) Any moneys held and/or taken by collection action prior to the date of any such stay and any support moneys claimed by the department, including moneys to be received in the future, to which the department may have a claim, shall be held in trust pending the final decision and appeal, if any, to be disbursed in accordance with the final decision. The secretary or the secretary's designee shall condition the stay to provide for the trust.

(3) If a (~~request~~) petition for a hearing is (~~received~~) filed, the department shall (~~notify~~) serve the notice of hearing on the appellant, (~~his~~) the appellant's attorney, or other designated representative (~~of the date, time and place of the hearing, at least twenty days prior to the date thereof by written notice to the appellant or his or her representative~~) by certified mail or other method showing proof of receipt.

(4) The department shall notify the appellant that it is (~~his or her~~) the appellant's responsibility to notify the department of (~~his or her~~) the appellant's mailing address at the time (~~of~~) the (~~request for hearing~~) petition is filed and also of any change of address after (~~this request for hearing is submitted~~) filing the petition. Mailing by certified mail, return receipt requested, to the last address provided by the appellant shall constitute service (~~pursuant to~~) under chapters 74.20A and (~~34-04~~) 34.05 RCW.

(~~The hearing shall be promptly scheduled within thirty days of the date of receipt of the request for hearing. If the time, date or place is inconvenient to either party, the hearing examiner may grant a new time, date or place as is reasonably convenient upon a showing of good cause.~~)

AMENDATORY SECTION (Amending Order 1465, filed 12/14/79)

WAC 388-13-060 TIMELY (~~REQUEST~~) APPLICATION FOR HEARING. (1) Any debtor who objects to all or any part of a notice of support debt shall have the right, for not more than twenty days from the date of service of the notice of support debt, to (~~request~~) file an application for an adjudicative proceeding, in writing, (~~a hearing, which request shall be served upon~~) at the district office of the office of support enforcement by certified mail or by personal service. (~~A request for hearing, pursuant to~~) An application under this section (~~:~~) shall be construed to be a general denial of liability to the department.

(2) The execution of the notice of support debt shall be stayed pending the final (~~decision on such hearing~~) adjudicative order.

(3) If (~~a request for hearing~~) an application is (~~received~~) timely filed, the department shall (~~notify~~) serve the notice of hearing on the appellant (~~his attorney,~~) or (~~other designated~~) the appellant's representative (~~of the date, time and place of the hearing, at least twenty days prior to the date thereof by written notice to the appellant or his or her representative~~) by certified mail or another method showing proof of receipt.

(4) The department shall notify the appellant that it is (~~his or her~~) the appellant's responsibility to notify the department of (~~his or her~~) the appellant's mailing address at the time (~~of~~) the (~~request for hearing~~) application is filed and also of any change of address after (~~this request for hearing is submitted~~) filing the application. Mailing by certified mail, return receipt requested, to the last address provided by the appellant shall constitute service (~~pursuant to~~) under chapters 74.20A and (~~34-04~~) 34.05 RCW.

(~~The hearing shall be promptly scheduled within thirty days of the date of receipt of the request for hearing. If the time, date or place is inconvenient to either party, the hearing examiner may grant a new time, date or place as is reasonably convenient upon a showing of good cause.~~)

AMENDATORY SECTION (Amending Order 2340, filed 2/12/86)

WAC 388-13-070 HEARING—INITIAL DECISION(~~(S)~~). (1) If the (~~hearing~~) petition or application is granted, it shall be an (~~administrative hearing~~) adjudicative proceeding limited to the determination of the ownership of the moneys claimed in the notice of support debt and/or the reasonableness of a repayment agreement presented to a public assistance recipient for the purpose of recovering child support under RCW 74.20A.270 and WAC 388-14-200 (4) and (5). The right to the (~~hearing~~) proceeding is conditioned upon holding any funds not yet disbursed or expended or to be received in the future in trust pending the final adjudicative order (~~in these proceedings~~) or during any appeal to the courts. The secretary or the secretary's designee shall enter an appropriate order providing for the terms of the trust.

(2) ~~((The hearing shall be a contested case as provided for in chapter 34.04 RCW and shall be held pursuant to this section, chapter 34.04 RCW, and the rules of the department.~~

~~(3) The hearing shall be promptly scheduled within thirty days from the date of receipt by the office of support enforcement of the answer/request for hearing by the department. The hearing shall be conducted by a duly qualified hearing examiner appointed for that purpose. Hearings may be held in the county of residence of the debtor or other place convenient to the debtor.~~

~~(4)) The department shall have the burden of proof to establish ownership of the support moneys claimed, including but not limited to moneys not yet disbursed or spent.~~

~~((5)) (3) ((After evidence has been presented at a hearing conducted by a hearing examiner, the hearing examiner shall enter an initial decision and order which shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the order based thereon. The hearing examiner shall make his or her decision and enter his or her findings of fact based upon the evidence admitted at the hearing.)) The administrative law judge shall allow the office of support enforcement ((shall have the right)) to orally amend the notice of support debt(;) at the ((time of)) hearing(;) to conform to the evidence ((in which case)). The ((hearing examiner is empowered to)) administrative law judge may grant a continuance, when deemed necessary, to allow the debtor additional time to present rebutting evidence and/or argument as to the amendment.~~

~~((6)) (4) The ((hearing examiner)) administrative law judge shall ((file the original of the initial decision and order, signed by him or her, with the secretary or the secretary's designee and copies thereof shall be mailed by the hearing examiner to)) serve a copy of the administrative law judge's initial decision on the office of support enforcement and ((to)) the debtor or the debtor's representative by certified mail to the last address provided by each party or by another method showing proof of receipt.~~

~~((7) To the extent they do not conflict with these rules or RCW 74.20A.270, the provisions of chapter 388-11 WAC and RCW 74.20A.055 shall apply to this process.))~~

#### AMENDATORY SECTION (Amending Order 1465, filed 12/14/79)

WAC 388-13-110 DEFAULT. ~~((+))~~ If the debtor fails to appear at the hearing, the ~~((hearing examiner))~~ administrative law judge shall, upon a showing of valid service, enter an initial decision and order declaring the amount of the support moneys, as claimed in the notice, to be assessed and determined and subject to collection action under chapter 74.20A RCW.

~~((2) Within thirty days of entry of the decision and order in subsection (1) of this section, the debtor may petition the secretary or the secretary's designee to vacate the decision and order and remand the matter upon the showing of any of the grounds enumerated in RCW 4.72.010 or CR 60.))~~

#### AMENDATORY SECTION (Amending Order 1465, filed 12/14/79)

WAC 388-13-120 PROCEDURAL REFERENCE. ~~((+))~~ WAC 388-11-145, 388-11-150 and 388-11-180 and all procedural references in that last section shall apply to actions under this chapter.

~~((2) Any provisions of) Adjudicative proceedings held under chapter 388-13 WAC shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 74.20A.270, and chapters ((388-11 or 388-14)) 388-08 and 388-13 WAC ((not in)). If any provision of this chapter conflicts with ((these rules or section 17 or 18.)) or is inconsistent with chapter ((171, Laws of 1979 ex. sess. [RCW 74.20.320 and 74.20A.270])) 388-08 WAC, ((shall apply to actions under)) the provision in this chapter governs.~~

#### REPEALER

The following sections of the Washington Administration Code are repealed:

#### WAC 388-13-080 REVIEW OF INITIAL DECISION.

Reviser's note: The typographical error in the above repealer appeared in the original copy of the repealer and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### AMENDATORY SECTION (Amending Order 2304, filed 11/13/85)

WAC 388-14-260 DISTRIBUTION—REFERRALS FROM OTHER STATES. (1) When a child support enforcement agency in

another state, operating a child support program under Title IV-D of the Social Security Act, submits a request for support enforcement services under RCW 74.20.040(3), the office of support enforcement shall initiate appropriate action to establish, enforce, and collect the support obligation. The request shall be signed by an authorized official of the state agency and shall contain appropriate information and be accompanied by appropriate documentation to support the action to establish, enforce, and/or collect the support obligation. The following is a list of some of the information/documentation that may be submitted with the request for support enforcement services:

(a) The responsible parent's name, address, Social Security number, date of birth, present or last known employer, earnings or ability to earn, employment history, property and resources, and physical description;

(b) The custodian's name, address, and Social Security number;

(c) The names, address, Social Security numbers, and dates of birth of the dependent children;

(d) A certification that the request is being submitted under Title IV-D of the Social Security Act and identification of the case as a public assistance or nonassistance case;

(e) A copy of any superior court order or administrative order establishing the support obligation and any order modifying the court or administrative order;

(f) A copy of any official record of support payments made by the responsible parent or, if no such record exists, an affidavit setting forth the amount of support due under the superior court or administrative order, the period during which support was due and payable, and the amounts and dates of support payments;

(g) If there is no superior court or administrative order for support, an affidavit setting forth the following:

(i) A statement of facts establishing or tending to establish the existence of a legally enforceable support obligation;

(ii) A statement of the dates and amounts of any public assistance payments or a statement reflecting the needs of the children for food, clothing, shelter, medical support, or other necessities if no such assistance has been provided.

(2) If a superior court order has been entered establishing the responsible parent's support obligation, the office of support enforcement may proceed under RCW 74.20A.040 to enforce the support obligation and initiate further enforcement and collection action as authorized by law.

(3) If an administrative order has been entered by an agency in another state establishing the responsible parent's support obligation, the office of support enforcement may issue a notice of debt accrued and/or accruing created by the administrative order. Said notice shall be served upon the debtor in the manner prescribed for service of a summons in a civil action or be served on the debtor by certified mail, return receipt requested, demanding payment within twenty days of the date of receipt. The notice of debt shall include a statement of the support debt accrued, computable on the amount required to be paid under the administrative order; a statement that the property is subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver; and a statement that the net proceeds will be applied to the satisfaction of the support debt. The notice shall also include a statement of the amount of the monthly payment for future/current support the responsible parent is required to make under the administrative order.

(a) Any debtor objecting to all or any part of the notice of debt shall have a right to ~~((request a contested hearing under chapter 34.04 RCW))~~ an adjudicative proceeding. The ~~((request))~~ application for a proceeding shall be in writing and shall include a statement of the grounds and defenses upon which relief from the administrative order is sought and/or the basis for modification of the amount for future/current support.

The ~~((request))~~ application shall be ~~((served upon))~~ filed at the office of support enforcement by registered or certified mail or personally. ~~((If a hearing is requested, it shall be promptly scheduled in no more than thirty days from the date of receipt of the request.))~~ If ~~((a request for hearing))~~ an application is ~~((made))~~ filed within twenty days of the date of service of the notice, collection action shall be stayed pending the ~~((decision on such hearing))~~ final adjudicative order. If no ~~((such request))~~ application is ~~((made))~~ filed within this twenty-day period, the support debt and/or the amount of the future/current support payments shall become final subject to the provisions of WAC 388-14-260 (3)(e) and shall be subject to collection action.

(b) The scope of the hearing shall be limited to the grounds and defenses enumerated in superior court Civil Rule 60 which may entitle

the debtor to relief from the administrative order and/or a determination whether or not the amount of the monthly payment for future/current support should be modified in accordance with the provisions of WAC 388-11-140. The burden of proof to establish such grounds and defenses and/or a material change in circumstances shall be on the debtor.

(c) If the debtor presents evidence which would constitute a full or partial defense and/or grounds for modification, upon request, the administrative law judge may continue the hearing to permit the parties to submit further evidence. Pending further hearing and the entry of an initial decision, the debtor may be ordered to pay or make reasonable payments on any undisputed portion of the support debt and to pay current support if owed.

(d)(i) The provisions of the following sections of chapter 388-11 WAC are incorporated by reference and made applicable to the hearing process provided for in this section to the extent they are consistent ((b-with)) and relevant ((to the hearing process)): WAC 388-11-015, 388-11-065, 388-11-070, 388-11-100, ((388-11-105)), 388-11-115, 388-11-120, 388-11-130, 388-11-135, 388-11-140, 388-11-145, 388-11-150, 388-11-155, 388-11-170, ((388-11-180, 388-11-185;)) and 388-11-190(, and chapter 10-08 WAC).

(ii) Hearings held under chapter 388-14 WAC shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), the provisions in this chapter, and chapter 388-08 WAC. If any provision in this chapter or in a rule incorporated by subsection (3)(d)(i) of this section conflicts with a provision in chapter 388-08 WAC, the provision in this chapter or in a rule incorporated by subsection (3)(d)(i) of this section shall govern.

(e) If a written ((request)) application for ((hearing)) an adjudicative proceeding is ((served upon)) filed at the office of support enforcement after the twenty-day period, the debtor's right to relief from the administrative order shall be determined pursuant to the provisions of Civil Rule 60. ((A contested hearing under chapter 34.04 RCW shall be promptly scheduled in response to such a request.)) The filing of the ((petition for a hearing)) application after the twenty-day period shall not affect any collection action previously taken under chapter 74.20A RCW. The granting of a ((request for hearing)) late application shall operate as a stay on any future collection action, pending the final ((decision of the secretary or the secretary's designee on the hearing)) adjudicative order. Moneys withheld as a result of collection action in effect at the time of the granting of the ((request for the hearing)) late application shall be delivered to the department and shall be held in trust by the department pending the final adjudicative order ((of the secretary)) or during the pendency of any appeal to the courts made under chapter ((34.04)) 34.05 RCW. The department may petition the administrative law judge to require the responsible parent to pay future/current support. If an order for future/current support is entered and the responsible parent fails to comply with the order, the office of support enforcement may take appropriate collection action.

(4) If there is no superior court order or administrative order, the office of support enforcement may issue a notice and finding of financial responsibility and proceed in accordance with the provisions of RCW 74.20A.055 which are incorporated by reference herein, to establish the support obligation, and initiate further enforcement and collection action as authorized by law.

(5) If the office of support enforcement is unable to establish, enforce, and/or collect the support obligation in response to the request or otherwise deems it appropriate under the circumstances, the case may be referred to the county prosecuting attorney or attorney general's office for collection action.

(6) A petition that has been or may be transmitted from another state for enforcement under the Uniform Reciprocal Enforcement of Support Act, chapter 26.21 RCW, may be deemed to be a request for support enforcement services sufficient to authorize the office of support enforcement to initiate action to establish, enforce, and collect the support obligation in accordance with this section.

(7) If the office of support enforcement is unable to locate the responsible parent after reasonable and diligent efforts, the requesting agency fails to provide sufficient information to locate the responsible parent and/or establish and enforce the support obligation, or the case does not appear to have collection potential for the foreseeable future, the office of support enforcement may discontinue support enforcement services and return the request and accompanying documentation to the requesting agency.

(8) If the office of support enforcement is notified by the requesting agency that the custodian of the dependent child or children is moving

to another state, support enforcement services on behalf of the custodian may be continued for a period not to exceed five months.

(9) When the responsible parent is residing and/or employed in another state and support enforcement services are being provided under RCW 74.20.040 (1) or (2), the office of support enforcement may execute and submit a request for support enforcement services similar to the request described in this section to the IV-D agency of that state, or may refer the case to the county prosecuting attorney or the attorney general's office for appropriate action.

(10) Upon request from another state, the office of support enforcement shall provide available information/documentation from case files, including but not limited to copies of superior court orders, administrative orders, pay records, and statements/affidavits of support debts, employment, and public assistance records.

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

#### AMENDATORY SECTION (Amending Order 2794, filed 5/3/89)

WAC 388-14-270 DISTRIBUTION OF SUPPORT PAYMENTS—PUBLIC ASSISTANCE. (1) When the office provides support enforcement services, the office shall distribute all support money collected by the office, or received by the office in its capacity, as the Washington state support registry:

(a) In accordance with state and federal law, if public assistance, or cash benefits under the family independence program, is being or has been provided for the support of the family unit;

(b) To the payee under the order if the payee has physical custody of the children;

(c) To the physical custodian of the children if someone other than the payee has physical custody of and is caring for the children; and/or

(d) To the child support enforcement agency in another state or foreign country which submitted a request for support enforcement services.

(2) Prior to distributing support moneys to a physical custodian who is not the payee under the support order, the office shall:

(a) Obtain a sworn statement from the physical custodian attesting to the fact he or she has physical custody of the children and is caring for them;

(b) Mail a notice of its intent to distribute support money to the physical custodian to the last known address of the payee and the responsible parent:

(i) The notice shall contain the following statements and information:

(A) That the office has collected or received support money due under the support order;

(B) The name of the physical custodian;

(C) That the payee may contest distribution of money to the physical custodian by requesting a conference board under WAC 388-14-385, or filing an appropriate motion with the court that entered the support order;

(D) That the office must be given notice of and made a party to any proceeding to contest the notice of distribution.

(ii) A copy of the sworn statement of the physical custodian shall be attached to the notice; and

(c) File a copy of the notice with the clerk of the court in which the support order was entered.

(3) If the location of the family or person to whom the support money is owed is unknown, the office shall exercise reasonable efforts to locate the family or person. If the office is unable to locate and disburse the money to the family or person, the office shall handle the money in accordance with an agreement with the department of revenue and as required by state law.

(4) The office shall apply the following rules to the distribution of support money:

(a) Record all payments in exact amounts without rounding;

(b) Distribute a support payment within eight days of the date the office receives the payment, unless unable to distribute the payment for one or more of the following reasons:

(i) The location of the payee is unknown;

(ii) There is not sufficient information to identify the accounts against which and to which the payment should be applied;

(iii) An action is filed in a court or agency with jurisdiction to decide the issue, to determine whether or not a support payment is owed and/or how the payment should be distributed;

(iv) Under subsection (6) of this section, the office receives prepaid support moneys which are being held and will be distributed in future months;

(v) The office mails a notice of intent to distribute the support money to the physical custodian under subsection (2) of this section; or

(vi) Other circumstances exist which make a proper and timely distribution of the payment impossible through no fault or lack of diligence of the office.

(c) The date of collection shall be the date on which the payment is received by the office. For interstate collections, the date of collection shall be the date on which the payment is received by the office or the legal entity of any state or political subdivision actually making the collection, whichever is earliest;

(d) The office shall apply all payments:

(i) To satisfy the support obligation for the month in which the payments are received and, then;

(ii) To any support debt or debts owed to:

(A) The family;

(B) A person for whom services are being provided;

(C) The department; or

(D) A child support agency in another state or foreign country.

(e) If the responsible parent owes a current support obligation to more than one family and does not pay enough money during the month to satisfy these current support obligations in full, the office shall distribute the money collected based on the proportionate share of the obligation owed to each family;

(f) The office shall apply amounts received during a month in excess of the responsible parent's current support obligation or obligations to the support debt or debts based on the proportionate size of the debts, except as provided in subsection (4)(g) of this section, if:

(i) The support payment or payments exceed the amount required to satisfy the current support obligation or obligations for that month; and

(ii) The responsible parent owes more than one support debt.

(g) The office may apply amounts distributed under this subsection to a single support debt rather than make a proportionate distribution in the following circumstances:

(i) To satisfy a support debt owed to the family that accrued after the family terminated from public assistance as provided for in RCW 26.23.030; or

(ii) If proportionate distribution is administratively inefficient; or

(iii) If the collection resulted from the sale or disposition of a specific piece of property in which the applicant/recipient or applicant/custodian has a judgment lien for child support.

(h) The office shall convert amounts collected which are paid more frequently than once a month to an amount that represents payment on the required support obligation for the current month. The office of support enforcement is directed to distribute payments periodically to give effect to efficient administration;

(i) The office shall report any amounts distributed to a family, receiving public assistance, to the community service office identifying whether or not the payment is available to meet the need. This requirement shall not relieve the recipient of the duty to report receipt of any support moneys; and

(j) The department shall pay a family, receiving cash assistance under the aid to families with dependent children program or the family independence program, the first fifty dollars of each child support payment provided under WAC 388-14-275.

(5) If the office receives or collects support moneys which represent payment on the required support obligation for future months, the office shall:

(a) Apply the support moneys to such future months if the support debt has been paid in full; and

(b) Distribute the support moneys on a monthly basis as of the date payments become due in the future.

(6) When the office receives or collects prepaid support moneys, the office shall mail a notice to the last known address of the person entitled to receive support payments. The notice shall inform the person that:

(a) The office received prepaid support money;

(b) The office will distribute this money as support payments become due in the future; and

(c) He or she may petition the court that entered the support order for an order requiring the immediate distribution of the prepaid support money.

(7) The office may recover support money distributed to a person or to the family in error, after receipt of a check which is later dishonored, or the office is later required to refund or return the support payment, as follows:

(a) In nonassistance cases, the office may deduct and retain, from subsequent support payments, any amounts collected on a support debt and ten percent of amounts collected as current support. The office shall send a notice to the last known address of the person or family prior to taking action to recover such payments. The notice shall:

(i) Contain a finding that a payment was distributed in error, was paid against a check that was later dishonored, or that the office was required to refund the support payment to the responsible parent;

(ii) Identify the payments the office will recover; and

(iii) Inform the person or family of the amounts that will be deducted from future collections; and

(iv) Inform the person or family they may request an ((administrative-hearing)) adjudicative proceeding under chapter ((34.04)) 34.05 RCW to object to the notice. At the hearing, the person may contest the office's findings regarding the existence and amount of the debt for erroneous payments or other payments the office is seeking to recover.

(b) If person or family is no longer receiving support enforcement services, the office of support enforcement may take action under RCW 74.20A.270 to recover the money.

(8) If the family is receiving public assistance and the applicant/recipient fails to remit support payments to the office as required, the office shall use the process set forth in WAC 388-14-200 to recover such support payments.

#### AMENDATORY SECTION (Amending Order 2738, filed 12/14/88)

WAC 388-14-385 CONFERENCE BOARD. (1) A conference board is herewith established to inquire into, determine facts, and attempt to resolve matters in which a responsible parent, custodial parent, or other person feels aggrieved by actions taken by the office of support enforcement pursuant to chapters 74.20, 74.20A RCW, or Title IV-D of the Social Security Act (Title 42 U.S.C.).

(a) The intent and purpose of the conference board is to facilitate the informal speedy resolution of grievances of responsible parents, custodial parents, or other persons. An applicant for a conference board proceeding shall have made a reasonable attempt and have failed to resolve the grievance or issue with the workers before a conference board may act to attempt to resolve the issue.

(b) The director, revenue division, or director's designee may assemble a conference board on application of the aggrieved person or on the director's own motion to investigate, find facts, and state or apply policy or law to the end of resolving grievances.

(c) The director or the director's designee may take such action, as deemed appropriate, and may individually exercise any of the authority provided for in this regulation, if:

(i) The grievance or issue presented in an application for conference board does not involve a factual dispute, or

(ii) The disputed fact or facts even if resolved in favor of the applicant would not provide a basis upon which relief could be granted to the applicant by a conference board acting in accordance with the standards provided for in this section.

(d) If an apparent factual dispute exists:

(i) The director or director's designee shall assemble a conference board composed of the director or director's designee, who shall serve as chairman, and two staff members, if deemed necessary.

(ii) The chairman of the conference board shall mail a notice, to the applicant and any other person or agency who is a party in interest to the proceeding, that a conference board has been convened and inform the parties of the time and place of the conference board at least seven days prior to the date the conference board is scheduled.

(e) The chairman of the conference board is herewith authorized as a duly appointed officer empowered to issue subpoenas of witnesses, books, records, etc., as provided for in RCW 74.04.290 and shall have power to subpoena witnesses, administer oaths, take testimony, and compel the production of such papers, books, records, and documents deemed relevant to the resolution of the grievance under consideration. Additional evidence may be taken by affidavit or other written submission when necessary or practicable together with written or oral argument. The director may designate persons having specific familiarity with the matter at issue or technical expertise with the subject to advise the board as required.

(f) The conference board's jurisdiction shall include but shall not be limited to the following areas:

(i) Complaints as to the conduct of individual staff members while acting in the scope of their duties. The decision of the board shall be directed to the first line supervisor for action as appropriate;

(ii) Review of denial of application for or termination of nonassistance support enforcement services;

(iii) Review of allegations of error as to the distribution of support moneys;

(iv) Resolution of amounts of arrears claimed due and rate of repayments;

(v) Requests to release or refund moneys taken pursuant to RCW 74.20A.080 to provide for the reasonable necessities of responsible parent or parents and minor children in their home;

(vi) Requests for deferral of support enforcement action;

(vii) Requests for partial or total charge-off of support arrears pursuant to RCW 74.20A.220 or declination to collect support arrears pursuant to RCW 74.20.040 on nonassistance cases;

(viii) Requests to waive interest pursuant to RCW 74.20A.190;

(ix) Requests to waive or defer the nonassistance support enforcement fee pursuant to RCW 74.20.040;

(x) Review of determinations that a support obligation has been satisfied or is no longer legally enforceable;

(xi) Any other matter requiring explanation of or application of policy or law to an issue in a specific case or clarification of facts in said case.

(xii) Requests for administrative review of cases submitted to the IRS for offset of a tax refund in accordance with federal statutes and regulations.

(2) The conference board shall dissolve upon issuance of decisions on matters for which it was appointed.

(3) The board's decision, including a decision to deny a request for a conference board, shall be in accordance with applicable statutes, case law, department of social and health services rules and regulations, published office of support enforcement manuals, support enforcement policy bulletins and the exercise of reasonable administrative discretion. The decision shall be in writing and shall find the facts, applicable law, policies applied, and clearly state the decision. If the decision is the result of a conference board, that decision shall represent the decision of a majority of the board. The director shall vacate decisions inconsistent with the standards in this section and remand them for issuance of a new decision in compliance with the standards.

(4) The office shall establish a file of pertinent documents for each case and distribute a copy of the decision, signed by the chairman, to:

(a) The applicant;

(b) Other parties in interest when requested;

(c) The appropriate office of support enforcement district field office for action consistent with the decision of the board; and

(d) The director.

(5) The board shall base decisions under RCW 74.20A.220 to grant partial or total charge-off of arrears owed to the department of social and health services under RCW 74.20A.030, 74.20A.250, 74.20.320, 74.20.330, or 42 U.S.C. 602 (a)(26)(A) on the following considerations and shall state them in the written decision of the conference board fully justifying the action taken:

(a) Error in law or bona fide legal defects that materially diminish chances of collection; or

(b) Substantial hardship to minor children in the household of the responsible parent or other minor children for whom the responsible parent actually provides support which hardship is to be measured against income standards for public assistance and consideration of all available income, property, and resources of the responsible parent and the necessity to apportion the income and resources of the responsible parent on an equitable basis with the children for whom the arrears accrued; or

(c) Costs of collection action in the future that are greater than the amount to be charged off; or

(d) Settlement from lump-sum cash payment that is beneficial to the state considering future costs of collection and likelihood of collection.

(6) A conference board is not ~~((a contested case))~~ an adjudicative proceeding subject to review by the superior court and is not a substitute for any constitutionally or statutorily ~~((permitted))~~ required hearing. Aggrieved parties may be represented before the board by a person of their choice represented before the board by a person of their choice. The department shall not pay any costs incurred by the aggrieved person in connection with the conference.

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

#### AMENDATORY SECTION (Amending Order 2036, filed 10/6/83)

WAC 388-14-390 ~~((PETITION FOR HEARING))~~ ADJUDICATIVE PROCEEDING WHEN COLLECTION ACTION IS INITIATED AGAINST A BANK ACCOUNT—EXEMPTIONS—BURDEN OF PROOF. If the department initiates collection action against a bank account, the responsible parent or the joint owner of record of the bank account may ~~((petition))~~ contest the ~~((secretary or the secretary's designee for a hearing))~~ action in an adjudicative proceeding. The ~~((petition))~~ application shall be ~~((served upon))~~ filed at the office of support enforcement by registered or certified mail or personally within twenty days of the date a copy of the order to withhold and deliver was either mailed to or served upon the responsible parent pursuant to RCW 74.20A.080 or a written notice of the collection action was mailed by certified mail to the last known address of the joint owner of record of the account. The ~~((petition))~~ application shall state the facts supporting the allegation by the responsible parent or the joint owner that the funds in the account, or a portion of those funds, are exempt from satisfaction of the child support obligation of the responsible parent.

On the ~~((petition))~~ application of the responsible parent, the joint owner of record, or OSE, a hearing shall be scheduled solely for the purpose of determining whether or not one of the following exemptions applies to the funds in the bank account:

(1) Pursuant to RCW 26.16.200 and 74.20A.120, the funds in the community bank account, or a portion of those funds which can be identified as the earnings of the spouse not owing a support obligation to the child or children of the responsible parent, are exempt from satisfaction of the child support obligation of the responsible parent.

(2) The funds in a bank account, or a portion of those funds which can be identified as AFDC funds, SSI monies, or other kinds of funds having been legally exempted from collection action, are exempt from satisfaction of the child support obligation of the responsible parent.

(3) The funds in a bank account which can be identified as being solely owned by the joint owner of record of the bank account not owing a child support obligation to the child or children of the responsible parent, are exempt from satisfaction of the child support obligation of the responsible parent.

The burden of tracing the funds and proving the funds in the bank account are exempt from satisfaction of the child support obligation of the responsible parent is on the responsible parent or the joint owner of record.

~~((The secretary or the secretary's designee shall notify the parties or their designated representatives of the date, time, and place of the hearing at least twenty days prior to the scheduled date of the hearing by written notice to the parties or their representatives by registered or certified mail. If the parties waive their right to twenty days' notice of the hearing and request the hearing be scheduled on an expedited basis, however, the hearing shall be scheduled within fifteen days of the receipt of the petition for hearing and notice of the hearing shall be mailed to the parties not less than seven days prior to the scheduled date of the hearing. If the time, date, or place is inconvenient to either party, the hearing shall grant a new time, date, or place as is reasonably convenient upon a showing of good cause))~~ If an application is filed, the department shall serve the notice of hearing on the appellant or the appellant's representative by certified mail or another method showing proof of receipt.

Moneys withheld as a result of collection action initiated against a bank account and delivered to the office of support enforcement at the time of the granting of ~~((a request for hearing))~~ an application shall be held by the office of support enforcement pending the final adjudicative order ~~((of the secretary))~~ or during the pendency of any appeal to the courts.

If the final decision of the department or courts on appeal is that the department has caused funds in a bank account that are exempt from satisfaction of the child support obligation of the responsible parent to be withheld by the bank or delivered to the department, the office of support enforcement shall promptly release the order to withhold and deliver or refund the proportionate share of the funds having been identified as being so exempt. No interest shall accrue or be payable by the department on any moneys withheld pursuant to RCW 74.20A.080.

AMENDATORY SECTION (Amending Order 2606, filed 3/4/88)WAC 388-14-415 NOTICE OF SUPPORT ~~((DEBT)) OWED.~~

(1) The notice of support ~~((debt)) owed~~ issued, under RCW ~~((74-20A-040))~~ 26.23.110, shall state that:

(a) The office is providing support enforcement services on behalf of the responsible parent's dependent children.

(b) Twenty-one days after service of the notice, the office will take action to collect the responsible parent's support obligation. The office shall take collection action without further notice if a support payment is more than fifteen days past due in an amount equal to the support payable for one month. Collection action includes issuing orders to withhold and deliver and notices of payroll deduction, or taking other income withholding action.

(c) After service of the notice, the responsible parent must make all support payments through the Washington state support registry.

(d) The responsible parent will not receive credit for payments made to a person or agency other than the support registry under RCW 26.23.050(7) and 74.20.101.

(2) The notice shall be served on the responsible parent like a summons in a civil action, or shall be mailed to his or her last known address by certified mail, return receipt requested.

(3) The notice of support ~~((debt)) owed~~ shall contain:

(a) The current monthly amount for support under a court or administrative order;

(b) An initial finding of the current support amount if there is no fixed dollar amount in the order, and the basis, rationale, or formula used to make the initial finding;

(c) The amount of any support debt, including medical support, owed by the responsible parent;

(d) A statement that the responsible parent has twenty days after service of the notice to contest:

(i) The initial finding for current support ~~((or support debt amount))~~ under subsection (3)(b) of this section; or

(ii) The support debt, and/or the current/future support obligation, if the support order contains an escalation clause or adjustment provision for which additional information not contained in the order is needed to determine the amount of the support debt or current support.

(e) A statement that the responsible parent may contest the notice by either:

(i) ~~((Making))~~ Filing a written ~~((request))~~ application for an ~~((administrative hearing to be held))~~ adjudicative proceeding under chapter ~~((34-04))~~ 34.05 RCW; or

(ii) Filing an action in superior court.

(4) The office may make the initial finding based upon:

(a) The factors stated in the order; and

(b) The responsible parent's earnings, if known; or

(c) The responsible parent's ability to earn if the actual earnings are unknown; or

(d) The needs of the dependent child(ren) if the responsible parent's earnings and ability to earn are unknown.

(5) If the responsible parent does not ~~((request a hearing))~~ file an application for an adjudicative proceeding or start an action in superior court the office shall:

(a) ~~((Issue))~~ Enter a default order stating the notice amounts if the notice contained an initial finding of the amount for current support;

(b) Mail a copy of the order to the last known address of the responsible parent. A copy of the order shall also be mailed to the person to whom support is payable under the support order;

(c) Collect the amounts stated in the notice without further notice.

(6) If the responsible parent ~~((requests a hearing))~~ files an application under this section, the department shall ~~((issue))~~ serve a notice of hearing on the responsible parent or the parent's representative. A copy of the notice of hearing shall also be mailed to the person to whom the support is payable under the support order.

The notice shall direct the responsible parent to appear and show why the current support amount and/or the support debt amount is wrong. ~~((A copy of the notice of hearing shall also be mailed to the person to whom the support is payable under the support order.))~~

(7) The responsible parent shall:

(a) List ~~((the))~~ defenses to liability and/or state the reasons why support should not be set as stated in the notice ~~((in the request for a hearing))~~ of support owed;

(b) Attach an office approved financial affidavit;

(c) ~~((Serve))~~ File the ~~((request for a hearing on))~~ application at the office of support enforcement by certified mail, return receipt requested, or like a summons in a civil action.

(8) If the responsible parent ~~((requests a hearing))~~ files an application for an adjudicative proceeding within twenty days of service of the notice of support owed, the office shall stay collection action pending the ~~((outcome of the hearing))~~ final adjudicative order, except as provided in subsection (9) of this section.

(9) The office may take action to collect:

(a) Temporary support if the administrative law judge issues an order for temporary support;

(b) Any part of the support debt that the responsible parent fails to allege is not owed;

(c) A fixed or minimum dollar amount for current support stated in the court order;

(d) Any part of a support debt that has been reduced to a sum certain judgment by a proper court or agency.

(10) The responsible parent shall prove defenses to the initial finding for current support and/or the amount of the support debt.

(11)(a) The following sections of chapter 388-11 WAC ~~((provisions))~~ are incorporated by reference and ~~((apply))~~ made applicable to the hearing process ~~((under))~~ provided for in this section ~~((if))~~ to the extent they are consistent and ~~((when))~~ relevant:

WAC 388-11-011, 388-11-065, 388-11-070, 388-11-100, ~~((388-11-105)),~~ 388-11-115, 388-11-120, 388-11-130, 388-11-135, 388-11-140, 388-11-145, 388-11-150, 388-11-155, 388-11-170, ~~((388-11-180, 388-11-185;))~~ and 388-11-190 ~~((and chapter 10-08 WAC)).~~

(b) Hearings held under this section shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), and chapters 388-08 and 388-14 WAC. If any provision in this chapter or in a rule incorporated by reference by (11)(a) of this section conflicts with or is inconsistent with chapter 388-08 WAC, the provision in this chapter or a rule incorporated by reference in (11)(a) of this section shall govern.

(12) ~~((After evidence has been presented at a hearing, the hearing examiner shall, within twenty days:~~

(a) Find the amount current support payable under the order;

(b) Find the amount of the support debt, including medical support, accrued prior to the date of service of the notice;

(c) Issue findings of fact, conclusions of law, and initial decision and order.

~~((13))~~ The ~~((hearing examiner's order shall also provide that either the))~~ office ~~((or))~~ of support enforcement and the responsible parent ~~((may))~~ each have the right to request a yearly review of the support order.

~~((14))~~ (13) The ~~((hearing examiner in the initial decision, and the secretary or designee in review of the proposed decision;))~~ administrative law and review judge's authority shall be limited to:

(a) Interpretation of the court order for support only. The ~~((hearing examiner))~~ administrative law and review judges shall have no authority to change or defer the support amount owed except to:

(i) Find the amount of monthly support as a fixed dollar amount; and

(ii) Find any arrears accrued prior to service of the notice of support owed.

(b) Correct mathematical computation of the stated debt;

(c) Superior court orders which have modified the superior court order in issue. Contempt orders and orders entered under chapters 26.21 or 26.20 RCW shall not be construed as modifications.

~~((15))~~ (14) If the debtor fails to appear at the hearing, the ~~((hearing examiner))~~ administrative law judge shall, after proof of proper service, enter a decision and order declaring the support debt subject to collection action.

~~((16))~~ The hearing examiner shall file the original of the initial decision and order with the secretary or the secretary's designee.

~~((17))~~ (15) The ~~((hearing examiner))~~ administrative law and review judges shall mail copies of the decisions and orders to:

(a) The office of support enforcement;

(b) The last known address of the responsible parent by certified mail; and

(c) The last known address of the person to whom support is payable under the support order.

~~((18))~~ The responsible parent or the office may request review of the initial decision within thirty days of receipt of the initial decision. Review shall be as set forth under WAC 388-11-105.

~~((19))~~ (16) Informal disposition of any hearing is favored where possible and not precluded by law. The office may dispose of cases by an agreed settlement ~~((;))~~ or a consent order. The administrative law judge shall approve any consent order unless it is contrary to law.

~~((20))~~ (17) A support order issued under this section shall:  
 (a) Contain the notice and information listed in RCW 26.23.050(4), and  
 (b) Be filed with the clerk of the court that has jurisdiction over the court order.  
~~((21) The office is not required to serve a notice of support debt on the responsible parent prior to collection action if:  
 (a) The office is providing services on behalf of the responsible parent's dependent children, and  
 (b) A superior court or administrative order directs the responsible parent to make support payments through the office or the Washington state support registry.~~  
~~((22))~~ (18) The responsible parent may ~~((request a hearing))~~ file an application for a proceeding under this section if the responsible parent claims credit for payments under WAC 388-14-210(4). ~~((When the department issues a notice of hearing to the responsible parent, the department shall mail a copy of the notice to the last known address of the person to whom support is payable under the order.))~~

**WSR 89-22-090**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**  
 [Order 3006—Filed October 31, 1989, 4:30 p.m.]

Date of Adoption: October 31, 1989.

Purpose: To conform program rules on adjudicative proceedings to the new Administrative Procedure Act, chapter 34.05 RCW, and other recent statutory changes.

Citation of Existing Rules Affected by this Order: See below.

Statutory Authority for Adoption: See below.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Adjudicative proceedings in programs administered by this department were affected by the new Administrative Procedure Act, chapter 34.05 RCW, and other statutory changes that became effective July 1, 1989. These rules conform the rules to the statutory changes. See below.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Substantially similar emergency rules were filed on July 3, 1989, under WSR 89-14-098. The rules here filed are being proposed for permanent rule making by rule making order filed on the same day as this order. See RCW 34.05.350(2).

The Administrative Procedure Act, chapter 34.05 RCW, at section 250 requires the Chief Administrative Law Judge, Office of Administrative Hearings, to adopt model rules of procedure under the act. RCW 34.05.220 (1)(a) permits an agency to adopt its own rules. An agency must adopt as much of the model rules as is reasonable and state the reasons for any variation in the order of rule adoption. Variations from the model rules are described below.

<u>Washington Administrative Code (WAC)</u>	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	<u>Statutory authority (RCW or Session Law Chapter)</u>	<u>Additional reasons for proposal and variations from Model Rules</u>
388-11-100		Amend		74.08.090	1. The scope of the rule is broadened to include objection to a notice and finding of parental responsibility. See chapter 55, Laws of 1989. 2. Housekeeping. See RCW 34.05.461(1)(c) and RCW 74.20A.055 as amended by section 152, chapter 175, Laws of 1989.
388-11-105			Repeal	Same	The section is being repealed because it conflicts with RCW 34.05.464(5). See also RCW 74.20A.055 as amended by section 152, chapter 175, Laws of 1989.

Washington Administrative Code (WAC)	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	Statutory authority (RCW or Session Law Chapter)	Additional reasons for proposal and variations from Model Rules
388-11-180		Amend		Same	Housekeeping
388-11-185			Repeal	Same	This section would limit discovery to the devices stated in it by operation of RCW 34.05.446(2), (3). General DSHS adjudicative proceeding rules do not contain such limits (see WAC 388-08-464). Thus, repeal of this rule broadens discovery rights in this program and makes them the same as those in chapter 388-08 WAC.
388-13-050		Amend		Same	Housekeeping. See RCW 74.20A.270 as amended by sections 156 and 157, chapter 175, Laws of 1989.
388-13-060		Amend		Same	Same
388-13-070		Amend		Same	Same
388-13-080			Repeal	Same	Same as WAC 388-11-105 (see above).
388-13-110		Amend		Same	Pursuant to RCW 34.05.440(3) the department has adopted 14 days as the general time to file a motion to vacate a dismissal of the proceedings for reason of default. The general period is contained in WAC 388-08-440. This rule in chapter 388-11 is being repealed to make WAC 388-08-440 apply to this program in the interest of achieving greater procedural uniformity among programs.
388-13-120		Amend		Same	Housekeeping and to achieve greater procedural uniformity among department programs.

Washington Administrative Code (WAC)	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	Statutory authority (RCW or Session Law Chapter)	Additional reasons for proposal and variations from Model Rules
388-14-260		Amend		Same	Same
388-14-270		Amend		Same	Housekeeping
388-14-385		Amend		Same	Same
388-14-390		Amend		Same	Housekeeping and to achieve greater procedural uniformity among department programs.
388-14-415		Amend		Same	1. Required by section 16, chapter 360, Laws of 1989. 2. Housekeeping

Effective Date of Rule: November 1, 1989, 12:01 a.m.  
October 31, 1989  
Leslie F. James, Director  
Administrative Services

**AMENDATORY SECTION** (Amending Order 2689, filed 8/30/88)

**WAC 388-11-100 DUTY OF THE ADMINISTRATIVE LAW JUDGE.** (1) In hearings held under this chapter to contest a notice and finding of financial responsibility or a notice and finding of parental responsibility, the administrative law judge shall determine:

(a) The responsible parent's obligation to provide support under RCW 74.20A.057;

(b) The net monthly income of the responsible parent and any residential parent;

(c) The responsible parent's share of the basic support obligation and any adjustments to that share, as warranted by his or her circumstances;

(d) If requested by a party, the responsible parent's share of any special child-rearing expenses;

(e) The responsible parent's obligation to provide medical support under WAC 388-11-215;

(f) The responsible parent's accrued debt and order payments thereon; and

(g) The responsible parent's total current and future support obligation as a sum certain and order payments thereon.

(2) The administrative law judge shall allow the office of support enforcement to orally amend the notice (~~and finding of financial responsibility~~) at the hearing to conform to the evidence. The administrative law judge

may grant a continuance, when deemed necessary, to allow the responsible parent additional time to present rebutting evidence and/or argument as to the amendment.

~~(3) ((Except as provided for under WAC 388-11-185;))~~ The administrative law judge shall not require the office of support enforcement to produce or obtain information, documents, or witnesses to assist the responsible parent in proof of defenses to liability. However, this rule shall not apply to relevant, nonconfidential information or documents that the office of support enforcement has in its possession.

~~((4) The administrative law judge shall issue an initial decision and order within twenty days of the close of the hearing record;))~~

AMENDATORY SECTION (Amending Order 2689, filed 8/30/88)

WAC 388-11-180 PROCEDURAL REFERENCE. Hearings held under this chapter shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 74.20A.055 ~~((shall be subject to the provisions of)), and chapters ((10-08 and)) 388-08 and 388-11 WAC ((to the extent these provisions are relevant and consistent with the rules adopted under)).~~ If any provision of this chapter conflicts with or is inconsistent with chapter 388-08 WAC, the provision in this chapter governs.

#### REPEALER

The following sections of the Washington Administration Code are repealed:

WAC 388-11-105 REVIEW OF INITIAL DECISION.

WAC 388-11-185 DISCOVERY.

**Reviser's note:** The typographical error in the above repealer appeared in the original copy of the repealer and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 1465, filed 12/14/79)

WAC 388-13-050 PETITION FOR HEARING AFTER TWENTY DAYS—STAY. (1) The person, firm, corporation, association, political subdivision or any officer or agent thereof served with a notice of support debt at any time within one year from the date of service of said notice may petition the secretary or the secretary's designee for a hearing, as provided for but not previously granted ~~((pursuant to))~~ under WAC 388-13-070, upon a showing of any of the grounds enumerated in RCW 4.72.010 or CR 60. A copy of said petition shall also be served by certified mail, return receipt requested, or by service in the manner of a summons in a civil action on the district field office of the office of support enforcement. The filing of the petition shall not stay any collection action being taken, but the debtor may petition the secretary or the secretary's designee for an order staying collection action pending final decision of the secretary or the secretary's designee or the courts on an appeal made ~~((pursuant to))~~ under chapter ~~((34-04))~~ 34.05 RCW.

(2) Any moneys held and/or taken by collection action prior to the date of any such stay and any support moneys claimed by the department, including moneys to be received in the future, to which the department may have a claim, shall be held in trust pending the final decision and appeal, if any, to be disbursed in accordance with the final decision. The secretary or the secretary's designee shall condition the stay to provide for the trust.

(3) If a ~~((request))~~ petition for a hearing is ~~((received))~~ filed, the department shall ~~((notify))~~ serve the notice of hearing on the appellant, ~~((his))~~ the appellant's attorney, or other designated representative ~~((; of the date, time and place of the hearing, at least twenty days prior to the date thereof by written notice to the appellant or his or her representative))~~ by certified mail or other method showing proof of receipt.

(4) The department shall notify the appellant that it is ~~((his or her))~~ the appellant's responsibility to notify the department of ~~((his or her))~~ the appellant's mailing address at the time ~~((of))~~ the ~~((request for hearing))~~ petition is filed and also of any change of address after ~~((this request for hearing is submitted))~~ filing the petition. Mailing by certified mail, return receipt requested, to the last address provided by the appellant shall constitute service ~~((pursuant to))~~ under chapters 74.20A and ~~((34-04))~~ 34.05 RCW.

~~((The hearing shall be promptly scheduled within thirty days of the date of receipt of the request for hearing. If the time, date or place is inconvenient to either party, the hearing examiner may grant a new time, date or place as is reasonably convenient upon a showing of good cause.))~~

AMENDATORY SECTION (Amending Order 1465, filed 12/14/79)

WAC 388-13-060 TIMELY ~~((REQUEST))~~ APPLICATION FOR HEARING. (1) Any debtor who objects to all or any part of a notice of support debt shall have the right, for not more than twenty days from the date of service of the notice of support debt, to ~~((request))~~ file an application for an adjudicative proceeding, in writing, ~~((a hearing, which request shall be served upon))~~ at the district office of the office of support enforcement by certified mail or by personal service. ~~((A request for hearing, pursuant to))~~ An application under this section ~~((;))~~ shall be construed to be a general denial of liability to the department.

(2) The execution of the notice of support debt shall be stayed pending the final ~~((decision on such hearing))~~ adjudicative order.

(3) If ~~((a request for hearing))~~ an application is ~~((received))~~ timely filed, the department shall ~~((notify))~~ serve the notice of hearing on the appellant ~~((; his attorney;))~~ or ~~((other designated))~~ the appellant's representative ~~((; of the date, time and place of the hearing, at least twenty days prior to the date thereof by written notice to the appellant or his or her representative))~~ by certified mail or another method showing proof of receipt.

(4) The department shall notify the appellant that it is ~~((his or her))~~ the appellant's responsibility to notify the

department of ~~((his or her))~~ the appellant's mailing address at the time ((of) the ((request for hearing)) application is filed and also of any change of address after ((this request for hearing is submitted)) filing the application. Mailing by certified mail, return receipt requested, to the last address provided by the appellant shall constitute service ((pursuant to)) under chapters 74.20A and ((34.04)) 34.05 RCW.

~~((The hearing shall be promptly scheduled within thirty days of the date of receipt of the request for hearing. If the time, date or place is inconvenient to either party, the hearing examiner may grant a new time, date or place as is reasonably convenient upon a showing of good cause.))~~

AMENDATORY SECTION (Amending Order 2340, filed 2/12/86)

WAC 388-13-070 HEARING—INITIAL DECISION((S)). (1) If the ~~((hearing))~~ petition or application is granted, it shall be an ((administrative hearing)) adjudicative proceeding limited to the determination of the ownership of the moneys claimed in the notice of support debt and/or the reasonableness of a repayment agreement presented to a public assistance recipient for the purpose of recovering child support under RCW 74.20A.270 and WAC 388-14-200 (4) and (5). The right to the ((hearing)) proceeding is conditioned upon holding any funds not yet disbursed or expended or to be received in the future in trust pending the final adjudicative order ((in these proceedings)) or during any appeal to the courts. The secretary or the secretary's designee shall enter an appropriate order providing for the terms of the trust.

(2) ~~((The hearing shall be a contested case as provided for in chapter 34.04 RCW and shall be held pursuant to this section, chapter 34.04 RCW, and the rules of the department.~~

~~(3) The hearing shall be promptly scheduled within thirty days from the date of receipt by the office of support enforcement of the answer/request for hearing by the department. The hearing shall be conducted by a duly qualified hearing examiner appointed for that purpose. Hearings may be held in the county of residence of the debtor or other place convenient to the debtor.~~

~~(4)) The department shall have the burden of proof to establish ownership of the support moneys claimed, including but not limited to moneys not yet disbursed or spent.~~

~~((5)) (3) ((After evidence has been presented at a hearing conducted by a hearing examiner, the hearing examiner shall enter an initial decision and order which shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the order based thereon. The hearing examiner shall make his or her decision and enter his or her findings of fact based upon the evidence admitted at the hearing.)) The administrative law judge shall allow the office of support enforcement ((shall have the right)) to orally amend the notice of support debt((:)) at the ((time of)) hearing((:)) to conform to the evidence ((in which case)). The ((hearing examiner is empowered to)) administrative law judge may grant a continuance, when~~

deemed necessary, to allow the debtor additional time to present rebutting evidence and/or argument as to the amendment.

~~((6)) (4) The ((hearing examiner)) administrative law judge shall ((file the original of the initial decision and order, signed by him or her, with the secretary or the secretary's designee and copies thereof shall be mailed by the hearing examiner to)) serve a copy of the administrative law judge's initial decision on the office of support enforcement and ((to)) the debtor or the debtor's representative by certified mail to the last address provided by each party or by another method showing proof of receipt.~~

~~((7) To the extent they do not conflict with these rules or RCW 74.20A.270, the provisions of chapter 388-11 WAC and RCW 74.20A.055 shall apply to this process.))~~

AMENDATORY SECTION (Amending Order 1465, filed 12/14/79)

WAC 388-13-110 DEFAULT. ~~((+))~~ If the debtor fails to appear at the hearing, the ~~((hearing examiner))~~ administrative law judge shall, upon a showing of valid service, enter an initial decision and order declaring the amount of the support moneys, as claimed in the notice, to be assessed and determined and subject to collection action under chapter 74.20A RCW.

~~((2) Within thirty days of entry of the decision and order in subsection (1) of this section, the debtor may petition the secretary or the secretary's designee to vacate the decision and order and remand the matter upon the showing of any of the grounds enumerated in RCW 4.72.010 or CR 60.))~~

AMENDATORY SECTION (Amending Order 1465, filed 12/14/79)

WAC 388-13-120 PROCEDURAL REFERENCE. ~~((+))~~ WAC 388-11-145, 388-11-150 and 388-11-180 and all procedural references in that last section shall apply to actions under this chapter.

~~(2) Any provisions of)) Adjudicative proceedings held under chapter 388-13 WAC shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 74.20A.270, and chapters ((388-11 or 388-14)) 388-08 and 388-13 WAC ((not in)). If any provision of this chapter conflicts with ((these rules or section 17 or 18,)) or is inconsistent with chapter ((171, Laws of 1979 ex. sess. [RCW 74.20.320 and 74.20A.270])) 388-08 WAC, ((shall apply to actions under)) the provision in this chapter governs.~~

#### REPEALER

The following sections of the Washington Administration Code are repealed:

WAC 388-13-080 REVIEW OF INITIAL DECISION.

Reviser's note: The typographical error in the above repealer appeared in the original copy of the repealer and appears in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION** (Amending Order 2304, filed 11/13/85)

WAC 388-14-260 DISTRIBUTION—REFERALS FROM OTHER STATES. (1) When a child support enforcement agency in another state, operating a child support program under Title IV-D of the Social Security Act, submits a request for support enforcement services under RCW 74.20.040(3), the office of support enforcement shall initiate appropriate action to establish, enforce, and collect the support obligation. The request shall be signed by an authorized official of the state agency and shall contain appropriate information and be accompanied by appropriate documentation to support the action to establish, enforce, and/or collect the support obligation. The following is a list of some of the information/documentation that may be submitted with the request for support enforcement services:

(a) The responsible parent's name, address, Social Security number, date of birth, present or last known employer, earnings or ability to earn, employment history, property and resources, and physical description;

(b) The custodian's name, address, and Social Security number;

(c) The names, address, Social Security numbers, and dates of birth of the dependent children;

(d) A certification that the request is being submitted under Title IV-D of the Social Security Act and identification of the case as a public assistance or nonassistance case;

(e) A copy of any superior court order or administrative order establishing the support obligation and any order modifying the court or administrative order;

(f) A copy of any official record of support payments made by the responsible parent or, if no such record exists, an affidavit setting forth the amount of support due under the superior court or administrative order, the period during which support was due and payable, and the amounts and dates of support payments;

(g) If there is no superior court or administrative order for support, an affidavit setting forth the following:

(i) A statement of facts establishing or tending to establish the existence of a legally enforceable support obligation;

(ii) A statement of the dates and amounts of any public assistance payments or a statement reflecting the needs of the children for food, clothing, shelter, medical support, or other necessities if no such assistance has been provided.

(2) If a superior court order has been entered establishing the responsible parent's support obligation, the office of support enforcement may proceed under RCW 74.20A.040 to enforce the support obligation and initiate further enforcement and collection action as authorized by law.

(3) If an administrative order has been entered by an agency in another state establishing the responsible parent's support obligation, the office of support enforcement may issue a notice of debt accrued and/or accruing created by the administrative order. Said notice shall be served upon the debtor in the manner prescribed for service of a summons in a civil action or be served on the

debtor by certified mail, return receipt requested, demanding payment within twenty days of the date of receipt. The notice of debt shall include a statement of the support debt accrued, computable on the amount required to be paid under the administrative order; a statement that the property is subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver; and a statement that the net proceeds will be applied to the satisfaction of the support debt. The notice shall also include a statement of the amount of the monthly payment for future/current support the responsible parent is required to make under the administrative order.

(a) Any debtor objecting to all or any part of the notice of debt shall have a right to ~~((request a contested hearing under chapter 34.04 RCW))~~ an adjudicative proceeding. The ~~((request))~~ application for a proceeding shall be in writing and shall include a statement of the grounds and defenses upon which relief from the administrative order is sought and/or the basis for modification of the amount for future/current support.

The ~~((request))~~ application shall be ~~((served upon))~~ filed at the office of support enforcement by registered or certified mail or personally. ~~((If a hearing is requested, it shall be promptly scheduled in no more than thirty days from the date of receipt of the request.))~~ If ((a request for hearing)) an application is ((made)) filed within twenty days of the date of service of the notice, collection action shall be stayed pending the ~~((decision on such hearing))~~ final adjudicative order. If no ~~((such request))~~ application is ((made)) filed within this twenty-day period, the support debt and/or the amount of the future/current support payments shall become final subject to the provisions of WAC 388-14-260 (3)(e) and shall be subject to collection action.

(b) The scope of the hearing shall be limited to the grounds and defenses enumerated in superior court Civil Rule 60 which may entitle the debtor to relief from the administrative order and/or a determination whether or not the amount of the monthly payment for future/current support should be modified in accordance with the provisions of WAC 388-11-140. The burden of proof to establish such grounds and defenses and/or a material change in circumstances shall be on the debtor.

(c) If the debtor presents evidence which would constitute a full or partial defense and/or grounds for modification, upon request, the administrative law judge may continue the hearing to permit the parties to submit further evidence. Pending further hearing and the entry of an initial decision, the debtor may be ordered to pay or make reasonable payments on any undisputed portion of the support debt and to pay current support if owed.

(d)(i) The provisions of the following sections of chapter 388-11 WAC are incorporated by reference and made applicable to the hearing process provided for in this section to the extent they are consistent ~~((b-with))~~ and relevant ~~((to the hearing process))~~: WAC 388-11-015, 388-11-065, 388-11-070, 388-11-100, ~~((388-11-105))~~, 388-11-115, 388-11-120, 388-11-130, 388-11-135, 388-11-140, 388-11-145, 388-11-150, 388-11-155, 388-11-170, ~~((388-11-180, 388-11-185,))~~ and 388-11-190~~((, and chapter 10-08 WAC))~~.

(ii) Hearings held under chapter 388-14 WAC shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), the provisions in this chapter, and chapter 388-08 WAC. If any provision in this chapter or in a rule incorporated by subsection (3)(d)(i) of this section conflicts with a provision in chapter 388-08 WAC, the provision in this chapter or in a rule incorporated by subsection (3)(d)(i) of this section shall govern.

(e) If a written ((request)) application for ((hearing)) an adjudicative proceeding is ((served upon)) filed at the office of support enforcement after the twenty-day period, the debtor's right to relief from the administrative order shall be determined pursuant to the provisions of Civil Rule 60. ((A contested hearing under chapter 34.04 RCW shall be promptly scheduled in response to such a request.)) The filing of the ((petition for a hearing)) application after the twenty-day period shall not affect any collection action previously taken under chapter 74.20A RCW. The granting of a ((request for hearing)) late application shall operate as a stay on any future collection action, pending the final ((decision of the secretary or the secretary's designee on the hearing)) adjudicative order. Moneys withheld as a result of collection action in effect at the time of the granting of the ((request for the hearing)) late application shall be delivered to the department and shall be held in trust by the department pending the final adjudicative order ((of the secretary)) or during the pendency of any appeal to the courts made under chapter ((34.04)) 34.05 RCW. The department may petition the administrative law judge to require the responsible parent to pay future/current support. If an order for future/current support is entered and the responsible parent fails to comply with the order, the office of support enforcement may take appropriate collection action.

(4) If there is no superior court order or administrative order, the office of support enforcement may issue a notice and finding of financial responsibility and proceed in accordance with the provisions of RCW 74.20A.055 which are incorporated by reference herein, to establish the support obligation, and initiate further enforcement and collection action as authorized by law.

(5) If the office of support enforcement is unable to establish, enforce, and/or collect the support obligation in response to the request or otherwise deems it appropriate under the circumstances, the case may be referred to the county prosecuting attorney or attorney general's office for collection action.

(6) A petition that has been or may be transmitted from another state for enforcement under the Uniform Reciprocal Enforcement of Support Act, chapter 26.21 RCW, may be deemed to be a request for support enforcement services sufficient to authorize the office of support enforcement to initiate action to establish, enforce, and collect the support obligation in accordance with this section.

(7) If the office of support enforcement is unable to locate the responsible parent after reasonable and diligent efforts, the requesting agency fails to provide sufficient information to locate the responsible parent and/or establish and enforce the support obligation, or the case

does not appear to have collection potential for the foreseeable future, the office of support enforcement may discontinue support enforcement services and return the request and accompanying documentation to the requesting agency.

(8) If the office of support enforcement is notified by the requesting agency that the custodian of the dependent child or children is moving to another state, support enforcement services on behalf of the custodian may be continued for a period not to exceed five months.

(9) When the responsible parent is residing and/or employed in another state and support enforcement services are being provided under RCW 74.20.040 (1) or (2), the office of support enforcement may execute and submit a request for support enforcement services similar to the request described in this section to the IV-D agency of that state, or may refer the case to the county prosecuting attorney or the attorney general's office for appropriate action.

(10) Upon request from another state, the office of support enforcement shall provide available information/documentation from case files, including but not limited to copies of superior court orders, administrative orders, pay records, and statements/affidavits of support debts, employment, and public assistance records.

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

#### AMENDATORY SECTION (Amending Order 2794, filed 5/3/89)

**WAC 388-14-270 DISTRIBUTION OF SUPPORT PAYMENTS—PUBLIC ASSISTANCE.** (1) When the office provides support enforcement services, the office shall distribute all support money collected by the office, or received by the office in its capacity, as the Washington state support registry:

(a) In accordance with state and federal law, if public assistance, or cash benefits under the family independence program, is being or has been provided for the support of the family unit;

(b) To the payee under the order if the payee has physical custody of the children;

(c) To the physical custodian of the children if someone other than the payee has physical custody of and is caring for the children; and/or

(d) To the child support enforcement agency in another state or foreign country which submitted a request for support enforcement services.

(2) Prior to distributing support moneys to a physical custodian who is not the payee under the support order, the office shall:

(a) Obtain a sworn statement from the physical custodian attesting to the fact he or she has physical custody of the children and is caring for them;

(b) Mail a notice of its intent to distribute support money to the physical custodian to the last known address of the payee and the responsible parent:

(i) The notice shall contain the following statements and information:

(A) That the office has collected or received support money due under the support order;

(B) The name of the physical custodian;

(C) That the payee may contest distribution of money to the physical custodian by requesting a conference board under WAC 388-14-385, or filing an appropriate motion with the court that entered the support order;

(D) That the office must be given notice of and made a party to any proceeding to contest the notice of distribution.

(ii) A copy of the sworn statement of the physical custodian shall be attached to the notice; and

(c) File a copy of the notice with the clerk of the court in which the support order was entered.

(3) If the location of the family or person to whom the support money is owed is unknown, the office shall exercise reasonable efforts to locate the family or person. If the office is unable to locate and disburse the money to the family or person, the office shall handle the money in accordance with an agreement with the department of revenue and as required by state law.

(4) The office shall apply the following rules to the distribution of support money:

(a) Record all payments in exact amounts without rounding;

(b) Distribute a support payment within eight days of the date the office receives the payment, unless unable to distribute the payment for one or more of the following reasons:

(i) The location of the payee is unknown;

(ii) There is not sufficient information to identify the accounts against which and to which the payment should be applied;

(iii) An action is filed in a court or agency with jurisdiction to decide the issue, to determine whether or not a support payment is owed and/or how the payment should be distributed;

(iv) Under subsection (6) of this section, the office receives prepaid support moneys which are being held and will be distributed in future months;

(v) The office mails a notice of intent to distribute the support money to the physical custodian under subsection (2) of this section; or

(vi) Other circumstances exist which make a proper and timely distribution of the payment impossible through no fault or lack of diligence of the office.

(c) The date of collection shall be the date on which the payment is received by the office. For interstate collections, the date of collection shall be the date on which the payment is received by the office or the legal entity of any state or political subdivision actually making the collection, whichever is earliest;

(d) The office shall apply all payments:

(i) To satisfy the support obligation for the month in which the payments are received and, then;

(ii) To any support debt or debts owed to:

(A) The family;

(B) A person for whom services are being provided;

(C) The department; or

(D) A child support agency in another state or foreign country.

(e) If the responsible parent owes a current support obligation to more than one family and does not pay enough money during the month to satisfy these current

support obligations in full, the office shall distribute the money collected based on the proportionate share of the obligation owed to each family;

(f) The office shall apply amounts received during a month in excess of the responsible parent's current support obligation or obligations to the support debt or debts based on the proportionate size of the debts, except as provided in subsection (4)(g) of this section, if:

(i) The support payment or payments exceed the amount required to satisfy the current support obligation or obligations for that month; and

(ii) The responsible parent owes more than one support debt.

(g) The office may apply amounts distributed under this subsection to a single support debt rather than make a proportionate distribution in the following circumstances:

(i) To satisfy a support debt owed to the family that accrued after the family terminated from public assistance as provided for in RCW 26.23.030; or

(ii) If proportionate distribution is administratively inefficient; or

(iii) If the collection resulted from the sale or disposition of a specific piece of property in which the applicant/recipient or applicant/custodian has a judgment lien for child support.

(h) The office shall convert amounts collected which are paid more frequently than once a month to an amount that represents payment on the required support obligation for the current month. The office of support enforcement is directed to distribute payments periodically to give effect to efficient administration;

(i) The office shall report any amounts distributed to a family, receiving public assistance, to the community service office identifying whether or not the payment is available to meet the need. This requirement shall not relieve the recipient of the duty to report receipt of any support moneys; and

(j) The department shall pay a family, receiving cash assistance under the aid to families with dependent children program or the family independence program, the first fifty dollars of each child support payment provided under WAC 388-14-275.

(5) If the office receives or collects support moneys which represent payment on the required support obligation for future months, the office shall:

(a) Apply the support moneys to such future months if the support debt has been paid in full; and

(b) Distribute the support moneys on a monthly basis as of the date payments become due in the future.

(6) When the office receives or collects prepaid support moneys, the office shall mail a notice to the last known address of the person entitled to receive support payments. The notice shall inform the person that:

(a) The office received prepaid support money;

(b) The office will distribute this money as support payments become due in the future; and

(c) He or she may petition the court that entered the support order for an order requiring the immediate distribution of the prepaid support money.

(7) The office may recover support money distributed to a person or to the family in error, after receipt of a

check which is later dishonored, or the office is later required to refund or return the support payment, as follows:

(a) In nonassistance cases, the office may deduct and retain, from subsequent support payments, any amounts collected on a support debt and ten percent of amounts collected as current support. The office shall send a notice to the last known address of the person or family prior to taking action to recover such payments. The notice shall:

(i) Contain a finding that a payment was distributed in error, was paid against a check that was later dishonored, or that the office was required to refund the support payment to the responsible parent;

(ii) Identify the payments the office will recover, and

(iii) Inform the person or family of the amounts that will be deducted from future collections; and

(iv) Inform the person or family they may request an ~~((administrative hearing))~~ adjudicative proceeding under chapter ~~((34.04))~~ 34.05 RCW to object to the notice. At the hearing, the person may contest the office's findings regarding the existence and amount of the debt for erroneous payments or other payments the office is seeking to recover.

(b) If person or family is no longer receiving support enforcement services, the office of support enforcement may take action under RCW 74.20A.270 to recover the money.

(8) If the family is receiving public assistance and the applicant/recipient fails to remit support payments to the office as required, the office shall use the process set forth in WAC 388-14-200 to recover such support payments.

AMENDATORY SECTION (Amending Order 2738, filed 12/14/88)

WAC 388-14-385 CONFERENCE BOARD. (1) A conference board is herewith established to inquire into, determine facts, and attempt to resolve matters in which a responsible parent, custodial parent, or other person feels aggrieved by actions taken by the office of support enforcement pursuant to chapters 74.20, 74.20A RCW, or Title IV-D of the Social Security Act (Title 42 U.S.C.).

(a) The intent and purpose of the conference board is to facilitate the informal speedy resolution of grievances of responsible parents, custodial parents, or other persons. An applicant for a conference board proceeding shall have made a reasonable attempt and have failed to resolve the grievance or issue with the workers before a conference board may act to attempt to resolve the issue.

(b) The director, revenue division, or director's designee may assemble a conference board on application of the aggrieved person or on the director's own motion to investigate, find facts, and state or apply policy or law to the end of resolving grievances.

(c) The director or the director's designee may take such action, as deemed appropriate, and may individually exercise any of the authority provided for in this regulation, if:

(i) The grievance or issue presented in an application for conference board does not involve a factual dispute, or

(ii) The disputed fact or facts even if resolved in favor of the applicant would not provide a basis upon which relief could be granted to the applicant by a conference board acting in accordance with the standards provided for in this section.

(d) If an apparent factual dispute exists:

(i) The director or director's designee shall assemble a conference board composed of the director or director's designee, who shall serve as chairman, and two staff members, if deemed necessary.

(ii) The chairman of the conference board shall mail a notice, to the applicant and any other person or agency who is a party in interest to the proceeding, that a conference board has been convened and inform the parties of the time and place of the conference board at least seven days prior to the date the conference board is scheduled.

(e) The chairman of the conference board is herewith authorized as a duly appointed officer empowered to issue subpoena of witnesses, books, records, etc., as provided for in RCW 74.04.290 and shall have power to subpoena witnesses, administer oaths, take testimony, and compel the production of such papers, books, records, and documents deemed relevant to the resolution of the grievance under consideration. Additional evidence may be taken by affidavit or other written submission when necessary or practicable together with written or oral argument. The director may designate persons having specific familiarity with the matter at issue or technical expertise with the subject to advise the board as required.

(f) The conference board's jurisdiction shall include but shall not be limited to the following areas:

(i) Complaints as to the conduct of individual staff members while acting in the scope of their duties. The decision of the board shall be directed to the first line supervisor for action as appropriate;

(ii) Review of denial of application for or termination of nonassistance support enforcement services;

(iii) Review of allegations of error as to the distribution of support moneys;

(iv) Resolution of amounts of arrears claimed due and rate of repayments;

(v) Requests to release or refund moneys taken pursuant to RCW 74.20A.080 to provide for the reasonable necessities of responsible parent or parents and minor children in their home;

(vi) Requests for deferral of support enforcement action;

(vii) Requests for partial or total charge-off of support arrears pursuant to RCW 74.20A.220 or declination to collect support arrears pursuant to RCW 74.20.040 on nonassistance cases;

(viii) Requests to waive interest pursuant to RCW 74.20A.190;

(ix) Requests to waive or defer the nonassistance support enforcement fee pursuant to RCW 74.20.040;

(x) Review of determinations that a support obligation has been satisfied or is no longer legally enforceable;

(xi) Any other matter requiring explanation of or application of policy or law to an issue in a specific case or clarification of facts in said case.

(xii) Requests for administrative review of cases submitted to the IRS for offset of a tax refund in accordance with federal statutes and regulations.

(2) The conference board shall dissolve upon issuance of decisions on matters for which it was appointed.

(3) The board's decision, including a decision to deny a request for a conference board, shall be in accordance with applicable statutes, case law, department of social and health services rules and regulations, published office of support enforcement manuals, support enforcement policy bulletins and the exercise of reasonable administrative discretion. The decision shall be in writing and shall find the facts, applicable law, policies applied, and clearly state the decision. If the decision is the result of a conference board, that decision shall represent the decision of a majority of the board. The director shall vacate decisions inconsistent with the standards in this section and remand them for issuance of a new decision in compliance with the standards.

(4) The office shall establish a file of pertinent documents for each case and distribute a copy of the decision, signed by the chairman, to:

- (a) The applicant;
- (b) Other parties in interest when requested;
- (c) The appropriate office of support enforcement district field office for action consistent with the decision of the board; and
- (d) The director.

(5) The board shall base decisions under RCW 74.20A.220 to grant partial or total charge-off of arrears owed to the department of social and health services under RCW 74.20A.030, 74.20A.250, 74.20.320, 74.20.330, or 42 U.S.C. 602 (a)(26)(A) on the following considerations and shall state them in the written decision of the conference board fully justifying the action taken:

- (a) Error in law or bona fide legal defects that materially diminish chances of collection; or
- (b) Substantial hardship to minor children in the household of the responsible parent or other minor children for whom the responsible parent actually provides support which hardship is to be measured against income standards for public assistance and consideration of all available income, property, and resources of the responsible parent and the necessity to apportion the income and resources of the responsible parent on an equitable basis with the children for whom the arrears accrued; or

(c) Costs of collection action in the future that are greater than the amount to be charged off; or

(d) Settlement from lump-sum cash payment that is beneficial to the state considering future costs of collection and likelihood of collection.

(6) A conference board is not ~~((a-contested case))~~ an adjudicative proceeding subject to review by the superior court and is not a substitute for any constitutionally or statutorily ~~((permitted))~~ required hearing. Aggrieved parties may be represented before the board by a person of their choice represented before the board by a person of their choice. The department shall not pay any costs

incurred by the aggrieved person in connection with the conference.

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

AMENDATORY SECTION (Amending Order 2036, filed 10/6/83)

WAC 388-14-390 ~~((PETITION FOR HEARING))~~ ADJUDICATIVE PROCEEDING WHEN COLLECTION ACTION IS INITIATED AGAINST A BANK ACCOUNT—EXEMPTIONS—BURDEN OF PROOF. If the department initiates collection action against a bank account, the responsible parent or the joint owner of record of the bank account may ~~((petition))~~ contest the ~~((secretary or the secretary's designee for a hearing))~~ action in an adjudicative proceeding. The ~~((petition))~~ application shall be ~~((served upon))~~ filed at the office of support enforcement by registered or certified mail or personally within twenty days of the date a copy of the order to withhold and deliver was either mailed to or served upon the responsible parent pursuant to RCW 74.20A.080 or a written notice of the collection action was mailed by certified mail to the last known address of the joint owner of record of the account. The ~~((petition))~~ application shall state the facts supporting the allegation by the responsible parent or the joint owner that the funds in the account, or a portion of those funds, are exempt from satisfaction of the child support obligation of the responsible parent.

On the ~~((petition))~~ application of the responsible parent, the joint owner of record, or OSE, a hearing shall be scheduled solely for the purpose of determining whether or not one of the following exemptions applies to the funds in the bank account:

(1) Pursuant to RCW 26.16.200 and 74.20A.120, the funds in the community bank account, or a portion of those funds which can be identified as the earnings of the spouse not owing a support obligation to the child or children of the responsible parent, are exempt from satisfaction of the child support obligation of the responsible parent.

(2) The funds in a bank account, or a portion of those funds which can be identified as AFDC funds, SSI monies, or other kinds of funds having been legally exempted from collection action, are exempt from satisfaction of the child support obligation of the responsible parent.

(3) The funds in a bank account which can be identified as being solely owned by the joint owner of record of the bank account not owing a child support obligation to the child or children of the responsible parent, are exempt from satisfaction of the child support obligation of the responsible parent.

The burden of tracing the funds and proving the funds in the bank account are exempt from satisfaction of the child support obligation of the responsible parent is on the responsible parent or the joint owner of record.

~~((The secretary or the secretary's designee shall notify the parties or their designated representatives of the date, time, and place of the hearing at least twenty days~~

~~prior to the scheduled date of the hearing by written notice to the parties or their representatives by registered or certified mail. If the parties waive their right to twenty days' notice of the hearing and request the hearing be scheduled on an expedited basis, however, the hearing shall be scheduled within fifteen days of the receipt of the petition for hearing and notice of the hearing shall be mailed to the parties not less than seven days prior to the scheduled date of the hearing. If the time, date, or place is inconvenient to either party, the hearing shall grant a new time, date, or place as is reasonably convenient upon a showing of good cause)~~ If an application is filed, the department shall serve the notice of hearing on the appellant or the appellant's representative by certified mail or another method showing proof of receipt.

Moneys withheld as a result of collection action initiated against a bank account and delivered to the office of support enforcement at the time of the granting of ~~((a request for hearing))~~ an application shall be held by the office of support enforcement pending the final adjudicative order ((of the secretary)) or during the pendency of any appeal to the courts.

If the final decision of the department or courts on appeal is that the department has caused funds in a bank account that are exempt from satisfaction of the child support obligation of the responsible parent to be withheld by the bank or delivered to the department, the office of support enforcement shall promptly release the order to withhold and deliver or refund the proportionate share of the funds having been identified as being so exempt. No interest shall accrue or be payable by the department on any moneys withheld pursuant to RCW 74.20A.080.

#### AMENDATORY SECTION (Amending Order 2606, filed 3/4/88)

WAC 388-14-415 NOTICE OF SUPPORT ~~((DEBT))~~ OWED. (1) The notice of support ~~((debt))~~ owed issued, under RCW ~~((74.20A.040))~~ 26.23.110, shall state that:

(a) The office is providing support enforcement services on behalf of the responsible parent's dependent children.

(b) Twenty-one days after service of the notice, the office will take action to collect the responsible parent's support obligation. The office shall take collection action without further notice if a support payment is more than fifteen days past due in an amount equal to the support payable for one month. Collection action includes issuing orders to withhold and deliver and notices of payroll deduction, or taking other income withholding action.

(c) After service of the notice, the responsible parent must make all support payments through the Washington state support registry.

(d) The responsible parent will not receive credit for payments made to a person or agency other than the support registry under RCW 26.23.050(7) and 74.20.101.

(2) The notice shall be served on the responsible parent like a summons in a civil action, or shall be mailed to his or her last known address by certified mail, return receipt requested.

(3) The notice of support ~~((debt))~~ owed shall contain:

(a) The current monthly amount for support under a court or administrative order,

(b) An initial finding of the current support amount if there is no fixed dollar amount in the order, and the basis, rationale, or formula used to make the initial finding;

(c) The amount of any support debt, including medical support, owed by the responsible parent;

(d) A statement that the responsible parent has twenty days after service of the notice to contest:

(i) The initial finding for current support ((or support debt amount)) under subsection (3)(b) of this section; or

(ii) The support debt, and/or the current/future support obligation, if the support order contains an escalation clause or adjustment provision for which additional information not contained in the order is needed to determine the amount of the support debt or current support.

(e) A statement that the responsible parent may contest the notice by either:

(i) ((Making)) Filing a written ((request)) application for an ((administrative hearing to be held)) adjudicative proceeding under chapter ((34.04)) 34.05 RCW; or

(ii) Filing an action in superior court.

(4) The office may make the initial finding based upon:

(a) The factors stated in the order, and

(b) The responsible parent's earnings, if known; or

(c) The responsible parent's ability to earn if the actual earnings are unknown; or

(d) The needs of the dependent child(ren) if the responsible parent's earnings and ability to earn are unknown.

(5) If the responsible parent does not ~~((request a hearing))~~ file an application for an adjudicative proceeding or start an action in superior court the office shall:

(a) ~~((Issue))~~ Enter a default order stating the notice amounts if the notice contained an initial finding of the amount for current support;

(b) Mail a copy of the order to the last known address of the responsible parent. A copy of the order shall also be mailed to the person to whom support is payable under the support order;

(c) Collect the amounts stated in the notice without further notice.

(6) If the responsible parent ((requests a hearing)) files an application under this section, the department shall ((issue)) serve a notice of hearing on the responsible parent or the parent's representative. A copy of the notice of hearing shall also be mailed to the person to whom the support is payable under the support order.

The notice shall direct the responsible parent to appear and show why the current support amount and/or the support debt amount is wrong. ~~((A copy of the notice of hearing shall also be mailed to the person to whom the support is payable under the support order.))~~

(7) The responsible parent shall:

(a) List ~~((the))~~ defenses to liability and/or state the reasons why support should not be set as stated in the notice ((in the request for a hearing)) of support owed;

(b) Attach an office approved financial affidavit;

(c) ~~((Serve))~~ File the ((request for a hearing on)) application at the office of support enforcement by certified mail, return receipt requested, or like a summons in a civil action.

(8) ~~If the responsible parent ((requests a hearing)) files an application for an adjudicative proceeding within twenty days of service of the notice of support owed, the office shall stay collection action pending the ((outcome of the hearing)) final adjudicative order, except as provided in subsection (9) of this section.~~

(9) ~~The office may take action to collect:~~

(a) ~~Temporary support if the administrative law judge issues an order for temporary support;~~

(b) ~~Any part of the support debt that the responsible parent fails to allege is not owed;~~

(c) ~~A fixed or minimum dollar amount for current support stated in the court order;~~

(d) ~~Any part of a support debt that has been reduced to a sum certain judgment by a proper court or agency.~~

(10) ~~The responsible parent shall prove defenses to the initial finding for current support and/or the amount of the support debt.~~

(11)(a) ~~The following sections of chapter 388-11 WAC ((provisions)) are incorporated by reference and ((apply)) made applicable to the hearing process ((under)) provided for in this section ((if)) to the extent they are consistent and ((when)) relevant:~~

~~WAC 388-11-011, 388-11-065, 388-11-070, 388-11-100, ((388-11-105)), 388-11-115, 388-11-120, 388-11-130, 388-11-135, 388-11-140, 388-11-145, 388-11-150, 388-11-155, 388-11-170, ((388-11-180, 388-11-185,)) and 388-11-190((, and chapter 10-08 WAC)).~~

~~(b) Hearings held under this section shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), and chapters 388-08 and 388-14 WAC. If any provision in this chapter or in a rule incorporated by reference by (11)(a) of this section conflicts with or is inconsistent with chapter 388-08 WAC, the provision in this chapter or a rule incorporated by reference in (11)(a) of this section shall govern.~~

~~(12) ((After evidence has been presented at a hearing, the hearing examiner shall, within twenty days:~~

~~(a) Find the amount current support payable under the order;~~

~~(b) Find the amount of the support debt, including medical support, accrued prior to the date of service of the notice;~~

~~(c) Issue findings of fact, conclusions of law, and initial decision and order.~~

~~((13)) The ((hearing examiner's order shall also provide that either the)) office ((or)) of support enforcement and the responsible parent ((may)) each have the right to request a yearly review of the support order.~~

~~((14)) (13) The ((hearing examiner in the initial decision, and the secretary or designee in review of the proposed decision,)) administrative law and review judge's authority shall be limited to:~~

~~(a) Interpretation of the court order for support only. The ((hearing examiner)) administrative law and review~~

~~judges shall have no authority to change or defer the support amount owed except to:~~

~~(i) Find the amount of monthly support as a fixed dollar amount; and~~

~~(ii) Find any arrears accrued prior to service of the notice of support owed.~~

~~(b) Correct mathematical computation of the stated debt;~~

~~(c) Superior court orders which have modified the superior court order in issue. Contempt orders and orders entered under chapters 26.21 or 26.20 RCW shall not be construed as modifications.~~

~~((15)) (14) If the debtor fails to appear at the hearing, the ((hearing examiner)) administrative law judge shall, after proof of proper service, enter a decision and order declaring the support debt subject to collection action.~~

~~((16) The hearing examiner shall file the original of the initial decision and order with the secretary or the secretary's designee.~~

~~((17)) (15) The ((hearing examiner)) administrative law and review judges shall mail copies of the decisions and orders to:~~

~~(a) The office of support enforcement;~~

~~(b) The last known address of the responsible parent by certified mail; and~~

~~(c) The last known address of the person to whom support is payable under the support order.~~

~~((18) The responsible parent or the office may request review of the initial decision within thirty days of receipt of the initial decision. Review shall be as set forth under WAC 388-11-105.~~

~~((19)) (16) Informal disposition of any hearing is favored where possible and not precluded by law. The office may dispose of cases by an agreed settlement((;)) or a consent order. The administrative law judge shall approve any consent order unless it is contrary to law.~~

~~((20)) (17) A support order issued under this section shall:~~

~~(a) Contain the notice and information listed in RCW 26.23.050(4), and~~

~~(b) Be filed with the clerk of the court that has jurisdiction over the court order.~~

~~((21) The office is not required to serve a notice of support debt on the responsible parent prior to collection action if:~~

~~(a) The office is providing services on behalf of the responsible parent's dependent children, and~~

~~(b) A superior court or administrative order directs the responsible parent to make support payments through the office or the Washington state support registry.~~

~~((22)) (18) The responsible parent may ((request a hearing)) file an application for a proceeding under this section if the responsible parent claims credit for payments under WAC 388-14-210(4). ((When the department issues a notice of hearing to the responsible parent, the department shall mail a copy of the notice to the last known address of the person to whom support is payable under the order.))~~

**WSR 89-22-091**  
**EMERGENCY RULES**  
**DEPARTMENT OF HEALTH**

[Order 013—Filed October 31, 1989, 4:50 p.m.]

Date of Adoption: October 31, 1989.

Purpose: To conform program rules on adjudicative proceedings to the new Administrative Procedure Act, chapter 34.05 RCW, and other recent statutory changes.

Citation of Existing Rules Affected by this Order: See below.

Statutory Authority for Adoption: See below.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Adjudicative proceedings in programs administered by this department were affected by the new Administrative Procedure Act and other

statutory changes that became effective July 1, 1989. These rules conform to the statutory changes.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Substantially similar emergency rules were filed on July 3, 1989, under WSR 89-14-095. The rules here filed are being proposed for permanent rule making by order filed on the same day as this order. See RCW 34.05.350(2).

The Administrative Procedure Act, chapter 34.05 RCW, at section 250 requires the Chief Administrative Law Judge, Office of Administrative Hearings, to adopt model rules of procedure under the act. RCW 34.05.220 (1)(a) permits an agency to adopt its own rules. An agency must adopt as much of the model rules as is reasonable and state the reasons for any variation in the order of rule adoption. Variations from the model rules are described below.

<u>Washington Administrative Code (WAC)</u>	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	<u>Statutory authority (RCW or Session Law Chapter)</u>	<u>Additional reasons for proposal and variations from Model Rules</u>
248-06-385		Amend		43.21C.120	<ol style="list-style-type: none"> <li>1. Subsection (2) sets an expected time limit for filing initial and review orders based on the likely complexity of the proceedings and the need for prompt orders.</li> <li>2. Subsection (3) specifies that the adjudicative officers' authority is to approve the contested department action or to remand the matter to the department. When an action is not approved this procedure permits the agency to review all the data and get additional information before making a new decision as opposed to having the decision based solely on the adjudicative proceeding record.</li> </ol>

<u>Washington Administrative Code (WAC)</u>	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	<u>Statutory authority (RCW or Session Law Chapter)</u>	<u>Additional reasons for proposal and variations from Model Rules</u>
248-15-110		Amend		18.71.205	Required by section 60 and to be consistent with section 95, chapter 175, Laws of 1989.
248-16-031		Amend		18.20.909	Required by section 63 and to be consistent with section 95, chapter 175, Laws of 1989.
248-17-060		Amend		Section 106, chapter 9, Laws of 1989, first ex.s.	To be consistent with section 95, chapter 175, Laws of 1989.
248-17-230		Amend		Same	Same
248-18-015		Amend		70.41.030	Required by section 128 and to be consistent with section 95, chapter 175, Laws of 1989.
248-19-480		Amend		70.38.135 (see also) section 607 chapter 9 Laws of 1989 first ex.s.)	Required by section 126 and be consistent with section 95, chapter 175, Laws of 1989.
248-22-005		Amend		Section 106, chapter 9, Laws of 1989 first ex.s.	Required by section 137, and to be consistent with section 95, chapter 175, Laws of 1989.
248-23-010		Amend		Same	Same

<u>Washington Administrative Code (WAC)</u>	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	<u>Statutory authority (RCW or Session Law Chapter)</u>	<u>Additional reasons for proposal and variations from Model Rules</u>
248-25-010		Amend		Same	Same
248-26-020		Amend		Same	Same
248-27-025		Amend		70.126.040	Housekeeping
248-27-035		Amend		Same	Housekeeping
248-27-045		Amend		Same	Housekeeping
248-27-055		Amend		Same	To be consistent with sections 95 and 96, chapter 175, Laws of 1989.
388-29-020		Amend		18.46.060	To conform to sections 63 and to be consistent with section 95, chapter 175, Laws of 1989.
388-31-025		Amend		70.126.040	Housekeeping
388-31-035		Amend		Same	Housekeeping
388-31-045		Amend		Same	Housekeeping
388-31-055		Amend		Same	To be consistent with sections 95 and 96, chapter 175, Laws of 1989.
248-36-025		Amend		Same	Housekeeping
248-36-035		Amend		Same	Housekeeping
248-36-045		Amend		Same	Housekeeping

Washington Administrative Code (WAC)	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	Statutory authority (RCW or Session Law Chapter)	Additional reasons for proposal and variations from Model Rules
248-36-055		Amend		Same	To be consistent with sections 95 and 96, chapter 175, Laws of 1989.
248-55-220		Amend		70.119.050	To be consistent with section 95, chapter 175, Laws of 1989.
248-55-230			Repeal	Same	Housekeeping; the provisions in this section are at 248-08-413.
248-55-235	New			Same	Housekeeping
248-55-240 and 250		Amend	Repeal	Same Same	The department is authorized to use an initial order - petition for review - review order procedure by RCW 34.05.464(1) provided it do so by rule. This is the enabling rule for this program. The presiding officer is a board. The procedure for revocation, suspension, or modification of a certificate is that the presiding officer's order is final when the board rules in favor of the certificate holder. The presiding officer's decision is an initial order when the board rules against the certificate holder; the Secretary or designee is the reviewing officer.
248-55-260			Repeal	Same	This section states a right contained in chapter 34.05 RCW so is being repealed.
248-59-030		Amend		70.116.050	<ol style="list-style-type: none"> <li>Subsections (1) and (2) are housekeeping.</li> <li>Subsection (3) is to continue to have these proceedings be based on the facts existing at the time the department acted as opposed to a <u>de novo</u> proceeding. If the parties agree this provision may be set aside.</li> <li>Subsection (4) specifies who has and what is the burden of proof.</li> </ol>
Washington Administrative Code (WAC)	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	Statutory authority (RCW or Session Law Chapter)	Additional reasons for proposal and variations from Model Rules
248-59-040			Repeal	Same	<ol style="list-style-type: none"> <li>Subsection (1) states the law regarding assigning administrative law judges to department proceedings that can be administratively reviewed, contains obsolete terminology, and incorrect references. As the items are dealt with in other law the subsection is being repealed.</li> <li>Subsections (2) and (3) are being moved to WAC 248-59-030.</li> </ol>
248-59-050			Repeal	Same	<ol style="list-style-type: none"> <li>This section's provisions are included in or conflict with section 95, chapter 175, Laws of 1989 and/or chapter 34.05 RCW and/or chapter 248-08 WAC or contain requirements in none of those laws. To achieve greater uniformity, they are being repealed.</li> </ol>
248-59-060			Repeal	Same	To achieve greater uniformity among all department programs the petition for administrative review procedure in this rule is being repealed in favor of the general provisions in RCW 34.05.464 and WAC 248-08-464.
248-59-070			Repeal	Same	This section is being repealed because it contains provisions that are the same as or conflict with chapter 34.05 RCW and chapter 248-08 WAC.
248-59-080			Repeal	Same	The section states a right contained in chapter 34.05 RCW so is being repealed.
248-91-060		Amend		Section 106, chapter 9, Laws of 1989 first ex. s.	To be consistent with section 95, chapter 175, Laws of 1989.

Effective Date of Rule: Immediately.

October 31, 1989  
Pam Campbell Mead  
for Kristine M. Gebbie  
Secretary

AMENDATORY SECTION (Amending Order 2173,  
filed 12/6/84)

WAC 248-06-385 ((HEARINGS)) ADJUDICATIVE PROCEEDING. Any person has the right to

~~((appeal)) an adjudicative proceeding to contest the department's final threshold determination that an EIS is or is not necessary and/or the sufficiency of the final EIS. The ((hearings are)) proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), the rules in this chapter, and by chapter((s 10-08 and 388-08)) 248-08 WAC. ((In case of conflict between this section and chapter 388-08 WAC, the)) If any provision(s) in this chapter ((take precedence over the rules in chapter 388-08 WAC)) conflicts with chapter 248-08 WAC, the provision in this chapter governs.~~

~~(1) ((The request for a hearing must be in writing and filed with the DSHS Office of Hearings, P.O. Box 2465, Olympia, Washington 98504 within thirty days of the department's official notice of issuance of a final threshold determination or final EIS)) A person contesting a department's decision shall within twenty-eight days of the department's official notice of issuance of a final threshold determination or final EIS:~~

~~(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and~~

~~(b) Include in or with the application:~~

~~(i) A specific statement of the issue or issues and law involved; and~~

~~(ii) The grounds for contesting the department decision.~~

~~(2) The initial ((decision)) order should be made within sixty days of the department's receipt of the ((request for a hearing)) application. When a party files a petition for administrative review, the review ((decision)) order should be made within sixty days of the department's receipt of the petition. The ((decision-rendering)) time to enter an order is extended by as many days as the ((hearing)) proceeding is continued on motion by any party ((to the hearing)).~~

~~(3)(a) If the ((hearing decision)) adjudicative order is that an EIS should be filed, the administrative law judge or review judge shall remand the matter to ((DSHS)) the department of health to file an EIS.~~

~~(b) If the ((hearing decision)) adjudicative order is that the final EIS is not sufficient, the administrative law judge or review judge shall remand the matter to ((DSHS)) the department of health to correct the insufficiency.~~

AMENDATORY SECTION (Amending Order 1329, filed 8/22/78)

~~WAC 248-15-110 ((APPEAL, REVOCATION, SUSPENSION OR MODIFICATION)) NOTICE OF ((CERTIFICATE)) DECISION—ADJUDICATIVE PROCEEDING. (1) ((No certificate issued pursuant to this chapter shall be revoked or suspended without formal written notification to the respondent from the department. Such written notification shall state the cause of the)) The department's notice of a denial, suspension, modification, or revocation ((or suspension and shall advise the respondent of the right to appeal the revocation or suspension.~~

~~(2) Revocation or suspension shall become final thirty days following the date of the mailing of such notice.~~

~~PROVIDED, That the applicant or holder of the certificate does not within thirty days from the date of mailing of the department's order to revocation or suspension, make written application to the department for a hearing. Upon receipt of a written application for a hearing, the department shall proceed to conduct a hearing in accordance with the requirements of the Administrative Procedure Act, chapter 34.04 RCW and the rules of practice and procedure issued by the department thereunder. Mailing of notices under this section shall be by registered mail)) of a certificate shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or certificate holder has the right to an adjudicative proceeding to contest the certificate decision.~~

~~(2) A certificate applicant or holder contesting a department certificate decision shall within twenty-eight days of receipt of the decision:~~

~~(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and~~

~~(b) Include in or with the application:~~

~~(i) A specific statement of the issue or issues and law involved;~~

~~(ii) The grounds for contesting the department decision; and~~

~~(iii) A copy of the contested department decision.~~

~~(3) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.~~

AMENDATORY SECTION (Amending Order 2786, filed 4/14/89)

WAC 248-16-031 BOARDING HOME LICENSE APPLICATION—DEPARTMENT DENIAL, SUSPENSION, REVOCATION OF LICENSE. (1) Boarding home license applicants shall:

(a) Submit appropriate, signed, completed department application forms to the department;

(b) Apply at least thirty days prior to expiration of license for renewal;

(c) Promptly report changes in information related to the application including identity of:

(i) Officers and directors if operated by a legally incorporated entity; and

(ii) Partners if a legal partnership.

(2) The department shall:

(a) Evaluate qualifications of persons named in boarding home license application prior to granting initial and subsequent licenses;

(b) Deny, suspend, or revoke a boarding home license if the department finds persons named unqualified or unable to operate or direct operation of the facility as described in chapter 18.20 RCW and chapter 248-16 WAC;

(c) Determine if reasonable relationship exists between any previous conviction of the applicant and ability to competently, safely oversee, or operate a boarding home;

(d) Deny, suspend, or revoke a boarding home license if any person named:

(i) Was previously denied a license to operate an agency for care of children, aged, ill, or infirm in Washington or elsewhere;

(ii) Had a license to operate an agency for treatment or care of people revoked or suspended;

(iii) Has a record of a criminal or civil conviction for:

(A) Operating an agency for care of aged, children, ill, or infirm without an appropriate, applicable license; or

(B) Any crime involving physical harm to another person.

(iv) Is identified on department abuse registry as perpetrator of substantiated abuse described in chapter 26.44 RCW;

(v) Committed, permitted, aided, or abetted an illegal act on boarding home premises;

(vi) Demonstrated cruelty, abuse, negligence, assault, or indifference to welfare and well-being of a resident;

(vii) Failed to exercise fiscal accountability and responsibility involving:

(A) A resident;

(B) The department;

(C) Public agencies; or

(D) The business community.

(3) The department may grant a license to operate a boarding home to previously disqualified licensees as specified in subsection (2) of this section if such person provides evidence including demonstrated ability to operate a boarding home according to applicable laws and rules.

(4)(a) The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest a license decision.

(b) A license applicant or holder contesting a department decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

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

AMENDATORY SECTION (Amending Order 1150, filed 9/2/76)

WAC 248-17-060 DENIAL, SUSPENSION, REVOCATION OF LICENSE—((HEARINGS)) NOTICE—ADJUDICATIVE PROCEEDING. (1) The department is authorized to deny, suspend, modify, or revoke any license issued ((pursuant to)) under this chapter in any case in which ((it)) the department finds ((that)) there ((has been)) is a failure to comply with the requirements of the Emergency Medical Care and Transportation Services Act, chapter 18.73 RCW, and with the standards, rules, and regulations established ((pursuant to)) under this law. ((The department shall issue an order to the applicant or licensee giving notice of any denial, revocation, or suspension, which order shall become final thirty days after the date of mailing: PROVIDED, That the applicant or licensee does not, within thirty days from the date of mailing of the department's order of denial, revocation, or suspension of license, make written application to the department for a hearing. Upon receipt of such a written application for a hearing, the department shall proceed to conduct a hearing on the denial, suspension, or revocation of license. Such hearings shall be conducted in accordance with the Administrative Procedure Act, chapter 34.04 RCW and with the rules of practice and procedure issued by the department thereunder.))

(2)(a) The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest a license decision.

(b) A license applicant or holder contesting a department license decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

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

AMENDATORY SECTION (Amending Order 1150, filed 9/2/76)

WAC 248-17-230 ((APPEAL, REVOCATION, SUSPENSION OR MODIFICATION)) NOTICE OF ((CERTIFICATE)) DECISION—ADJUDICATIVE PROCEEDING. (1) ((No certificate issued pursuant to

~~this chapter shall be revoked or suspended without formal written notification to the respondent from the head, emergency medical services. Such written notification shall state the cause of the revocation or suspension and shall advise the respondent of the right to appeal the revocation or suspension.~~

~~(2) No certificate of an emergency medical technician shall be denied, revoked, or suspended without formal written notification to the applicant or holder of the certificate from the department. The denial, revocation, or suspension shall become final thirty days after the date of mailing. PROVIDED, That the applicant or holder of the certificate does not within thirty days from the date of mailing of the department's order of denial, revocation or suspension make written application to the department for a hearing. Upon receipt of a written application for a hearing, the department shall proceed to conduct a hearing in accordance with the requirements of the Administrative Procedure Act, chapter 34.04 RCW and the rules of practice and procedure issued by the department thereunder)) The department's notice of a denial, suspension, modification, or revocation of a certificate shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or certificate holder has the right to an adjudicative proceeding to contest a certificate decision.~~

~~(2) A certificate applicant or holder contesting a department certificate decision shall within twenty-eight days of receipt of the decision:~~

~~(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and~~

~~(b) Include in or with the application:~~

~~(i) A specific statement of the issue or issues and law involved;~~

~~(ii) The grounds for contesting the department decision; and~~

~~(iii) A copy of the contested department decision.~~

~~(3) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.~~

AMENDATORY SECTION (Amending Order 249, filed 11/18/82)

WAC 248-18-015 LICENSE EXPIRATION DATES—NOTICE OF DECISION—ADJUDICATIVE PROCEEDING. (1) The department shall issue hospital licenses initially and reissue hospital licenses as often thereafter as necessary to stagger license expiration dates throughout the calendar year so as to cause approximately one-twelfth of the total number of hospital licenses to expire on the last day of each month, but no license issued pursuant to this chapter shall exceed thirty-six months in duration. If there is failure to comply with the provisions of chapter 70.41 RCW or this chapter, the department may, in its discretion, issue a provisional license to permit the operation of the hospital for a period of time to be determined by the department.

(2) The department may deny, suspend, modify, or revoke a license for cause.

(3)(a) The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest a license decision.

(b) A license applicant or holder contesting a department license decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

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

AMENDATORY SECTION (Amending Order 2344, filed 2/28/86)

WAC 248-19-480 ((RIGHT AND NOTICE OF APPEAL)) ADJUDICATIVE PROCEEDING. (1) ((Any affected person may request and shall be afforded the opportunity for an administrative hearing on the decision of the secretary's designee to issue or deny)) An applicant denied a certificate of need ((for a project or a separable portion of a project, to grant or deny an exemption requested under WAC 248-19-405, to suspend or revoke a certificate of need, or to withdraw or not withdraw)) or a certificate ((of need)) holder whose certificate was suspended or revoked has the right to an adjudicative proceeding.

(2) ((To be effective, a request for an administrative hearing shall be in writing and received by the department within thirty days after the person requesting the hearing received the particular decision of the department which is being appealed or, if a reconsideration hearing was requested and denied, thirty days after the denial of the request for the reconsideration hearing.

(3) An administrative hearing shall be conducted in accordance with the provisions of chapter 34.04 RCW.

(4) The decision of the secretary's designee shall be subject to review in an administrative hearing to establish a record of the decision of the secretary's designee. The determination of the official conducting such an administrative hearing)) A certificate applicant or holder contesting a department certificate decision shall ((be made in writing)) within ((forty-five)) twenty-eight days ((after the conclusion)) of receipt of the ((hearing. The official conducting such an administrative hearing

~~may make a proposed decision, findings of fact and conclusions of law, pursuant to RCW 34.04.110, or the official may remand the matter to the secretary's designee for further action or consideration.<sup>1</sup> The written determination shall be sent to the applicant, the appropriate advisory review agencies, and the department. The department shall make any written determination available to others upon request.~~

**Note:**

<sup>1</sup>Chapter 34.04 RCW provides entitlement to judicial review to any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form)) decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(b) Include in or with the application:

(i) A specific statement of the issue or issues and law involved;

(ii) The grounds for contesting the department decision; and

(iii) A copy of the contested department decision.

(3) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

AMENDATORY SECTION (Amending Order 1898, filed 11/4/82)

WAC 248-22-005 LICENSURE. Private psychiatric hospitals and private alcoholism hospitals for adults, adolescents, and children shall be licensed under chapter 71.12 RCW, Private establishments. The purpose of this section is to establish minimum standards for safety and adequate care of patients with signs and/or symptoms of acute emotional or psychiatric impairment or acute alcoholism and associated substance use during diagnosis and treatment.

(1) Application for license.

(a) An application for a private hospital license shall be submitted on forms furnished by the department. The application shall be signed by the legal representative of the governing body.

(b) The applicant shall furnish to the department full and complete information and promptly report any changes which would affect current accuracy of such information as to the identity of each officer and director of the corporation, if the hospital is operated by a legally incorporated entity, profit or nonprofit, and of each partner if the hospital is operated through a legal partnership.

(2) Disqualified applicants.

(a) Each and every individual named in an application for a license shall be considered separately and jointly as applicants and if anyone is deemed unqualified by the department in accordance with the law or these rules and regulations, the license may be denied, suspended, or revoked. A license may be denied, suspended, or revoked for failure or refusal to comply with the requirements established by chapter 71.12 RCW or with these rules

and regulations promulgated pursuant thereto and, in addition, any of the following:

(i) Obtaining or attempting to obtain a license by fraudulent means or misrepresentation;

(ii) Aiding or abetting the commission of an illegal act on the premises of the hospital;

(iii) Cruelty, assault, abuse, neglect or indifference to the welfare of any patient;

(iv) Misappropriation of property of the patients; and

(v) Failure or inability to exercise fiscal accountability and responsibility toward the individual patient, the department, or the business community.

(b) Before granting a license to operate as a hospital, the department shall consider the ability of each individual named in the application to operate a hospital in accordance with the law and with these regulations. Individuals who have previously been denied a license to operate a health care facility in the state or elsewhere, or who have been convicted criminally or civilly of operating such a facility without a license, or who have had their license to operate such a facility suspended or revoked shall not be granted a license unless, to the satisfaction of the department, they affirmatively establish clear, cogent, and convincing evidence of their ability to operate the hospital for which the license is sought, and for conformance with all applicable laws and rules and regulations.

(3) Denial, suspension, modification, or revocation of a license, adjudicative proceeding. (~~Upon finding as a result of an inspection,)~~)

(a) When the department determines that a facility has failed or refused to comply with the requirements of chapter 71.12 RCW and/or these rules ((and regulations)), the department may, if the interests of the patients so demand, issue ((a written notification letter)) to the applicant or licensee ((giving)) a notice ((of intent)) to deny a license application, or to suspend, modify, or revoke a license ((thirty days after the date of mailing. This letter shall be followed by a formal revocation letter, provided the applicant or licensee does not within thirty days from the date of mailing of the department's notice of intent to reject, revoke or suspend a license make written application to the department for a hearing. Upon receipt of such an application, the department shall fix a time for such hearing and shall give the applicant or licensee a notice of the time fixed for such hearing. Procedures governing hearings under these regulations shall be in accord with procedures set out in chapter 248-08 WAC, especially WAC 248-08-750 through 248-08-790, as now or hereafter amended. All hearings conducted under these regulations shall be deemed to be contested cases within the meaning of chapter 34.04 RCW)) to a license holder. The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest a license decision.

(b) A license applicant or holder contesting a department license decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

(4) *Submission of plans.* The following shall be submitted with an application for license: PROVIDED, HOWEVER, That when any of the required plans are already on file with the department for previous applications for license or construction approval, only plans for portions or changes which are not on file need to be submitted.

(a) A plan showing streets, driveways, water and sewage disposal systems, the location of buildings on the site, and grade elevations within ten feet of any building in which patients are to be housed.

(b) Floor plans for each building in which patients are to be housed. The floor plans shall provide the following information: Identification of each patient's sleeping room by use of a lettering or numbering system; the useable square feet of floor space in each room; the clear glass window area in each patient's sleeping room, the height of the lowest portion of the ceiling in any patient's sleeping room; the floor elevations referenced to the grade level.

(5) *Posting of a license.* The license for the hospital shall be posted in a conspicuous place on the premises.

(6) *New construction.*

(a) When new construction is contemplated, the following shall be submitted to the department for review:

(i) A written program containing, at a minimum, information concerning services to be provided and operational methods to be used which will affect the extent of facilities required by these regulations;

(ii) Duplicate sets of preliminary plans which are drawn to scale and include: A plot plan showing streets, driveways, water and sewage disposal systems, grade and location of building(s) on the site; the plans for each floor of the building(s), existing and proposed, which designate the function of each room and show all fixed equipment. The preliminary plans shall be accompanied by a statement as to the source of the water supply and the method of sewage and garbage disposal and a general description of construction and materials, including interior finishes.

(b) Construction shall not be started until duplicate sets of final plans (drawn to scale) and specifications have been submitted to and approved by the department. Final plans and specifications shall show complete details to be furnished to contractors for construction of buildings. These shall include:

(i) Plot plans;

(ii) Plans for each floor of the building(s) which designate the function of each room and show all fixed equipment in the planned locations of beds and other furniture in patient's sleeping rooms;

(iii) Interior and exterior elevations, building sections and construction details;

(iv) A schedule of floors, wall and ceiling finishes, and the types and sizes of doors and windows; plumbing, heating ventilation and electrical systems; and

(v) Specifications which fully describe workmanship and finishes.

(c) Adequate provision shall be made for the safety and comfort of patients if construction work takes place in or near occupied areas.

(d) All construction shall take place in accordance with the approved final plans and specifications. The department shall be consulted prior to making any changes from the approved plans and specifications. As indicated by the nature or extent of proposed changes, the department may require the submission of modified plans or addenda for review prior to considering proposed change(s) for approval. Only those changes which have been approved by the department may be incorporated into the construction project shall be submitted for the department's file on the project, even though it was not required that these be submitted prior to approval.

(7) *Compliance with other regulations.*

(a) Rules and regulations adopted by the Washington state fire marshal under the provisions of RCW 71.12-.485 which are found in Title 212 WAC apply.

(b) If there is no local plumbing code, the uniform plumbing code of the international association of plumbing and mechanical officials shall be followed.

(c) Compliance with these regulations does not exempt private hospitals from compliance with the local and state electrical codes or local zoning, building, and plumbing codes.

(8) *Transfer of ownership.* The ownership of a hospital shall not be transferred until the transferee has been notified by the department that the transferee's application for license has been approved. Change in administrator shall be reported to the department.

**AMENDATORY SECTION** (Amending Order 1899, filed 11/4/82)

WAC 248-23-010 LICENSURE. Residential treatment facilities shall be licensed under chapter 71.12 RCW, private establishments. Chapter 248-23 WAC establishes minimum licensing standards for the safety, adequate care and treatment of clients who are residents in a residential treatment facility.

(1) *Application for license.*

(a) An application for a residential treatment facility license shall be submitted on forms furnished by the department. Applications shall be signed by the legal representative of the owner.

(b) The applicant shall furnish to the department full and complete information and promptly report any changes which would affect the current accuracy of such information as to the identity of each officer and director

of the corporation, if the program is operated by a legally incorporated entity, profit or nonprofit, and of each partner, if the program is a legal partnership.

(2) Disqualified applicants.

(a) Each and every individual named in an application for a residential facility license shall be considered separately and jointly as applicants, and if anyone is deemed disqualified/unqualified by the department in accordance with the law or these rules and regulations, a license may be denied, suspended or revoked. A license may be denied, suspended or revoked for failure or refusal to comply with the requirements established by chapter 71.12 RCW or with rules and regulations promulgated pursuant thereto, and, in addition, for any of the following:

- (i) Obtaining or attempting to obtain a license by fraudulent means or misrepresentation;
- (ii) Permitting, aiding or abetting the commission of an illegal act on the premises of the residential treatment facility;
- (iii) Cruelty, abuse, neglect or assault, or indifference to the welfare of any client;
- (iv) Misappropriation of the property of the client; and
- (v) Failure or inability to exercise fiscal accountability and responsibility toward the individual client, the department, or the business community.

(b) Before granting a license to operate a residential treatment facility, the department shall consider the ability of each individual named in the application to operate the residential treatment facility in accordance with the law and with these regulations. Individuals who have previously been denied a license to operate a health care or child care facility in this state or elsewhere, or who have been convicted civilly or criminally of operating such a facility without a license, or who have had their license to operate such a facility suspended or revoked, shall not be granted a license unless, to the satisfaction of the department, they affirmatively establish clear, cogent and convincing evidence of their ability to operate the residential treatment facility, for which the license is sought, in full conformance with all applicable laws, rules and regulations.

(3) Visitation and examination of the residential treatment facility by the department to ascertain compliance with this chapter and chapter 71.12 RCW shall occur as necessary and at least one time each twelve months.

(4) Denial, suspension, modification, or revocation of a license, adjudicative proceeding. ((Upon finding, as a result of an inspection,))

(a) When the department determines that a facility has failed or refused to comply with the requirements of chapter 71.12 RCW and/or these rules ((and regulations)), the department may, if the interests of the clients so demand, issue ((a written notification letter)) to the applicant or licensee ((giving)) a notice ((of intent)) to deny a license application or to suspend, modify, or revoke a license ((thirty days after the date of mailing. This letter shall be followed by a denial, suspension or revocation letter provided the applicant or licensee does not within thirty days from the date of mailing of the

~~department's notice of intent to reject, revoke or suspend a license make written application to the department for a hearing. Upon receipt of such an application to the department, the department shall fix a time for such hearing and shall give the applicant or licensee a notice of the time fixed for such hearing. Procedures governing hearings under these regulations shall be in accord with procedures set out in chapter 248-08 WAC, especially WAC 248-08-700 through 248-08-740. All hearings conducted under these regulations shall be deemed to be contested cases within the meaning of chapter 34.04 RCW)) to a license holder. The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.~~

(b) A license applicant or holder contesting a department license decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

(5) Submission of plans. The following shall be submitted with an application for license: PROVIDED, HOWEVER, That when any of the required plans are already on file with the department through previous applications for license or construction approval, only plans for portions or changes which are not on file need to be submitted.

(a) A plot plan showing street, driveways, water and sewage disposal systems, the location of buildings on the site and grade elevations within ten feet of any building in which clients are to be housed.

(b) Floor plans of each building in which clients are to be housed. The floor plans shall provide the following information:

(i) Identification of each client's sleeping room by use of a lettering or numbering system, or some equivalent mechanism of identification;

(ii) The usable square feet of floor space in each room;

(iii) The clear window glass area in each client's sleeping room;

(iv) The height of the lowest portion of the ceiling in any client's sleeping room;

(v) The floor elevations referenced to the grade level.

(6) Posting of license. A license for the residential treatment facility shall be posted in a conspicuous place on the premises.

**(7) New construction.**

(a) When new construction is contemplated, the following shall be submitted to the department for review:

(i) A written program containing, at a minimum, information concerning services to be provided and operational methods to be used which will affect the extent of facilities required by these regulations.

(ii) Duplicate sets of preliminary plans which are drawn to scale and include: A plot plan showing streets, driveways, the water and sewage disposal systems, grade and location of building(s) on the site; the plans for each floor of the building(s), existing and proposed, which designate the functions of each room and show all fixed equipment. The preliminary plans shall be accompanied by a statement as to the source of the water supply and the method of sewage and garbage disposal and a general description of construction and materials, including interior finishes.

(b) Construction shall not be started until duplicate sets of final plans (drawn to scale) and specifications have been submitted to and approved by the department. Final plans and specifications shall show complete details to be furnished to contractors for construction of buildings. These shall include:

(i) Plot plans;

(ii) Plans for each floor of the building(s) which designate the function of each room and show all fixed equipment and the planned location of beds and other furniture in client's sleeping rooms;

(iii) Interior and exterior elevations, building sections and construction details;

(iv) A schedule of floors, wall and ceiling finishes, and the types and sizes of doors and windows;

(v) Plumbing, heating, ventilation, and electrical systems; and

(vi) Specifications which fully describe workmanship and finishes.

(c) Adequate provisions shall be made for the safety and comfort of clients as construction work takes place in or near occupied areas.

(d) All construction shall take place in accordance with the approved final plans and specifications. The department shall be consulted prior to making any changes from the approved plans and specifications. When indicated by the nature or extent of proposed changes, the department may require the submission of modified plans or addenda for review prior to considering proposed change(s) for approval. Only those changes which have been approved by the department may be incorporated into a construction project. In all cases, modified plans or addenda on changes which are incorporated into the construction project shall be submitted for the department's file on the project even though it was not required that these be submitted prior to approval.

(8) Exemptions. The state board of health may, in its discretion, exempt a residential treatment facility from complying with parts of these rules pursuant to the procedures set forth in WAC 248-08-595.

**(9) Compliance with other regulations.**

(a) Rules and regulations adopted by the Washington state fire marshall under provisions of RCW 71.12.485 which are found in Title 212 WAC apply.

(b) If there is no local plumbing code, the uniform plumbing code of the international association of plumbing and mechanical officials shall be followed.

(c) Compliance with these regulations does not exempt a residential treatment facility from compliance with local and state electrical codes or local zoning, building and plumbing codes.

(10) Transfer of ownership. The ownership of a residential treatment facility shall not be transferred until the transferee has been notified by the department that the transferee's application for a license has been approved. Change in administrator shall be reported to the department.

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

**AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)**

**WAC 248-36-025 LICENSURE OF THE HOME CARE AGENCY.** (1) Persons operating home care agencies as defined under chapter 70.127 RCW, shall submit application and fees to the department by July 1, 1989.

(2) After July 1, 1990, no person shall:

(a) Advertise, operate, manage, conduct, open, or maintain a home care agency without first obtaining an appropriate license from the department; or

(b) Use the words "home care agency" or "home care services" in its corporate or business name, or advertise using such words unless licensed as a home care agency under chapter 70.127 RCW.

(3) Applicants for a home care agency license shall:

(a) Submit a completed application and fee for initial license or renewal to the department on forms furnished by the department, including signature of the owner or legal representative of the owner; and

(b) Furnish to the department full and complete information as required by the department for the proper administration of department requirements including:

(i) Evidence of current insurance including:

(A) Professional liability insurance coverage specified under RCW 70.127.080; and

(B) Public liability and property damage insurance coverage as specified under RCW 70.127.080.

(ii) Information on organizational and governing structure and the identity of the applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets;

(iii) A list of counties where the applicant will operate;

(iv) A list of branch offices; and

(v) A list of services provided or offered.

(4) Agencies requesting license renewal shall submit a renewal application and fee to the department.

(5) If the applicant or owner meets the requirements of this chapter and chapter 70.127 RCW, the department shall issue or renew a license for the agency, including branch offices.

(6) The department shall:

(a) Deny a license if in the last five years the owner, applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets are found in a civil or criminal proceeding to have committed any act reasonably relating to the fitness of any of the above persons to:

- (i) Establish, maintain, or administer an agency; or
- (ii) Provide care in the home of another.

(b) Provide a combination of applications and licenses and the reduction of individual license fees if an applicant applies for more than one category of license under chapter 70.127 RCW;

(c) Establish fees to be paid as required under RCW 43.20B.110 and chapter 440-44 WAC, including providing for the reduction of individual license fees if an applicant applies for more than one category of license under RCW 70.127.110;

(d) Prohibit transfer or reassignment of a license without a thirty-day prior notice to the department and department approval;

(e) Issue a license following approval of a new or current owner's application;

(f) Conduct on-site reviews of the agency, which may include in-home visits with the consent of the participant, in order to determine compliance;

(g) Examine and audit records of the agency if the department has reason to believe persons are providing care without an appropriate license;

(h) Provide for combined licensure inspections and audits for owners holding more than one license under RCW 70.127.110;

(i) Give written notice of any violations, including a statement of deficiencies observed;

(j) Inform the owner or applicant of the requirement to:

(i) Present a plan of correction to the department within ten working days; and

(ii) Comply within a specified time not to exceed sixty days.

(k) Allow the owner a reasonable period of time, not to exceed sixty days, to correct a deficiency prior to assessing a civil penalty unless:

(i) The deficiency is an immediate threat to life, health, or safety; or

(ii) The owner fails to comply with any of the provisions of WAC 248-36-045 (3)(a), (b), (c), (d), (e), (f), (g), (h), (i), and (j).

(l) Initiate disciplinary action, under RCW 70.127-.170 and this chapter, if the owner or applicant fails to comply.

(7) The department may:

(a) Issue a license effective for one year unless the license is suspended or revoked;

(b) Inspect an agency and examine records at any time to determine compliance with chapter 70.127 RCW and this chapter; and

(c) Deny, suspend, modify, or revoke an agency license for failure to comply with chapter 70.127 RCW or this chapter. ~~((Actions to deny, suspend, modify, or revoke the license shall be consistent with chapter 34.05 RCW, Administrative Procedure Act.))~~

(8) When a change of ownership is planned, the owner shall notify the department, in writing, at least thirty days prior to the date of transfer, including:

(a) Full name and address of the current owner and prospective new owner;

(b) Name and address of the agency and new name under which the agency will be operating, if known; and

(c) The date of the proposed change of ownership.

(9) The prospective new owner shall submit a new application for an agency license with the fee at least thirty days prior to the change of ownership.

(10) The agency shall inform the department in writing at the time of opening or closing of the agency or branch offices.

#### AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

#### WAC 248-36-035 LICENSE DENIALS—SUSPENSIONS—MODIFICATIONS—REVOCATIONS.

(1) The department may deny, suspend, modify, or revoke a license or assess civil penalties, or both, against the agency if an applicant, owner, officer, director, or managing employee:

(a) Fails or refuses to comply with the provisions of chapter 70.127 RCW or this chapter;

(b) Continues to operate after the license is revoked or suspended for cause and not subsequently reinstated by the department;

(c) Makes false statement of a material fact in the application for the license or data attached or in any record required by this chapter or matter under investigation by the department;

(d) Refuses to allow representatives of the department to inspect any part of the agency or books, records, or files required by this chapter;

(e) Willfully prevents or interferes with or attempts to impede in any way the work of any representative of the department in the lawful enforcement of chapter 70.127 RCW and this chapter;

(f) Willfully prevents or interferes with any representative of the department in the preservation of evidence of a violation under chapter 70.127 RCW or this chapter;

(g) Fails to pay or make arrangements to pay a civil monetary penalty assessed by the department within ten days after the assessment becomes final, as provided under WAC 248-36-045, Civil Fines;

(h) Uses false, fraudulent, or misleading advertising;

(i) Has repeated incidents of personnel performing services beyond those authorized by the agency or law; or

(j) Misrepresents, or is fraudulent in an aspect of, the conduct of the applicant's or owner's business.

(2) If the department finds the public health, safety, or welfare imperatively require emergency action, a license may be summarily suspended pending proceedings for revocation or other action.

~~((3) The department shall inform the owner or applicant in writing of a denial, suspension, modification, or revocation of a license, and of the right to appeal, with such notice:~~

~~(a) Stating the reasons for the adverse action; and~~

~~(b) Personally served in the manner of service of a summons in a civil action or given in another manner showing proof of receipt.~~

~~(4) Unless stated otherwise, the department shall consider the denial, suspension, modification, or revocation effective twenty-eight days after receipt.~~

~~(5) The department may make the date of action effective:~~

~~(a) Later than twenty-eight days after receipt if the department states the effective date in the written notice to the owner or applicant; and~~

~~(b) Sooner than twenty-eight days after receipt when necessary to protect the public health, safety, or welfare if the department states the effective date and the reasons supporting the effective date in the written notice.)~~

AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

WAC 248-36-045 CIVIL FINES. (1) Following an on-site review, in-home visit, or audit, the department shall give written notice either in person or by personal service or certified mail, return receipt requested, of any violation under chapter 70.127 RCW or this chapter. The notice shall inform the owner or applicant as appropriate including:

(a) Describing the conditions of noncompliance;

(b) Specifying a reasonable time of compliance not to exceed sixty days;

(c) Explaining the possibility of a violation subjecting the owner or applicant to denial, revocation, modification, or suspension of the license and/or civil fines; and

(d) Explaining the right of the owner or applicant to appeal.

(2) The department may assess civil monetary penalties in addition to or in lieu of denial, suspension, modification, or revocation of a license if the owner fails to comply with a notice of violation.

(3) The department may assess civil monetary penalties not to exceed one thousand dollars per violation in any case when the department finds the owner, applicant, officer, director, partner, managing employee, or owner of ten percent or more of the applicant's or owner's assets:

(a) Failed or refused to comply with requirements of chapter 70.127 RCW or this chapter;

(b) Continued to operate after the license was revoked or suspended for cause and not subsequently reinstated by the department;

(c) Has knowingly or with reason to know made a false statement of a material fact in the:

(i) Application for the license; or

(ii) Data attached; or

(iii) Record required under chapter 70.127 RCW; or

(iv) Matter under investigation by the department.

(d) Refused to allow representatives of the department to inspect any book, record, file or part of the agency required under this chapter;

(e) Willfully prevented, interfered with, or attempted to impede the work of any representative of the department in the lawful enforcement of a provision under chapter 70.127 RCW and this chapter;

(f) Willfully prevented or interfered with a representative of the department in the preservation of evidence of a violation under chapter 70.127 RCW or this chapter;

(g) Failed to pay or make arrangements to pay any civil monetary penalty assessed by the department under chapter 70.127 RCW within ten days after the assessment became final;

(h) Used false, fraudulent, or misleading advertising;

(i) Has repeated incidents of personnel performing services beyond services authorized by the agency or law; or

(j) Misrepresented or was fraudulent in any aspect of the conduct of the home care business.

(4) Failure to pay or make arrangements to pay civil monetary penalties within ten days from the time the assessment becomes final may result in denial, suspension, modification, or revocation of the license, in addition to the assessment of the penalties or to the assessment of additional penalties.

~~((5) The department shall give written notice to the owner or applicant against whom it assesses a civil fine, including the right to appeal. The written notice shall:~~

~~(a) State the reasons for the adverse action;~~

~~(b) Be personally served in the manner of service of a summons in a civil action or given in another manner showing proof of receipt; and~~

~~(c) State the effective date of the civil fine is:~~

~~(i) Twenty-eight days after receipt of the written notice; or~~

~~(ii) A later date at the discretion of the department.)~~

AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

WAC 248-36-055 ~~((APPEALS=HEARINGS))~~ LICENSE ACTION AND/OR CIVIL FINE—NOTICE—ADJUDICATIVE PROCEEDING. (1) ~~((Any owner or applicant aggrieved by the department's denial, suspension, modification, or revocation of a license, or imposition of a civil penalty, may request a department hearing))~~ The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.

~~(2) ((Any owner or applicant requesting a department hearing shall make the request in writing and:~~

~~(a) State the issue and law upon which the appeal relies;~~

~~(b) State the grounds for contesting the denial, suspension, modification, or revocation of license or imposition of civil fines;~~

~~(c) State current address and telephone number, if any;~~

~~(d) Attach a copy of the department notice of denial, suspension, modification, or revocation of license or imposition of civil fines;~~

~~(e) Submit the request for hearing within twenty-eight days of the date of receipt of the department notice of denial, suspension, modification, or revocation of license or imposition of civil penalty; and~~

~~(f) Deliver the request by personal service or by certified mail to the Office of Appeals, 12th Avenue and Franklin Street, P.O. Box 2465, Olympia, Washington 98504-2465.) The department's notice of imposition of a civil fine shall be consistent with RCW 43.20A.XXX and section 96, chapter 175, Laws of 1989. A person the department imposes a civil fine on has the right to an adjudicative proceeding to contest the decision.~~

~~(3) ((The department shall:~~

~~(a) Treat a mailed request as effective on the date it was postmarked, if the mailed request is received by the office of appeals properly addressed and with no postage due;~~

~~(b) Conduct hearings under chapters 10-08 and 388-08 WAC and chapter 34.05 RCW, Administrative Procedure Act;~~

~~(c) Apply this section if any provision of this section conflicts with chapter 388-08 WAC; and~~

~~(d) Follow the decision-making procedure including:~~

~~(i) Initial decision;~~

~~(ii) Petition for review; and~~

~~(iii) Review decision procedure.~~

~~(4) When an owner or applicant files an appeal within the time limits specified under this section, department action to deny, suspend, modify, or revoke a license, or impose a civil fine shall proceed as follows:~~

~~(a) When the department gives an owner or applicant twenty-eight or more days written notice and the owner or applicant files an appeal before the effective date on the written notice, the department:~~

~~(i) Shall delay implementing the adverse action until the order from the administrative hearing is served upon the owner or applicant; and~~

~~(ii) May implement part or all of the adverse action while the proceedings are pending if the:~~

~~(A) Presiding or reviewing officer permits the department to start such action; and~~

~~(B) Owner or applicant causes an unreasonable delay in the proceeding and circumstances change so the implementation is in the public interest or for other good cause.~~

~~(b) When the department gives an owner or applicant less than a twenty-eight-day written notice and the owner or applicant files an appeal, the department may:~~

~~(i) Implement the adverse action on the effective date stated in the written notice; or~~

~~(ii) Stay implementation of part or all of the adverse action, if ordered by the presiding or reviewing officer, while the proceedings are pending if the stay is in the public interest or for other good cause.) A license applicant or holder or a person the department imposes a civil fine on contesting a department decision shall within twenty-eight days of receipt of the decision:~~

~~(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and~~

~~(b) Include in or with the application:~~

~~(i) A specific statement of the issue or issues and law involved;~~

~~(ii) The grounds for contesting the department decision; and~~

~~(iii) A copy of the contested department decision.~~

~~(4) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.~~

AMENDATORY SECTION (Amending Order 1917, filed 12/1/82)

WAC 248-55-220 NOTICE OF ((REVOCA-TION)) DECISION-ADJUDICATIVE PROCEED-ING. ((Whenever the department has reasonable cause to believe that in the administration of chapter 70.119 RCW, grounds exist to revoke a certificate of competency, the department shall notify the certificate holder. The notice must:))

(1) ((Be in writing;)) The department's notice of a denial, suspension, modification, or revocation of a certificate of competency shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or certificate holder has the right to an adjudicative proceeding to contest the decision.

(2) ((State the grounds the department relies on to revoke the certificate, and)) A certificate applicant or holder contesting a department certificate decision shall within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(b) Include in or with the application:

(i) A specific statement of the issue or issues and law involved;

(ii) The grounds for contesting the department decision; and

(iii) A copy of the contested department decision.

(3) ((Be delivered personally to the certificate holder or be mailed by certified mail to his or her last known residence or business address)) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

#### NEW SECTION

WAC 248-55-235 CERTIFICATE DENIAL-ADJUDICATIVE PROCEDURE. The procedure for an adjudicative proceeding to contest the denial of a certificate is chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

AMENDATORY SECTION (Amending Order 1917, filed 12/1/82)

WAC 248-55-240 ((HEARING AND RECOM-MENDATION BY BOARD)) CERTIFICATE SUS-PENSION, MODIFICATION, OR REVOCATION-ADJUDICATIVE PROCEDURE. This section contains the procedure for an adjudicative proceeding to contest

the suspension, modification, or revocation of a certificate.

(1) The board members shall ~~((hold a hearing to make a record upon which it shall base its recommendation to the secretary))~~ preside at the adjudicative proceeding. The ~~((hearing))~~ proceeding shall be conducted in accordance with the Administrative Procedure Act (chapter ~~((34.04))~~ 34.05 RCW), this chapter, and ~~((under the procedural rules of))~~ chapter ~~((10-08))~~ 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

(2) The board may have ~~((a hearings examiner))~~ an administrative law judge assigned to ~~((preside))~~ assist the board at the hearing. The ~~((hearings examiner))~~ administrative law judge shall:

(a) ~~((Shall))~~ Conduct the hearing(s);

(b) ~~((Shall))~~ Offer advice and assistance to the board upon request by the board; and

(c) ~~((Shall))~~ Not be a member of the board.

(3) The department has the burden of proving its case by a preponderance of the credible evidence.

(4) At least four members of the board including the water industry representative must consider the record. A majority of the board members who considered the record shall make a written recommendation to the secretary to, or not to, revoke the certificate. The recommendation shall ~~((contain findings of fact and conclusions of law))~~ conform to RCW 34.05.461.

(5) The board's recommendation shall be personally delivered to the certificate holder or mailed ~~((to him or her))~~ by certified mail to ~~((his or her))~~ the certificate holder's last known residence or business address or served in another manner showing proof of receipt.

(6) If the board's recommendation is not to suspend, modify, or revoke the certificate, the recommendation shall be a final order as defined under chapter 34.05 RCW.

(7) If the board's recommendation is to suspend, modify, or revoke the certificate, the recommendation shall be an initial order as defined under chapter 34.05 RCW. The recommendation shall become the final order if no petition for administrative review is filed. If a petition for review is filed, the secretary or designee shall make the final adjudicative order.

#### REPEALER

The following sections of the Washington Administration Code are repealed:

WAC 248-55-230 APPEAL OF REVOCATION.

WAC 248-55-250 FINAL DECISION BY SECRETARY.

WAC 248-55-260 JUDICIAL REVIEW.

**Reviser's note:** The typographical error in the above repealer appeared in the original copy of the repealer and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 1919, filed 12/6/82)

WAC 248-59-030 ~~((APPEAL PROCEDURE))~~ ADJUDICATIVE PROCEEDING. (1) Any party affected by the decision of the water supply and waste

section of ~~((DSHS may appeal that))~~ the department has the right to contest the decision ~~((within twenty days from the date received by certified mail))~~ in an adjudicative proceeding. If no appeal is filed, the decision of the water supply and waste section shall be final.

(2) ~~((Notice of appeal must:~~

(a) ~~Be in writing;~~

(b) ~~Clearly and concisely state the basis for the appeal;~~

(c) ~~State whether the appellant will represent himself or herself or be represented by another;~~

(d) ~~State the name, address, and telephone number of the appellant and, if represented by another, the representative's name, address, and telephone number; and~~

(e) ~~Be mailed by certified mail to Office of Hearings, Post Office Box 2465, Olympia, Washington 98504))~~ A person contesting a water supply and waste section decision shall within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(b) Include in or with the application:

(i) A specific statement of the issue or issues and law involved;

(ii) The grounds for contesting the decision; and

(iii) A copy of the contested decision.

(3) The ~~((office of hearings shall notify all affected parties of the appeal and schedule of events))~~ proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

(4) Evidence not considered by the water supply and waste section in making their decision shall not be admitted in the adjudicative proceeding unless agreed to by all parties.

(5) The administrative law and review judge shall not modify the initial water supply and waste section decision unless the preponderance of evidence shows that decision is substantially or legally in error.

#### REPEALER

The following sections of the Washington Administration Code are repealed:

WAC 248-59-040 APPEAL HEARING.

WAC 248-59-050 APPEAL DECISION.

WAC 248-59-060 REVIEW BY SECRETARY.

WAC 248-59-070 DECISION OF SECRETARY.

WAC 248-59-080 JUDICIAL REVIEW.

**Reviser's note:** The typographical error in the above repealer appeared in the original copy of the repealer and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 6, filed 10/16/68)

WAC 248-91-060 ~~((DECISION OF THE DEPARTMENT))~~ NOTICE OF DECISION—ADJUDICATIVE PROCEEDING. ~~((After))~~ (1) The ~~((department has made a decision either granting or denying a~~

request for an approval and a certification of necessity, said decision shall constitute a "contested case" within the meaning of chapter 34.04 RCW)) department's notice of a denial, suspension, modification, or revocation of an approval and certificate of necessity shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or certificate holder has the right to an adjudicative proceeding to contest the decision.

(2) A certificate applicant or holder contesting a department certificate decision shall within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(b) Include in or with the application:

(i) A specific statement of the issue or issues and law involved;

(ii) The grounds for contesting the department decision; and

(iii) A copy of the contested department decision.

(3) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

AMENDATORY SECTION (Amending Order 2668, filed 8/9/88)

WAC 248-25-010 LICENSURE—ADULT RESIDENTIAL REHABILITATION CENTERS AND PRIVATE ADULT TREATMENT HOMES. Centers and treatment homes shall obtain a license under chapter 71.12 RCW. Chapter 248-25 WAC establishes minimum licensing standards for the safety, adequate care, and treatment of residents living in centers or treatment homes.

(1) Application for license.

(a) Applicants shall apply for a center or treatment home license on forms furnished by the department. The owner or a legal representative of the owner shall sign the application.

(b) The applicant shall furnish to the department full and complete information and promptly report any changes affecting the current accuracy of such information as to:

(i) The identity of each officer and director of the corporation, if the program is operated by legally incorporated entity, profit or nonprofit; and

(ii) The identity of each partner, if the program is a legal partnership.

(2) Disqualified applicants.

(a) The department shall consider each and every individual named in an application for a center or treatment home license, separately and jointly, as applicants. If the department deems anyone disqualified or unqualified in accordance with the law or these rules, a license may be denied, suspended, or revoked.

(b) The department may deny, suspend, or revoke a license for failure or refusal to comply with the requirements and rules established under provisions of chapter

71.12 RCW, and in addition, but not limited to, for any of the following:

(i) Obtaining or attempting to obtain a license by fraudulent means or misrepresentation;

(ii) Permitting, aiding, or abetting the commission of an illegal act on the premises of a center or treatment home;

(iii) Cruelty, abuse, neglect or assault, or indifference to the welfare of any resident;

(iv) Misappropriation of the property of the resident;

(v) Failure or inability to exercise fiscal accountability and responsibility toward the individual resident, the department, or the business community.

(c) The department shall consider the ability of each individual named in the license application prior to granting a license to determine:

(i) Ability of each individual to operate the center or treatment home in accordance with the law and these rules;

(ii) If there is cause for denial of a license to an individual named in the application for any of the following reasons:

(A) Previous denial of a license to operate a health or personal care facility in Washington state or elsewhere, or

(B) Civil or criminal conviction for operating a health or personal care facility without a license, or

(C) Previous revocation or suspension of a license to operate a health or personal care facility.

(d) The department shall deny a license for reasons listed in subsections (2)(c)(ii) of this section unless an applicant affirmatively establishes clear, cogent, and convincing evidence of ability to operate a center or treatment home in full conformance with all applicable laws, rules and regulations.

(3) Inspection of premises. Centers and treatment homes shall permit the department to visit and examine the premises of centers and treatment homes annually and as necessary to ascertain compliance with chapter 71.12 RCW and chapter 248-25 WAC.

(4) Denial, suspension, or revocation of a license, adjudicative proceeding.

(a) (~~Upon the department's decision to deny, suspend, or revoke a license,)~~ The department shall issue a letter to an applicant or licensee stating the department is denying an application, or is suspending, modifying, or revoking a license because:

(i) Findings upon inspection reveal failure or refusal of a center or treatment home to comply with chapter 71.12 RCW and chapter 248-25 WAC; and

(ii) The criteria in WAC 248-25-010 (2)(b) are satisfied; and

(iii) The health, safety, or welfare of residents is endangered.

(b) The department's notice of a denial, suspension, modification, or revocation (~~letter becomes effective thirty days after the date of mailing unless the applicant or licensee makes a written request to the department for a hearing within thirty days of the date of mailing of the letter~~) of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989.

An applicant or license holder has the right to an adjudicative proceeding to contest the decision.

~~(c) ((The written request for a hearing may be made to the Office of Hearings, P.O. Box 2465, Olympia, Washington 98504-2465. When the request for hearing is mailed, it shall be treated as having been made on the date it was postmarked, provided it is received by the office of hearings properly addressed with no postage due)) A license applicant or holder contesting a department license decision shall within twenty-eight days of receipt of the decision:~~

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(d) The ~~((procedures governing hearings are provided in))~~ proceeding is governed by the Administrative Procedure Act (chapter 34.04 RCW), this chapter, and chapter ~~((10-08))~~ 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

(5) Submission of plans and programs for centers. Centers shall submit the following with an application for license unless already on file with the department:

(a) A written description of activities and functions containing, at a minimum, information concerning services to be provided and operational methods to be used affecting the physical plant and facilities required by chapter 248-25 WAC;

(b) A plot plan showing street, driveways, water and sewage disposal systems, the location of buildings on the site, and grade elevations within ten feet of any building housing residents;

(c) Floor plans of each building housing residents with the following information:

(i) Identification of each resident's sleeping room by use of a lettering or numbering system, or some equivalent mechanism of identification;

(ii) The usable square feet of floor space in each room;

(iii) The clear window glass area in each resident's sleeping room;

(iv) The height of the lowest portion of the ceiling in any resident's sleeping room; and

(v) The floor elevations referenced to the grade level.

(6) New construction for centers.

(a) Centers shall submit the following to the department for review when new construction is contemplated:

(i) A written description of activities and functions containing, at a minimum, information concerning services to be provided and operational methods to be used affecting the physical plant and facilities required by these regulations;

(ii) Duplicate sets of preliminary plans drawn to scale and including:

(A) A plot plan showing streets, driveways, the water and sewage disposal systems, grade and location of building or buildings on the site; and

(B) The plans for each floor of the building or buildings, existing and proposed, designating the functions of each room and showing all fixed equipment.

(f)(iii) A(f)) statement about:

(A) Source of the water supply;

(B) The method of sewage and garbage disposal; and  
(C) A general description of construction and materials, including interior finishes.

(b) Licensees and applicants shall start construction only after department receipt and approval of:

(i) Specifications and duplicate sets of final plans drawn to scale;

(ii) Specifications showing complete details to contractors for construction of buildings; and

(iii) Plans and specifications including:

(A) Plot plans;

(B) Plans for each floor of each building designating the function of each room and showing all fixed equipment and the planned location of beds and other furniture in residents' sleeping rooms;

(C) Interior and exterior elevations, building sections, and construction details;

(D) A schedule of floor, wall and ceiling finishes, and the types and sizes of doors and windows;

(E) Plumbing, heating, ventilation, electrical systems, fire safety; and

(F) Specifications fully describing workmanship and finishes.

(c) Centers shall make adequate provisions for safety and comfort of residents as construction work takes place in or near occupied areas.

(d) Centers shall:

(i) Ensure all construction takes place in accordance with department approved final plans and specifications;

(ii) Consult with the department prior to making any changes from the approved plans and specifications;

(iii) Incorporate only department-approved changes into a construction project;

(iv) Submit modified plans or addenda on changes incorporated into a construction project to the department file on the project even though submission of the modified plans or addenda was not required by the department prior to approval.

(e) The department may require submission of modified plans or addenda for review prior to considering a proposed change or changes for approval.

(7) Compliance with other regulations.

(a) Centers shall comply with rules and regulations adopted by the Washington state fire marshal under provisions of RCW 71.12.485.

(b) Centers involved in construction shall comply with the state building code as required in chapter 19.27 RCW.

(c) Center compliance with chapter 248-25 WAC does not exempt it from compliance with codes under other state authorities or local jurisdictions, such as state electrical codes or local zoning, building, and plumbing codes.

(8) *Posting of license.* Centers shall post the license in a conspicuous place on the premises.

(9) *Transfer of ownership.* A center shall transfer ownership or, if a corporation, sell a majority of stock, only after the transferee has received department approval of the license application and reported change of center administrator.

(10) *Exemptions.*

(a) The secretary or designee may exempt a center or treatment home from compliance with specified subsections of these regulations when the department ascertains such exemptions may be made in an individual case without jeopardizing the safety or health of the residents in a particular center or treatment home.

(b) Centers and treatment homes shall keep all written exemptions granted by the department pursuant to chapter 248-25 WAC on file in the center or treatment home.

**AMENDATORY SECTION** (Amending Order 2130, filed 8/3/84)

**WAC 248-26-020 LICENSURE.** (1) Application for license.

(a) An application for an alcoholism treatment facility license shall be submitted on forms furnished by the department. An application shall be signed by the owner of the facility, or his or her legal representative, and the administrator.

(b) The applicant shall furnish to the department full and complete information, and promptly report any changes.

(2) *Disqualified applicants.*

(a) Each and every individual named in an application for an alcoholism treatment facility license shall be considered separately and jointly as applicants and, if anyone be deemed unqualified by the department in accordance with the law or these rules and regulations, the license may be denied, suspended, or revoked.

(b) A license may be denied, suspended, or revoked for failure or refusal to comply with the requirements established by chapter 71.12 RCW or with these rules and regulations and, in addition, any of the following:

(i) Obtaining or attempting to obtain a license by fraudulent means or misrepresentation;

(ii) Permitting, aiding, or abetting the commission of any illegal act on the premises of the alcoholism treatment facility;

(iii) Cruelty, assault, abuse, neglect, or indifference to the welfare of any patient;

(iv) Misappropriation of the property of the patients; or

(v) Failure or inability to exercise fiscal accountability and responsibility toward the individual patient, the department, or the business community.

(c) Before granting a license to operate an alcoholism treatment facility, the department shall consider the ability of each individual named in the application to operate the alcoholism treatment facility in accordance with the law and these regulations. Individuals having been previously denied a license to operate a health or personal care facility in this state or elsewhere, or having

been convicted civilly or criminally of operating such a facility without a license, or having had their license to operate such a facility suspended or revoked shall not be granted a license unless to the satisfaction of the department they affirmatively establish clear, cogent, and convincing evidence of their ability to operate the alcoholism treatment facility, for which the license is sought, in full conformance with all applicable laws, rules, and regulations.

(d) Individuals convicted of a felony, child abuse, and/or any crime involving physical harm to another person, or individuals identified as perpetrators of substantiated child abuse pursuant to chapter 26.44 RCW, shall be disqualified by reason of such conviction if such conviction is reasonably related to the competency of the person to exercise responsibilities for ownership, operation, and/or administration of an alcoholism treatment facility unless, to the satisfaction of the department, the individual establishes clear, cogent, and convincing evidence of sufficient rehabilitation subsequent to such conviction or abuse registry listing to warrant public trust.

(3) *Submission of plans.* The following shall be submitted with an application for license: **PROVIDED HOWEVER,** That whenever any of the required plans are already on file with the department through previous applications for license or construction approval, only plans for portions or changes not on file need to be submitted.

(a) A plot plan showing streets, driveways, water and sewage disposal systems, locations of buildings on the site, and grade elevations within ten feet of any building where patients are to be housed.

(b) Floor plans of each building where patients are to be housed. The floor plans shall provide the following information:

(i) Identification of each room by use of a system;

(ii) Identification of category of service intended for each room;

(iii) The usable square feet of floor space in each patient sleeping room;

(iv) The clear window glass area in each patient's sleeping room;

(v) The height of the lowest portion of the ceiling in any patient's sleeping room; and

(vi) Floor elevations referenced to the grade level.

(c) If new construction or remodeling is planned, requirements in WAC 248-26-020(7) shall apply.

(4) Classification or categories of alcoholism treatment services. For the purpose of licensing, alcoholism treatment services provided by alcoholism treatment facilities shall be classified as follows:

(a) Alcoholism detoxification services are either acute or subacute services required for the care and/or treatment of individuals intoxicated or incapacitated by alcohol during the initial period the body is cleared of alcohol and the individual recovers from the transitory effects of intoxication. Services include screening of intoxicated persons, detoxification of intoxicated persons, counseling of alcoholics regarding their illness to stimulate motivation to obtain further treatment, and referral of detoxified alcoholics to other, appropriate alcoholism treatment programs.

(b) Alcoholism intensive inpatient treatment services are those services provided to the detoxified alcoholic in a residential setting including, as a minimum, limited medical evaluation and general health supervision, alcoholism education, organized individual and group counseling, discharge referral to necessary supportive services, and a patient follow-through program after discharge.

(c) Alcoholism recovery house services are the provision of an alcohol-free residential setting with supporting services and social and recreational facilities for detoxified alcoholics to aid their adjustment to alcohol-free patterns of living and their engagement in occupational training, gainful employment, or other types of community activities.

(d) Alcoholism long-term treatment services are long-term provision of a residential care setting providing a structural living environment, board, and room for alcoholics with impaired self-maintenance capabilities needing personal guidance and assistance to maintain sobriety and optimum health status.

(5) Authorization and designation of categories of alcoholism treatment service.

(a) The license issued to an alcoholism treatment facility shall show the category or categories of alcoholism treatment the facility is licensed to provide.

(b) For each category of alcoholism treatment service, the licensee shall designate and maintain the particular category or categories of service for which the department has shown approval on the license.

(c) If maintenance and operation are not in compliance with chapter 71.12 RCW or chapter 248-26 WAC, the department may deny, suspend, or revoke authorization to provide a particular category of treatment service.

(6) Posting of license. The license for an alcoholism treatment facility shall be posted in a conspicuous place on the premises.

(7) New construction.

(a) When new construction is planned, the following shall be submitted to the department for review:

(i) A written program containing, at a minimum, information concerning services to be provided and operational methods to be used affecting the extent of facilities required by these regulations.

(ii) Duplicate sets of preliminary plans for new construction drawn to scale and including:

(A) A plot plan showing streets, driveways, the water and sewage disposal systems, grade and location of building or buildings on the site;

(B) Plans of each floor of the building or buildings, existing and proposed, designating the function of each room and showing all fixed equipment;

(iii) Preliminary plans shall be accompanied by a statement as to:

(A) Source of the water supply;

(B) Method of sewage and garbage disposal; and

(C) A general description of construction and materials including interior finishes.

(b) Construction shall not be started until duplicate sets of final plans for new construction, drawn to scale, and specifications have been submitted to and approved

by the department. Final plans and specifications shall show complete details to be furnished to contractors for construction of buildings. These shall include:

(i) Plot plan;

(ii) Plans of each floor of the building or buildings designating the function of each room and showing all fixed equipment;

(iii) Interior and exterior elevations, building sections, and construction details;

(iv) A schedule of floor, wall, and ceiling finishes, and the types and sizes of doors and windows;

(v) Plumbing, heating, ventilating, and electrical systems; and

(vi) Specifications fully describing the workmanship and finishes.

(c) Adequate provisions shall be made for the safety and comfort of patients if construction work takes place in or near occupied areas.

(d) All construction shall take place in accordance with the approved final plans and specifications.

(i) The department shall be consulted prior to making any changes from the approved plans and specifications.

(ii) When indicated by the nature or extent of proposed changes, the department may require the submission of modified plans or addenda for review prior to considering proposed change or changes for approval.

(iii) Only those changes approved by the department shall be incorporated into a construction project.

(iv) In all cases, modified plans or addenda on changes incorporated into the construction project shall be submitted for the department's file on the project even though it was not required these be submitted prior to approval.

(8) Exemptions.

(a) The secretary or designee may exempt an alcoholism treatment facility from compliance with parts of these regulations when it has been found after thorough investigation and consideration such exemption may be made in an individual case without jeopardizing the safety or health of the patients in the particular alcoholism treatment facility.

(b) The secretary or designee may, upon written application, allow the substitution of procedures, materials, or equipment for those specified in these regulations when such procedures, materials, or equipment have been demonstrated, to the satisfaction of the secretary, to be at least equivalent to those prescribed.

(c) All exemptions or substitutions granted pursuant to the foregoing provisions shall be reduced to writing and filed with the department and the alcoholism treatment facility.

(9) Compliance with other regulations.

(a) Rules and regulations adopted by the Washington state fire marshal under provision of RCW 71.12.485 which are found in chapter 212-40 WAC apply.

(b) If there is no local plumbing code, the Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials, 1979 edition, shall be followed.

(c) Compliance with these regulations does not exempt an alcoholism treatment facility from compliance

with local and state electrical codes or local zoning, building, and plumbing codes.

(10) Transfer of ownership. The possession or ownership of an alcoholism treatment facility shall not be transferred until the transferee has been notified by the department that the transferee's application for license has been approved.

(11) Denial, suspension, modification, or revocation of licenses or a license appeal; notice; adjudicative proceeding. (~~Upon finding, as a result of an inspection,~~)

(a) ~~When the department determines a facility has failed or refused to comply with the requirements of chapter 71.12 RCW and/or these rules (and regulations), the department may deny, suspend, modify, or revoke a license (in accordance with RCW 34.04.170. Procedures governing hearings under these regulations shall be in accord with procedures set out in chapter 248-08 WAC. All hearings conducted under these regulations shall be deemed to be contested cases within the meaning of chapter 34.04 RCW).~~ The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.

(b) A license applicant or holder contesting a department license decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

**AMENDATORY SECTION** (Amending Order 2790, filed 6/7/89)

WAC 248-27-025 LICENSURE OF THE HOME HEALTH AGENCY. (1) Persons operating home health agencies defined under chapter 70.127 RCW shall submit applications and fees to the department by July 1, 1989.

(2) After July 1, 1990, no person shall:

(a) Advertise, operate, manage, conduct, open, or maintain a home health agency without first obtaining an appropriate license from the department; or

(b) Use the words "home health agency," "home health care services," or "visiting nurse services" in its corporate or business name, or advertise using such words unless licensed as a home health agency under chapter 70.127 RCW.

(3) Applicants for a home health agency license shall:

(a) Submit a completed application and fee for initial license or renewal to the department on forms furnished by the department, including signature of the owner or legal representative of the owner;

(b) Furnish to the department full and complete information as required by the department for the proper administration of department requirements including:

(i) Evidence of current insurance including:

(A) Professional liability insurance coverage specified under RCW 70.127.080; and

(B) Public liability and property damage insurance coverage specified under RCW 70.127.080.

(ii) Information on organizational and governing structure and the identity of the applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets;

(iii) A list of counties where the applicant will operate;

(iv) A list of branch offices; and

(v) A list of services provided or offered.

(4) Agencies requesting license renewal shall submit a renewal application and fee to the department.

(5) If the applicant or owner meets the requirements of this chapter and chapter 70.127 RCW, the department shall issue or renew a license for the agency.

(6) The department shall:

(a) Deny a license if in the last five years the owner, applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets are found in a civil or criminal proceeding to have committed any act reasonably relating to the fitness of any of the above persons to:

(i) Establish, maintain, or administer an agency; or

(ii) Provide care in the home of another.

(b) Provide a combination of applications and licenses and the reduction of individual license fees if an applicant applies for more than one category of license under chapter 70.127 RCW;

(c) Establish fees to be paid under RCW 43.20B.110 and chapter 440-44 WAC, including providing for the reduction of individual license fees if an applicant applies for more than one category of license under RCW 70.127.110;

(d) Prohibit transfer or reassignment of a license without thirty-day-prior-notice to the department and department approval;

(e) Issue a license following approval of a new or current owner's application;

(f) Conduct on-site reviews of the agency, which may include in-home visits with consent of the patient, to determine compliance;

(g) Examine and audit records of the agency if the department has reason to believe persons are providing care without an appropriate license;

(h) Provide for combined licensure inspections and audits for owners holding more than one license under RCW 70.127.110;

(i) Give written notice of any violations, including a statement of deficiencies observed;

(j) Inform the owner or applicant of the requirement to:

(i) Present a plan of correction to the department within ten working days; and

(ii) Comply within a specified time not to exceed sixty days.

(k) Allow the owner a reasonable period of time, not to exceed sixty days, to correct a deficiency prior to assessing a civil penalty unless:

(i) The deficiency is an immediate threat to life, health, or safety; or

(ii) The owner fails to comply with any of the provisions under WAC 248-27-045 (3)(a), (b), (c), (d), (e), (f), (g), (h), (i), and (j).

(l) Initiate disciplinary action, under RCW 70.127-.170 and this chapter, if the owner or applicant fails to comply.

(7) The department may:

(a) Issue a license effective for one year or less unless the license is suspended or revoked;

(b) Inspect an agency and examine records at any time to determine compliance with chapter 70.127 RCW and this chapter;

(c) Deny, suspend, modify, or revoke an agency license for failure to comply with chapter 70.127 RCW or this chapter. ~~((Actions to deny, suspend, modify, or revoke the license shall be consistent with chapter 34.05 RCW, Administrative Procedure Act.))~~

(8) When a change of ownership is planned, the owner shall notify the department, in writing, at least thirty days prior to the date of transfer, including:

(a) Full name and address of the current owner and prospective new owner;

(b) Name and address of the agency and new name under which the agency will be operating, if known; and

(c) The date of the proposed change of ownership.

(9) The prospective new owner shall submit a new application for an agency license with the fee at least thirty days prior to the change of ownership.

(10) The agency shall inform the department, in writing, at the time of opening or closing the agency or branch offices included in the agency license.

#### AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

#### WAC 248-27-035 LICENSE DENIALS—SUSPENSIONS—MODIFICATIONS—REVOICATIONS.

(1) The department may deny, suspend, modify, or revoke a license or assess civil penalties, or both, against the agency if an applicant, owner, officer, director, or managing employee:

(a) Fails or refuses to comply with the provisions under chapter 70.127 RCW or this chapter;

(b) Continues to operate after the license is revoked or suspended for cause without subsequent reinstatement by the department;

(c) Makes a false statement of a material fact in the application for the license or data attached or in any record required by this chapter or matter under investigation by the department;

(d) Refuses to allow representatives of the department to inspect any part of the agency or books, records, or files required by this chapter;

(e) Willfully prevents or interferes with, or attempts to impede in any way, the work of a representative of the department in the lawful enforcement of chapter 70.127 RCW and this chapter;

(f) Willfully prevents or interferes with a representative of the department in the preservation of evidence of a violation under chapter 70.127 RCW or this chapter;

(g) Fails to pay or make arrangements to pay a civil monetary penalty assessed by the department within ten days after the assessment becomes final, as provided under WAC 248-27-045, Civil Fines;

(h) Uses false, fraudulent, or misleading advertising;

(i) Has repeated incidents of personnel performing services beyond services authorized by the agency or law; or

(j) Misrepresents, or is fraudulent in an aspect of, the conduct of the applicant's or owner's business.

(2) If the department finds the public health, safety, or welfare imperatively require emergency action, a license may be summarily suspended pending proceedings for revocation or other action.

~~((3) The department shall inform the owner or applicant, in writing, of a denial, suspension, modification, or revocation of a license, and of the right to appeal, with such notice:~~

~~(a) Stating the reasons for the adverse action; and~~

~~(b) Personally served in the manner of service of a summons in a civil action or given in another manner showing proof of receipt.~~

~~(4) Unless stated otherwise, the department shall consider a denial, suspension, modification, or revocation effective twenty-eight days after receipt.~~

~~(5) The department may make the date of action effective:~~

~~(a) Later than twenty-eight days after receipt if the department states the effective date in the written notice to the owner or applicant; and~~

~~(b) Sooner than twenty-eight days after receipt when necessary to protect the public health, safety, or welfare if the department states the effective date and the reasons supporting the effective date in the written notice.))~~

#### AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

WAC 248-27-045 CIVIL FINES. (1) Following an on-site review, in-home visit, or audit, the department shall give written notice either in person or by personal service or certified mail, return receipt requested, of any violation under chapter 70.127 RCW or this chapter. The notice shall inform the owner or applicant as appropriate including:

(a) Describing the conditions of noncompliance;

(b) Specifying a reasonable time of compliance not to exceed sixty days;

(c) Explaining the possibility of a violation subjecting the owner or applicant to denial, revocation, modification, or suspension of the license, and/or civil fines; and

(d) Explaining the right of the owner or applicant to appeal.

(2) The department may assess civil monetary penalties in addition to or in lieu of denial, suspension, modification, or revocation of a license if the owner fails to comply with a notice of violation.

(3) The department may assess civil monetary penalties not to exceed one thousand dollars per violation in any case where the department finds the owner, applicant, officer, director, partner, managing employee, or owner of ten percent or more of the applicant's or owner's assets:

(a) Failed or refused to comply with requirements under chapter 70.127 RCW or this chapter;

(b) Continued to operate after the license was revoked or suspended for cause and not subsequently reinstated by the department;

(c) Has knowingly, or with reason to know, made a false statement of a material fact in the:

(i) Application for the license; or

(ii) Data attached; or

(iii) Record required under chapter 70.127 RCW; or

(iv) Matter under investigation by the department.

(d) Refused to allow representatives of the department to inspect any book, record, file, or part of the agency under this chapter;

(e) Willfully prevented, interfered with, or attempted to impede the work of any representative of the department and the lawful enforcement of a provision under chapter 70.127 RCW and this chapter;

(f) Willfully prevented or interfered with a representative of the department in the preservation of evidence of a violation under chapter 70.127 RCW or this chapter;

(g) Failed to pay or make arrangements to pay any civil monetary penalty assessed by the department under chapter 70.127 RCW within ten days after the assessment became final;

(h) Used false, fraudulent, or misleading advertising;

(i) Has repeated incidents of personnel performing services beyond services authorized by the agency or law; or

(j) Misrepresented or was fraudulent in any aspect of the conduct of the home health business.

(4) Failure to pay or make arrangements to pay civil monetary penalties within ten days from the time the assessment becomes final may result in denial, suspension, modification, or revocation of the license, in addition to either the assessment of the penalties or to the assessment of additional penalties.

~~((5) The department shall give written notice to the owner or applicant against whom the department assesses a civil fine, including the right to appeal. The written notice shall:~~

~~(a) State the reasons for the adverse action;~~

~~(b) Be personally served in the manner of service of a summons in a civil action or given in another manner showing proof of receipt; and~~

~~(c) State the effective date of the civil fine action is:~~

~~(i) Twenty-eight days after receipt of the written notice; or~~

~~(ii) A later date at the discretion of the department.)~~

AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

~~WAC 248-27-055 ((APPEALS—HEARINGS))  
LICENSE ACTION AND/OR CIVIL FINE—NOTICE—ADJUDICATIVE PROCEEDING. (1) ((An owner or applicant aggrieved by)) The department's notice of a denial, suspension, modification, or revocation of a license((; or imposition of a civil penalty, may request a department hearing.~~

~~(2) Any owner or applicant requesting a department hearing shall make the request, in writing, and:~~

~~(a) State the issue and law upon which the appeal relies;~~

~~(b) State the grounds for contesting the denial, suspension, modification, or revocation of license or imposition of civil fines;~~

~~(c) State current address and telephone number;~~

~~(d) Attach to the request a copy of the department notice of denial, suspension, modification, or revocation of license or imposition of civil fine;~~

~~(e) Submit the request for hearing within twenty-eight days of the date of receipt of the department notice of denial, suspension, modification, or revocation of license or imposition of civil penalty; and~~

~~(f) Deliver the request by personal service or by certified mail to the Office of Appeals, 12th Avenue and Franklin Street, P.O. Box 2465, Olympia, Washington 98504-2465.~~

~~(3) The department shall:~~

~~(a) Treat a mailed request as effective on the date it was postmarked, if the mailed request is received by the office of appeals properly addressed and with no postage due;~~

~~(b) Conduct hearings under chapters 10-08 and 388-08 WAC and chapter 34.05 RCW, Administrative Procedure Act;~~

~~(c) Apply this section if any provision of this section conflicts with chapter 388-08 WAC; and~~

~~(d) Follow the decision-making procedure including:~~

~~(i) Initial decision;~~

~~(ii) Petition for review; and~~

~~(iii) Review decision procedure.~~

~~(4) When an owner or applicant files an appeal within the time limits specified under this section, department action to deny, suspend, modify, or revoke a license, or impose a civil fine shall proceed as follows:~~

~~(a) When the department gives an owner or applicant twenty-eight or more days' written notice and the owner or applicant files an appeal before the effective date on the written notice, the department:~~

~~(i) Shall delay implementing the adverse action until the order from the administrative hearing is served upon the owner or applicant; and~~

~~(ii) May implement part or all of the adverse action while the proceedings are pending if the:~~

~~(A) Presiding or reviewing officer permits the department to start such action; and~~

~~(B) Owner or applicant causes an unreasonable delay in the proceeding and circumstances change so the implementation is in the public interest or for other good cause.~~

~~(b) When the department gives an owner or applicant less than a twenty-eight-day written notice and the owner or applicant files an appeal, the department may:~~

~~(i) Implement the adverse action on the effective date stated in the written notice, or~~

~~(ii) Stay implementation of part or all of the adverse action, if ordered by the presiding or reviewing officer, while the proceedings are pending if the stay is in the public interest or for other good cause)) shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or licensee holder has the right to an adjudicative proceeding to contest the decision.~~

~~(2) The department's notice of imposition of a civil fine shall be consistent with RCW 43.20A.XXX and section 96, chapter 175, Laws of 1989. A person the department imposes a civil fine on has the right to an adjudicative proceeding to contest the decision.~~

~~(3) A license applicant or holder or a person the department imposes a civil fine on contesting a department decision shall within twenty-eight days of receipt of the decision:~~

~~(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and~~

~~(b) Include in or with the application:~~

~~(i) A specific statement of the issue or issues and law involved;~~

~~(ii) The grounds for contesting the department decision; and~~

~~(iii) A copy of the contested department decision.~~

~~(4) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.~~

AMENDATORY SECTION (Amending Order 2338, filed 1/29/86)

WAC 248-29-020 LICENSURE. (1) Application for license—Fee.

(a) An application for a childbirth center license shall be submitted on forms furnished by the department. The application shall be signed by the legal representative of the governing body.

(b) The applicant shall furnish to the department full and complete information and promptly report any changes which would affect the current accuracy of such information as to the identity of each officer and director of the corporation, if the birth center is operated by a legally incorporated entity, profit or nonprofit, and of each partner if the birth center is operated through a legal partnership.

(c) Each application for license shall be accompanied by a license fee as established by the department under RCW 43.20A.055: PROVIDED, That no fee shall be required of charitable or nonprofit or government-operated birth centers. Upon receipt of the license fee, when required, the department shall issue a childbirth center license if the applicant and the birth center facilities meet the requirements of this chapter.

(2) License renewal—Limitations—Display.

(a) A license, unless suspended or revoked, shall be renewed annually.

(i) Applications for renewal shall be on forms provided by the department and shall be filed with the department not less than ten days prior to expiration.

(ii) Each application for renewal shall be accompanied by a license fee as established by the department under RCW 43.20A.055.

(iii) The department shall inspect and investigate each childbirth center as needed and at least annually to determine compliance with standards herein (chapter 248-29 WAC) and applicable standards of chapter 18.46 RCW.

(b) Each license shall be issued only for the premises and persons named. Licenses shall be transferrable or assignable only with written approval by the department.

(c) Licenses shall be posted in a conspicuous place on the licensed premises.

~~(3) ((License=))Denial, suspension, modification, revocation of a license, notice, adjudicative proceeding.~~

~~(a) The department may, if the interests of the clients so demand, deny, suspend, or revoke a license when there has been failure or refusal to comply with the requirements ((established in chapter 248-29 WAC or applicable sections)) of chapter 18.46 RCW((, in accordance with RCW 18.46.050 and chapter 34.04 RCW)) and/or these rules. The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.~~

~~(b) A license applicant or holder contesting a department license decision shall within twenty-eight days of receipt of the decision:~~

~~(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and~~

~~(ii) Include in or with the application:~~

~~(A) A specific statement of the issue or issues and law involved;~~

~~(B) The grounds for contesting the department decision; and~~

~~(C) A copy of the contested department decision.~~

~~(c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.~~

~~(4) New construction—Major alterations.~~

~~(a) When new construction or major alteration is contemplated, the following shall be submitted to the department for review:~~

~~(i) A written program containing, at a minimum, information concerning services to be provided and operational methods to be used which will affect the extent of facilities required by these regulations;~~

~~(ii) Duplicate sets of preliminary plans which are drawn to scale and include: A plot plan showing streets, driveways, water, and sewage disposal systems, grade~~

and location of the building or buildings on the site; the plans for each floor of each building, existing and proposed, which designate the functions of each room and show all fixed equipment. The preliminary plans shall be accompanied by a statement as to the source of water supply and the method of sewage and garbage disposal and a general description of construction and materials, including interior finishes.

(b) Construction shall not be started until duplicate sets of final plans (drawn to scale) and specifications have been submitted to and approved by the department. Final plans and specifications shall show complete details to be furnished to contractors for construction of buildings or major alterations in existing buildings. These shall include:

(i) Plot plans;

(ii) Plans for each floor of each building which designate the function of each room and show all fixed equipment and the planned location of beds and other furniture;

(iii) Interior and exterior elevations, building sections, and construction details;

(iv) Schedule of floors, wall, and ceiling finishes, and the types and sizes of doors and windows; plumbing, heating, ventilation, and electrical systems; and

(v) Specifications which fully describe workmanship and finishes.

(c) Adequate provisions shall be made for the safety and comfort of clients as construction work takes place in or near an occupied area.

(d) Construction shall take place in accordance with approved final plans and specifications. Only those changes which have been approved by the department may be incorporated into the construction project. Modified plans, additions, or changes incorporated into the construction project shall be submitted to the department for the department file on the project.

(5) Compliance with other regulations.

(a) Applicable rules and regulations adopted by the Washington state fire marshal.

(b) If there is no local plumbing code, the Uniform Plumbing Code of the National Association of Plumbing and Mechanical Officials shall be followed.

(c) Compliance with these regulations does not exempt birth centers from compliance with the local and state electrical codes or local fire, zoning, building, and plumbing codes.

**AMENDATORY SECTION** (Amending Order 2790, filed 6/7/89)

WAC 248-31-025 LICENSURE OF THE HOSPICE AGENCY. (1) Persons operating hospice agencies defined under chapter 70.127 RCW shall submit applications and fees to the department by July 1, 1989.

(2) After July 1, 1990, no person shall:

(a) Advertise, operate, manage, conduct, open, or maintain a hospice agency without first obtaining an appropriate license from the department; or

(b) Use the words "hospice agency" or "hospice care" in its corporate or business name, or advertise using such words unless licensed as a hospice agency under chapter 70.127 RCW.

(3) Applicants for a hospice agency license shall:

(a) Submit a completed application and fee for initial license or renewal to the department on forms furnished by the department, including signature of the owner or legal representative of the owner;

(b) Furnish to the department full and complete information as required by the department for the proper administration of department requirements including:

(i) Evidence of current insurance including:

(A) Professional liability insurance coverage specified under RCW 70.127.080; and

(B) Public liability and property damage insurance coverage specified under RCW 70.127.080.

(ii) Information on organizational and governing structure and the identity of the applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets;

(iii) A list of counties where the applicant will operate;

(iv) A list of branch offices; and

(v) A list of services provided or offered.

(4) Agencies requesting license renewal shall submit a renewal application and fee to the department.

(5) If the applicant or owner meets the requirements of this chapter and chapter 70.127 RCW, the department shall issue or renew a license for the agency.

(6) The department shall:

(a) Deny a license if in the last five years the owner, applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets are found in a civil or criminal proceeding to have committed any act reasonably relating to the fitness of any of the above persons to:

(i) Establish, maintain, or administer an agency; or

(ii) Provide care in the home of another.

(b) Provide for a combination of applications and licenses and the reduction of individual license fees if an applicant applies for more than one category of license under chapter 70.127 RCW;

(c) Establish fees to be paid under RCW 43.20B.110 and chapter 440-44 WAC, including providing for the reduction of individual license fees if an applicant applies for more than one category of license under RCW 70.127.110;

(d) Prohibit transfer or reassignment of a license without thirty days prior notice to the department and department approval;

(e) Issue a license following approval of a new or current owner's application;

(f) Conduct on-site reviews of the agency, which may include in-home visits with the consent of the patient, to determine compliance;

(g) Examine and audit records of the agency if the department believes a person is providing care without an appropriate license;

(h) Provide for combined licensure inspections and audits for owners holding more than one license under RCW 70.127.110;

(i) Give written notice of any violations, including a statement of deficiencies observed;

(j) Inform the owner or applicant of the requirement to:

(i) Present a plan of correction to the department within ten working days; and

(ii) Comply within a specified time not to exceed sixty days.

(k) Allow the owner a reasonable period of time, not to exceed sixty days, to correct a deficiency prior to assessing a civil penalty unless:

(i) The deficiency is an immediate threat to life, health, or safety; or

(ii) The owner fails to comply with any of the provisions of WAC 248-31-045 (3)(a), (b), (c), (d), (e), (f), (g), (h), (i), and (j).

(l) Initiate disciplinary action, under RCW 70.127-.170 and this chapter, if the owner or applicant fails to comply.

(7) The department may:

(a) Issue a license effective for one year or less unless the license is suspended or revoked;

(b) Inspect an agency and examine records at any time to determine compliance with chapter 70.127 RCW and this chapter; and

(c) Deny, suspend, modify, or revoke an agency license for failure to comply with chapter 70.127 RCW and this chapter. (~~Actions to deny, suspend, modify, or revoke the license shall be consistent with chapter 34.05 RCW, Administrative Procedure Act.~~)

(8) When a change of ownership is planned, the owner shall notify the department, in writing, at least thirty days prior to the date of transfer, including:

(a) Full name and address of the current owner and prospective new owner;

(b) Name and address of the agency and new name under which the agency will be operating, if known; and

(c) The date of the proposed change of ownership.

(9) The prospective new owner shall submit a new application for an agency license with the fee at least thirty days prior to the change of ownership.

(10) The agency shall inform the department, in writing, at the time of opening or closing the agency or branch offices included in the agency license.

#### AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

##### WAC 248-31-035 LICENSE DENIALS—SUSPENSIONS—MODIFICATIONS—REVOCATIONS.

(1) The department may deny, suspend, modify, or revoke a license or assess civil penalties, or both, against the agency if an applicant, owner, officer, director, or managing employee:

(a) Fails or refuses to comply with the provisions under chapter 70.127 RCW or this chapter;

(b) Continues to operate after the license is revoked or suspended for cause without subsequent reinstatement by the department;

(c) Makes a false statement of a material fact in the application for the license or data attached or in any record required by this chapter or matter under investigation by the department;

(d) Refuses to allow representatives of the department to inspect any part of the agency or books, records, or files required by this chapter;

(e) Willfully prevents or interferes with, or attempts to impede in any way, the work of a representative of the department in the lawful enforcement of chapter 70.127 RCW and this chapter;

(f) Willfully prevents or interferes with a representative of the department in the preservation of evidence of a violation under chapter 70.127 RCW or this chapter;

(g) Fails to pay or make arrangements to pay a civil monetary penalty assessed by the department within ten days after the assessment becomes final, as provided under WAC 248-27-045, Civil Fines;

(h) Uses false, fraudulent, or misleading advertising;

(i) Has repeated incidents of personnel performing services beyond services authorized by the agency or law; or

(j) Misrepresents, or is fraudulent in an aspect of, the conduct of the applicant's or owner's business.

(2) If the department finds the public health, safety, or welfare imperatively require emergency action, a license may be summarily suspended pending proceedings for revocation or other action.

~~((3) The department shall inform the owner or applicant, in writing, of a denial, suspension, modification, or revocation of a license, and of the right to appeal, with such notice:~~

~~(a) Stating the reasons for the adverse action; and~~

~~(b) Personally served in the manner of service of a summons in a civil action or given in another manner showing proof of receipt.~~

~~(4) Unless stated otherwise, the department shall consider a denial, suspension, modification, or revocation effective twenty-eight days after receipt.~~

~~(5) The department may make the date of action effective:~~

~~(a) Later than twenty-eight days after receipt if the department states the effective date in the written notice to the owner or applicant; and~~

~~(b) Sooner than twenty-eight days after receipt when necessary to protect the public health, safety, or welfare if the department states the effective date and the reasons supporting the effective date in the written notice.))~~

#### AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

WAC 248-31-045 CIVIL FINES. (1) Following an on-site review, in-home visit, or audit, the department shall give written notice either in person or by personal service or certified mail, return receipt requested, of any violation under chapter 70.127 RCW or this chapter. The notice shall inform the owner or applicant as appropriate including:

(a) Describing the conditions of noncompliance;

(b) Specifying a reasonable time of compliance not to exceed sixty days;

(c) Explaining the possibility of a violation subjecting the owner or applicant to denial, revocation, modification, or suspension of the license, and/or civil fines; and

(d) Explaining the right of the owner or applicant to appeal.

(2) The department may assess civil monetary penalties in addition to or in lieu of denial, suspension, modification, or revocation of a license if the owner fails to comply with a notice of violation.

(3) The department may assess civil monetary penalties not to exceed one thousand dollars per violation in any case where the department finds the owner, applicant, officer, director, partner, managing employee, or owner of ten percent or more of the applicant's or owner's assets:

(a) Failed or refused to comply with requirements under chapter 70.127 RCW or this chapter;

(b) Continued to operate after the license was revoked or suspended for cause and not subsequently reinstated by the department;

(c) Has knowingly, or with reason to know, made a false statement of a material fact in the:

(i) Application for the license; or

(ii) Data attached; or

(iii) Record required under chapter 70.127 RCW; or

(iv) Matter under investigation by the department.

(d) Refused to allow representatives of the department to inspect any book, record, file, or part of the agency under this chapter;

(e) Willfully prevented, interfered with, or attempted to impede the work of any representative of the department and the lawful enforcement of a provision under chapter 70.127 RCW and this chapter;

(f) Willfully prevented or interfered with a representative of the department in the preservation of evidence of a violation under chapter 70.127 RCW or this chapter;

(g) Failed to pay or make arrangements to pay any civil monetary penalty assessed by the department under chapter 70.127 RCW within ten days after the assessment became final;

(h) Used false, fraudulent, or misleading advertising;

(i) Has repeated incidents of personnel performing services beyond services authorized by the agency or law; or

(j) Misrepresented or was fraudulent in any aspect of the conduct of the agency business.

(4) Failure to pay or make arrangements to pay civil monetary penalties within ten days from the time the assessment becomes final may result in denial, suspension, modification, or revocation of the license, in addition to either the assessment of the penalties or to the assessment of additional penalties.

~~((5) The department shall give written notice to the owner or applicant against whom the department assesses a civil fine, including the right to appeal. The written notice shall:~~

~~(a) State the reasons for the adverse action;~~

~~(b) Be personally served in the manner of service of a summons in a civil action or given in another manner showing proof of receipt; and~~

~~(c) State the effective date of the civil fine action is:~~

~~(i) Twenty-eight days after receipt of the written notice; or~~

~~(ii) A later date at the discretion of the department.)~~

AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

WAC 248-31-055 ((APPEALS=HEARINGS)) LICENSE ACTION AND/OR CIVIL FINE—NOTICE—ADJUDICATIVE PROCEEDING. (1) ((An owner or applicant aggrieved by the department's denial, suspension, modification, or revocation of a license, or imposition of a civil penalty, may request a department hearing)) The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.

~~(2) ((Any owner or applicant requesting a department hearing shall make the request, in writing, and:~~

~~(a) State the issue and law upon which the appeal relies;~~

~~(b) State the grounds for contesting the denial, suspension, modification, or revocation of license or imposition of civil fines;~~

~~(c) State the current address and telephone number;~~

~~(d) Attach to the request a copy of the department notice of denial, suspension, modification, or revocation of license or imposition of civil fine;~~

~~(e) Submit the request for hearing within twenty-eight days of the date of receipt of the department notice of denial, suspension, modification, or revocation of license or imposition of civil penalty; and~~

~~(f) Deliver the request by personal service or by certified mail to the Office of Appeals, 12th Avenue and Franklin Street, P.O. Box 2465, Olympia, Washington 98504-2465)) The department's notice of imposition of a civil fine shall be consistent with RCW 43.20A.XXX and section 96, chapter 175, Laws of 1989. A person the department imposes a civil fine on has the right to an adjudicative proceeding to contest the decision.~~

~~(3) ((The department shall:~~

~~(a) Treat a mailed request as effective on the date it was postmarked, if the mailed request is received by the office of appeals properly addressed and with no postage due;~~

~~(b) Conduct hearings under chapters 10-08 and 388-08 WAC and chapter 34.05 RCW, Administrative Procedure Act;~~

~~(c) Apply this section if any provision of this section conflicts with chapter 388-08 WAC; and~~

~~(d) Follow the decision-making procedure including:~~

~~(i) Initial decision;~~

~~(ii) Petition for review; and~~

~~(iii) Review decision procedure.~~

~~(4) When an owner or applicant files an appeal within the time limits specified under this section, department action to deny, suspend, modify, or revoke a license, or impose a civil fine shall proceed as follows:~~

~~(a) When the department gives an owner or applicant twenty-eight or more days' written notice and the owner or applicant files an appeal before the effective date on the written notice, the department:~~

~~(i) Shall delay implementing the adverse action until the order from the administrative hearing is served upon the owner or applicant, and~~

~~(ii) May implement part or all of the adverse action while the proceedings are pending if the:~~

~~(A) Presiding or reviewing officer permits the department to start such action, and~~

~~(B) Owner or applicant causes an unreasonable delay in the proceeding and circumstances change so the implementation is in the public interest or for other good cause.~~

~~(b) When the department gives an owner or applicant less than a twenty-eight-day written notice and the owner or applicant files an appeal, the department may:~~

~~(i) Implement the adverse action on the effective date stated in the written notice, or~~

~~(ii) Stay implementation of part or all of the adverse action, if ordered by the presiding or reviewing officer, while the proceedings are pending if the stay is in the public interest or for other good cause)) A license applicant or holder or a person the department imposes a civil fine on contesting a department decision shall within twenty-eight days of receipt of the decision:~~

~~(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and~~

~~(b) Include in or with the application:~~

~~(i) A specific statement of the issue or issues and law involved;~~

~~(ii) The grounds for contesting the department decision; and~~

~~(iii) A copy of the contested department decision.~~

~~(4) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.~~

WSR 89-22-107

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed November 1, 1989, 1:31 p.m.]

Original Notice.

Title of Rule: Adjudicative proceedings, see below.

Purpose: To conform program rules on adjudicative proceeding to the new Administrative Procedure Act, chapter 34.05 RCW, and other recent statutory changes.

Other Identifying Information: This proposal was adopted as emergency rules effective October 31, 1989.

Statutory Authority for Adoption: See below, see also RCW 34.05.220.

Statute Being Implemented: Chapter 34.05 RCW, primarily sections in the 400 series.

Summary: This proposal conforms adjudicative proceeding to the new Administrative Procedure Act.

Reasons Supporting Proposal: To comply with statutory law and to achieve greater procedural uniformity in adjudical [adjudicative] proceedings in programs the department administers.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bill Williams, 12th and Franklin, Olympia, Washington, 586-6500.

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: To amend program rules and to conform to the new Administrative Procedure Act and other recent statutory changes.

Proposal Changes the Following Existing Rules: See below. The Administrative Procedure Act, chapter 34.05 RCW, at section 250 requires the Chief Administrative Law Judge, Office of Administrative Hearings, to adopt model rules of procedure under the act. RCW 34.05.220 (1)(a) permits an agency to adopt its own rules. An agency must adopt as much of the model rules as is reasonable and state the reasons for any variation in the order of rule adoption. Variations from the model rules are described below.

Washington Administrative Code (WAC)	New	Amend	Repeal	Statutory authority (RCW or Session Law Chapter)	Additional reasons for proposal and variations from Model Rules
248-06-385		Amend		43.21C.120	<ol style="list-style-type: none"> <li>Subsection (2) sets an expected time limit for filing initial and review orders based on the likely complexity of the proceedings and the need for prompt orders.</li> <li>Subsection (3) specifies that the adjudicative officers' authority is to approve the contested department action or to remand the matter to the department. When an action is not approved this procedure permits the agency to review all the data and get additional information before making a new decision as opposed to having the decision based solely on the adjudicative proceeding record.</li> </ol>

<u>Washington Administrative Code (WAC)</u>	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	<u>Statutory authority (RCW or Session Law Chapter)</u>	<u>Additional reasons for proposal and variations from Model Rules</u>
248-15-110		Amend		18.71.205	Required by section 60 and to be consistent with section 95, chapter 175, Laws of 1989.
248-16-031		Amend		18.20.909	Required by section 63 and to be consistent with section 95, chapter 175, Laws of 1989.
248-17-060		Amend		Section 106, chapter 9, Laws of 1989, first ex.s.	To be consistent with section 95, chapter 175, Laws of 1989.
248-17-230		Amend		Same	Same
248-18-015		Amend		70.41.030	Required by section 128 and to be consistent with section 95, chapter 175, Laws of 1989.
248-19-480		Amend		70.38.135 (see also section 607 chapter 9 Laws of 1989 first ex.s.)	Required by section 126 and be consistent with section 95, chapter 175, Laws of 1989.
248-22-005		Amend		Section 106, chapter 9, Laws of 1989 first ex.s.	Required by section 137 and to be consistent with section 95, chapter 175, Laws of 1989.
248-23-010		Amend		Same	Same

<u>Washington Administrative Code (WAC)</u>	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	<u>Statutory authority (RCW or Session Law Chapter)</u>	<u>Additional reasons for proposal and variations from Model Rules</u>
248-25-010		Amend		Same	Same
248-26-020		Amend		Same	Same
248-27-025		Amend		70.126.040	Housekeeping
248-27-035		Amend		Same	Housekeeping
248-27-045		Amend		Same	Housekeeping
248-27-055		Amend		Same	To be consistent with sections 95 and 96, chapter 175, Laws of 1989.
388-29-020		Amend		18.46.060	To conform to sections 63 and to be consistent with section 95, chapter 175, Laws of 1989.
388-31-025		Amend		70.126.040	Housekeeping
388-31-035		Amend		Same	Housekeeping
388-31-045		Amend		Same	Housekeeping
388-31-055		Amend		Same	To be consistent with sections 95 and 96, chapter 175, Laws of 1989.
248-36-025		Amend		Same	Housekeeping
248-36-035		Amend		Same	Housekeeping
248-36-045		Amend		Same	Housekeeping

Washington Administrative Code (WAC)	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	Statutory authority (RCW or Session Law Chapter)	Additional reasons for proposal and variations from Model Rules
248-36-055		Amend		Same	To be consistent with sections 95 and 96, chapter 175, Laws of 1989.
248-55-220		Amend		70.119.050	To be consistent with section 95, chapter 175, Laws of 1989.
248-55-230			Repeal	Same	Housekeeping; the provisions in this section are at 248-08-413.
248-55-235	New			Same	Housekeeping
248-55-240 and 250		Amend	Repeal	Same Same	The department is authorized to use an initial order - petition for review - review order procedure by RCW 34.05.464(1) provided it do so by rule. This is the enabling rule for this program. The presiding officer is a board. The procedure for revocation, suspension, or modification of a certificate is that the presiding officer's order is final when the board rules in favor of the certificate holder. The presiding officer's decision is an initial order when the board rules against the certificate holder; the Secretary or designee is the reviewing officer.
248-55-260			Repeal	Same	This section states a right contained in chapter 34.05 RCW so is being repealed.
248-59-030		Amend		70.116.050	<ol style="list-style-type: none"> <li>Subsections (1) and (2) are housekeeping.</li> <li>Subsection (3) is to continue to have these proceedings be based on the facts existing at the time the department acted as opposed to a <u>de novo</u> proceeding. If the parties agree this provision may be set aside.</li> <li>Subsection (4) specifies who has and what is the burden of proof.</li> </ol>
Washington Administrative Code (WAC)	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	Statutory authority (RCW or Session Law Chapter)	Additional reasons for proposal and variations from Model Rules
248-59-040			Repeal	Same	<ol style="list-style-type: none"> <li>Subsection (1) states the law regarding assigning administrative law judges to department proceedings that can be administratively reviewed, contains obsolete terminology, and incorrect references. As the items are dealt with in other law the subsection is being repealed.</li> <li>Subsections (2) and (3) are being moved to WAC 248-59-030.</li> </ol>
248-59-050			Repeal	Same	1. This section's provisions are included in or conflict with section 95, chapter 175, Laws of 1989 and/or chapter 34.05 RCW and/or chapter 248-08 WAC or contain requirements in none of those laws. To achieve greater uniformity, they are being repealed.
248-59-060			Repeal	Same	To achieve greater uniformity among all department programs the petition for administrative review procedure in this rule is being repealed in favor of the general provisions in RCW 34.05.464 and WAC 248-08-464.
248-59-070			Repeal	Same	This section is being repealed because it contains provisions that are the same as or conflict with chapter 34.05 RCW and chapter 248-08 WAC.
248-59-080			Repeal	Same	The section states a right contained in chapter 34.05 RCW so is being repealed.
248-91-060		Amend		Section 106, chapter 9, Laws of 1989 first ex. s.	To be consistent with section 95, chapter 175, Laws of 1989.

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

Hearing Location: OB-2 Auditorium, 12th and Franklin, Olympia, Washington, on January 4, 1990, at 10:00 a.m.

Submit Written Comments to: Leslie Baldwin, 1300 Quince Street, Olympia, WA 98504, by January 3, 1990.

Date of Intended Adoption: January 10, 1990.

October 31, 1989  
Pam Campbell Mead  
for Kristine Gebbie  
Secretary

AMENDATORY SECTION (Amending Order 2173, filed 12/6/84)

WAC 248-06-385 ((HEARINGS)) ADJUDICATIVE PROCEEDING. Any person has the right to ((appeal)) an adjudicative proceeding to contest the department's final threshold determination that an EIS is or is not necessary and/or the sufficiency of the final EIS. The ((hearings are)) proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), the rules in this chapter, and by chapter((s) 10-08 and 388-08)) 248-08 WAC. ((In case of conflict between this section and chapter 388-08 WAC, the)) If any provision((s)) in this chapter ((take precedence over the rules in chapter 388-08 WAC)) conflicts with chapter 248-08 WAC, the provision in this chapter governs.

(1) ((The request for a hearing must be in writing and filed with the DSHS Office of Hearings, P.O. Box 2465, Olympia, Washington 98504 within thirty days of the department's official notice of issuance of a final threshold determination or final EIS)) A person contesting a department's decision shall within twenty-eight days of the department's official notice of issuance of a final threshold determination or final EIS:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(b) Include in or with the application:

(i) A specific statement of the issue or issues and law involved; and

(ii) The grounds for contesting the department decision.

(2) The initial ((decision)) order should be made within sixty days of the department's receipt of the ((request for a hearing)) application. When a party files a petition for administrative review, the review ((decision)) order should be made within sixty days of the department's receipt of the petition. The ((decision-rendering)) time to enter an order is extended by as many days as the ((hearing)) proceeding is continued on motion by any party ((to the hearing)).

(3)(a) If the ((hearing decision)) adjudicative order is that an EIS should be filed, the administrative law judge or review judge shall remand the matter to ((DSHS)) the department of health to file an EIS.

(b) If the ((hearing decision)) adjudicative order is that the final EIS is not sufficient, the administrative law judge or review judge shall remand the matter to ((DSHS)) the department of health to correct the insufficiency.

AMENDATORY SECTION (Amending Order 1329, filed 8/22/78)

WAC 248-15-110 ((APPEAL, REVOCATION, SUSPENSION OR MODIFICATION)) NOTICE OF ((CERTIFICATE)) DECISION—ADJUDICATIVE PROCEEDING. (1) ((No certificate issued pursuant to this chapter shall be revoked or suspended without formal written notification to the respondent from the department. Such written notification shall state the cause of the)) The department's notice of a denial, suspension, modification, or revocation ((or suspension and shall advise the respondent of the right to appeal the revocation or suspension:

(2) Revocation or suspension shall become final thirty days following the date of the mailing of such notice. PROVIDED, That the applicant or holder of the certificate does not within thirty days from the date of mailing of the department's order to revocation or suspension, make written application to the department for a hearing. Upon receipt of a written application for a hearing, the department shall proceed to conduct a hearing in accordance with the requirements of the Administrative Procedure Act, chapter 34.04 RCW and the rules of practice and procedure issued by the department thereunder. Mailing of notices under this section shall be by registered mail) of a certificate shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or certificate holder has the right to an adjudicative proceeding to contest the certificate decision.

(2) A certificate applicant or holder contesting a department certificate decision shall within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(b) Include in or with the application:

(i) A specific statement of the issue or issues and law involved;

(ii) The grounds for contesting the department decision; and

(iii) A copy of the contested department decision.

(3) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

AMENDATORY SECTION (Amending Order 2786, filed 4/14/89)

WAC 248-16-031 BOARDING HOME LICENSE APPLICATION—DEPARTMENT DENIAL, SUSPENSION, REVOCATION OF LICENSE. (1) Boarding home license applicants shall:

(a) Submit appropriate, signed, completed department application forms to the department;

(b) Apply at least thirty days prior to expiration of license for renewal;

(c) Promptly report changes in information related to the application including identity of:

(i) Officers and directors if operated by a legally incorporated entity; and

(ii) Partners if a legal partnership.

(2) The department shall:

(a) Evaluate qualifications of persons named in boarding home license application prior to granting initial and subsequent licenses;

(b) Deny, suspend, or revoke a boarding home license if the department finds persons named unqualified or unable to operate or direct operation of the facility as described in chapter 18.20 RCW and chapter 248-16 WAC;

(c) Determine if reasonable relationship exists between any previous conviction of the applicant and ability to competently, safely oversee, or operate a boarding home;

(d) Deny, suspend, or revoke a boarding home license if any person named:

(i) Was previously denied a license to operate an agency for care of children, aged, ill, or infirm in Washington or elsewhere;

(ii) Had a license to operate an agency for treatment or care of people revoked or suspended;

(iii) Has a record of a criminal or civil conviction for:

(A) Operating an agency for care of aged, children, ill, or infirm without an appropriate, applicable license; or

(B) Any crime involving physical harm to another person.

(iv) Is identified on department abuse registry as perpetrator of substantiated abuse described in chapter 26.44 RCW;

(v) Committed, permitted, aided, or abetted an illegal act on boarding home premises;

(vi) Demonstrated cruelty, abuse, negligence, assault, or indifference to welfare and well-being of a resident;

(vii) Failed to exercise fiscal accountability and responsibility involving:

(A) A resident;

(B) The department;

(C) Public agencies; or

(D) The business community.

(3) The department may grant a license to operate a boarding home to previously disqualified licensees as specified in subsection (2) of this section if such person provides evidence including demonstrated ability to operate a boarding home according to applicable laws and rules.

(4)(a) The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest a license decision.

(b) A license applicant or holder contesting a department decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

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

AMENDATORY SECTION (Amending Order 1150, filed 9/2/76)

WAC 248-17-060 DENIAL, SUSPENSION, REVOCATION OF LICENSE—~~((HEARINGS))~~ NOTICE—ADJUDICATIVE PROCEEDING. (1) The department is authorized to deny, suspend, modify, or revoke any license issued ~~((pursuant to))~~ under this chapter in any case in which ~~((it))~~ the department finds ~~((that))~~ there ~~((has been))~~ is a failure to comply with the requirements of the Emergency Medical Care and Transportation Services Act, chapter 18.73 RCW, and with the standards, rules, and regulations established ~~((pursuant to))~~ under this law. ~~((The department shall issue an order to the applicant or licensee giving notice of any denial, revocation, or suspension, which order shall become final thirty days after the date of mailing. PROVIDED, That the applicant or licensee does not, within thirty days from the date of mailing of the department's order of denial, revocation, or suspension of license, make written application to the department for a hearing. Upon receipt of such a written application for a hearing, the department shall proceed to conduct a hearing on the denial, suspension, or revocation of license. Such hearings shall be conducted in accordance with the Administrative Procedure Act, chapter 34.04 RCW and with the rules of practice and procedure issued by the department thereunder.))~~

(2)(a) The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest a license decision.

(b) A license applicant or holder contesting a department license decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

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

AMENDATORY SECTION (Amending Order 1150, filed 9/2/76)

WAC 248-17-230 ~~((APPEAL, REVOCATION, SUSPENSION OR MODIFICATION))~~ NOTICE OF ~~((CERTIFICATE))~~ DECISION—ADJUDICATIVE PROCEEDING. (1) ~~((No certificate is issued pursuant to this chapter shall be revoked or suspended without formal written notification to the respondent from the head, emergency medical services. Such written notification shall state the cause of the revocation or suspension and shall advise the respondent of the right to appeal the revocation or suspension.))~~

(2) No certificate of an emergency medical technician shall be denied, revoked, or suspended without formal written notification to the applicant or holder of the certificate from the department. The denial, revocation, or suspension shall become final thirty days after the date of mailing. PROVIDED, That the applicant or holder of the certificate does not within thirty days from the date of mailing of the department's order of denial, revocation or suspension make written application to the department for a hearing. Upon receipt of a written application for a hearing, the department shall proceed to conduct a hearing in accordance with the requirements of the Administrative Procedure Act, chapter 34.04 RCW and the rules of practice and procedure issued by the department thereunder.) The department's notice of a denial, suspension, modification, or revocation of a certificate shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or certificate holder has the right to an adjudicative proceeding to contest a certificate decision.

(2) A certificate applicant or holder contesting a department certificate decision shall within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(b) Include in or with the application:

(i) A specific statement of the issue or issues and law involved;

(ii) The grounds for contesting the department decision; and

(iii) A copy of the contested department decision.

(3) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

AMENDATORY SECTION (Amending Order 249, filed 11/18/82)

WAC 248-18-015 LICENSE EXPIRATION DATES—NOTICE OF DECISION—ADJUDICATIVE PROCEEDING. (1) The department shall issue hospital licenses initially and reissue hospital licenses as often thereafter as necessary to stagger license expiration dates throughout the calendar year so as to cause approximately one-twelfth of the total number of hospital licenses to expire on the last day of each month, but no license issued pursuant to this chapter shall exceed thirty-six months in duration. If there is failure to comply with the provisions of chapter 70.41 RCW or this chapter, the department may, in its discretion, issue a provisional license to permit the operation of the hospital for a period of time to be determined by the department.

(2) The department may deny, suspend, modify, or revoke a license for cause.

(3)(a) The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest a license decision.

(b) A license applicant or holder contesting a department license decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

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

AMENDATORY SECTION (Amending Order 2344, filed 2/28/86)

WAC 248-19-480 ~~((RIGHT AND NOTICE OF APPEAL))~~ ADJUDICATIVE PROCEEDING. (1) ~~((Any affected person may request and shall be afforded the opportunity for an administrative hearing on the decision of the secretary's designee to issue or deny))~~ An applicant denied a certificate of need ~~((for a project or a separable portion of a project, to grant or deny an exemption requested under WAC 248-19-405, to suspend or revoke a certificate of need, or to withdraw or not withdraw))~~ or a certificate ~~((of need))~~ holder whose certificate was suspended or revoked has the right to an adjudicative proceeding.

(2) ((To be effective, a request for an administrative hearing shall be in writing and received by the department within thirty days after the person requesting the hearing received the particular decision of the department which is being appealed or, if a reconsideration hearing was requested and denied, thirty days after the denial of the request for the reconsideration hearing.

(3) An administrative hearing shall be conducted in accordance with the provisions of chapter 34.04 RCW.

(4) The decision of the secretary's designee shall be subject to review in an administrative hearing to establish a record of the decision of the secretary's designee. The determination of the official conducting such an administrative hearing)) A certificate applicant or holder contesting a department certificate decision shall ~~((be made in writing))~~ within ~~((forty-five))~~ twenty-eight days ~~((after the conclusion))~~ of receipt of the ~~((hearing. The official conducting such an administrative~~

hearing may make a proposed decision, findings of fact and conclusions of law, pursuant to RCW 34.04.110, or the official may remand the matter to the secretary's designee for further action or consideration.<sup>1</sup> The written determination shall be sent to the applicant, the appropriate advisory review agencies, and the department. The department shall make any written determination available to others upon request.

Note:

<sup>1</sup>Chapter 34.04 RCW provides entitlement to judicial review to any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form)) decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(b) Include in or with the application:

(i) A specific statement of the issue or issues and law involved;

(ii) The grounds for contesting the department decision; and

(iii) A copy of the contested department decision.

(3) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

#### AMENDATORY SECTION (Amending Order 1898, filed 11/4/82)

WAC 248-22-005 LICENSURE. Private psychiatric hospitals and private alcoholism hospitals for adults, adolescents, and children shall be licensed under chapter 71.12 RCW, Private establishments. The purpose of this section is to establish minimum standards for safety and adequate care of patients with signs and/or symptoms of acute emotional or psychiatric impairment or acute alcoholism and associated substance use during diagnosis and treatment.

(1) Application for license.

(a) An application for a private hospital license shall be submitted on forms furnished by the department. The application shall be signed by the legal representative of the governing body.

(b) The applicant shall furnish to the department full and complete information and promptly report any changes which would affect current accuracy of such information as to the identity of each officer and director of the corporation, if the hospital is operated by a legally incorporated entity, profit or nonprofit, and of each partner if the hospital is operated through a legal partnership.

(2) Disqualified applicants.

(a) Each and every individual named in an application for a license shall be considered separately and jointly as applicants and if anyone is deemed unqualified by the department in accordance with the law or these rules and regulations, the license may be denied, suspended, or revoked. A license may be denied, suspended, or revoked for failure or refusal to comply with the requirements established by chapter 71.12 RCW or with these rules and regulations promulgated pursuant thereto and, in addition, any of the following:

(i) Obtaining or attempting to obtain a license by fraudulent means or misrepresentation;

(ii) Aiding or abetting the commission of an illegal act on the premises of the hospital;

(iii) Cruelty, assault, abuse, neglect or indifference to the welfare of any patient;

(iv) Misappropriation of property of the patients; and

(v) Failure or inability to exercise fiscal accountability and responsibility toward the individual patient, the department, or the business community.

(b) Before granting a license to operate as a hospital, the department shall consider the ability of each individual named in the application to operate a hospital in accordance with the law and with these regulations. Individuals who have previously been denied a license to operate a health care facility in the state or elsewhere, or who have been convicted criminally or civilly of operating such a facility without a license, or who have had their license to operate such a facility suspended or revoked shall not be granted a license unless, to the satisfaction of the department, they affirmatively establish clear, cogent, and convincing evidence of their ability to operate the hospital for which the license is sought, and for conformance with all applicable laws and rules and regulations.

(3) Denial, suspension, modification, or revocation of a license; adjudicative proceeding. ((Upon finding as a result of an inspection;))

(a) When the department determines that a facility has failed or refused to comply with the requirements of chapter 71.12 RCW and/or

these rules ((and regulations)), the department may, if the interests of the patients so demand, issue ((a written notification letter)) to the applicant or licensee ((giving)) a notice ((of intent)) to deny a license application, or to suspend, modify, or revoke a license ((thirty days after the date of mailing. This letter shall be followed by a formal revocation letter, provided the applicant or licensee does not within thirty days from the date of mailing of the department's notice of intent to reject, revoke or suspend a license make written application to the department for a hearing. Upon receipt of such an application, the department shall fix a time for such hearing and shall give the applicant or licensee a notice of the time fixed for such hearing. Procedures governing hearings under these regulations shall be in accord with procedures set out in chapter 248-08 WAC, especially WAC 248-08-750 through 248-08-790, as now or hereafter amended. All hearings conducted under these regulations shall be deemed to be contested cases within the meaning of chapter 34.04 RCW)) to a license holder. The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest a license decision.

(b) A license applicant or holder contesting a department license decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

(4) Submission of plans. The following shall be submitted with an application for license: PROVIDED, HOWEVER, That when any of the required plans are already on file with the department for previous applications for license or construction approval, only plans for portions or changes which are not on file need to be submitted.

(a) A plan showing streets, driveways, water and sewage disposal systems, the location of buildings on the site, and grade elevations within ten feet of any building in which patients are to be housed.

(b) Floor plans for each building in which patients are to be housed. The floor plans shall provide the following information: Identification of each patient's sleeping room by use of a lettering or numbering system; the useable square feet of floor space in each room; the clear glass window area in each patient's sleeping room, the height of the lowest portion of the ceiling in any patient's sleeping room; the floor elevations referenced to the grade level.

(5) Posting of a license. The license for the hospital shall be posted in a conspicuous place on the premises.

(6) New construction.

(a) When new construction is contemplated, the following shall be submitted to the department for review:

(i) A written program containing, at a minimum, information concerning services to be provided and operational methods to be used which will affect the extent of facilities required by these regulations;

(ii) Duplicate sets of preliminary plans which are drawn to scale and include: A plot plan showing streets, driveways, water and sewage disposal systems, grade and location of building(s) on the site; the plans for each floor of the building(s), existing and proposed, which designate the function of each room and show all fixed equipment. The preliminary plans shall be accompanied by a statement as to the source of the water supply and the method of sewage and garbage disposal and a general description of construction and materials, including interior finishes.

(b) Construction shall not be started until duplicate sets of final plans (drawn to scale) and specifications have been submitted to and approved by the department. Final plans and specifications shall show complete details to be furnished to contractors for construction of buildings. These shall include:

(i) Plot plans;

(ii) Plans for each floor of the building(s) which designate the function of each room and show all fixed equipment in the planned locations of beds and other furniture in patient's sleeping rooms;

(iii) Interior and exterior elevations, building sections and construction details;

(iv) A schedule of floors, wall and ceiling finishes, and the types and sizes of doors and windows; plumbing, heating ventilation and electrical systems; and

(v) Specifications which fully describe workmanship and finishes.

(c) Adequate provision shall be made for the safety and comfort of patients if construction work takes place in or near occupied areas.

(d) All construction shall take place in accordance with the approved final plans and specifications. The department shall be consulted prior to making any changes from the approved plans and specifications. As indicated by the nature or extent of proposed changes, the department may require the submission of modified plans or addenda for review prior to considering proposed change(s) for approval. Only those changes which have been approved by the department may be incorporated into the construction project shall be submitted for the department's file on the project, even though it was not required that these be submitted prior to approval.

(7) Compliance with other regulations.

(a) Rules and regulations adopted by the Washington state fire marshal under the provisions of RCW 71.12.485 which are found in Title 212 WAC apply.

(b) If there is no local plumbing code, the uniform plumbing code of the international association of plumbing and mechanical officials shall be followed.

(c) Compliance with these regulations does not exempt private hospitals from compliance with the local and state electrical codes or local zoning, building, and plumbing codes.

(8) Transfer of ownership. The ownership of a hospital shall not be transferred until the transferee has been notified by the department that the transferee's application for license has been approved. Change in administrator shall be reported to the department.

#### AMENDATORY SECTION (Amending Order 1899, filed 11/4/82)

WAC 248-23-010 LICENSURE. Residential treatment facilities shall be licensed under chapter 71.12 RCW, private establishments. Chapter 248-23 WAC establishes minimum licensing standards for the safety, adequate care and treatment of clients who are residents in a residential treatment facility.

(1) Application for license.

(a) An application for a residential treatment facility license shall be submitted on forms furnished by the department. Applications shall be signed by the legal representative of the owner.

(b) The applicant shall furnish to the department full and complete information and promptly report any changes which would affect the current accuracy of such information as to the identity of each officer and director of the corporation, if the program is operated by a legally incorporated entity, profit or nonprofit, and of each partner, if the program is a legal partnership.

(2) Disqualified applicants.

(a) Each and every individual named in an application for a residential facility license shall be considered separately and jointly as applicants, and if anyone is deemed disqualified/unqualified by the department in accordance with the law or these rules and regulations, a license may be denied, suspended or revoked. A license may be denied, suspended or revoked for failure or refusal to comply with the requirements established by chapter 71.12 RCW or with rules and regulations promulgated pursuant thereto, and, in addition, for any of the following:

(i) Obtaining or attempting to obtain a license by fraudulent means or misrepresentation;

(ii) Permitting, aiding or abetting the commission of an illegal act on the premises of the residential treatment facility;

(iii) Cruelty, abuse, neglect or assault, or indifference to the welfare of any client;

(iv) Misappropriation of the property of the client; and

(v) Failure or inability to exercise fiscal accountability and responsibility toward the individual client, the department, or the business community.

(b) Before granting a license to operate a residential treatment facility, the department shall consider the ability of each individual named in the application to operate the residential treatment facility in accordance with the law and with these regulations. Individuals who have previously been denied a license to operate a health care or child care facility in this state or elsewhere, or who have been convicted civilly or criminally of operating such a facility without a license, or who have had their license to operate such a facility suspended or revoked,

shall not be granted a license unless, to the satisfaction of the department, they affirmatively establish clear, cogent and convincing evidence of their ability to operate the residential treatment facility, for which the license is sought, in full conformance with all applicable laws, rules and regulations.

(3) Visitation and examination of the residential treatment facility by the department to ascertain compliance with this chapter and chapter 71.12 RCW shall occur as necessary and at least one time each twelve months.

(4) Denial, suspension, modification, or revocation of a license; adjudicative proceeding. (~~Upon finding, as a result of an inspection;~~)

(a) When the department determines that a facility has failed or refused to comply with the requirements of chapter 71.12 RCW and/or these rules (and regulations), the department may, if the interests of the clients so demand, issue (a written notification letter) to the applicant or licensee (giving) a notice (of intent) to deny a license application or to suspend, modify, or revoke a license (thirty days after the date of mailing. This letter shall be followed by a denial, suspension or revocation letter provided the applicant or licensee does not within thirty days from the date of mailing of the department's notice of intent to reject, revoke or suspend a license make written application to the department for a hearing. Upon receipt of such an application to the department, the department shall fix a time for such hearing and shall give the applicant or licensee a notice of the time fixed for such hearing. Procedures governing hearings under these regulations shall be in accord with procedures set out in chapter 248-08 WAC, especially WAC 248-08-700 through 248-08-740. All hearings conducted under these regulations shall be deemed to be contested cases within the meaning of chapter 34.04 RCW) to a license holder. The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.

(b) A license applicant or holder contesting a department license decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

(5) Submission of plans. The following shall be submitted with an application for license: PROVIDED, HOWEVER, That when any of the required plans are already on file with the department through previous applications for license or construction approval, only plans for portions or changes which are not on file need to be submitted.

(a) A plot plan showing street, driveways, water and sewage disposal systems, the location of buildings on the site and grade elevations within ten feet of any building in which clients are to be housed.

(b) Floor plans of each building in which clients are to be housed. The floor plans shall provide the following information:

(i) Identification of each client's sleeping room by use of a lettering or numbering system, or some equivalent mechanism of identification;

(ii) The usable square feet of floor space in each room;

(iii) The clear window glass area in each client's sleeping room;

(iv) The height of the lowest portion of the ceiling in any client's sleeping room;

(v) The floor elevations referenced to the grade level.

(6) Posting of license. A license for the residential treatment facility shall be posted in a conspicuous place on the premises.

(7) New construction.

(a) When new construction is contemplated, the following shall be submitted to the department for review:

(i) A written program containing, at a minimum, information concerning services to be provided and operational methods to be used which will affect the extent of facilities required by these regulations.

(ii) Duplicate sets of preliminary plans which are drawn to scale and include: A plot plan showing streets, driveways, the water and sewage disposal systems, grade and location of building(s) on the site; the plans for each floor of the building(s), existing and proposed, which designate the functions of each room and show all fixed equipment. The preliminary plans shall be accompanied by a statement as to the

source of the water supply and the method of sewage and garbage disposal and a general description of construction and materials, including interior finishes.

(b) Construction shall not be started until duplicate sets of final plans (drawn to scale) and specifications have been submitted to and approved by the department. Final plans and specifications shall show complete details to be furnished to contractors for construction of buildings. These shall include:

(i) Plot plans;

(ii) Plans for each floor of the building(s) which designate the function of each room and show all fixed equipment and the planned location of beds and other furniture in client's sleeping rooms;

(iii) Interior and exterior elevations, building sections and construction details;

(iv) A schedule of floors, wall and ceiling finishes, and the types and sizes of doors and windows;

(v) Plumbing, heating, ventilation, and electrical systems; and

(vi) Specifications which fully describe workmanship and finishes.

(c) Adequate provisions shall be made for the safety and comfort of clients as construction work takes place in or near occupied areas.

(d) All construction shall take place in accordance with the approved final plans and specifications. The department shall be consulted prior to making any changes from the approved plans and specifications. When indicated by the nature or extent of proposed changes, the department may require the submission of modified plans or addenda for review prior to considering proposed change(s) for approval. Only those changes which have been approved by the department may be incorporated into a construction project. In all cases, modified plans or addenda on changes which are incorporated into the construction project shall be submitted for the department's file on the project even though it was not required that these be submitted prior to approval.

(8) Exemptions. The state board of health may, in its discretion, exempt a residential treatment facility from complying with parts of these rules pursuant to the procedures set forth in WAC 248-08-595.

(9) Compliance with other regulations.

(a) Rules and regulations adopted by the Washington state fire marshal under provisions of RCW 71.12.485 which are found in Title 212 WAC apply.

(b) If there is no local plumbing code, the uniform plumbing code of the international association of plumbing and mechanical officials shall be followed.

(c) Compliance with these regulations does not exempt a residential treatment facility from compliance with local and state electrical codes or local zoning, building and plumbing codes.

(10) Transfer of ownership. The ownership of a residential treatment facility shall not be transferred until the transferee has been notified by the department that the transferee's application for a license has been approved. Change in administrator shall be reported to the department.

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

#### AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

WAC 248-36-025 LICENSURE OF THE HOME CARE AGENCY. (1) Persons operating home care agencies as defined under chapter 70.127 RCW, shall submit application and fees to the department by July 1, 1989.

(2) After July 1, 1990, no person shall:

(a) Advertise, operate, manage, conduct, open, or maintain a home care agency without first obtaining an appropriate license from the department; or

(b) Use the words "home care agency" or "home care services" in its corporate or business name, or advertise using such words unless licensed as a home care agency under chapter 70.127 RCW.

(3) Applicants for a home care agency license shall:

(a) Submit a completed application and fee for initial license or renewal to the department on forms furnished by the department, including signature of the owner or legal representative of the owner; and

(b) Furnish to the department full and complete information as required by the department for the proper administration of department requirements including:

(i) Evidence of current insurance including:

(A) Professional liability insurance coverage specified under RCW 70.127.080; and

(B) Public liability and property damage insurance coverage as specified under RCW 70.127.080.

(ii) Information on organizational and governing structure and the identity of the applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets;

(iii) A list of counties where the applicant will operate;

(iv) A list of branch offices; and

(v) A list of services provided or offered.

(4) Agencies requesting license renewal shall submit a renewal application and fee to the department.

(5) If the applicant or owner meets the requirements of this chapter and chapter 70.127 RCW, the department shall issue or renew a license for the agency, including branch offices.

(6) The department shall:

(a) Deny a license if in the last five years the owner, applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets are found in a civil or criminal proceeding to have committed any act reasonably relating to the fitness of any of the above persons to:

(i) Establish, maintain, or administer an agency; or

(ii) Provide care in the home of another.

(b) Provide a combination of applications and licenses and the reduction of individual license fees if an applicant applies for more than one category of license under chapter 70.127 RCW;

(c) Establish fees to be paid as required under RCW 43.20B.110 and chapter 440-44 WAC, including providing for the reduction of individual license fees if an applicant applies for more than one category of license under RCW 70.127.110;

(d) Prohibit transfer or reassignment of a license without a thirty-day prior notice to the department and department approval;

(e) Issue a license following approval of a new or current owner's application;

(f) Conduct on-site reviews of the agency, which may include in-home visits with the consent of the participant, in order to determine compliance;

(g) Examine and audit records of the agency if the department has reason to believe persons are providing care without an appropriate license;

(h) Provide for combined licensure inspections and audits for owners holding more than one license under RCW 70.127.110;

(i) Give written notice of any violations, including a statement of deficiencies observed;

(j) Inform the owner or applicant of the requirement to:

(i) Present a plan of correction to the department within ten working days; and

(ii) Comply within a specified time not to exceed sixty days.

(k) Allow the owner a reasonable period of time, not to exceed sixty days, to correct a deficiency prior to assessing a civil penalty unless:

(i) The deficiency is an immediate threat to life, health, or safety; or

(ii) The owner fails to comply with any of the provisions of WAC 248-36-045 (3)(a), (b), (c), (d), (e), (f), (g), (h), (i), and (j).

(l) Initiate disciplinary action, under RCW 70.127.170 and this chapter, if the owner or applicant fails to comply.

(7) The department may:

(a) Issue a license effective for one year unless the license is suspended or revoked;

(b) Inspect an agency and examine records at any time to determine compliance with chapter 70.127 RCW and this chapter; and

(c) Deny, suspend, modify, or revoke an agency license for failure to comply with chapter 70.127 RCW or this chapter. (~~Actions to deny, suspend, modify, or revoke the license shall be consistent with chapter 34.05 RCW, Administrative Procedure Act.~~)

(8) When a change of ownership is planned, the owner shall notify the department, in writing, at least thirty days prior to the date of transfer, including:

(a) Full name and address of the current owner and prospective new owner;

(b) Name and address of the agency and new name under which the agency will be operating, if known; and

(c) The date of the proposed change of ownership.

(9) The prospective new owner shall submit a new application for an agency license with the fee at least thirty days prior to the change of ownership.

(10) The agency shall inform the department in writing at the time of opening or closing of the agency or branch offices.

AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

WAC 248-36-035 LICENSE DENIALS—SUSPENSIONS—MODIFICATIONS—REVOCATIONS. (1) The department may deny, suspend, modify, or revoke a license or assess civil penalties, or both, against the agency if an applicant, owner, officer, director, or managing employee:

(a) Fails or refuses to comply with the provisions of chapter 70.127 RCW or this chapter;

(b) Continues to operate after the license is revoked or suspended for cause and not subsequently reinstated by the department;

(c) Makes false statement of a material fact in the application for the license or data attached or in any record required by this chapter or matter under investigation by the department;

(d) Refuses to allow representatives of the department to inspect any part of the agency or books, records, or files required by this chapter;

(e) Willfully prevents or interferes with or attempts to impede in any way the work of any representative of the department in the lawful enforcement of chapter 70.127 RCW and this chapter;

(f) Willfully prevents or interferes with any representative of the department in the preservation of evidence of a violation under chapter 70.127 RCW or this chapter;

(g) Fails to pay or make arrangements to pay a civil monetary penalty assessed by the department within ten days after the assessment becomes final, as provided under WAC 248-36-045, Civil Fines;

(h) Uses false, fraudulent, or misleading advertising;

(i) Has repeated incidents of personnel performing services beyond those authorized by the agency or law; or

(j) Misrepresents, or is fraudulent in an aspect of, the conduct of the applicant's or owner's business.

(2) If the department finds the public health, safety, or welfare imperatively require emergency action, a license may be summarily suspended pending proceedings for revocation or other action.

~~((3) The department shall inform the owner or applicant in writing of a denial, suspension, modification, or revocation of a license, and of the right to appeal, with such notice:~~

~~(a) Stating the reasons for the adverse action; and~~

~~(b) Personally served in the manner of service of a summons in a civil action or given in another manner showing proof of receipt.~~

~~(4) Unless stated otherwise, the department shall consider the denial, suspension, modification, or revocation effective twenty-eight days after receipt.~~

~~(5) The department may make the date of action effective:~~

~~(a) Later than twenty-eight days after receipt if the department states the effective date in the written notice to the owner or applicant; and~~

~~(b) Sooner than twenty-eight days after receipt when necessary to protect the public health, safety, or welfare if the department states the effective date and the reasons supporting the effective date in the written notice.))~~

AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

WAC 248-36-045 CIVIL FINES. (1) Following an on-site review, in-home visit, or audit, the department shall give written notice either in person or by personal service or certified mail, return receipt requested, of any violation under chapter 70.127 RCW or this chapter. The notice shall inform the owner or applicant as appropriate including:

(a) Describing the conditions of noncompliance;

(b) Specifying a reasonable time of compliance not to exceed sixty days;

(c) Explaining the possibility of a violation subjecting the owner or applicant to denial, revocation, modification, or suspension of the license and/or civil fines; and

(d) Explaining the right of the owner or applicant to appeal.

(2) The department may assess civil monetary penalties in addition to or in lieu of denial, suspension, modification, or revocation of a license if the owner fails to comply with a notice of violation.

(3) The department may assess civil monetary penalties not to exceed one thousand dollars per violation in any case when the department finds the owner, applicant, officer, director, partner, managing employee, or owner of ten percent or more of the applicant's or owner's assets:

(a) Failed or refused to comply with requirements of chapter 70.127 RCW or this chapter;

(b) Continued to operate after the license was revoked or suspended for cause and not subsequently reinstated by the department;

(c) Has knowingly or with reason to know made a false statement of a material fact in the:

(i) Application for the license; or

(ii) Data attached; or

(iii) Record required under chapter 70.127 RCW; or

(iv) Matter under investigation by the department.

(d) Refused to allow representatives of the department to inspect any book, record, file or part of the agency required under this chapter;

(e) Willfully prevented, interfered with, or attempted to impede the work of any representative of the department in the lawful enforcement of a provision under chapter 70.127 RCW and this chapter;

(f) Willfully prevented or interfered with a representative of the department in the preservation of evidence of a violation under chapter 70.127 RCW or this chapter;

(g) Failed to pay or make arrangements to pay any civil monetary penalty assessed by the department under chapter 70.127 RCW within ten days after the assessment became final;

(h) Used false, fraudulent, or misleading advertising;

(i) Has repeated incidents of personnel performing services beyond services authorized by the agency or law; or

(j) Misrepresented or was fraudulent in any aspect of the conduct of the home care business.

(4) Failure to pay or make arrangements to pay civil monetary penalties within ten days from the time the assessment becomes final may result in denial, suspension, modification, or revocation of the license, in addition to the assessment of the penalties or to the assessment of additional penalties.

~~((5) The department shall give written notice to the owner or applicant against whom it assesses a civil fine, including the right to appeal. The written notice shall:~~

~~(a) State the reasons for the adverse action;~~

~~(b) Be personally served in the manner of service of a summons in a civil action or given in another manner showing proof of receipt; and~~

~~(c) State the effective date of the civil fine is:~~

~~(i) Twenty-eight days after receipt of the written notice; or~~

~~(ii) A later date at the discretion of the department.))~~

AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

WAC 248-36-055 ((~~APPEALS—HEARINGS~~)) LICENSE ACTION AND/OR CIVIL FINE—NOTICE—ADJUDICATIVE PROCEEDING. (1) ((~~Any owner or applicant aggrieved by the department's denial, suspension, modification, or revocation of a license, or imposition of a civil penalty, may request a department hearing~~))

The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.

(2) ((~~Any owner or applicant requesting a department hearing shall make the request in writing and:~~

(a) State the issue and law upon which the appeal relies;

(b) State the grounds for contesting the denial, suspension, modification, or revocation of license or imposition of civil fines;

(c) State current address and telephone number, if any;

(d) Attach a copy of the department notice of denial, suspension, modification, or revocation of license or imposition of civil fines;

(e) Submit the request for hearing within twenty-eight days of the date of receipt of the department notice of denial, suspension, modification, or revocation of license or imposition of civil penalty; and

(f) Deliver the request by personal service or by certified mail to the Office of Appeals, 12th Avenue and Franklin Street, P.O. Box 2465, Olympia, Washington 98504-2465)) The department's notice of imposition of a civil fine shall be consistent with RCW 43.20A.XXX and section 96, chapter 175, Laws of 1989. A person the department imposes a civil fine on has the right to an adjudicative proceeding to contest the decision.

(3) ((~~The department shall:~~

(a) Treat a mailed request as effective on the date it was postmarked, if the mailed request is received by the office of appeals properly addressed and with no postage due;

(b) Conduct hearings under chapters 10-08 and 388-08 WAC and chapter 34-05 RCW, Administrative Procedure Act;

(c) Apply this section if any provision of this section conflicts with chapter 388-08 WAC; and

(d) Follow the decision-making procedure including:

(i) Initial decision;

(ii) Petition for review; and

(iii) Review decision procedure.

(4) When an owner or applicant files an appeal within the time limits specified under this section, department action to deny, suspend, modify, or revoke a license, or impose a civil fine shall proceed as follows:

(a) When the department gives an owner or applicant twenty-eight or more days written notice and the owner or applicant files an appeal before the effective date on the written notice, the department:

(i) Shall delay implementing the adverse action until the order from the administrative hearing is served upon the owner or applicant; and

(ii) May implement part or all of the adverse action while the proceedings are pending if the:

(A) Presiding or reviewing officer permits the department to start such action; and

(B) Owner or applicant causes an unreasonable delay in the proceeding and circumstances change so the implementation is in the public interest or for other good cause.

(b) When the department gives an owner or applicant less than a twenty-eight-day written notice and the owner or applicant files an appeal, the department may:

(i) Implement the adverse action on the effective date stated in the written notice; or

(ii) Stay implementation of part or all of the adverse action, if ordered by the presiding or reviewing officer, while the proceedings are pending if the stay is in the public interest or for other good cause.) A license applicant or holder or a person the department imposes a civil fine on contesting a department decision shall within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(b) Include in or with the application:

(i) A specific statement of the issue or issues and law involved;

(ii) The grounds for contesting the department decision; and

(iii) A copy of the contested department decision.

(4) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

#### AMENDATORY SECTION (Amending Order 1917, filed 12/1/82)

WAC 248-55-220 NOTICE OF ((REVOICATION)) DECISION—ADJUDICATIVE PROCEEDING. ((Whenever the department has reasonable cause to believe that in the administration of chapter 70.119 RCW, grounds exist to revoke a certificate of competency, the department shall notify the certificate holder. The notice must:))

(1) ((Be in writing;)) The department's notice of a denial, suspension, modification, or revocation of a certificate of competency shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or certificate holder has the right to an adjudicative proceeding to contest the decision.

(2) ((State the grounds the department relies on to revoke the certificate; and)) A certificate applicant or holder contesting a department certificate decision shall within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(b) Include in or with the application:

(i) A specific statement of the issue or issues and law involved;

(ii) The grounds for contesting the department decision; and

(iii) A copy of the contested department decision.

(3) ((Be delivered personally to the certificate holder or be mailed by certified mail to his or her last known residence or business address)) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

#### NEW SECTION

WAC 248-55-235 CERTIFICATE DENIAL—ADJUDICATIVE PROCEDURE. The procedure for an adjudicative proceeding to contest the denial of a certificate is chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

#### AMENDATORY SECTION (Amending Order 1917, filed 12/1/82)

WAC 248-55-240 ((HEARING AND RECOMMENDATION BY BOARD)) CERTIFICATE SUSPENSION, MODIFICATION, OR REVOCATION—ADJUDICATIVE PROCEDURE. This section contains the procedure for an adjudicative proceeding to contest the suspension, modification, or revocation of a certificate.

(1) The board members shall ((hold a hearing to make a record upon which it shall base its recommendation to the secretary)) preside at the adjudicative proceeding. The ((hearing)) proceeding shall be conducted in accordance with the Administrative Procedure Act (chapter ((34.04)) 34.05 RCW), this chapter, and ((under the procedural rules of)) chapter ((10-08)) 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

(2) The board may have ((a hearings examiner)) an administrative law judge assigned to ((preside)) assist the board at the hearing. The ((hearings examiner)) administrative law judge shall:

(a) ((Shall)) Conduct the hearing((s));

(b) ((Shall)) Offer advice and assistance to the board upon request by the board; and

(c) ((Shall)) Not be a member of the board.

(3) The department has the burden of proving its case by a preponderance of the credible evidence.

(4) At least four members of the board including the water industry representative must consider the record. A majority of the board members who considered the record shall make a written recommendation to the secretary to, or not to, revoke the certificate. The recommendation shall ((contain findings of fact and conclusions of law)) conform to RCW 34.05.461.

(5) The board's recommendation shall be personally delivered to the certificate holder or mailed ((to him or her)) by certified mail to ((his or her)) the certificate holder's last known residence or business address or served in another manner showing proof of receipt.

(6) If the board's recommendation is not to suspend, modify, or revoke the certificate, the recommendation shall be a final order as defined under chapter 34.05 RCW.

(7) If the board's recommendation is to suspend, modify, or revoke the certificate, the recommendation shall be an initial order as defined under chapter 34.05 RCW. The recommendation shall become the final order if no petition for administrative review is filed. If a petition for review is filed, the secretary or designee shall make the final adjudicative order.

#### REPEALER

The following sections of the Washington Administration Code are repealed:

WAC 248-55-230 APPEAL OF REVOCATION.

WAC 248-55-250 FINAL DECISION BY SECRETARY.

WAC 248-55-260 JUDICIAL REVIEW.

Reviser's note: The typographical error in the above material appeared in the original copy of the repealer and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### AMENDATORY SECTION (Amending Order 1919, filed 12/6/82)

WAC 248-59-030 ((APPEAL PROCEDURE)) ADJUDICATIVE PROCEEDING. (1) Any party affected by the decision of the water supply and waste section of ((DSHS may appeal that)) the department has the right to contest the decision ((within twenty days from the date received by certified mail)) in an adjudicative proceeding. If no appeal is filed, the decision of the water supply and waste section shall be final.

(2) ((Notice of appeal must:

(a) Be in writing;

(b) Clearly and concisely state the basis for the appeal;

(c) State whether the appellant will represent himself or herself or be represented by another;

(d) State the name, address, and telephone number of the appellant and, if represented by another, the representative's name, address, and telephone number; and

(e) Be mailed by certified mail to Office of Hearings, Post Office Box 2465, Olympia, Washington 98504)) A person contesting a water supply and waste section decision shall within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(b) Include in or with the application:

(i) A specific statement of the issue or issues and law involved;

(ii) The grounds for contesting the decision; and

(iii) A copy of the contested decision.

(3) ~~The ((office of hearings shall notify all affected parties of the appeal and schedule of events)) proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.~~

(4) Evidence not considered by the water supply and waste section in making their decision shall not be admitted in the adjudicative proceeding unless agreed to by all parties.

(5) The administrative law and review judge shall not modify the initial water supply and waste section decision unless the preponderance of evidence shows that decision is substantially or legally in error.

#### REPEALER

The following sections of the Washington Administration Code are repealed:

WAC 248-59-040 APPEAL HEARING.  
WAC 248-59-050 APPEAL DECISION.  
WAC 248-59-060 REVIEW BY SECRETARY.  
WAC 248-59-070 DECISION OF SECRETARY.  
WAC 248-59-080 JUDICIAL REVIEW.

**Reviser's note:** The typographical error in the above material appeared in the original copy of the repealer and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### AMENDATORY SECTION (Amending Order 6, filed 10/16/68)

WAC 248-91-060 ~~((DECISION OF THE DEPARTMENT))~~  
~~NOTICE OF DECISION—ADJUDICATIVE PROCEEDING.~~  
~~((After)) (1) The ((department has made a decision either granting or denying a request for an approval and a certification of necessity; said decision shall constitute a "contested case" within the meaning of chapter 34.04 RCW)) department's notice of a denial, suspension, modification, or revocation of an approval and certificate of necessity shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or certificate holder has the right to an adjudicative proceeding to contest the decision.~~

(2) A certificate applicant or holder contesting a department certificate decision shall within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(b) Include in or with the application:

(i) A specific statement of the issue or issues and law involved;

(ii) The grounds for contesting the department decision; and

(iii) A copy of the contested department decision.

(3) ~~The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.~~

#### AMENDATORY SECTION (Amending Order 2668, filed 8/9/88)

WAC 248-25-010 LICENSURE—ADULT RESIDENTIAL REHABILITATION CENTERS AND PRIVATE ADULT TREATMENT HOMES. Centers and treatment homes shall obtain a license under chapter 71.12 RCW. Chapter 248-25 WAC establishes minimum licensing standards for the safety, adequate care, and treatment of residents living in centers or treatment homes.

(1) Application for license.

(a) Applicants shall apply for a center or treatment home license on forms furnished by the department. The owner or a legal representative of the owner shall sign the application.

(b) The applicant shall furnish to the department full and complete information and promptly report any changes affecting the current accuracy of such information as to:

(i) The identity of each officer and director of the corporation, if the program is operated by legally incorporated entity, profit or nonprofit; and

(ii) The identity of each partner, if the program is a legal partnership.

(2) Disqualified applicants.

(a) The department shall consider each and every individual named in an application for a center or treatment home license, separately and jointly, as applicants. If the department deems anyone disqualified or unqualified in accordance with the law or these rules, a license may be denied, suspended, or revoked.

(b) The department may deny, suspend, or revoke a license for failure or refusal to comply with the requirements and rules established under provisions of chapter 71.12 RCW, and in addition, but not limited to, for any of the following:

(i) Obtaining or attempting to obtain a license by fraudulent means or misrepresentation;

(ii) Permitting, aiding, or abetting the commission of an illegal act on the premises of a center or treatment home;

(iii) Cruelty, abuse, neglect or assault, or indifference to the welfare of any resident;

(iv) Misappropriation of the property of the resident;

(v) Failure or inability to exercise fiscal accountability and responsibility toward the individual resident, the department, or the business community.

(c) The department shall consider the ability of each individual named in the license application prior to granting a license to determine:

(i) Ability of each individual to operate the center or treatment home in accordance with the law and these rules;

(ii) If there is cause for denial of a license to an individual named in the application for any of the following reasons:

(A) Previous denial of a license to operate a health or personal care facility in Washington state or elsewhere, or

(B) Civil or criminal conviction for operating a health or personal care facility without a license, or

(C) Previous revocation or suspension of a license to operate a health or personal care facility.

(d) The department shall deny a license for reasons listed in subsections (2)(c)(ii) of this section unless an applicant affirmatively establishes clear, cogent, and convincing evidence of ability to operate a center or treatment home in full conformance with all applicable laws, rules and regulations.

(3) Inspection of premises. Centers and treatment homes shall permit the department to visit and examine the premises of centers and treatment homes annually and as necessary to ascertain compliance with chapter 71.12 RCW and chapter 248-25 WAC.

(4) Denial, suspension, or revocation of a license; adjudicative proceeding.

(a) ~~((Upon the department's decision to deny, suspend, or revoke a license;))~~ The department shall issue a letter to an applicant or licensee stating the department is denying an application, or is suspending, modifying, or revoking a license because:

(i) Findings upon inspection reveal failure or refusal of a center or treatment home to comply with chapter 71.12 RCW and chapter 248-25 WAC; and

(ii) The criteria in WAC 248-25-010 (2)(b) are satisfied; and

(iii) The health, safety, or welfare of residents is endangered.

(b) ~~The department's notice of a denial, suspension, modification, or revocation ((letter becomes effective thirty days after the date of mailing unless the applicant or licensee makes a written request to the department for a hearing within thirty days of the date of mailing of the letter)) of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or licensee holder has the right to an adjudicative proceeding to contest the decision.~~

(c) ~~((The written request for a hearing may be made to the Office of Hearings, P.O. Box 2465, Olympia, Washington 98504-2465. When the request for hearing is mailed, it shall be treated as having been made on the date it was postmarked, provided it is received by the office of hearings properly addressed with no postage due))~~ A license applicant or holder contesting a department license decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(d) The ~~((procedures governing hearings are provided in))~~ proceeding is governed by the Administrative Procedure Act (chapter 34.04 RCW, this chapter, and chapter ~~((10-08))~~ 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

(5) Submission of plans and programs for centers. Centers shall submit the following with an application for license unless already on file with the department:

(a) A written description of activities and functions containing, at a minimum, information concerning services to be provided and operational methods to be used affecting the physical plant and facilities required by chapter 248-25 WAC;

(b) A plot plan showing street, driveways, water and sewage disposal systems, the location of buildings on the site, and grade elevations within ten feet of any building housing residents;

(c) Floor plans of each building housing residents with the following information:

(i) Identification of each resident's sleeping room by use of a lettering or numbering system, or some equivalent mechanism of identification;

(ii) The usable square feet of floor space in each room;

(iii) The clear window glass area in each resident's sleeping room;

(iv) The height of the lowest portion of the ceiling in any resident's sleeping room; and

(v) The floor elevations referenced to the grade level.

(6) New construction for centers.

(a) Centers shall submit the following to the department for review when new construction is contemplated:

(i) A written description of activities and functions containing, at a minimum, information concerning services to be provided and operational methods to be used affecting the physical plant and facilities required by these regulations;

(ii) Duplicate sets of preliminary plans drawn to scale and including:

(A) A plot plan showing streets, driveways, the water and sewage disposal systems, grade and location of building or buildings on the site; and

(B) The plans for each floor of the building or buildings, existing and proposed, designating the functions of each room and showing all fixed equipment.

~~((f))~~(iii) A ~~((f))~~ statement about:

(A) Source of the water supply;

(B) The method of sewage and garbage disposal; and

(C) A general description of construction and materials, including interior finishes.

(b) Licensees and applicants shall start construction only after department receipt and approval of:

(i) Specifications and duplicate sets of final plans drawn to scale;

(ii) Specifications showing complete details to contractors for construction of buildings; and

(iii) Plans and specifications including:

(A) Plot plans;

(B) Plans for each floor of each building designating the function of each room and showing all fixed equipment and the planned location of beds and other furniture in residents' sleeping rooms;

(C) Interior and exterior elevations, building sections, and construction details;

(D) A schedule of floor, wall and ceiling finishes, and the types and sizes of doors and windows;

(E) Plumbing, heating, ventilation, electrical systems, fire safety; and

(F) Specifications fully describing workmanship and finishes.

(c) Centers shall make adequate provisions for safety and comfort of residents as construction work takes place in or near occupied areas.

(d) Centers shall:

(i) Ensure all construction takes place in accordance with department approved final plans and specifications;

(ii) Consult with the department prior to making any changes from the approved plans and specifications;

(iii) Incorporate only department-approved changes into a construction project;

(iv) Submit modified plans or addenda on changes incorporated into a construction project to the department file on the project even though submission of the modified plans or addenda was not required by the department prior to approval.

(e) The department may require submission of modified plans or addenda for review prior to considering a proposed change or changes for approval.

(7) Compliance with other regulations.

(a) Centers shall comply with rules and regulations adopted by the Washington state fire marshal under provisions of RCW 71.12.485.

(b) Centers involved in construction shall comply with the state building code as required in chapter 19.27 RCW.

(c) Center compliance with chapter 248-25 WAC does not exempt it from compliance with codes under other state authorities or local jurisdictions, such as state electrical codes or local zoning, building, and plumbing codes.

(8) Posting of license. Centers shall post the license in a conspicuous place on the premises.

(9) Transfer of ownership. A center shall transfer ownership or, if a corporation, sell a majority of stock, only after the transferee has received department approval of the license application and reported change of center administrator.

(10) Exemptions.

(a) The secretary or designee may exempt a center or treatment home from compliance with specified subsections of these regulations when the department ascertains such exemptions may be made in an individual case without jeopardizing the safety or health of the residents in a particular center or treatment home.

(b) Centers and treatment homes shall keep all written exemptions granted by the department pursuant to chapter 248-25 WAC on file in the center or treatment home.

#### AMENDATORY SECTION (Amending Order 2130, filed 8/3/84)

WAC 248-26-020 LICENSURE. (1) Application for license.

(a) An application for an alcoholism treatment facility license shall be submitted on forms furnished by the department. An application shall be signed by the owner of the facility, or his or her legal representative, and the administrator.

(b) The applicant shall furnish to the department full and complete information, and promptly report any changes.

(2) Disqualified applicants.

(a) Each and every individual named in an application for an alcoholism treatment facility license shall be considered separately and jointly as applicants and, if anyone be deemed unqualified by the department in accordance with the law or these rules and regulations, the license may be denied, suspended, or revoked.

(b) A license may be denied, suspended, or revoked for failure or refusal to comply with the requirements established by chapter 71.12 RCW or with these rules and regulations and, in addition, any of the following:

(i) Obtaining or attempting to obtain a license by fraudulent means or misrepresentation;

(ii) Permitting, aiding, or abetting the commission of any illegal act on the premises of the alcoholism treatment facility;

(iii) Cruelty, assault, abuse, neglect, or indifference to the welfare of any patient;

(iv) Misappropriation of the property of the patients; or

(v) Failure or inability to exercise fiscal accountability and responsibility toward the individual patient, the department, or the business community.

(c) Before granting a license to operate an alcoholism treatment facility, the department shall consider the ability of each individual named in the application to operate the alcoholism treatment facility in accordance with the law and these regulations. Individuals having been previously denied a license to operate a health or personal care facility in this state or elsewhere, or having been convicted civilly or criminally of operating such a facility without a license, or having had their license to operate such a facility suspended or revoked shall not be granted a license unless to the satisfaction of the department they affirmatively establish clear, cogent, and convincing evidence of their ability to operate the alcoholism treatment facility, for which the license is sought, in full conformance with all applicable laws, rules, and regulations.

(d) Individuals convicted of a felony, child abuse, and/or any crime involving physical harm to another person, or individuals identified as perpetrators of substantiated child abuse pursuant to chapter 26.44 RCW, shall be disqualified by reason of such conviction if such conviction is reasonably related to the competency of the person to exercise responsibilities for ownership, operation, and/or administration of an alcoholism treatment facility unless, to the satisfaction of the department, the individual establishes clear, cogent, and convincing evidence of sufficient rehabilitation subsequent to such conviction or abuse registry listing to warrant public trust.

(3) Submission of plans. The following shall be submitted with an application for license: PROVIDED HOWEVER, That whenever any of the required plans are already on file with the department through previous applications for license or construction approval, only plans for portions or changes not on file need to be submitted.

(a) A plot plan showing streets, driveways, water and sewage disposal systems, locations of buildings on the site, and grade elevations within ten feet of any building where patients are to be housed.

(b) Floor plans of each building where patients are to be housed. The floor plans shall provide the following information:

- (i) Identification of each room by use of a system;
- (ii) Identification of category of service intended for each room;
- (iii) The usable square feet of floor space in each patient sleeping room;
- (iv) The clear window glass area in each patient's sleeping room;
- (v) The height of the lowest portion of the ceiling in any patient's sleeping room; and
- (vi) Floor elevations referenced to the grade level.

(c) If new construction or remodeling is planned, requirements in WAC 248-26-020(7) shall apply.

(4) Classification or categories of alcoholism treatment services. For the purpose of licensing, alcoholism treatment services provided by alcoholism treatment facilities shall be classified as follows:

(a) Alcoholism detoxification services are either acute or subacute services required for the care and/or treatment of individuals intoxicated or incapacitated by alcohol during the initial period the body is cleared of alcohol and the individual recovers from the transitory effects of intoxication. Services include screening of intoxicated persons, detoxification of intoxicated persons, counseling of alcoholics regarding their illness to stimulate motivation to obtain further treatment, and referral of detoxified alcoholics to other, appropriate alcoholism treatment programs.

(b) Alcoholism intensive inpatient treatment services are those services provided to the detoxified alcoholic in a residential setting including, as a minimum, limited medical evaluation and general health supervision, alcoholism education, organized individual and group counseling, discharge referral to necessary supportive services, and a patient follow-through program after discharge.

(c) Alcoholism recovery house services are the provision of an alcohol-free residential setting with supporting services and social and recreational facilities for detoxified alcoholics to aid their adjustment to alcohol-free patterns of living and their engagement in occupational training, gainful employment, or other types of community activities.

(d) Alcoholism long-term treatment services are long-term provision of a residential care setting providing a structural living environment, board, and room for alcoholics with impaired self-maintenance capabilities needing personal guidance and assistance to maintain sobriety and optimum health status.

(5) Authorization and designation of categories of alcoholism treatment service.

(a) The license issued to an alcoholism treatment facility shall show the category or categories of alcoholism treatment the facility is licensed to provide.

(b) For each category of alcoholism treatment service, the licensee shall designate and maintain the particular category or categories of service for which the department has shown approval on the license.

(c) If maintenance and operation are not in compliance with chapter 71.12 RCW or chapter 248-26 WAC, the department may deny, suspend, or revoke authorization to provide a particular category of treatment service.

(6) Posting of license. The license for an alcoholism treatment facility shall be posted in a conspicuous place on the premises.

(7) New construction.

(a) When new construction is planned, the following shall be submitted to the department for review:

(i) A written program containing, at a minimum, information concerning services to be provided and operational methods to be used affecting the extent of facilities required by these regulations.

(ii) Duplicate sets of preliminary plans for new construction drawn to scale and including:

(A) A plot plan showing streets, driveways, the water and sewage disposal systems, grade and location of building or buildings on the site;

(B) Plans of each floor of the building or buildings, existing and proposed, designating the function of each room and showing all fixed equipment;

(iii) Preliminary plans shall be accompanied by a statement as to:

(A) Source of the water supply;

(B) Method of sewage and garbage disposal; and

(C) A general description of construction and materials including interior finishes.

(b) Construction shall not be started until duplicate sets of final plans for new construction, drawn to scale, and specifications have been submitted to and approved by the department. Final plans and specifications shall show complete details to be furnished to contractors for construction of buildings. These shall include:

(i) Plot plan;

(ii) Plans of each floor of the building or buildings designating the function of each room and showing all fixed equipment;

(iii) Interior and exterior elevations, building sections, and construction details;

(iv) A schedule of floor, wall, and ceiling finishes, and the types and sizes of doors and windows;

(v) Plumbing, heating, ventilating, and electrical systems; and

(vi) Specifications fully describing the workmanship and finishes.

(c) Adequate provisions shall be made for the safety and comfort of patients if construction work takes place in or near occupied areas.

(d) All construction shall take place in accordance with the approved final plans and specifications.

(i) The department shall be consulted prior to making any changes from the approved plans and specifications.

(ii) When indicated by the nature or extent of proposed changes, the department may require the submission of modified plans or addenda for review prior to considering proposed change or changes for approval.

(iii) Only those changes approved by the department shall be incorporated into a construction project.

(iv) In all cases, modified plans or addenda on changes incorporated into the construction project shall be submitted for the department's file on the project even though it was not required these be submitted prior to approval.

(8) Exemptions.

(a) The secretary or designee may exempt an alcoholism treatment facility from compliance with parts of these regulations when it has been found after thorough investigation and consideration such exemption may be made in an individual case without jeopardizing the safety or health of the patients in the particular alcoholism treatment facility.

(b) The secretary or designee may, upon written application, allow the substitution of procedures, materials, or equipment for those specified in these regulations when such procedures, materials, or equipment have been demonstrated, to the satisfaction of the secretary, to be at least equivalent to those prescribed.

(c) All exemptions or substitutions granted pursuant to the foregoing provisions shall be reduced to writing and filed with the department and the alcoholism treatment facility.

(9) Compliance with other regulations.

(a) Rules and regulations adopted by the Washington state fire marshal under provision of RCW 71.12.485 which are found in chapter 212-40 WAC apply.

(b) If there is no local plumbing code, the Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials, 1979 edition, shall be followed.

(c) Compliance with these regulations does not exempt an alcoholism treatment facility from compliance with local and state electrical codes or local zoning, building, and plumbing codes.

(10) Transfer of ownership. The possession or ownership of an alcoholism treatment facility shall not be transferred until the transferee has been notified by the department that the transferee's application for license has been approved.

(11) Denial, suspension, modification, or revocation of licenses or a license appeal; notice; adjudicative proceeding. ((Upon finding, as a result of an inspection;))

(a) When the department determines a facility has failed or refused to comply with the requirements of chapter 71.12 RCW and/or these rules ((and regulations)), the department may deny, suspend, modify, or revoke a license ((in accordance with RCW 34.04.170. Procedures governing hearings under these regulations shall be in accord with procedures set out in chapter 248-08 WAC. All hearings conducted under these regulations shall be deemed to be contested cases within the meaning of chapter 34.04 RCW)). The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws

of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.

(b) A license applicant or holder contesting a department license decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

#### AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

WAC 248-27-025 LICENSURE OF THE HOME HEALTH AGENCY. (1) Persons operating home health agencies defined under chapter 70.127 RCW shall submit applications and fees to the department by July 1, 1989.

(2) After July 1, 1990, no person shall:

(a) Advertise, operate, manage, conduct, open, or maintain a home health agency without first obtaining an appropriate license from the department; or

(b) Use the words "home health agency," "home health care services," or "visiting nurse services" in its corporate or business name, or advertise using such words unless licensed as a home health agency under chapter 70.127 RCW.

(3) Applicants for a home health agency license shall:

(a) Submit a completed application and fee for initial license or renewal to the department on forms furnished by the department, including signature of the owner or legal representative of the owner;

(b) Furnish to the department full and complete information as required by the department for the proper administration of department requirements including:

(i) Evidence of current insurance including:

(A) Professional liability insurance coverage specified under RCW 70.127.080; and

(B) Public liability and property damage insurance coverage specified under RCW 70.127.080.

(ii) Information on organizational and governing structure and the identity of the applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets;

(iii) A list of counties where the applicant will operate;

(iv) A list of branch offices; and

(v) A list of services provided or offered.

(4) Agencies requesting license renewal shall submit a renewal application and fee to the department.

(5) If the applicant or owner meets the requirements of this chapter and chapter 70.127 RCW, the department shall issue or renew a license for the agency.

(6) The department shall:

(a) Deny a license if in the last five years the owner, applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets are found in a civil or criminal proceeding to have committed any act reasonably relating to the fitness of any of the above persons to:

(i) Establish, maintain, or administer an agency; or

(ii) Provide care in the home of another.

(b) Provide a combination of applications and licenses and the reduction of individual license fees if an applicant applies for more than one category of license under chapter 70.127 RCW;

(c) Establish fees to be paid under RCW 43.20B.110 and chapter 440-44 WAC, including providing for the reduction of individual license fees if an applicant applies for more than one category of license under RCW 70.127.110;

(d) Prohibit transfer or reassignment of a license without thirty-day-prior-notice to the department and department approval;

(e) Issue a license following approval of a new or current owner's application;

(f) Conduct on-site reviews of the agency, which may include in-home visits with consent of the patient, to determine compliance;

(g) Examine and audit records of the agency if the department has reason to believe persons are providing care without an appropriate license;

(h) Provide for combined licensure inspections and audits for owners holding more than one license under RCW 70.127.110;

(i) Give written notice of any violations, including a statement of deficiencies observed;

(j) Inform the owner or applicant of the requirement to:

(i) Present a plan of correction to the department within ten working days; and

(ii) Comply within a specified time not to exceed sixty days.

(k) Allow the owner a reasonable period of time, not to exceed sixty days, to correct a deficiency prior to assessing a civil penalty unless:

(i) The deficiency is an immediate threat to life, health, or safety; or

(ii) The owner fails to comply with any of the provisions under WAC 248-27-045 (3)(a), (b), (c), (d), (e), (f), (g), (h), (i), and (j).

(l) Initiate disciplinary action, under RCW 70.127.170 and this chapter, if the owner or applicant fails to comply.

(7) The department may:

(a) Issue a license effective for one year or less unless the license is suspended or revoked;

(b) Inspect an agency and examine records at any time to determine compliance with chapter 70.127 RCW and this chapter;

(c) Deny, suspend, modify, or revoke an agency license for failure to comply with chapter 70.127 RCW or this chapter. ~~((Actions to deny, suspend, modify, or revoke the license shall be consistent with chapter 34.05 RCW, Administrative Procedure Act.))~~

(8) When a change of ownership is planned, the owner shall notify the department, in writing, at least thirty days prior to the date of transfer, including:

(a) Full name and address of the current owner and prospective new owner;

(b) Name and address of the agency and new name under which the agency will be operating, if known; and

(c) The date of the proposed change of ownership.

(9) The prospective new owner shall submit a new application for an agency license with the fee at least thirty days prior to the change of ownership.

(10) The agency shall inform the department, in writing, at the time of opening or closing the agency or branch offices included in the agency license.

#### AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

WAC 248-27-035 LICENSE DENIALS—SUSPENSIONS—MODIFICATIONS—REVOCATIONS. (1) The department may deny, suspend, modify, or revoke a license or assess civil penalties, or both, against the agency if an applicant, owner, officer, director, or managing employee:

(a) Fails or refuses to comply with the provisions under chapter 70.127 RCW or this chapter;

(b) Continues to operate after the license is revoked or suspended for cause without subsequent reinstatement by the department;

(c) Makes a false statement of a material fact in the application for the license or data attached or in any record required by this chapter or matter under investigation by the department;

(d) Refuses to allow representatives of the department to inspect any part of the agency or books, records, or files required by this chapter;

(e) Willfully prevents or interferes with, or attempts to impede in any way, the work of a representative of the department in the lawful enforcement of chapter 70.127 RCW and this chapter;

(f) Willfully prevents or interferes with a representative of the department in the preservation of evidence of a violation under chapter 70.127 RCW or this chapter;

(g) Fails to pay or make arrangements to pay a civil monetary penalty assessed by the department within ten days after the assessment becomes final, as provided under WAC 248-27-045, Civil Fines;

(h) Uses false, fraudulent, or misleading advertising;

(i) Has repeated incidents of personnel performing services beyond services authorized by the agency or law; or

(j) Misrepresents, or is fraudulent in an aspect of, the conduct of the applicant's or owner's business.

(2) If the department finds the public health, safety, or welfare imperatively require emergency action, a license may be summarily suspended pending proceedings for revocation or other action.

~~((3) The department shall inform the owner or applicant, in writing, of a denial, suspension, modification, or revocation of a license, and of the right to appeal, with such notice:~~

~~(a) Stating the reasons for the adverse action; and~~

~~(b) Personally served in the manner of service of a summons in a civil action or given in another manner showing proof of receipt:~~

~~(4) Unless stated otherwise, the department shall consider a denial, suspension, modification, or revocation effective twenty-eight days after receipt.~~

~~(5) The department may make the date of action effective:~~

~~(a) Later than twenty-eight days after receipt if the department states the effective date in the written notice to the owner or applicant; and~~

~~(b) Sooner than twenty-eight days after receipt when necessary to protect the public health, safety, or welfare if the department states the effective date and the reasons supporting the effective date in the written notice.)~~

#### AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

WAC 248-27-045 CIVIL FINES. (1) Following an on-site review, in-home visit, or audit, the department shall give written notice either in person or by personal service or certified mail, return receipt requested, of any violation under chapter 70.127 RCW or this chapter. The notice shall inform the owner or applicant as appropriate including:

- (a) Describing the conditions of noncompliance;
  - (b) Specifying a reasonable time of compliance not to exceed sixty days;
  - (c) Explaining the possibility of a violation subjecting the owner or applicant to denial, revocation, modification, or suspension of the license, and/or civil fines; and
  - (d) Explaining the right of the owner or applicant to appeal.
- (2) The department may assess civil monetary penalties in addition to or in lieu of denial, suspension, modification, or revocation of a license if the owner fails to comply with a notice of violation.
- (3) The department may assess civil monetary penalties not to exceed one thousand dollars per violation in any case where the department finds the owner, applicant, officer, director, partner, managing employee, or owner of ten percent or more of the applicant's or owner's assets:
- (a) Failed or refused to comply with requirements under chapter 70.127 RCW or this chapter;
  - (b) Continued to operate after the license was revoked or suspended for cause and not subsequently reinstated by the department;
  - (c) Has knowingly, or with reason to know, made a false statement of a material fact in the:
    - (i) Application for the license; or
    - (ii) Data attached; or
    - (iii) Record required under chapter 70.127 RCW; or
    - (iv) Matter under investigation by the department.
  - (d) Refused to allow representatives of the department to inspect any book, record, file, or part of the agency under this chapter;
  - (e) Willfully prevented, interfered with, or attempted to impede the work of any representative of the department and the lawful enforcement of a provision under chapter 70.127 RCW and this chapter;
  - (f) Willfully prevented or interfered with a representative of the department in the preservation of evidence of a violation under chapter 70.127 RCW or this chapter;
  - (g) Failed to pay or make arrangements to pay any civil monetary penalty assessed by the department under chapter 70.127 RCW within ten days after the assessment became final;
  - (h) Used false, fraudulent, or misleading advertising;
  - (i) Has repeated incidents of personnel performing services beyond services authorized by the agency or law; or
  - (j) Misrepresented or was fraudulent in any aspect of the conduct of the home health business.
- (4) Failure to pay or make arrangements to pay civil monetary penalties within ten days from the time the assessment becomes final may result in denial, suspension, modification, or revocation of the license, in addition to either the assessment of the penalties or to the assessment of additional penalties.
- ~~((5) The department shall give written notice to the owner or applicant against whom the department assesses a civil fine, including the right to appeal. The written notice shall:~~
- ~~(a) State the reasons for the adverse action;~~
  - ~~(b) Be personally served in the manner of service of a summons in a civil action or given in another manner showing proof of receipt; and~~
  - ~~(c) State the effective date of the civil fine action is:~~
    - ~~(i) Twenty-eight days after receipt of the written notice; or~~
    - ~~(ii) A later date at the discretion of the department.)~~

#### AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

WAC 248-27-055 ((APPEALS—HEARINGS)) LICENSE ACTION AND/OR CIVIL FINE—NOTICE—ADJUDICATIVE PROCEEDING. (1) ((An owner or applicant aggrieved by)) The department's notice of a denial, suspension, modification, or revocation of a license((, or imposition of a civil penalty, may request a department hearing:

(2) Any owner or applicant requesting a department hearing shall make the request, in writing, and:

- (a) State the issue and law upon which the appeal relies;
- (b) State the grounds for contesting the denial, suspension, modification, or revocation of license or imposition of civil fines;
- (c) State current address and telephone number;
- (d) Attach to the request a copy of the department notice of denial, suspension, modification, or revocation of license or imposition of civil fine;

(e) Submit the request for hearing within twenty-eight days of the date of receipt of the department notice of denial, suspension, modification, or revocation of license or imposition of civil penalty; and

(f) Deliver the request by personal service or by certified mail to the Office of Appeals, 12th Avenue and Franklin Street, P.O. Box 2465, Olympia, Washington 98504-2465.

(3) The department shall:

- (a) Treat a mailed request as effective on the date it was post-marked, if the mailed request is received by the office of appeals properly addressed and with no postage due;
- (b) Conduct hearings under chapters 10-08 and 388-08 WAC and chapter 34.05 RCW, Administrative Procedure Act;
- (c) Apply this section if any provision of this section conflicts with chapter 388-08 WAC; and
- (d) Follow the decision-making procedure including:

- (i) Initial decision;
- (ii) Petition for review; and
- (iii) Review decision procedure.

(4) When an owner or applicant files an appeal within the time limits specified under this section, department action to deny, suspend, modify, or revoke a license, or impose a civil fine shall proceed as follows:

(a) When the department gives an owner or applicant twenty-eight or more days' written notice and the owner or applicant files an appeal before the effective date on the written notice, the department:

- (i) Shall delay implementing the adverse action until the order from the administrative hearing is served upon the owner or applicant; and
- (ii) May implement part or all of the adverse action while the proceedings are pending if the:

(A) Presiding or reviewing officer permits the department to start such action; and

(B) Owner or applicant causes an unreasonable delay in the proceeding and circumstances change so the implementation is in the public interest or for other good cause.

(b) When the department gives an owner or applicant less than a twenty-eight-day written notice and the owner or applicant files an appeal, the department may:

- (i) Implement the adverse action on the effective date stated in the written notice; or
- (ii) Stay implementation of part or all of the adverse action, if ordered by the presiding or reviewing officer, while the proceedings are pending if the stay is in the public interest or for other good cause)) shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.

(2) The department's notice of imposition of a civil fine shall be consistent with RCW 43.20A.XXX and section 96, chapter 175, Laws of 1989. A person the department imposes a civil fine on has the right to an adjudicative proceeding to contest the decision.

(3) A license applicant or holder or a person the department imposes a civil fine on contesting a department decision shall within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(b) Include in or with the application:

- (i) A specific statement of the issue or issues and law involved;
- (ii) The grounds for contesting the department decision; and
- (iii) A copy of the contested department decision.

(4) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a

provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

AMENDATORY SECTION (Amending Order 2338, filed 1/29/86)

WAC 248-29-020 LICENSURE. (1) Application for license—Fee.

(a) An application for a childbirth center license shall be submitted on forms furnished by the department. The application shall be signed by the legal representative of the governing body.

(b) The applicant shall furnish to the department full and complete information and promptly report any changes which would affect the current accuracy of such information as to the identity of each officer and director of the corporation, if the birth center is operated by a legally incorporated entity, profit or nonprofit, and of each partner if the birth center is operated through a legal partnership.

(c) Each application for license shall be accompanied by a license fee as established by the department under RCW 43.20A.055: PROVIDED, That no fee shall be required of charitable or nonprofit or government-operated birth centers. Upon receipt of the license fee, when required, the department shall issue a childbirth center license if the applicant and the birth center facilities meet the requirements of this chapter.

(2) License renewal—Limitations—Display.

(a) A license, unless suspended or revoked, shall be renewed annually.

(i) Applications for renewal shall be on forms provided by the department and shall be filed with the department not less than ten days prior to expiration.

(ii) Each application for renewal shall be accompanied by a license fee as established by the department under RCW 43.20A.055.

(iii) The department shall inspect and investigate each childbirth center as needed and at least annually to determine compliance with standards herein (chapter 248-29 WAC) and applicable standards of chapter 18.46 RCW.

(b) Each license shall be issued only for the premises and persons named. Licenses shall be transferrable or assignable only with written approval by the department.

(c) Licenses shall be posted in a conspicuous place on the licensed premises.

(3) (~~(License—)~~)Denial, suspension, modification, revocation of a license; notice; adjudicative proceeding.

(a) The department may, if the interests of the clients so demand, deny, suspend, or revoke a license when there has been failure or refusal to comply with the requirements (~~(established in chapter 248-29 WAC or applicable sections)~~) of chapter 18.46 RCW (~~(in accordance with RCW 18.46.050 and chapter 34.04 RCW)~~) and/or these rules. The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.

(b) A license applicant or holder contesting a department license decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

(4) New construction—Major alterations.

(a) When new construction or major alteration is contemplated, the following shall be submitted to the department for review:

(i) A written program containing, at a minimum, information concerning services to be provided and operational methods to be used which will affect the extent of facilities required by these regulations;

(ii) Duplicate sets of preliminary plans which are drawn to scale and include: A plot plan showing streets, driveways, water, and sewage disposal systems, grade and location of the building or buildings on the site; the plans for each floor of each building, existing and proposed, which designate the functions of each room and show all fixed equipment. The preliminary plans shall be accompanied by a statement as to

the source of water supply and the method of sewage and garbage disposal and a general description of construction and materials, including interior finishes.

(b) Construction shall not be started until duplicate sets of final plans (drawn to scale) and specifications have been submitted to and approved by the department. Final plans and specifications shall show complete details to be furnished to contractors for construction of buildings or major alterations in existing buildings. These shall include:

(i) Plot plans;

(ii) Plans for each floor of each building which designate the function of each room and show all fixed equipment and the planned location of beds and other furniture;

(iii) Interior and exterior elevations, building sections, and construction details;

(iv) Schedule of floors, wall, and ceiling finishes, and the types and sizes of doors and windows; plumbing, heating, ventilation, and electrical systems; and

(v) Specifications which fully describe workmanship and finishes.

(c) Adequate provisions shall be made for the safety and comfort of clients as construction work takes place in or near an occupied area.

(d) Construction shall take place in accordance with approved final plans and specifications. Only those changes which have been approved by the department may be incorporated into the construction project. Modified plans, additions, or changes incorporated into the construction project shall be submitted to the department for the department file on the project.

(5) Compliance with other regulations.

(a) Applicable rules and regulations adopted by the Washington state fire marshal.

(b) If there is no local plumbing code, the Uniform Plumbing Code of the National Association of Plumbing and Mechanical Officials shall be followed.

(c) Compliance with these regulations does not exempt birth centers from compliance with the local and state electrical codes or local fire, zoning, building, and plumbing codes.

AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

WAC 248-31-025 LICENSURE OF THE HOSPICE AGENCY. (1) Persons operating hospice agencies defined under chapter 70.127 RCW shall submit applications and fees to the department by July 1, 1989.

(2) After July 1, 1990, no person shall:

(a) Advertise, operate, manage, conduct, open, or maintain a hospice agency without first obtaining an appropriate license from the department; or

(b) Use the words "hospice agency" or "hospice care" in its corporate or business name, or advertise using such words unless licensed as a hospice agency under chapter 70.127 RCW.

(3) Applicants for a hospice agency license shall:

(a) Submit a completed application and fee for initial license or renewal to the department on forms furnished by the department, including signature of the owner or legal representative of the owner;

(b) Furnish to the department full and complete information as required by the department for the proper administration of department requirements including:

(i) Evidence of current insurance including:

(A) Professional liability insurance coverage specified under RCW 70.127.080; and

(B) Public liability and property damage insurance coverage specified under RCW 70.127.080.

(ii) Information on organizational and governing structure and the identity of the applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets;

(iii) A list of counties where the applicant will operate;

(iv) A list of branch offices; and

(v) A list of services provided or offered.

(4) Agencies requesting license renewal shall submit a renewal application and fee to the department.

(5) If the applicant or owner meets the requirements of this chapter and chapter 70.127 RCW, the department shall issue or renew a license for the agency.

(6) The department shall:

(a) Deny a license if in the last five years the owner, applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets are found in a civil or criminal proceeding to have committed any act reasonably relating to the fitness of any of the above persons to:

- (i) Establish, maintain, or administer an agency; or
- (ii) Provide care in the home of another.
- (b) Provide for a combination of applications and licenses and the reduction of individual license fees if an applicant applies for more than one category of license under chapter 70.127 RCW;
- (c) Establish fees to be paid under RCW 43.20B.110 and chapter 440-44 WAC, including providing for the reduction of individual license fees if an applicant applies for more than one category of license under RCW 70.127.110;
- (d) Prohibit transfer or reassignment of a license without thirty days prior notice to the department and department approval;
- (e) Issue a license following approval of a new or current owner's application;
- (f) Conduct on-site reviews of the agency, which may include in-home visits with the consent of the patient, to determine compliance;
- (g) Examine and audit records of the agency if the department believes a person is providing care without an appropriate license;
- (h) Provide for combined licensure inspections and audits for owners holding more than one license under RCW 70.127.110;
- (i) Give written notice of any violations, including a statement of deficiencies observed;
- (j) Inform the owner or applicant of the requirement to:
  - (i) Present a plan of correction to the department within ten working days; and
  - (ii) Comply within a specified time not to exceed sixty days.
- (k) Allow the owner a reasonable period of time, not to exceed sixty days, to correct a deficiency prior to assessing a civil penalty unless:
  - (i) The deficiency is an immediate threat to life, health, or safety; or
  - (ii) The owner fails to comply with any of the provisions of WAC 248-31-045 (3)(a), (b), (c), (d), (e), (f), (g), (h), (i), and (j).
- (l) Initiate disciplinary action, under RCW 70.127.170 and this chapter, if the owner or applicant fails to comply.
- (7) The department may:
  - (a) Issue a license effective for one year or less unless the license is suspended or revoked;
  - (b) Inspect an agency and examine records at any time to determine compliance with chapter 70.127 RCW and this chapter; and
  - (c) Deny, suspend, modify, or revoke an agency license for failure to comply with chapter 70.127 RCW and this chapter. ~~((Actions to deny, suspend, modify, or revoke the license shall be consistent with chapter 34.05 RCW, Administrative Procedure Act.))~~
  - (8) When a change of ownership is planned, the owner shall notify the department, in writing, at least thirty days prior to the date of transfer, including:
    - (a) Full name and address of the current owner and prospective new owner;
    - (b) Name and address of the agency and new name under which the agency will be operating, if known; and
    - (c) The date of the proposed change of ownership.
  - (9) The prospective new owner shall submit a new application for an agency license with the fee at least thirty days prior to the change of ownership.
  - (10) The agency shall inform the department, in writing, at the time of opening or closing the agency or branch offices included in the agency license.

#### AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

WAC 248-31-035 LICENSE DENIALS—SUSPENSIONS—MODIFICATIONS—REVOCATIONS. (1) The department may deny, suspend, modify, or revoke a license or assess civil penalties, or both, against the agency if an applicant, owner, officer, director, or managing employee:

- (a) Fails or refuses to comply with the provisions under chapter 70.127 RCW or this chapter;
- (b) Continues to operate after the license is revoked or suspended for cause without subsequent reinstatement by the department;
- (c) Makes a false statement of a material fact in the application for the license or data attached or in any record required by this chapter or matter under investigation by the department;
- (d) Refuses to allow representatives of the department to inspect any part of the agency or books, records, or files required by this chapter;
- (e) Willfully prevents or interferes with, or attempts to impede in any way, the work of a representative of the department in the lawful enforcement of chapter 70.127 RCW and this chapter;
- (f) Willfully prevents or interferes with a representative of the department in the preservation of evidence of a violation under chapter 70.127 RCW or this chapter;

(g) Fails to pay or make arrangements to pay a civil monetary penalty assessed by the department within ten days after the assessment becomes final, as provided under WAC 248-27-045, Civil Fines;

- (h) Uses false, fraudulent, or misleading advertising;
- (i) Has repeated incidents of personnel performing services beyond services authorized by the agency or law; or
- (j) Misrepresents, or is fraudulent in an aspect of, the conduct of the applicant's or owner's business.

(2) If the department finds the public health, safety, or welfare imperatively require emergency action, a license may be summarily suspended pending proceedings for revocation or other action.

~~((3) The department shall inform the owner or applicant, in writing, of a denial, suspension, modification, or revocation of a license, and of the right to appeal, with such notice:~~

- ~~(a) Stating the reasons for the adverse action; and~~
- ~~(b) Personally served in the manner of service of a summons in a civil action or given in another manner showing proof of receipt.~~

~~(4) Unless stated otherwise, the department shall consider a denial, suspension, modification, or revocation effective twenty-eight days after receipt:~~

- ~~(5) The department may make the date of action effective:~~
- ~~(a) Later than twenty-eight days after receipt if the department states the effective date in the written notice to the owner or applicant; and~~

~~(b) Sooner than twenty-eight days after receipt when necessary to protect the public health, safety, or welfare if the department states the effective date and the reasons supporting the effective date in the written notice.))~~

#### AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

WAC 248-31-045 CIVIL FINES. (1) Following an on-site review, in-home visit, or audit, the department shall give written notice either in person or by personal service or certified mail, return receipt requested, of any violation under chapter 70.127 RCW or this chapter. The notice shall inform the owner or applicant as appropriate including:

- (a) Describing the conditions of noncompliance;
- (b) Specifying a reasonable time of compliance not to exceed sixty days;
- (c) Explaining the possibility of a violation subjecting the owner or applicant to denial, revocation, modification, or suspension of the license, and/or civil fines; and
- (d) Explaining the right of the owner or applicant to appeal.

(2) The department may assess civil monetary penalties in addition to or in lieu of denial, suspension, modification, or revocation of a license if the owner fails to comply with a notice of violation.

(3) The department may assess civil monetary penalties not to exceed one thousand dollars per violation in any case where the department finds the owner, applicant, officer, director, partner, managing employee, or owner of ten percent or more of the applicant's or owner's assets:

- (a) Failed or refused to comply with requirements under chapter 70.127 RCW or this chapter;
- (b) Continued to operate after the license was revoked or suspended for cause and not subsequently reinstated by the department;
- (c) Has knowingly, or with reason to know, made a false statement of a material fact in the:
  - (i) Application for the license; or
  - (ii) Data attached; or
  - (iii) Record required under chapter 70.127 RCW; or
  - (iv) Matter under investigation by the department.
- (d) Refused to allow representatives of the department to inspect any book, record, file, or part of the agency under this chapter;
- (e) Willfully prevented, interfered with, or attempted to impede the work of any representative of the department and the lawful enforcement of a provision under chapter 70.127 RCW and this chapter;
- (f) Willfully prevented or interfered with a representative of the department in the preservation of evidence of a violation under chapter 70.127 RCW or this chapter;
- (g) Failed to pay or make arrangements to pay any civil monetary penalty assessed by the department under chapter 70.127 RCW within ten days after the assessment became final;
- (h) Used false, fraudulent, or misleading advertising;
- (i) Has repeated incidents of personnel performing services beyond services authorized by the agency or law; or
- (j) Misrepresented or was fraudulent in any aspect of the conduct of the agency business.

(4) Failure to pay or make arrangements to pay civil monetary penalties within ten days from the time the assessment becomes final may result in denial, suspension, modification, or revocation of the license, in addition to either the assessment of the penalties or to the assessment of additional penalties.

~~((5) The department shall give written notice to the owner or applicant against whom the department assesses a civil fine, including the right to appeal. The written notice shall:~~

- ~~(a) State the reasons for the adverse action;~~
- ~~(b) Be personally served in the manner of service of a summons in a civil action or given in another manner showing proof of receipt; and~~
- ~~(c) State the effective date of the civil fine action is:~~
  - ~~(i) Twenty-eight days after receipt of the written notice; or~~
  - ~~(ii) A later date at the discretion of the department;))~~

#### AMENDATORY SECTION (Amending Order 2790, filed 6/7/89)

~~WAC 248-31-055 ((APPEALS—HEARINGS)) LICENSE ACTION AND/OR CIVIL FINE—NOTICE—ADJUDICATIVE PROCEEDING. (1) ((An owner or applicant aggrieved by the department's denial, suspension, modification, or revocation of a license, or imposition of a civil penalty, may request a department hearing)) The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.~~

~~(2) ((Any owner or applicant requesting a department hearing shall make the request, in writing, and:~~

- ~~(a) State the issue and law upon which the appeal relies;~~
- ~~(b) State the grounds for contesting the denial, suspension, modification, or revocation of license or imposition of civil fines;~~
- ~~(c) State the current address and telephone number;~~
- ~~(d) Attach to the request a copy of the department notice of denial, suspension, modification, or revocation of license or imposition of civil fine;~~

~~(e) Submit the request for hearing within twenty-eight days of the date of receipt of the department notice of denial, suspension, modification, or revocation of license or imposition of civil penalty; and~~

~~(f) Deliver the request by personal service or by certified mail to the Office of Appeals, 12th Avenue and Franklin Street, P.O. Box 2465, Olympia, Washington 98504-2465)) The department's notice of imposition of a civil fine shall be consistent with RCW 43.20A.XXX and section 96, chapter 175, Laws of 1989. A person the department imposes a civil fine on has the right to an adjudicative proceeding to contest the decision.~~

~~(3) ((The department shall:~~

~~(a) Treat a mailed request as effective on the date it was postmarked, if the mailed request is received by the office of appeals properly addressed and with no postage due;~~

~~(b) Conduct hearings under chapters 10-08 and 388-08 WAC and chapter 34.05 RCW, Administrative Procedure Act;~~

~~(c) Apply this section if any provision of this section conflicts with chapter 388-08 WAC; and~~

~~(d) Follow the decision-making procedure including:~~

- ~~(i) Initial decision;~~
- ~~(ii) Petition for review; and~~
- ~~(iii) Review decision procedure.~~

~~(4) When an owner or applicant files an appeal within the time limits specified under this section, department action to deny, suspend, modify, or revoke a license, or impose a civil fine shall proceed as follows:~~

~~(a) When the department gives an owner or applicant twenty-eight or more days' written notice and the owner or applicant files an appeal before the effective date on the written notice, the department:~~

- ~~(i) Shall delay implementing the adverse action until the order from the administrative hearing is served upon the owner or applicant; and~~
- ~~(ii) May implement part or all of the adverse action while the proceedings are pending if the:~~

~~(A) Presiding or reviewing officer permits the department to start such action; and~~

~~(B) Owner or applicant causes an unreasonable delay in the proceeding and circumstances change so the implementation is in the public interest or for other good cause.~~

~~(b) When the department gives an owner or applicant less than a twenty-eight-day written notice and the owner or applicant files an appeal, the department may:~~

~~(i) Implement the adverse action on the effective date stated in the written notice; or~~

~~(ii) Stay implementation of part or all of the adverse action, if ordered by the presiding or reviewing officer, while the proceedings are pending if the stay is in the public interest or for other good cause)) A license applicant or holder or a person the department imposes a civil fine on contesting a department decision shall within twenty-eight days of receipt of the decision:~~

~~(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and~~

~~(b) Include in or with the application:~~

- ~~(i) A specific statement of the issue or issues and law involved;~~
- ~~(ii) The grounds for contesting the department decision; and~~
- ~~(iii) A copy of the contested department decision.~~

~~(4) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.~~

#### WSR 89-23-001

#### PERMANENT RULES

#### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Order 15—Filed November 2, 1989, 4:05 p.m.]

Date of Adoption: September 8, 1989.

Purpose: To comply with new APA requirements.

Citation of Existing Rules Affected by this Order:  
Readopting chapters 392-101, 392-168, 392-171, 392-190 and 392-137 WAC.

Statutory Authority for Adoption: RCW 34.05.220 [(1)](a) and chapter 392-137 WAC.

Pursuant to notice filed as WSR 89-16-012 on July 21, 1989.

Effective Date of Rule: Thirty-one days after filing.

November 2, 1989  
Judith A. Billings  
Superintendent of  
Public Instruction

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 83-5, filed 8/17/83)

WAC 392-101-001 AUTHORITY. The authority for this chapter is RCW ((34.04.020)) 34.05.220 which authorizes the superintendent of public instruction to adopt rules governing the formal and informal procedures prescribed or authorized by chapter ((34.04)) 34.05 RCW.

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 83-5, filed 8/17/83)

WAC 392-101-005 ADMINISTRATIVE PRACTICES REGARDING HEARINGS AND RULE PROCEEDINGS. The superintendent of public instruction is governed by the state Administrative Procedure Act, chapter ((34.04)) 34.05 RCW, the Washington State Register Act, chapter 34.08 RCW, and the state office of Administrative Hearings Act, chapter 34.12 RCW. These acts govern the conduct of "rule" making proceedings and the conduct of "contested case" hearings as these terms are defined in RCW ((34.04.010)) 34.05.010 (2) and (3). Appearances in representative

capacities before the superintendent of public instruction; the procedures and conditions governing petitions for declaratory rulings or the adoption, amendment, or repeal of a rule; and, the standards, procedures and conditions governing the conduct of contested case hearings and proceedings by or before the superintendent of public instruction shall be as set forth in rules of the state code reviser and the office of administrative hearings as now or hereafter amended. The rules of the code reviser are currently set forth in chapters 1-08 and ((1-12)) 1-21 WAC. The rules of the office of administrative hearings are currently set forth in chapter 10-08 WAC.

All other regulatory actions and hearings conducted by the superintendent of public instruction may be conducted informally at the discretion of the superintendent.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-105 **AUTHORITY**. The authority for this chapter is RCW 28A.02.100 which authorizes the superintendent of public instruction to receive and administer federal funds on behalf of school districts of the state of Washington in compliance with applicable rules and regulations.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-110 **PURPOSE**. The purpose of this chapter is to ensure compliance by the state of Washington with 34 CFR 76.780 through 782, Department of Education regulations governing state-administered federal grant programs, and with the Hatch Amendment.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-115 **APPLICABILITY**. This chapter shall apply to federal programs administered by the superintendent of public instruction and listed in 34 CFR 76.1(b):

(1) Title III-A of the National Defense Education Act of 1958, Strengthening Instruction in Academic Subjects in Public Schools;

(2) Title IV of Public Law 96-511, Emergency Immigrant Education Program;

(3) Title II, Sections 201-206, 208-211, and 213 of the Education for Economic Security Act, State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning;

(4) Part B of the Education of the Handicapped Act, Assistance to States for Education of Handicapped Children;

(5) Section 619 of the Education of the Handicapped Act, Incentive Grants;

(6) Part A of Title I of the Vocational Education Act, State Vocational Education Program;

(7) Career Education Incentive Act (except Sections 10, 11, and 12) Career Education—State Allotment Program; and

(8) Adult Education Act (except Sections 309, 314, 317, and 318), State Adult Education Program;

(9) **PROVIDED**, That pursuant to 34 CFR 76.1(c), this chapter shall not apply to programs authorized under Chapter 1 and Chapter 2 of the Education Consolidation and Improvement Act of 1981:

(a) Chapter 1—Financial Assistance to Local Educational Agencies to Meet the Special Educational Needs of Educationally Deprived Children, Grants to State Educational Agencies for Program to Meet the Special Educational Needs of Migratory Children, Grants to State Agencies for Programs to Meet the Special Education Needs of Children in Institutions for Neglected or Delinquent Children, State-operated Programs for Handicapped Children; and

(b) Chapter 2—Consolidation of Federal Programs for Elementary and Secondary Education:

(10) **PROVIDED FURTHER**, That any additional complaint procedure requirements of particular programs shall be applicable to those programs in addition to the basic citizen complaint procedure described in this chapter.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-120 **DEFINITION—HATCH AMENDMENT**. As used in this chapter, the term the "Hatch Amendment" means section 439 of the General Education Provisions Act (GEPA), "Protection of Pupil Rights" which provides that:

(1) Parents or guardians of children involved in a research or experimentation project supported with federal funds shall have a right to inspect instructional materials used in connection with the project; and

(2) No student in such a project shall be required to submit to psychiatric or psychological examination, testing, or treatment which might reveal specified personal information without the consent of an adult or emancipated minor student or, for other minor students, without prior written parental consent.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-125 **DEFINITION—COMPLAINT**. As used in this chapter, the term "complaint" means a written allegation, signed by the complainant, that the state, a local school district, an educational service district, or other subgrantee receiving federal funds has systematically violated a federal statute or regulation or a state regulation that applies to a federal program covered under this chapter.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-130 **DEFINITION—OTHER SUBGRANTEE**. As used in this chapter, the term "other subgrantee" means the government, nonprofit, or other legal entity to which the state as grantee awards a subgrant, and which is accountable to the state for the use of the funds provided. The subgrantee is the entire

legal entity even if only a particular component of the entity is designated in the subgrant award document.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-135 RIGHT TO REGISTER A COMPLAINT.** Any individual, entity, or organization may register a complaint: **PROVIDED**, That a complaint filed pursuant to the Hatch Amendment may be filed only by a student or parent or guardian of a student directly affected by the alleged violation: **PROVIDED FURTHER**, That if a parent or adult student has also filed an individualized complaint which constitutes the basis in whole or in part for initiation of a due process special education hearing pursuant to WAC 392-171-531, a citizen complaint by such person regarding systemic noncompliance shall be held in abeyance until the hearing has been concluded.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-140 CONTENTS OF COMPLAINT.** A complaint filed under this chapter shall be in writing, signed by the complainant, and shall include:

- (1) A statement that the state, a local school district, an educational service district, or other subgrantee has violated one or more requirements of federal statutes or regulations or state regulations that apply to a federal program;
- (2) The facts on which the statement is based;
- (3) The name and address of the complainant; and
- (4) In the case of a complaint alleging a violation by an entity other than the state and filed directly with the superintendent of public instruction, the name and address of the allegedly offending entity.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-145 PROCEDURE FOR FILING A COMPLAINT.** The procedure for filing a complaint shall be as follows:

(1) A complaint alleging a violation by a local school district, an educational service district, or other subgrantee shall be filed directly with a responsible official of the local school district, an educational service district, or other subgrantee: **PROVIDED**, That a complaint alleging a violation by an entity other than the state may be filed directly with the superintendent of public instruction at the complainant's discretion.

(2) A complaint against a local school district, an educational service district, or other subgrantee filed directly with the superintendent of public instruction shall be referred back to the allegedly offending entity for action pursuant to this chapter.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-150 COMPLAINT DIRECTED TO A SCHOOL DISTRICT, AN EDUCATIONAL SERVICE DISTRICT, OR OTHER SUBGRANTEE**

**AND DESIGNATION OF RESPONSIBLE EMPLOYEE.** The chief officer of each local school district, an educational service district, or other subgrantee shall designate at least one employee to monitor and coordinate the entity's compliance with this chapter. Such employee shall also be charged with the responsibility for investigating any complaint(s) communicated to the entity pursuant to WAC 392-168-145.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-155 INVESTIGATION OF AND RESPONSE TO COMPLAINTS AGAINST A SCHOOL DISTRICT, EDUCATIONAL SERVICE DISTRICT, OR OTHER SUBGRANTEE.** Investigation of and response to a complaint shall be as follows:

(1) Upon receipt of a properly filed complaint, the employee(s) designated pursuant to WAC 392-168-150 shall investigate the alleged violations.

(2) Upon completion of the investigation, the designated employee(s) shall provide the responsible official of the entity with a written report of the results of the investigation. Said officials shall respond in writing to the complainant no later than twenty calendar days after the date of receipt by the entity of such complaint.

(3) The response to the complainant shall clearly state either:

(a) That the entity denies the allegations contained in the complaint and the basis for such denial; or

(b) The reasonable corrective action deemed necessary to correct the violation: **PROVIDED**, That any such corrective measures shall be instituted as expeditiously as possible but in no event later than thirty calendar days following the date of the response to the complainant.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-160 APPEAL TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF A LOCAL SCHOOL DISTRICT, EDUCATIONAL SERVICE DISTRICT, OR OTHER SUBGRANTEE DECISION.** The complainant shall have the following right of appeal:

(1) In the event a complainant remains aggrieved with the written decision of a local school district, an educational service district, or other subgrantee, or upon failure or refusal of such entity to respond to a properly filed complaint, the complainant may, in writing, appeal the decision to the superintendent of public instruction or, in the case of a failure or refusal to respond, may register the complaint directly with the superintendent: **PROVIDED**, That upon the refusal of the local school district, educational service district, or other subgrantee to grant a request of the parent (or adult student) for a due process special education hearing made in conformance with WAC 392-171-531, the parent (or adult student) may register the complaint with the superintendent of public instruction.

(2) The written notice of appeal must be received by the superintendent of public instruction on or before the

fifteenth day after the date the complainant received the written response of the local school district, educational service district, or other subgrantee pursuant to WAC 392-168-155; or in the case of a failure or refusal to respond to a complaint, a written notice registering the complaint must be received by the superintendent of public instruction on or before the thirty-fifth day after the citizen registered the complaint with the entity.

(3) In the case of a local school district, an educational service district, or other subgrantee's refusal to grant a request of a parent (or adult student) for a special education hearing made in conformance with WAC 392-171-531, a written notice registering the complaint must be received by the superintendent of public instruction on or before either the fifteenth day after the date the parent (or adult student) received notice of such entity's refusal to grant a hearing or on or before the fifteenth day after the expiration of the time period for rendering a final decision pursuant to a request for a hearing (i.e., forty-five days after the date of receipt of a request for a hearing), whichever occurs first.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-165 CONTENT OF APPEAL NOTICE.** The appeal notice shall set forth:

(1) A statement of the portion(s) of the local school district, educational service district, or other subgrantee's decision which is appealed or, in the case of a failure or refusal to respond, a statement so indicating; and

(2) The relief or remedy requested by the complainant/appellant.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-170 ACTIONS BY SUPERINTENDENT OF PUBLIC INSTRUCTION IN RESPONSE TO NOTICES OF APPEAL AND NOTICES REGISTERING COMPLAINTS.** The superintendent of public instruction shall respond in the following manner to appeals and direct complaints:

(1) The superintendent of public instruction shall investigate the allegation(s) contained in a written notice of appeal or a written notice registering the complaint that is deemed to be of substance and make a decision no later than fifteen calendar days after the receipt of a written appeal or no later than sixty calendar days after receipt of a complaint registered directly with the superintendent of public instruction by a citizen. Investigations carried out pursuant to this section may be performed on-site as necessary.

(2) If the investigation reveals that there is merit to the allegation(s), the superintendent of public instruction shall provide for negotiations, or technical advice and assistance, or other remedial action in an attempt to ensure compliance with this chapter and/or state and/or federal laws and regulations: **PROVIDED**, That any corrective measures deemed necessary shall be instituted

no later than ten calendar days following the decision of the superintendent of public instruction.

(3) If compliance by a local school district, educational service district, or other subgrantee is not achieved pursuant to subsection (2) of this section, the superintendent of public instruction shall initiate funding withholding, fund recovery, or any other sanction deemed appropriate.

(4) In the event a complainant, local school district, educational service district, or other subgrantee remains aggrieved with the decision of the superintendent of public instruction, either party may appeal the decision to the secretary, department of education.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-175 COMPLAINTS AGAINST THE SUPERINTENDENT OF PUBLIC INSTRUCTION—DESIGNATION OF RESPONSIBLE EMPLOYEE(S).** (1) A complaint alleging a violation by the superintendent of public instruction shall be filed directly with the superintendent of public instruction in the form specified in WAC 392-168-140.

(2) The superintendent of public instruction shall designate at least one office of the agency to monitor and coordinate the agency's compliance with this chapter, which shall include ensuring that investigation of any complaint is conducted expeditiously and thoroughly.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-180 COMPLAINTS AGAINST THE SUPERINTENDENT OF PUBLIC INSTRUCTION—INVESTIGATION OF AND RESPONSE TO COMPLAINTS.** (1) The staff responsible for investigating the alleged violation shall commence investigation within ten days of receipt of the complaint by the superintendent of public instruction.

(2) Investigation by the superintendent of public instruction may include on-site investigations as appropriate.

(3) Upon completion of the investigation, investigating staff shall provide the superintendent of public instruction with a written report on the results of the investigation.

(4) The superintendent of public instruction shall respond in writing to the complainant as expeditiously as possible but in no event later than sixty calendar days after the date of receipt of such complaint by the superintendent of public instruction.

(5) The response shall clearly state either:

(a) That the complaint is without merit, the allegations are denied, and the basis for such denial; or

(b) The reasonable corrective measures deemed necessary to correct any violation: **PROVIDED**, That any such corrective measures deemed necessary shall be instituted as expeditiously as possible but in no event later than thirty calendar days following the date of the response to the complainant.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)**WAC 392-168-185 WAIVER OF TIMELINES.**

(1) Timelines established in this chapter may be waived by mutual consent in writing of both complainant and local school district or other subgrantee. Such waiver of timelines shall be communicated within ten days to the appropriate division, superintendent of public instruction, by the entity named in the complaint.

(2) An extension of time limits applicable to actions by the superintendent of public instruction shall be waived by mutual consent of the complainant and the superintendent of public instruction: **PROVIDED**, That if exceptional circumstances exist with respect to a particular complaint, the superintendent of public instruction may unilaterally extend the timelines for cause upon written notice to the parties.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-190 APPEAL TO THE SECRETARY OF EDUCATION IN COMPLAINTS AGAINST THE SUPERINTENDENT OF PUBLIC INSTRUCTION.** In the event that a complainant remains aggrieved with the response of the superintendent of public instruction, the complainant may file an appeal directly with the secretary, Department of Education.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-295 AUTHORITY.** The authority for this chapter is RCW 28A.13.070(7) which authorizes the superintendent of public instruction to promulgate rules and regulations to implement chapter 28A.13 RCW. Such authority is supplemented by RCW 28A-.02.100 which authorizes the superintendent of public instruction to receive federal funds in accordance with the provisions of federal law.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-300 PURPOSES.** The purposes of this chapter are:

(1) To implement chapter 28A.13 RCW in a manner that is compatible also with the federal Education for All Handicapped Children Act, 20 United States Code (USC) section 1401 et seq. (PL 94-142);

(2) To assure that all handicapped students as defined in this chapter have an opportunity for a free and appropriate education at public expense (i.e., free special education and related services) to meet their unique needs;

(3) To assure that the rights of handicapped students and their parents are protected;

(4) To assist school districts and others to provide for the education of all handicapped students;

(5) To assess and assure the effectiveness of efforts to educate handicapped students; and

(6) To be applicable to all handicapped education programs established pursuant to law and operated by the common school districts or on behalf of the common school districts, including the state residential school programs established and operated pursuant to RCW 28A.58.770 et seq.

**READOPTED SECTION** (Readopting Order 11-78, filed 10/31/78)

**WAC 392-171-305 ADVISORY COUNCIL.** (1) Council established—The special education state advisory council is hereby established in order to help facilitate the provision of special education and related services to meet every handicapped student's unique needs, abilities, and limitations.

(2) Membership—The membership of the council shall include at least one representative of each of the following groups or entities:

- (a) Handicapped individuals;
- (b) Teachers of handicapped students;
- (c) Parents of handicapped students;
- (d) Local administrators of special education programs;
- (e) Support services personnel;
- (f) Superintendents;
- (g) Principals;
- (h) Nonpublic schools serving handicapped students;
- (i) School directors;
- (j) Institutions of higher education;
- (k) Department of social and health services;
- (l) The medical profession; and
- (m) Other individuals or groups as may hereafter be designated and approved by the superintendent of public instruction.

(3) Functions—The council's purposes are:

(a) To advise the superintendent of public instruction and make recommendations on all matters related to special education and specifically advise the superintendent of unmet needs within the state in the education of handicapped students;

(b) Comment publicly on the state's annual program plan, state rules regarding the education of handicapped students, and the procedures for distribution of funds; and

(c) Assist the state in developing and reporting such information and evaluations as may assist the federal government.

(4) Organization—The council shall conduct its affairs in accordance with bylaws approved by the superintendent of public instruction. To assure that maximum information and recommendations are provided to the superintendent of public instruction, the state advisory council shall have the authority to recommend the design of its organization and to appoint subcommittees from its membership for carrying out council responsibilities. Ad hoc subcommittees with membership other than council members may be appointed: **PROVIDED**, That the superintendent of public instruction or his or her designee has given prior approval for such appointments.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-310 DEFINITIONS OF "FREE APPROPRIATE, PUBLIC EDUCATION," "ADULT STUDENT," "HANDICAPPED STUDENT," "PARENT," AND "SCHOOL DISTRICT." As used in this chapter:

(1) "Free appropriate, public education" means special education and related services which:

(a) Are provided at public expense, under local school district supervision and direction, and without charge;

(b) Meet the standards of the state educational agency, including the requirements of this chapter; and

(c) Are provided in conformity with an individualized education program which meet the requirements of WAC 392-171-461.

(2) "Adult student" means a handicapped student or a student who is eighteen, nineteen, or twenty years of age, except as provided for in WAC 392-171-331, and who has not been judged incompetent by a court of law or otherwise judged by a court of law as being incapable of assuming and exercising the rights, duties and responsibilities otherwise granted to and imposed upon parents by this chapter (a student shall assume and be entitled to exercise all rights, duties and responsibilities otherwise granted to or imposed upon parents by this chapter upon attaining the age of eighteen and shall retain and be entitled to exercise the same until he or she has been judged incompetent or otherwise incapable of exercising the same by a court of law).

(3) "Handicapped student" and "student" (depending upon the context in which the terms are used) mean:

(a) A person under the age of twenty-one, except as provided for in WAC 392-171-331, who has been determined pursuant to this chapter to have one or more of the disabilities set forth in WAC 392-171-381 through 392-171-451 and to be in need of special education and related services; or

(b) A person under the age of twenty-one who has become a focus of concern and who may have one or more of the disabilities set forth in WAC 392-171-381 through 392-171-451 in the judgment of the school district superintendent or his or her designee, or the parent(s), or the adult student; or

(c) A person under the age of twenty-one, except as provided for in WAC 392-171-331, who resides in a residential school for the handicapped in accordance with RCW 28A.58.770 et seq.

(d) The foregoing categories of persons—notwithstanding the fact the person(s) may not be enrolled in or attending school in the normal sense of the term "student."

(4) "Parent" means a natural parent, a legal guardian, an adult person acting as a parent, or a surrogate parent who has been appointed in accordance with WAC 392-171-581, who represents a nonadult student. The term does not include the state if the child is a ward of the state.

(5) "School district" means:

(a) Each public school district in the state;

(b) Each educational service district that provides special education or related services to one or more handicapped students; and

(c) Each public or private organization or entity or person who provides special education and/or related services to one or more handicapped students in behalf of a public school district—even though such public school district, educational service district, or public or private organization or entity or person does not receive federal funds made available for the purposes of the Education for All Handicapped Children Act.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-311 DEFINITIONS OF "ASSESSMENT," "CURRENT ASSESSMENT," "REASSESSMENT," AND "CONSENT." As used in this chapter:

(1) "Assessment" means procedures used in accordance with WAC 392-171-346 through 392-171-366 and 392-171-516 to determine whether a student is handicapped and/or the nature and extent of the special education and related services that the student needs. The term means procedures used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade, or class.

The purposes of assessment are to:

(a) Measure the student's present level of educational performance to identify the student's unique needs, abilities and limitations;

(b) Draw conclusions regarding the significance of the findings as related to the student's instructional program;

(c) Provide appropriate personnel with information for determining appropriate placement and developing the individualized education program in accordance with WAC 392-171-461;

(d) Assure appropriate identification of the handicapping condition; and

(e) Determine the student's eligibility for funding for special education and related services.

(2) "Current assessment" means:

(a) Intellectual assessment data shall be considered current if obtained during a one calendar year period prior to the formal assessment or if obtained during the formal assessment period.

(b) Academic assessment data, including perceptual assessment data, shall be considered "current" if obtained during a ninety calendar day period prior to formal assessment or if obtained during the formal assessment period.

(c) Psychological and social assessment data shall be considered "current" if obtained during a thirty calendar day period prior to formal assessment or if obtained during the formal assessment period.

(d) Adaptive behavior assessment data, including vocational and career assessment data, shall be considered "current" if obtained during a ninety calendar day period prior to formal assessment or if obtained during the formal assessment period.

(e) Speech/language (communication skills) assessment data shall be considered "current" if obtained during a ninety calendar day period prior to formal assessment or if obtained during the formal assessment period.

(f) Vision/hearing screening data shall be considered "current" if obtained during a one calendar year period prior to formal assessment or if obtained during the formal assessment period.

(g) Medical assessment data shall be considered "current" if obtained during a one hundred eighty calendar day period prior to formal assessment or if obtained during the formal assessment period.

(3) "Reassessment" means procedures used in accordance with WAC 392-171-346 through 392-171-366 to determine the student's eligibility for and need for continuing special education and related services pursuant to WAC 392-171-516.

(4) "Consent" means that:

(a) The parent (or the adult student) has been fully informed of all information relevant to the activity for which consent is sought in his or her native language or other mode of communication, including being informed of existing assessment data to be used within the definitions of current assessment;

(b) The parent (or the adult student) understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent (or the adult student) understands that the granting of consent is voluntary on the part of the parent (or the adult student) and may be revoked at any time.

#### READOPTED SECTION (Readopting Order 86-1, filed 2/21/86)

WAC 392-171-315 DEFINITION OF "SPECIAL EDUCATION." As used in this chapter "special education" means specially designed instruction, at no cost to the parent or the student, to meet the unique needs, abilities, and limitations of a student having a handicapped condition, including classroom and itinerant instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. The term includes communication disorders services, physical and occupational therapy, orientation and mobility instruction, and audiology. The term also includes career development and vocational education if either consists of specially designed instruction, at no cost to the parents or the student, to meet the unique needs of a handicapped student.

The terms in the definition of "special education" are defined as follows:

(1) "Specially designed instruction" means organized and planned teaching and/or training activities provided by certificated and/or licensed special education personnel, including therapists, designed to facilitate progress toward specific written objectives and which occurs repeatedly over a given period of time during regularly scheduled sessions. The term does not include diagnostic or assessment activities, related services per se, consultative services, or materials preparation.

(2) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to nonhandicapped students or their parents as a part of the regular education program.

(3) "Physical education" means the development of:

(a) Physical and motor fitness;

(b) Fundamental motor skills and patterns; and

(c) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

The term includes special physical education, adapted physical education, movement education, and motor development.

(4) "Career development" means instructional activities infused into a student's education program which make provision for career awareness, career exploration and career preparation for all occupations.

(5) "Vocational education" means a planned series of learning experiences, the specific objective of which is to prepare persons to enter, continue in, or upgrade themselves in gainful employment in recognized occupations not designated as professional or requiring a baccalaureate or higher degree.

(6) "Audiology" means the provision of habilitative activities related to a hearing impairment, such as language habilitation, auditory training, speech reading (lip reading), training for hearing evaluation, and speech conservation.

(7) "Occupational therapy" means improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation; improving ability to perform tasks for independent functioning when functions are impaired or lost; and preventing through early intervention, initial or further impairment or loss of function.

(8) "Orientation and mobility instruction" means the provision of training/instruction in orientation and mobility for visually handicapped students.

(9) "Physical therapy" means seeking to relieve disability or pain, developing or restoring motor function and maintaining appropriate performance commensurate with the student's unique needs, abilities, and limitations.

(10) "Communication disorders services" mean the provision of speech and language services for the habilitation or prevention of communication disorders.

#### READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-320 DEFINITION OF "RELATED SERVICES." As used in this chapter "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped student to benefit from special education, and includes communication disorders services and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in students, counseling services, medical services for diagnostic or assessment purposes, and orientation and mobility services. The term also includes school health services, social work services in

schools, parent counseling and training, and classified staff services.

The terms used in the definition of "related services" are defined as follows:

- (1) "Audiology" includes:
  - (a) Identification of students with hearing loss;
  - (b) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
  - (c) Creation and administration of programs for prevention of hearing loss;
  - (d) Counseling and guidance of students, parents, and teachers regarding hearing loss; and
  - (e) Determination of the student's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- (2) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
- (3) "Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a student's life.
- (4) "Medical services" means services provided by a licensed physician to determine a student's medically related handicapping condition which results in the student's need for special education and related services.
- (5) "Occupational therapy" includes:
  - (a) The identification and assessment of the student's physical and self-care status;
  - (b) Determination of the student's need for occupational therapy; and
  - (c) Related counseling and guidance of parents, students, and staff regarding the provision of occupational therapy.
- (6) "Orientation and mobility services" includes:
  - (a) Identification and assessment of the student's mobility status;
  - (b) Determination of the student's need for orientation and mobility services; and
  - (c) Related counseling and guidance of parents, students and staff regarding orientation and mobility services.
- (7) "Parent counseling and training" means assisting parents in understanding the special needs, abilities, and limitations of their child or ward and providing parents with information about child/student development.
- (8) "Physical therapy" includes:
  - (a) Identification and assessment of the student's physical status;
  - (b) Determination of the student's need for physical therapy; and
  - (c) Related counseling and guidance of parents, students and staff regarding physical therapy services.
- (9) "Psychological services" includes:
  - (a) Administering psychological and educational tests, and other assessment procedures;
  - (b) Interpreting assessment results;
  - (c) Obtaining, integrating, and interpreting information about child/student behavior and conditions relating to learning;

(d) Consulting with other staff members in planning school programs to meet the special needs of students as indicated by psychological tests, interviews, and behavioral evaluations; and

(e) Planning and managing a program of psychological services, including psychological counseling for students and parents.

(10) "Recreation" includes:

(a) Assessment of leisure function;

(b) Therapeutic recreation services;

(c) Recreation programs in school and community agencies; and

(d) Leisure education.

(11) "School health services" means services provided by a qualified school nurse or other qualified person.

(12) "Social work services in schools" include:

(a) Preparing a social or developmental history on a handicapped student;

(b) Group and individual counseling with the student and family;

(c) Working with those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school; and

(d) Mobilizing school and community resources to enable the student to receive maximum benefit from his or her educational program.

(13) "Communication disorders services" includes:

(a) Identification of students with communication disorders;

(b) Diagnosis and appraisal of specific communication disorders;

(c) Referral for medical or other professional attention necessary for the habilitation of communication disorders; and

(d) Counseling and guidance of parents, students, and staff regarding communication disorders.

(14) "Transportation" includes:

(a) Travel to and from school and between schools;

(b) Travel in and around school buildings; and

(c) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a handicapped student.

(15) "Classified staff services" includes:

(a) Services provided by classified staff which provide for the handicapped student's safety and/or personal care and instructional assistance (e.g. interpreter services and braille services); and

(b) Services provided by classified staff which provide assistance for handicapped students and certificated staff to achieve placement in the least restrictive environment.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-325 STUDENTS' RIGHTS TO SPECIAL EDUCATION PROGRAMS.** (1) Each school district shall provide every handicapped student between the age of three and twenty-one a free and appropriate educational program consisting of special education and related services. The date of eligibility to begin receiving such services shall be the child's birthdate: **PROVIDED,** That handicapped children between the

age of three and four need not be served until the 1985-86 school year.

(2) School districts may provide special education and related services to handicapped students in the zero to one, one, two, three and/or four year old age groups without being obligated to extend preschool programs to nonhandicapped children. However, if a school district provides an education to any nonhandicapped child in the zero to three year old age group, the district shall make special education and related services available pursuant to this chapter to all its handicapped students of the same age: **PROVIDED**, That school districts that do not offer services to all eligible three year old handicapped children in the 1984-85 school year shall be subject to this nondiscriminatory service requirement.

(3) Any student made a focus of concern shall qualify pursuant to the disability definitions and criteria set forth in this chapter in order to receive state or federal special education funding. A handicapped student shall remain eligible for special education and related services until: (a) The student has met high school graduation requirements established by the school district pursuant to rules of the state board of education; or (b) the student has reached age twenty-one; or (c) the student is no longer in need of special education and related services as judged by the student's multidisciplinary team based upon a reassessment of the student, whichever occurs first. The student may continue to receive special education and related services: **PROVIDED**, That a reassessment of the student concludes that, notwithstanding the fact that the student no longer meets the initial eligibility criteria, the student's performance is or will be adversely affected if he or she is terminated from special education.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-331 CONTINUING ELIGIBILITY.** (1) Any student whose eligibility was established pursuant to rules in effect at a time of prior assessment but before September 1, 1984, shall continue to remain eligible for special education and related services under the authority and provisions of such prior rules unless:

(a) The student has met high school graduation requirements established by the school district pursuant to the rules of the state board of education; or

(b) The student reaches age twenty-one; or

(c) The student is no longer in need of special education and related services: **PROVIDED**, That the determination that the student needs to receive special education and related services is based on a reassessment of the student which concludes that, notwithstanding the fact that the student no longer meets the initial eligibility criteria, the student's performance is or will be adversely affected if he or she is terminated from special education. Any such student shall be reassessed pursuant to WAC 392-171-346 through 392-171-366 and the applicable section(s) of WAC 392-171-381 through 392-171-451.

(2) Any student made a focus of concern for the first time and/or assessed for the first time after September

1, 1984, shall be assessed and determined eligible pursuant to WAC 392-171-346 through 392-171-366 and the applicable section(s) of WAC 392-171-381 through 392-171-451.

(3) Effective September 1, 1984, and thereafter, every handicapped student shall remain eligible for special education and related services only so long as the student has not yet met high school graduation requirements established by the school district pursuant to rules of the state board of education or the student has not reached age twenty-one, or the student no longer requires special education and related services as judged by the student's multidisciplinary team based on a reassessment of the student.

(4) The student whose twenty-first birthday occurs during the school year shall continue to be eligible for special education and related services for the remainder of the school year.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-336 CHILDFIND.** The local district shall conduct childfind activities to locate and identify students with a suspected handicapping condition who are residing within the boundaries of the district and not currently receiving special education services. Childfind activities shall apply to students age 0 to 21 and may include, but are not necessarily limited to: Pre-school developmental screening, local media informational campaigns, liaison with public health and other medical and social agencies, public or private, questionnaire for first-time enrolling students, screening of district-wide group standardized test results, inservice education to teaching staff, and cooperation as requested with state childfind programs.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-341 STUDENT AS FOCUS OF CONCERN—PREASSESSMENT PROCEDURES—TIMELINE.** (1) A student shall become a focus of concern when the student is brought to the attention of a school district superintendent or his or her designee because of a suspected handicapping condition(s). Such concern for a student may be originated by or transmitted through any source, including: Parents, medical personnel, school district personnel, community agencies, civil authorities, district screening procedures, and other identified, interested persons.

(2) When the possibility of a student's need for special education and related services has been brought to the attention of the school district superintendent or his or her designee, the superintendent or his or her designee shall act on the referral by promptly:

(a) Recording the circumstance by date, origin, and reason for concern; and

(b) Providing the student's parent(s) (or the adult student) written notice that the student has been referred because of a suspected handicapping condition

and that within fifteen school days the district will determine whether or not there is good reason to believe that the student is a candidate for assessment.

(3) The superintendent or his or her designee shall, within fifteen school days after the date of referral, review the referral, collect and examine existing school, medical and other records in the possession of the school district and make a determination that there is or is not good reason to believe that the student is a candidate for assessment. This decision shall be in writing and shall set forth the date and the name of the person making the decision. The superintendent or his or her designee shall, within ten school days after the date of such decision, direct a written notice to the student's parent(s) (or the adult student) that complies with the notice requirements of WAC 392-171-526.

(4) In the event the decision is that there is good reason to believe that the student is a candidate for assessment, the school district shall fully assess the student and arrive at a decision pursuant to WAC 392-171-376 within:

(a) Thirty-five school days (also referred to as the formal assessment period) after the date written consent for an assessment has been provided by the parent(s) (or the adult student); or

(b) Thirty-five school days (also referred to as the formal assessment period) after the date the refusal of the parent(s) (or the adult student) to grant consent has been overridden pursuant to a hearing (or appeal) in accordance with WAC 392-171-521 et seq.; or

(c) Such other time period as may be agreed to by the parent(s) (or the adult student) and school authorities.

(5) The school district shall request the parent to sign consent form(s) for the mutual exchange of pertinent information where such information is available between the school, other agencies, and/or professionals.

(6) If temporary (not to exceed thirty school days) special education programming is necessary for diagnostic reasons during the assessment period, the district shall obtain written permission for such diagnostic placement from the parent(s) prior to making the placement.

(7) In the case of students admitted to state residential schools, an assessment and individualized education program must be completed as provided in this chapter within fifty school days of enrollment.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-346 GENERAL AREAS OF ASSESSMENT.** The assessment of a student shall be in all areas related to the suspected disability. The assessment procedures outlined in WAC 392-171-381 through 392-171-451 are to be considered minimal, required procedures. Where concerns are indicated, as judged by the multidisciplinary team, additional or more in depth assessment in each of the following areas shall be conducted.

(1) Scholastic assessment. This area may include assessment of the intellectual, language and communication, academic and cognitive development of the student

and any other scholastic area as deemed appropriate by the multidisciplinary team.

(2) Physical assessment. This area may include a review of the general health status of the student, vision and hearing screening, oral-peripheral examination, evaluation of musculo-skeletal, neurological, and developmental modalities, and any other physical area as deemed necessary by the multidisciplinary team.

(3) Adjustment assessment. This area may include assessment of the social skills and emotional status of the student, career and vocational assessment, and assessment of adaptive behaviors (e.g., self-help, interpersonal communication, survival skills, and practical application of academic skills).

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-351 GENERAL ASSESSMENT SAFEGUARDS—PERSONNEL, MATERIALS AND PROCEDURES.** Every student who is assessed or reassessed shall be assessed according to the procedures established in this chapter.

(1) The initial assessment of a student (except one with a suspected communication disorder) shall be made by a multidisciplinary team (i.e., a group of professionals) including at least one special education teacher and at least one person qualified to conduct individual diagnostic assessment in the area of suspected disability. In a reassessment of a student, the multidisciplinary team also shall consist of a representative from each professional area involved in identified deficits or other eligibility criteria pertinent to the classification of such student in the most recent assessment of the student and such other professional areas as recommended by any professional involved in the reassessment. Each member of the team shall be licensed, registered, credentialed, or certificated according to his or her professional standards in accordance with state statutes and rules: PROVIDED, That in assessing or reassessing a student suspected of having a specific learning disability, each school district shall include on the multidisciplinary team at least three members:

(a) The student's regular education teacher or, if the student does not have a regular education teacher, a regular education teacher qualified to teach a student of his or her age;

(b) A special education teacher having experience with learning disabled students; and

(c) A school psychologist.

(2) No single test instrument or single procedure shall be the sole criterion for determining a student's eligibility or handicapping condition and/or for determining the appropriate educational program for a student.

(3) Assessment materials, procedures, and instruments used for the purpose of assessment and placement shall be selected and administered so as not to be racially or culturally discriminatory.

(4) All tests and other evaluation materials shall have been validated for the specific purpose for which they are used and shall accurately reflect whatever factors the tests purport to measure. If properly validated tests are unavailable, the professional judgment of each member

of the multidisciplinary team shall determine eligibility for special education based on other evidence of the existence of a specific handicap and need. This professional judgment shall be documented in a written narrative.

(5) All tests and other evaluation materials shall be administered by qualified personnel in conformance with the instructions of their producer. Tests designed to measure intellectual functioning shall be administered and interpreted by a qualified psychologist: PROVIDED, That cognitive tests for developmentally delayed students other than an intelligence quotient test shall be administered by a qualified psychologist or by professionals with other titles who have considerable training and experience in individual psychological or psychoeducational assessment.

(6) Assessment materials, procedures or instruments shall be provided and administered in a student's primary language or mode of communication, unless it is clearly not feasible to do so. Tests shall be selected and administered so as to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors the test purports to measure).

(7) In conducting assessment activities, appropriate assessment team members shall:

(a) Collect and review all available existing school, medical, and other records pertinent to the suspected handicapping condition(s) of the student, including previous screening and assessment results, health reports, relevant cumulative records and recommendations of related service providers; and

(b) Conduct current assessment activities required by this chapter and in accordance with the procedures specified herein; and

(c) Collect such other data as needed to verify the results of standardized testing, including but not limited to parent and/or teacher interviews and current classroom performance data.

(8) Assessment data shall be summarized in writing, dated, and signed by each person conducting an assessment. Information used to support the assessment, but which is not incorporated into the file, (e.g., review of health record), shall be referenced as to date of record, location, and source person. The summaries shall specify the procedures and instruments used, the results obtained, and the apparent significance of findings as related to the student's instructional program, including a description of the specific factors which are interfering with the student's educational performance and the special education and related services needed to assist the student in benefiting from his or her educational placement, including the need, if appropriate, of scheduling such services over a period of time that exceeds the regular one hundred eighty day school calendar: PROVIDED, That in the event the assessment is an initial assessment by the district, the recommendation regarding the appropriateness of an extended school year for a

particular student need not be made until May of the school year in which the initial assessment was made.

READOPTED SECTION (Readopting Order 86-1, filed 2/21/86)

WAC 392-171-358 COMMUNICATION DISORDERED STUDENTS—ASSESSMENT. Students who are suspected of having a communication disorder as their only handicap shall be assessed by a qualified communication disorder specialist who shall use procedures appropriate for the diagnosis and appraisal of communication disorders. The student shall be referred for additional assessment needs for appropriate placement. The assessment results required in this section shall be summarized as provided in WAC 392-171-351(8).

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-361 MEDICAL EVALUATION.

(1) A medical evaluation is required when:

(a) It is necessary to meet the eligibility criteria for funding; or

(b) Voice training is being considered in the presence of hoarseness; or

(c) Whenever a qualified health professional suspects a student under consideration as a possible handicapped student of having a health problem which may affect his or her educational program.

(2) Medical evaluations at the expense or otherwise in behalf of a school district shall be obtained only:

(a) At the direction of or with the prior approval of the school district superintendent or his or her designee (except in the case of an independent assessment pursuant to WAC 392-171-371);

(b) In accordance with criteria established by the school district including, but not limited to, the location of the evaluation and the report required; and

(c) When the student's parent(s) (or the adult student) agrees in advance to the type of examination and the choice of medical examiner;

(d) When, except in the case of an adult student, the student's parent(s) is present at the time of the examination or has agreed that his or her presence is not required; and

(e) When the evaluation is conducted by the student's personal physician or if conducted by another physician, when the student's personal physician has been involved in the planning with the permission of the student's parent(s) (or the adult student).

(4) Medical evaluation services necessary to a determination of the educational needs of residential school students, shall be the responsibility of the department of social and health services pursuant to RCW 28A.58.774.

READOPTED SECTION (Readopting Order 86-1, filed 2/21/86)

WAC 392-171-366 SUMMARY ANALYSIS OF ASSESSMENT DATA. (1) The leader of a student's assessment team shall review and analyze the summaries of assessment data provided for in WAC 392-171-

351(8) and any other available data in each of the areas assessed. The conclusions, recommendations, and the facts and/or reasons resulting in the eligibility decision pursuant to WAC 392-171-376 shall:

(a) Describe the discrepancy which exists between the student's actual performance and his or her expected performance;

(b) Identify the handicapping condition(s), if any, that qualifies the student as a handicapped student;

(c) Set forth the nature and extent of the special education and related services that the student needs, if any;

(d) Reconcile any inconsistent or contradictory information and/or opinions evidenced in the assessment data, if any, supporting conclusion(s) with appropriate data;

(e) Relate the apparent significance, as appropriate, of such factors as test measurement error or cultural, environmental, economic, and behavioral factors to the assessment results.

Where specific test results obtained in any assessment do not appear to the multidisciplinary team to accurately reflect a student's expected performance the multidisciplinary team shall apply professional judgment to determine eligibility for special education and related services. In such event, the multidisciplinary team shall document in a written narrative the basis for such determination, the instruments used, and the data used for a determination of eligibility.

(f) Make recommendations to the individualized education program committee regarding placement, special education and related services needed (including the need, if appropriate, of scheduling such services over a period of time that exceeds the regular one hundred eighty school days), needs for specialized materials or equipment, learning modalities (e.g., auditory), and student management strategies (e.g., reinforcement schedules, etc.), as determined by the multidisciplinary team to be significant to the student's program. If the multidisciplinary team at the time of the student's initial assessment by the district for professionally sound reasons is unable to make a recommendation regarding the need for an extended school year for a particular student, the multidisciplinary team shall make its recommendation regarding an extended school year prior to the May following initial assessment; and

(g) Provide any necessary professional judgment(s) and the facts or reasons in support of the judgment(s).

(2) The summary analysis shall be signed and dated by both the team leader and the school district's special education director or his or her designee.

(3) Provided that, in the case of a student suspected of having a specific learning disability, the summary analysis shall also include a statement of:

(a) The relevant behavior noted during observation(s) of the student, including the relationship of that behavior to the student's academic problem(s) in the regular education program;

(b) A summary, if applicable, of previous intervention attempts and results; and

(c) The educationally relevant medical findings, if any, including the results of a current vision and hearing screening.

(4) Each multidisciplinary team member shall certify in writing whether the summary analysis reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusion(s) and the reasons therefor.

READOPTED SECTION (Readopting Order 86-1, filed 2/21/86)

WAC 392-171-371 INDEPENDENT EDUCATIONAL ASSESSMENT. (1) General.

(a) The parent(s) of a student (or the adult student) made a focus of concern and assessed or any student reassessed has the right to obtain an independent educational assessment, subject to subsections (3) and (4) of this section.

(b) Each school district shall provide to parents, (or adult students) on request, information about where an independent educational assessment may be obtained.

(c) For the purposes of this section:

(i) "Independent educational assessment" means an assessment conducted by a qualified examiner who is not employed by the school district responsible for the education of the student in question; and

(ii) "Public expense" means that the school district either pays for the full cost of the assessment or assures that the assessment is otherwise provided at no cost to the parent (or to the adult student).

(2) Parent/adult student right to assessment at public expense. A parent (or the adult student) has the right to an independent educational assessment at public expense if the parent (or the adult student) disagrees with the assessment results obtained by the school district, as follows:

(a) The parent(s) (or the adult student) shall provide a written notice to the school district superintendent or special education director which:

(i) Specifies the portion(s) of the assessment results with which the parent(s) (or the adult student) disagrees; and

(ii) Requests an independent educational assessment at public expense;

(b) The school district shall have the prior opportunity to initiate and conduct a hearing pursuant to WAC 392-171-531 et seq. to show that its assessment is appropriate: PROVIDED, That the school district shall provide the parent(s) (or the adult student) written notice of the election to initiate a hearing no later than the tenth day after the date of receipt of the parent's (or adult student's) notice of disagreement;

(c) If the final decision pursuant to WAC 392-171-521 et seq. is that the school district's assessment is appropriate, the parent (or adult student) still has the right to an independent educational assessment, but not at public expense; and

(d) If the district elects not to hold a hearing or is not upheld by the final decision, the parent's (or adult student's) request for an independent assessment shall be provided at public expense in accordance with the same criteria which the district uses when it initiates an assessment including, but not limited to, the location of the assessment and the qualifications of the examiner.

(3) Parent/adult student initiated assessment. If the parent (or adult student) obtains an independent educational assessment at private expense, the results of the assessment:

(a) Shall be considered by the school district in any decision made with respect to the provision of special education and related services to the student; and

(b) May be presented as evidence at such hearings regarding that student as may be conducted pursuant to WAC 392-171-521 et seq.

(4) Requests for assessment by hearing officers. If a hearing officer requests an independent educational assessment as part of a hearing, the cost of the assessment shall be at public expense.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-376 SCHOOL DISTRICT DECISION. The school district superintendent or his/her designee shall, based on the preceding procedures (WAC 392-171-341 through 392-171-366), arrive at one of the following decisions.

(1) The student does not have a handicapping condition(s); or

(2) The student does have a handicapping condition(s) and is in need of special education and related services.

The school district superintendent or his or her designee shall duly record in writing the decision as to the handicapping condition(s) of a student brought to the school's attention. Whatever decision is made, the information from the procedures for making the determination shall be filed in school district records. Within ten calendar days of the decision that the student does not have a handicapping condition, the parents or legal guardian of the student shall be informed in writing of the assessment findings in compliance with notice requirements of WAC 392-171-521. If the decision is that the student has a handicapping condition(s), the school district shall request the parent(s) to participate in the IEP conference (individualized education program) pursuant to WAC 392-171-456. Upon the request of the parent (or the adult student) the school district shall provide the parent (or the adult student) a copy of the summary analysis prior to the IEP meeting: PROVIDED, That the parent (or the adult student) may request a meeting with the school district to explain the summary analysis.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

WAC 392-171-381 DEFINITION AND ELIGIBILITY CRITERIA FOR DEVELOPMENTALLY HANDICAPPED. Definition and eligibility criteria for developmentally handicapped are as follows:

(1) As used in this chapter, the term "developmentally handicapped" shall mean children under the age of eligibility to the first grade who meet the definition and eligibility criteria for one of the following:

(a) WAC 392-171-382, Developmentally delayed;

(b) WAC 392-171-396, Orthopedically impaired;

(c) WAC 392-171-401, Health impaired;

(d) WAC 392-171-436, Deaf;

(e) WAC 392-171-441, Hard of hearing;

(f) WAC 392-171-446, Visually handicapped; and

(g) WAC 392-171-451, Deaf-blind;

(2) The term "developmentally handicapped" does not include children under the age of eligibility for entry to the first grade who qualify solely for communications disorder services under WAC 392-171-391.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

WAC 392-171-382 DEFINITION AND ELIGIBILITY CRITERIA FOR DEVELOPMENTALLY DELAYED. Definition and eligibility criteria for developmentally delayed are as follows:

(1) Developmentally delayed, birth to three years. As used in this chapter, the term "developmentally delayed, birth to three years" shall mean those children under three years of age who demonstrate a 1.5 standard deviation or twenty-five percent delay in the developmental delay area of cognitive (WAC 392-171-383(1)), communication (WAC 392-171-383(2)), fine motor (WAC 392-171-383(3)), gross motor (WAC 392-171-383(4)), or motor which for the purpose of this section shall be a combined delay area of fine motor (WAC 392-171-383(3)) and gross motor (WAC 392-171-383(4)). Such children in order to continue to be eligible for special education and related services after reaching three years of age shall meet the entry eligibility criteria for developmentally delayed, three to six years or one of the other eligibility criteria specified in WAC 392-171-381;

(2) Developmentally delayed, three to six years. As used in this chapter, the term "developmentally delayed, three to six years" shall mean those children between three years and the age of eligibility for entry to the first grade who receive a score on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

(a) Two standard deviations below the mean in one or more of the five developmental delay areas defined in WAC 392-171-383; or

(b) One and one-half standard deviations below the mean in two or more of the five developmental delay areas defined in WAC 392-171-383.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

WAC 392-171-383 AREAS OF DEVELOPMENTAL DELAY—DEFINITIONS. The five developmental delay areas for the purpose of applying eligibility criteria to developmentally delayed children are:

(1) Cognitive: Comprehending, remembering, and making sense out of one's experience. Cognitive ability is the ability to think and is often thought of in terms of intelligence;

(2) Communication: The ability to effectively use or understand, age-appropriate language, including vocabulary, grammar, and speech sounds;

(3) Fine motor: Motor skills requiring precise, coordinated use of the small muscles;

(4) Gross motor: Motor skills used for body control such as standing, walking, balance and climbing; and

(5) Social/emotional: The ability to develop and maintain functional interpersonal relationships and to exhibit age appropriate social and emotional behaviors.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-384 DISTINCTION BETWEEN DEVELOPMENTALLY HANDICAPPED AND COMMUNICATION DISORDER—REASSESSMENT OF DEVELOPMENTALLY DELAYED UPON ENTRY TO FIRST GRADE.** (1) Except for children who qualify solely for communications disorder services under WAC 392-171-391, children under the age of eligibility for entry to first grade, in order to be eligible for special education and related services, shall meet the eligibility criteria for one of the handicapping conditions specified in WAC 392-171-381.

(2) Children under the age of eligibility to first grade, who qualify for special education as developmentally delayed under WAC 392-171-382 shall not qualify for special education and related services upon entry to first grade until a reassessment is conducted and a determination is made that the student qualifies under the provisions of one of the other handicapping conditions in this chapter.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-386 DEFINITION AND ELIGIBILITY CRITERIA FOR SERIOUSLY BEHAVIORALLY DISABLED.** (1) Seriously behaviorally disabled students are those who exhibit one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects their own educational performance:

(a) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(c) Inappropriate types of behavior or feelings under normal circumstances;

(d) A general pervasive mood of unhappiness or depression; or

(e) A tendency to develop physical symptoms or fears associated with personal or school problems.

(2) The term includes students who are schizophrenic. The term does not include students who are socially maladjusted, unless it is determined that they are also seriously behaviorally disabled. Students whose primary disability is identified in another handicapping category do not qualify as seriously behaviorally disabled.

(3) All students considered for initial placement in special education as seriously behaviorally disabled shall be assessed by a multidisciplinary team including at least one school psychologist or school social worker and determined as eligible for special education and related services according to the following:

(a) A current school district evaluation which concludes that the student has a serious behavioral disability

and which considers and describes the student's social and emotional behaviors and provides any implications for educational planning.

(b) For the purposes of establishing that the student has a behavioral disability, the evaluation shall describe behaviors which distinguish between common disciplinary problem behaviors and serious behavioral disabilities. Common disciplinary problem behaviors (e.g., truancy, smoking, breaking school conduct rules) may exist in conjunction with serious behavioral disabilities, but cannot be used as the sole criteria for recommending special education and related services.

The evaluation shall include:

(i) Dated and signed documented anecdotal records of behavioral observations made by two or more persons at separate times and places, each of which cite and corroborate specific behaviors which, in the aggregate, provide foundation for probable concern for serious behavioral disability. Multiple settings are required (e.g., in addition to the classroom setting consider playground, cafeteria, school bus, hallway, etc.); and

(ii) Dated and signed documented evidence of at least two intervention techniques that have been tried and the effect of each. These interventions may include, but are not limited to, changes in student's regular class schedule, curriculum, and/or teacher, school counseling, community agency therapy, or counseling; and

(iii) A social or developmental history compiled directly from the parent(s) and/or records, when parents are not available.

(c) Current assessment of level of academic or cognitive achievement as measured by standardized tests appropriate to age level and administered individually.

(d) A current vision and hearing screening report.

(e) In the event that the required academic assessment and vision and hearing screening are completed and there are documented and dated anecdotal records of behavioral observations showing that the student's disability is evident in the school environment, the following evaluation reports may be substituted for the school district's evaluation:

(i) A current psychiatric evaluation which considers and describes the student's social and emotional behaviors, which concludes and describes a serious behavioral disability and where implications for educational planning are provided. The multidisciplinary team shall consider these implications in planning and implementing the student's educational program; or

(ii) A current psychological evaluation by a nonpublic school mental health professional who holds a graduate degree in a recognized mental health specialty that considers and describes the student's social and emotional behaviors, which concludes that the student has a serious behavioral disability, the consequences of which entail the necessity for active, on-going therapy and/or counseling, and where implications for educational planning are provided. The multidisciplinary team shall consider these implications in planning and implementing the student's educational program.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-391 DEFINITION AND ELIGIBILITY CRITERIA FOR COMMUNICATION DISORDERED.** A student shall be considered to have a communication disorder if there is present a documented communication disorder such as stuttering, voice disorder, language impairment, and/or impaired articulation which adversely affects a student's educational performance. The assessment procedures and eligibility standards outlined in this section apply to those students whose only handicapping condition is a communication disorder.

All students considered for initial placement in special education as communication disorder shall be assessed and determined eligible for special education and related services according to the following:

- (1) A current hearing screening report;
- (2) A current description of the level of educational or cognitive development as provided by the classroom teacher, or where available, by standardized tests in those areas affected by the speech and/or communication problem(s) including discussion of the existing or potential impact of the problem(s) on educational performance; and
- (3) A current assessment of the level of speech and/or language development as measured by standardized tests or professionally recognized procedures, scales, or checklists appropriate to the student's age level and mode of communication, individually administered, and which considers the student's sex, dialect norms, social-cultural environment, and behaviors: **PROVIDED**, That for children under the age of eligibility for entry to the first grade the assessment shall include development acquisition of speech and language. Such measures shall result in one or more of the following findings that the student:
  - (a) Achieves a rating of moderate or severe on a standardized articulation test that yields a severity rating and/or misarticulates in comparison to developmental norms five or more unrelated phonemes each in two or more positions (initial, medial, or final) for children under the age of eligibility for entry to the first grade, three or more unrelated phonemes for students age six through age seven, or one or more for students over age seven, with consideration given to the student's speech intelligibility, physical ability, and/or therapy history.
  - (b) Has a delay in receptive and/or expressive language such that functioning is one year or more below chronological age for students up through age eight or functioning is two-thirds of chronological age or below for students over age eight.
  - (c) Has interruptions or dysfluencies in more than one speaking situation such as repetitions, prolongations, blockage in flow of speech, struggle, or avoidance behaviors which interfere with communication or are inconsistent with age or development.
  - (d) Has a deviation in voice quality, pitch, or loudness characterized by abusive vocal habits, or interference

with communication, or is inconsistent with age or development, or demonstrates chronic hoarseness of duration of three weeks or more.

Whenever appropriate, referral for medical and/or psychological and/or other evaluations shall be made and the results considered in the assessment of the student's suspected handicapping condition.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-396 DEFINITION AND ELIGIBILITY CRITERIA FOR ORTHOPEDICALLY IMPAIRED.** Orthopedically impaired students are those who lack normal function of muscles, joints or bones due to congenital anomaly, disease or permanent injury, and such condition adversely affects their educational performance.

All students considered for initial placement in special education as orthopedically impaired shall be assessed and determined eligible for special education and related services according to the following:

- (1) A current medical evaluation by a qualified medical practitioner which describes and confirms the student's health circumstances and which provides any medical implications for educational planning;
- (2) Current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually;
- (3) A current evaluation which considers and describes the student's social and emotional behaviors and which provides any implications for educational planning, including an evaluation of adaptive behavior as measured by standardized instrument(s) or professionally recognized scales where there are no known standardized measures, which addresses the student's self-help and interpersonal communication skills in relation to chronological age/grade peers;
- (4) A current physical therapy and/or occupational therapy evaluation which considers and describes implications for therapy as a part of educational planning; and
- (5) A current vision and hearing screening report.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-401 DEFINITION AND ELIGIBILITY CRITERIA FOR HEALTH IMPAIRED.** Health impaired students are those who have chronic or acute health problems—such as students with serious congenital heart defect, other congenital syndrome(s), other disorders of the cardiorespiratory systems, disorders of the central nervous system including epilepsy or neurological impairment, autism or other profound health circumstances or degenerative condition(s)—which adversely affect or with a high degree of professional certainty will affect their educational performance.

All students considered for initial placement in special education as health impaired shall be assessed and determined eligible for special education and related services according to the following:

(1) A current medical evaluation by a qualified medical practitioner which describes and confirms the student's health circumstances and which provides any medical implications for educational planning;

(2) Current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually;

(3) A current evaluation which considers and describes the student's social and emotional behaviors and which provides any implications for educational planning which may include an evaluation of adaptive behaviors as measured by standardized instrument(s) or professionally recognized scales addressing the student's self-help and interpersonal communication skills in relation to chronological age/grade peers; and

(4) A current vision and hearing screening report.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-406 SPECIFIC LEARNING DISABILITY—DEFINITION.** Specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language. Such disorder may include problems in visual and auditory perception and integration and may manifest itself in an impaired ability to think, speak or communicate clearly, read with comprehension, write legibly and with meaning, and to accurately perform mathematical calculations, including those involving reading. Spelling shall not stand alone as a qualifying academic achievement area. The presence of a specific learning disability is indicated by intellectual functioning above that specified in this chapter for eligibility as mentally retarded and by a severe discrepancy between the student's intellectual ability and academic achievement in one or more of the following areas:

- (1) Oral expression;
- (2) Listening comprehension;
- (3) Written expression;
- (4) Basic reading skill;
- (5) Reading comprehension;
- (6) Mathematics calculations; and
- (7) Mathematics reasoning;

**PROVIDED,** That such a performance deficit cannot be explained by visual or hearing problems, motor handicaps, mental retardation, behavioral disability, or environmental, cultural, or economic factors.

A specific learning disability includes conditions described as perceptual handicap, minimal brain dysfunction, dyslexia, and developmental aphasia: **PROVIDED,** That the student meets the eligibility criteria set forth in WAC 392-171-411, including documentation of severe discrepancy as required by WAC 392-171-413 and 392-171-418.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-411 SPECIFIC LEARNING DISABILITY—ASSESSMENT PROCEDURES AND ELIGIBILITY CRITERIA.** Assessment procedures and eligibility standards: All students considered for initial

placement in special education as specific learning disabled shall be assessed and determined eligible for special education and related services according to the following:

(1) A current assessment of sufficient scope to rule out eligibility for any other handicapping condition and to rule out environmental, cultural, or economic factors as an explanation for the specific academic problem;

(2) A current vision and hearing screening report shall be obtained and shall be of sufficient scope to rule out vision or hearing acuity as an explanation for the specific academic problem;

(3) A written record of observation of the student's learning behaviors in the regular education program and the relationships of these behaviors to the specific academic problem shall be completed by a member of the assessment team other than the student's regular education teacher; and

(4) Written documentation that the student has an academic achievement problem in the regular education program shall be available. Such documentation shall include, if applicable, previous intervention attempts and the results obtained. Examples of data used for documentation may include:

(a) Student performance on daily classroom work and/or criterion-referenced tests;

(b) Summary of past student performance;

(c) Group test results;

(d) Teacher observation and judgments; and

(e) Performance on student learning objectives.

(5) Documentation of the existence of a severe discrepancy between the student's intellectual ability and academic achievement in one or more of the seven areas specified in WAC 392-171-406 shall be recorded. Such documentation shall conform to the requirements of WAC 392-171-413 or 392-171-418, whichever is applicable.

(6) Tests used to assess the student's intellectual ability and academic achievement shall be:

(a) Current;

(b) Reliable as demonstrated by a reliability coefficient of .85 or above;

(c) Normed on representative national samples;

(d) Selected and administered in accordance with the general requirements of WAC 392-171-351; and

(e) Individually administered and interpreted by a qualified person (defined in WAC 392-171-351) in accordance with the standardized procedures described in the test manuals.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-412 DISCREPANCY TABLES FOR DETERMINING SEVERE DISCREPANCY UNDER WAC 392-171-413.** The superintendent of public instruction shall develop and publish discrepancy tables for the purpose of determining a severe discrepancy between intellectual ability and academic achievement pursuant to WAC 392-171-413. Such tables shall be developed on the basis of a regressed standard score discrepancy method which shall consider the following variables:

- (1) The reliability coefficient of the intellectual ability test;
- (2) The reliability coefficient of the academic achievement test; and
- (3) An appropriate correlation between the intellectual ability and the academic achievement tests.

The regressed standard score discrepancy method shall be applied at a criterion level of 1.55.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-413 METHOD FOR DOCUMENTING SEVERE DISCREPANCY—GRADES ONE AND ABOVE.** (1) For students in grades one and above, a severe discrepancy shall be determined and documented from tables developed pursuant to WAC 392-171-412.

(2) For the purposes of applying the severe discrepancy tables, the following scores shall be used:

- (a) A total or full scale intellectual ability score; and
- (b) An academic achievement test score which can be converted into a standard score with a mean of one hundred and a standard deviation of fifteen.

(c) A severe discrepancy between the student's intellectual ability and academic achievement in one or more of the seven areas provided for in WAC 392-171-406 shall be determined by applying the regressed standard score discrepancy method to the obtained intellectual ability and achievement test scores using the tables referenced above: **PROVIDED**, That where the assessment results do not appear to accurately represent the student's intellectual ability and where the discrepancy between the student's intellectual ability and academic achievement does not initially appear to be severe upon application of the discrepancy tables, WAC 392-171-412, the multidisciplinary team shall apply professional judgment in order to determine the presence of a severe discrepancy. In this event, the multidisciplinary team shall document in writing a narrative explanation as to why the student has a severe discrepancy. The multidisciplinary team must provide supportive evidence, including the procedures used to determine that a severe discrepancy exists between the student's intellectual ability and academic achievement: **PROVIDED FURTHER**, That if the prohibition against the use of specific tests or test results as provided in WAC 392-171-351(4) shall preclude the use of any of the tests referenced above, the multidisciplinary team shall document in a written narrative the basis upon which the members decided that there exists a severe discrepancy between intellectual ability and achievement.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-418 ADDITIONAL METHOD FOR DOCUMENTING SEVERE DISCREPANCY—GRADES SEVEN AND ABOVE.** For a student in grades seven and above not found eligible under WAC 392-171-413 as a specific learning disabled student, the existence of a severe discrepancy between that student's

intellectual ability and academic achievement shall be determined and documented as follows:

- (1) An intellectual ability test shall be administered.
- (2) An academic achievement test in one or more of the seven areas described in WAC 392-171-406 shall be administered.

(3) The student's chronological age/grade (CAG) performance in one or more of the academic achievement areas provided for in the definition shall be adjusted for expectations due to variance in intellectual functioning. The expected performance adjusted for intellectual functioning shall then be compared to the results of the actual achievement measures, the results of which must yield:

(a) A functioning level of two-thirds or below of expected performance; and

(b) A functioning level below chronological age/grade.

(4) If the results of the above comparison for a particular student indicate a functioning level of two-thirds or below of expected performance and a functioning level below chronological age/grade level in one or more of the seven areas described in WAC 392-171-406, a severe discrepancy has been documented.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-421 DEFINITION AND ELIGIBILITY CRITERIA FOR MENTAL RETARDATION.** Mentally retarded students are those who demonstrate significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects their educational performance.

(1) Assessment procedures. All students considered for initial placement in special education as mentally retarded shall be assessed and determined eligible for special education and related services according to the following:

(a) A current assessment of intellectual functioning obtained from a standardized individual test designed to measure intellectual functioning, individually administered by a qualified psychologist and interpreted and attested to as to validity by a qualified psychologist; and

(b) A current evaluation which considers and describes adaptive behavior as measured by standardized instrument(s), or professionally recognized scales where there are no known standardized measures, which discusses any implications for educational planning; and

(c) Current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually; and

(d) A developmental history compiled directly from the parent(s), or records, when parents are not available; and

(e) A current vision and hearing screening report.

(2) Eligibility standards. The measured level of functioning is to be classified as follows:

(a) Mild mental retardation. Intellectual functioning (IQ) range from approximately 51 through 75 and the following conditions:

(i) Academic functioning equal to three-fourths or less of chronological age/grade; and

(ii) Adaptive behavior equal to three-fourths or less chronological age/grade.

(b) Moderate mental retardation. Intellectual functioning (IQ) range from 30 to 50 and the following conditions:

(i) Academic functioning equal to one-half or less of chronological age/grade; and

(ii) Adaptive behavior equal to one-half or less of chronological age/grade.

(c) Severe/profound mental retardation. Intellectual functioning (IQ) range under 30 and the following:

(i) Academic functioning equal to one-third or less of chronological age/grade; and

(ii) Adaptive behavior equal to one-third or less of chronological age/grade.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-431 DEFINITION AND ELIGIBILITY CRITERIA FOR MULTIHANDICAPPED.** A student shall be considered multihandicapped when there are present and documented two or more handicapping conditions, each of which is so severe as to warrant a special program were that handicapping condition to appear in isolation, and the combination of which causes such severe educational problems that the student requires intensive programming cannot be accommodated in special education programs solely for one of the impairments. Students who are deaf-blind are not included as multihandicapped. (See WAC 392-171-451.) Students who are classified as specific learning disability in combination with another handicapping condition shall not be eligible to be counted for state funding purposes as multihandicapped.

Assessment procedures and eligibility standards: All students considered for initial placement in special education as multihandicapped shall be assessed and determined eligible for special education and related services according to the following:

(1) Assessment procedures for each handicapping condition have been followed, the results of which document eligibility for inclusion in special education were each handicap to appear in isolation; and

(2) Summary statements in the assessment analysis report document that the effect of the multiplicity of handicaps is so severe that the student cannot be accommodated in special education programs solely for one of the impairments.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-436 DEFINITION AND ELIGIBILITY CRITERIA FOR DEAF.** Deaf student are those students who have a documented hearing impairment which is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

All students considered for initial placement in special education as deaf shall be assessed and determined eligible for special education and related services according to the following:

(1) A current evaluation by a qualified audiologist which describes and confirms that the hearing impairment is so severe that student is impaired in processing linguistic information through hearing, with or without amplification and which prevents the auditory channel from being the primary mode of learning speech and language and adversely affects educational performance;

(2) Current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually;

(3) A current evaluation which considers and describes the student's social and emotional behaviors and which provides any implications for educational planning;

(4) A current assessment of language development as measured by standardized tests or professionally recognized scales appropriate to age level and administered individually; and

(5) A current vision screening report.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-441 DEFINITION AND ELIGIBILITY CRITERIA FOR HARD OF HEARING.** Hard of hearing students are those students who have a hearing impairment, whether permanent or fluctuating, which adversely affects the student's educational performance.

All students considered for initial placement in special education as hard of hearing shall be assessed and determined eligible for special education and related services according to the following:

(1) A current evaluation by a qualified audiologist which describes and confirms that the student:

(a) Has an organic hearing loss in excess of 20 dB better ear average in the speech range (500, 1,000, 2,000 Hz), unaided; or

(b) Has a history of fluctuating hearing loss which has interrupted the normal acquisition of speech and language and continues to be a part of educational planning.

(2) A current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually.

(3) A current evaluation which describes and confirms the student's social and emotional behaviors and which provides any implications for educational planning.

(4) A current assessment of language development as measured by standardized tests or professionally recognized scales appropriate to age level and administered individually.

(5) A current vision screening report.

Each school district shall ensure that the hearing aids worn by deaf and hearing impaired students in school are functioning properly.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-446 DEFINITION AND ELIGIBILITY CRITERIA FOR VISUALLY HANDICAPPED. Visually handicapped students are those students who have a visual impairment which, even with correction, adversely affects the student's educational performance. The term includes both partially sighted and blind students.

All students considered for initial placement in special education as visually handicapped shall be assessed and determined eligible for special education and related services according to the following:

(1) A current evaluation by a qualified vision specialist or physician which describes and confirms that the student:

(a) Has visual acuity of 20/70 or less in the better eye with correction; or

(b) Has a field of vision which at its widest diameter subtends an angle of no greater than twenty degrees in the better eye with correction.

(2) Current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually.

(3) A current evaluation which considers and describes the student's social and emotional behaviors and which provides any implications for educational planning.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-451 DEFINITION AND ELIGIBILITY CRITERIA FOR DEAF-BLIND. Deaf-blind students are those whose hearing and vision impairments, in combination, cause such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind students.

All students considered for initial placement in special education as deaf-blind shall be assessed and determined eligible for special education and related services according to the following:

(1) A current evaluation by a qualified audiologist and vision specialist or physician which describes and confirms that the vision and hearing impairments, in combination, cause such severe communication and other developmental and educational problems that the students cannot be accommodated in special education programs solely for deaf or blind students.

(2) Current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually.

(3) A current evaluation which considers and describes the student's social and emotional behaviors and which provides any implications for educational planning; and

(4) A current assessment of language development as measured by standardized tests or professionally recognized scales appropriate to age level and administered individually.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-456 MEETINGS. (1) A meeting shall be held within thirty calendar days after the date upon which a student's assessment is completed for the purpose of developing the student's individualized education program. The school district shall initiate and conduct the meeting and shall include the following participants:

(a) A representative of the school district other than the student's teacher who is qualified to provide or supervise the provision of special education and related services;

(b) The student's regular classroom teacher or special education teacher or therapist: PROVIDED, That either the representative of the school district or the teacher or therapist is qualified in the area of the student's suspected disability;

(c) One or both of the parents (in the case of a non-adult student), subject to subsections (2) through (5) of this section;

(d) The student if he or she is an adult student (and in the case of nonadult students, the student, if appropriate);

(e) A member of the student's assessment team; and

(f) Other individuals at the discretion of the district or the parent or the adult student.

(2) Each school district shall take steps to assure (in the case of nonadult students) that one or both parents of the handicapped student are present at each meeting or are afforded the opportunity to participate, including:

(a) Notifying the parent(s) of the meeting early enough to assure his or her participation; and

(b) Scheduling the meeting at a mutually agreed upon place and time.

(3) The notice to the parent(s) shall include the purpose, time, location of the meeting and who will be in attendance.

(4) If a parent cannot attend, the district shall use other methods to assure participation, including individual or conference telephone calls.

(5) A meeting may be conducted (in the case of a nonadult student) without a parent in attendance if the school district is unable to convince the parents they should attend. In such a case the school district shall make a record of its attempts to arrange a mutually agreed upon time and place. The record shall contain such information as:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(6) The school district shall take whatever action is necessary to assure that the parent (or adult student) understands the proceedings at a meeting, including arranging for an interpreter for parents (or adult students) who are deaf or whose native language is other than English.

(7) The district shall document the parent(s)' and other IEP participants' presence at the IEP meeting.

(8) Meetings consistent with this section shall be conducted by the school district at least once a year for the purpose of reviewing and revising as necessary each student's individualized education program. Meetings may be held more frequently.

(9) In the case of students admitted to state residential schools, an assessment and individualized education program must be completed as provided in this chapter within fifty school days of enrollment.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-461 INDIVIDUALIZED EDUCATION PROGRAM.** (1) Each handicapped student's individualized education program shall be developed on the basis of assessment analysis and parent input, where it is provided, and shall include:

(a) For each orthopedically impaired and health impaired student under the age of eligibility to first grade, current medical evaluation by a qualified medical practitioner which describes and confirms the student's health circumstance and which provides any medical implications for educational planning;

(b) A statement of the student's present levels of educational performance;

(c) A statement of specific annual goals including short-term instructional objectives which are stated in terms that provide for measurement of progress, expected levels of performance, and the schedules for their accomplishments;

(d) A statement of the specific special education and related services needed by the student, and the extent to which the student will be able to participate in the regular educational program, including physical education. If the student is unable to participate in the regular physical education program, a description of the specially designed physical education to be provided to the student shall be included;

(e) The IEP developed for a handicapped student whose chronological age is fourteen or above shall also include career development and/or vocational education goals and short-term instructional objectives, where appropriate: PROVIDED, That if the career development and/or vocational education is specially designed instruction, goals and short-term instructional objectives shall be included;

(f) The projected dates for the initiation of services and the anticipated duration of the services, including the number of school days, the number of hours per day, and the length of the school year over which such services shall be provided: PROVIDED, That in the event the individualized educational program is the first in the district for such student and the multidisciplinary team has not made a determination as to the need for an extended school year for such child, the individualized educational program team shall make its recommendation on the length of the school year over which such services shall be provided prior to the conclusion of the regular one hundred eighty school days; and

(g) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being met.

(2) The school district shall provide the parent (or the adult student) a copy of the individualized education program.

(3) Nothing in this chapter may be construed as promising or guaranteeing that a handicapped student will in fact achieve the growth projected in his or her annual goals and short-term objectives.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-466 INITIAL EDUCATIONAL PLACEMENT—NOTICE—CONSENT.** (1) Each school district shall provide written notice of a student's proposed, initial special education placement, or of the district's inability or refusal to make a special education placement, at the initial meeting or within ten calendar days after the initial meeting provided for in WAC 392-171-456. The notice shall comply with the notice requirements of WAC 392-171-526. Provided that pupils admitted to state residential schools shall be enrolled in an educational program within ten school days of admission.

(2) The written consent of the parent(s) (or adult student) shall be requested if special education placement is proposed.

(3) The student's proposed special education placement shall commence when either:

(a) Written consent has been given by the parent(s) (or the adult student); or

(b) The refusal of a student's parent(s) (or adult student) to grant consent has been overridden by the school district pursuant to a hearing (or appeal) conducted in accordance with WAC 392-171-521 et seq.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-471 LEAST RESTRICTIVE ENVIRONMENT.** The placement and provision of services to each handicapped student shall be in his or her least restrictive environment as follows:

(1) Educational setting—Each handicapped student shall be placed:

(a) In the regular educational environment with non-handicapped students to the maximum extent appropriate to his or her needs, unless it can be demonstrated by the school district that the nature or severity of the student's disability is such that his or her education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; and

(b) In the school which he or she would attend if not handicapped, unless his or her individualized education program requires some other arrangement. If some other arrangement is required, the student shall be placed in the appropriate educational program that is as close to the student's home as is reasonably possible.

(2) Nonacademic settings—Each handicapped student shall be provided nonacademic and extracurricular services and activities conducted by the school district (e.g., meals, recess, recreation, athletics, counseling, transportation, student club activities, etc.) with nonhandicapped students to the maximum extent appropriate to the needs of the student.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-476 CONTINUUM OF ALTERNATIVE PLACEMENTS. A continuum of alternative placement options shall be made available as is necessary to meet the needs of the district's handicapped students for special education and related services.

The option shall include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and shall provide for supplementary services such as resource room or itinerant instruction in conjunction with regular class placement.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-481 PLACEMENT OPTIONS—SELECTION—REQUIRED CONSIDERATIONS.

(1) The placement of each handicapped student shall be determined annually at a meeting conducted pursuant to WAC 392-171-456.

(2) The selection of the appropriate placement option or options for each handicapped student shall be based upon:

- (a) The student's individualized education program;
- (b) The least restrictive environment requirements of WAC 392-171-471;
- (c) The option or combination of options that provides a reasonably high probability of assisting the student to attain his or her annual goals; and
- (d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-486 HOME/HOSPITAL INSTRUCTION. Home or hospital instruction shall be provided to both handicapped students and other students who are unable to attend school for an estimated period of four weeks or more because of physical disability or illness. As conditions to such services, the parent(s) of a student (or the adult student) shall request the services and provide a written statement to the school district from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least four weeks. A student who is not otherwise handicapped pursuant to WAC 392-171-310 who qualifies pursuant to this subsection shall be deemed "handicapped" only for the purpose of home/hospital instructional services and funding and may not otherwise qualify as a handicapped student for

the purposes of generating state or federal special education funds. A school district shall not pay the cost of the statement from a qualified medical practitioner for the purposes of qualifying a student for home/hospital instructional services pursuant to this section.

Home-hospital instructional services funded in accordance with the provisions of this section shall not be used for initial or on-going placement of otherwise handicapped students. It shall be limited to placement as is deemed necessary to provide temporary intervention as a result of a physical disability or illness.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-491 CONTRACTUAL SERVICES. (1) School districts, severally or jointly, shall be authorized to:

(a) Enter into interdistrict agreements with another school district(s) pursuant to RCW 28A.58.075, 28A.58.245, 28A.58.250, and chapter 392-135 WAC; and

(b) Contract with nonpublic and public school agencies for special education and related services for handicapped students: PROVIDED, That the school district establishes that it cannot provide an appropriate education for the handicapped student within the district or another school district: PROVIDED FURTHER, That in the case of a cooperative placement by a school district of a handicapped student at a center for the furtherance of research and training in handicapping conditions as established pursuant to RCW 28B.20.410 through 28B.20.414, as now or hereafter amended, or other such centers as may be established at other public institutions of higher education, as defined in RCW 28B.10.016, the school districts shall establish that the parent (or adult student) has given written approval for placement of the handicapped student at such center despite the existence of an appropriate education for the handicapped student within the district or another school district and has agreed that such placement would equal or substantially equal the placement available in the school district.

(2) If a handicapped student has special education and related services available in his or her public school district of residence and the child is placed in another public school district or in a public or private school or facility other than pursuant to a contractual arrangement between the student's district of (initial) residence and the entity of placement, the district of (initial) residence shall not be required to pay for the student's education or otherwise be responsible for the education of the student, except to the extent the student may qualify for services as a private school student pursuant to WAC 392-171-646 et seq.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-496 APPROVAL OF NONPUBLIC AND PUBLIC SCHOOL AGENCIES. A school district shall not either place a student in a nonpublic or public school agency or award a contract to a nonpublic or public school agency until the nonpublic or public

school agency has been approved by the state board of education. Approval of such agencies shall be made in accordance with the following procedures:

(1) The school district shall establish that all requirements imposed by this chapter for contracting with a nonpublic or public school agency can be met and shall forward the nonpublic or public school agency's application to the superintendent of public instruction or his or her designee;

(2) The superintendent of public instruction or his or her designee shall recommend approval or disapproval of the agency to the state board of education; and

(3) The superintendent of public instruction or his or her designee shall notify the requesting school district and nonpublic or public school agency of approval or disapproval.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-501 SCHOOL DISTRICT RESPONSIBILITY WHEN CONTRACTING FOR PLACEMENT IN A NONPUBLIC OR PUBLIC SCHOOL AGENCY.** Any school district contracting with an approved nonpublic or public school agency for special education and/or related services in behalf of a handicapped student shall:

(1) Initiate and conduct a meeting with appropriate personnel and the student's parent(s) for the purpose of developing the student's individualized education program. The district shall assure that a representative of the nonpublic or public school agency attends the meeting or in some other way assure participation by the nonpublic school agency. Meetings to review or revise the student's individualized education program after the student has been placed shall be initiated and conducted by the nonpublic or public school agency at the discretion of the school district. The district shall assure that both the parent(s) (or the adult student) and the nonpublic school agency are represented in any decision concerning the student's individualized education program and agree to proposed changes in the program before those changes are implemented. The responsibility for compliance with this section lies with the school district.

(2) Develop a written contract which shall include, but not necessarily be limited to, the following elements:

- (a) Names of the parties involved;
- (b) The name of the handicapped student(s) for whom the contract is drawn;
- (c) Location and setting;
- (d) Description of program administration and supervision;
- (e) Designation of coordinator of the services to be provided by the school district and the contractor;
- (f) Assurance of compliance with staff licensing/certification requirements;
- (g) Periodic student report requirements;
- (h) Annual program monitoring procedures and requirements;
- (i) Starting date and duration of contract;
- (j) Program day and description of student's program;

(k) Charges and reimbursement—Billing and payment procedures;

(l) Total contract cost;

(m) Contract review;

(n) Disposition of materials and equipment upon termination;

(o) School district's responsibility for compliance with due process, individualized education program, and yearly review and determination of placement requirements;

(p) Contractor's policies and procedures covering:

(i) Care of student(s) in emergencies;

(ii) Fire drills;

(iii) Personnel policies;

(iv) Staff duties; and

(v) Board of directors' duties and functions;

(q) Other contractual elements that may be necessary to assure compliance with state and federal rules and clearly define each party's role and functions; and

(r) Signatures of authorized school and contractor officials.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-506 OUT-OF-STATE AGENCIES.** In the event the school district within which a handicapped student resides is unable to contract with another district, or a nonpublic or public school agency, or an appropriate state agency, the parent (or adult student) and district may jointly petition the superintendent of public instruction or his or her designee for state and federal special education funds to provide an educational program with an agency in another state or Canada.

Contractual arrangements for an out-of-state educational program shall be approved by the superintendent of public instruction or his or her designee prior to the student's placement in that program. The school district shall be responsible for:

(1) Determining that no appropriate in-state placement option is available and for making the decision that the student should be placed in an out-of-state program;

(2) Determining that the out-of-state educational program is appropriately licensed or approved by that state's authorities and that placement will result in an appropriate education for the student; and

(3) Contracting with the out-of-state agency pursuant to the requirements of WAC 392-171-491 through 392-171-501.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-511 ANNUAL REVIEW OF PLACEMENT AND STUDENT PROGRESS—PROGRAM IMPROVEMENT.** (1) Annual placement review—The educational placement of each handicapped student shall be evaluated and redetermined annually at a meeting conducted pursuant to WAC 392-171-456.

(2) Program evaluation—Each school district shall establish a simple and reliable system of evaluating the program established for each handicapped student. Program evaluations shall be based upon a handicapped

student's progress toward the accomplishment of the goals and objectives set forth in the student's individualized education program and/or upon the teacher/manager efforts to facilitate change. Specific methods of evaluating and displaying program results shall be determined in accordance with the district's policies and procedures and the student's individualized education program.

(3) The program evaluation system shall assure that the performance measurement is recorded and reported at both in-process and final-result stages, and the results of the evaluation shall be reported to the parent(s) (or the adult student) consistent with policies and procedures of the school district.

(4) Program evaluations shall serve two purposes:

(a) To compare a student's measured performance with established goals and objectives; and

(b) To attempt to identify causal factors that account for significant differences between actual and predicted performance.

(5) Each school district shall develop, in its own format, alternatives designed to improve methods and results that are based upon the performance evaluation of the student. Evaluation of progress shall be continuing and completed at least annually in order to allow assessment personnel to adjust aims, programs, etc., if the goals and objectives are not met.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-512 REASSESSMENT—REQUIREMENT.** Each identified student having a handicapping condition shall be reassessed in accordance with the assessment procedures specified in WAC 392-171-351 through 392-171-366 by the multidisciplinary team provided for in WAC 392-171-351 as follows:

(1) At a minimum, once every three years or more frequently if required by this chapter.

(2) Upon request of the student's parent (or adult student), teacher, or individualized education program committee.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-513 REASSESSMENT—NOTICE REQUIREMENT.** Ten calendar days prior to conducting the reassessment, the district shall provide written notice to parents (or adult student). Such notice for reassessment, shall include:

(1) The procedural safeguard requirements provided in WAC 392-171-526 (1)(a) and also shall be issued in compliance with the provisions of WAC 392-171-526 (2) and (3);

(2) The reasons for reassessment i.e., required three-year reassessment or reassessment upon request. If the reassessment is upon request, the notice shall include the source of and reasons for such request;

(3) A statement that the student's records will be reviewed as a part of the reassessment and that the parents

(or adult student) have the right to submit to the multidisciplinary team any information they deem important to the reassessment;

(4) A statement that the multidisciplinary team will determine the need, if any, for replication of previous assessment procedures and the need, if any, for additional assessment procedures;

(5) A list of the disciplines to be represented on the multidisciplinary team as required by WAC 392-171-351.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-514 REASSESSMENT—PURPOSES.** The purposes of reassessment of identified students having a handicapping condition are to determine one or more of the following:

(1) Whether the student is appropriately identified as handicapped—i.e., having or not having a handicapping condition—or appropriately classified—i.e., having one or more particular handicapping conditions specified in WAC 392-171-381 through 392-171-451;

(2) Whether the program designed for the student is appropriate to meet the student's unique needs, abilities, and limitations; and

(3) Whether the student meets the continuing eligibility requirement of WAC 392-171-325(3) or 392-171-331.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-516 REASSESSMENT—NOTICE OF RESULTS.** Following the completion of the reassessment and based on the reassessment results, the district superintendent or his or her designee shall record in writing one or more of the following decisions:

(1) Whether the student is appropriately identified as handicapped.

(2) Whether the student is appropriately classified as having a particular handicapping condition and is in need of special education services.

(3) Whether the program designed for the student is appropriate to the student's unique needs, abilities, and limitations.

(4) Whether the student meets the continuing eligibility requirement of WAC 392-171-325(3) or 392-171-331.

In accordance with WAC 392-171-521, the parent (or adult student) shall be notified pursuant to the content of notice prescribed in WAC 392-171-526 of the school district's decision within ten calendar days following the completion of the reassessment. When a determination is made that the program is inappropriate, an individualized education program committee meeting shall be convened in accordance with WAC 392-171-456 through 392-171-466. When special education services are to be discontinued, notice shall be given the parent(s) pursuant to WAC 392-171-521.

READOPTED SECTION (Readopting Order 86-1, filed 2/21/86)

WAC 392-171-517 REASSESSMENT—THREE-YEAR REQUIREMENT. If the reassessment is the result of the three-year reassessment requirement, the multidisciplinary team based on the professional judgment of the members thereof—i.e., a reasonable degree of professional certainty—shall determine and document the following:

(1) Whether the student is appropriately identified or appropriately classified. If not, the multidisciplinary team shall follow the procedures specified in WAC 392-171-518.

(2) Whether the current program is appropriate to the student's unique needs, abilities, and limitations. If not, the multidisciplinary team shall follow the procedures specified in WAC 392-171-519.

(3) Whether the student meets the continuing eligibility requirement of WAC 392-171-325(3) or 392-171-331. In making such determination, the multidisciplinary team shall document in a written narrative the basis for such determination, including any relevant data or assessment process used for the determination of continuing eligibility.

(4) Whether assessment procedures should be replicated or conducted by members of the multidisciplinary team or other professionals not represented on the multidisciplinary team to provide reasonable professional certainty that the reassessment results are accurate. In making such determination, members of the multidisciplinary team shall be governed by the generally recognized professional practice standards of their respective disciplines. Members of the multidisciplinary team shall defer to the professional judgment of a team member who requests the replication or conduction of a particular assessment procedure.

READOPTED SECTION (Readopting Order 86-1, filed 2/21/86)

WAC 392-171-518 REASSESSMENT—APPROPRIATE IDENTIFICATION OR CLASSIFICATION. If the reassessment is upon request of the student's parent (or adult student), teacher, or individualized education program committee and concern is stated that the student is or may be inappropriately identified as handicapped or inappropriately classified as having a particular handicapping condition, the reassessment process shall address each component of the eligibility criteria for the identified or suspected handicapping condition pursuant to WAC 392-171-381 through 392-171-451. The assessment procedures stated therein shall be conducted unless the multidisciplinary team based on a reasonable degree of professional certainty determines that the replication of a particular assessment procedure is not necessary for one or more of the following reasons:

(1) That previous assessment procedures were conducted accurately;

(2) That a particular assessment procedure is unnecessary to determine the accuracy of the identification or classification;

(3) That an alternative assessment procedure is more or equally appropriate to determine the accuracy of the identification or classification.

READOPTED SECTION (Readopting Order 86-1, filed 2/21/86)

WAC 392-171-519 REASSESSMENT—APPROPRIATENESS OF PROGRAM. If the reassessment is upon the request of the student's parent (or adult student), teacher, or individualized education program committee and concern is stated that the current program is or may be inappropriate to the student's unique needs, abilities, and limitations, then the assessment procedures utilized to determine the appropriateness of the student's special education and related services program, including recommendations for changes therein, shall be determined by the multidisciplinary team. In making such determination the multidisciplinary team shall document in a written narrative the basis for such determination, including any relevant data or assessment procedures utilized.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-521 WHEN NOTICE MUST BE GIVEN. Written notice in accordance with WAC 392-171-526 shall be given by a school district to the parent(s) of a student (or to the adult student) a reasonable time before the school district:

(1) Proposes to initiate or change the identification, assessment, or educational placement of the student or the provision of special education and related services to the student pursuant to this chapter; or

(2) Refuses to initiate or change the identification, assessment, or educational placement of the student or the provision of special education and related services to the student pursuant to this chapter.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-526 CONTENTS OF NOTICE.

(1) The notice required by WAC 392-171-521 shall include:

(a) A full explanation of all of the procedural safeguards available to the parent (or the adult student) that are set forth in this chapter;

(b) A description of the action proposed or refused by the school district, an explanation of why the district proposes or refuses to take the action, and a description of any options the district considered and the reasons why those options were rejected;

(c) A description of each assessment procedure, test, record, or report the district used as a basis for the proposal or refusal; and

(d) A description of any other factors which are relevant to the district's proposal or refusal.

(2) The notice shall be:

(a) Written in language understandable to the general public; and

(b) Provided in the native language of the parent (or adult student) or other mode of communication used by

the parent (or adult student), unless it is clearly not feasible to do so.

(3) If the native language or other mode of communication of the parent (or adult student) is not a written language, the district shall take steps to assure that:

(a) The notice is translated orally or by other means to the parent (or adult student) in his or her native language or other mode of communication;

(b) The parent (or adult student) understands the content of the notice; and

(c) There is written evidence that the requirements in subparagraphs (a) and (b) of this subsection have been met.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-531 RIGHT TO INITIATE—PURPOSES.** (1) Hearings conducted in accordance with WAC 392-171-521 through 392-171-556 may be initiated in the following cases for the purposes stated:

(a) The parent(s) of a student (or an adult student) or a school district may initiate a hearing to challenge or to show (as the case may be) the appropriateness of a proposal by the school district to initiate or change:

- (i) The identification of the student;
- (ii) The assessment of the student;
- (iii) The educational placement of the student; or
- (iv) The provision of special education and related services to the student pursuant to this chapter;

(b) The parent(s) of a student (or an adult student) or a school district may initiate a hearing to challenge or to show (as the case may be) the appropriateness of the school district's refusal of the parent(s) (or adult student's) request to initiate or change:

- (i) The identification of the student;
- (ii) The assessment of the student;
- (iii) The educational placement of the student; or
- (iv) The provision of special education and related services to the student pursuant to this chapter;

(c) A school district may initiate a hearing to show that its assessment of a student is appropriate if the student's parent(s) (or adult student) disagrees with the assessment results.

(2) A request by a student's parent(s) (or adult student) for a hearing pursuant to this section shall:

- (a) Be in writing;
- (b) Be mailed or provided directly to the superintendent of the school district; and

(c) Explain the complaint of the parent(s) (or adult student) in general or specific terms.

(3) A request by a school district for a hearing pursuant to this section shall:

- (a) Be in writing;
- (b) Be mailed or provided directly to Office of Superintendent of Public Instruction, Office of Legal Services, Old Capitol Building, Olympia, Washington 98504. A copy of such request, including required attachments shall be transmitted to the student's parent(s) (or adult student);

(c) Have attached to such request a copy of the notice to parent(s) (or adult student) as required by WAC 392-171-521. If the hearing request by the district is in

response to a request for an independent educational assessment pursuant to WAC 392-171-371, the district's written request for a hearing also shall have attached a copy of the written notice to the district required by WAC 392-171-371(2).

(4) A notice of a hearing requested by a student's parent(s) (or adult student) or initiated by a school district pursuant to this section shall be provided by the hearing officer and shall include, but not necessarily be limited to:

(a) The date, time, and place of the hearing;

(b) The issues to be addressed at the hearing to the extent the issues have been identified at the time of the notice;

(c) The rights, procedures, and other matters set forth in WAC 392-171-536 through 392-171-576; and

(d) The right of the parent(s) (or adult student) to seek an independent assessment at public expense pursuant to WAC 392-171-371.

**READOPTED SECTION** (Readopting Order 84-33, filed 9/6/84)

**WAC 392-171-533 TRANSMITTAL OF COMPLAINT BY SCHOOL DISTRICT TO SUPERINTENDENT OF PUBLIC INSTRUCTION.** Unless the complaint filed with the school district superintendent pursuant to WAC 392-171-531(2) is withdrawn by the complainant in writing within five calendar days from the date of receipt, the school district superintendent shall transmit the complaint to the office of Superintendent of Public Instruction, Office of Legal Services, Old Capitol Building, Olympia, Washington 98504 prior to midnight of such fifth calendar day by depositing such complaint in the United States mail.

**READOPTED SECTION** (Readopting Order 84-33, filed 9/6/84)

**WAC 392-171-536 HEARING OFFICERS—SELECTION AND EXPENSES OF—PARENT ASSISTANCE.** (1) If a hearing is initiated pursuant to WAC 392-171-531:

(a) The hearing shall be conducted by and at the expense of the superintendent of public instruction.

(b) The superintendent of public instruction shall provide for a court reporter's stenographic record of all testimony and other oral hearing proceedings at the expense of the superintendent of public instruction: PROVIDED, That a court reporter's stenographic record need not be transcribed for any purpose except as provided or required in WAC 392-171-551(e).

(c) The superintendent of public instruction shall inform the parent(s) (or adult student) of any free or low-cost legal and other relevant services available in the area if:

(i) The parent (or adult student) requests the information; or

(ii) The school district or the parent (or adult student) initiates a hearing;

(d) The hearing shall be conducted by a qualified person selected and appointed by the chief administrative law judge in the office of administrative hearings

pursuant to chapter 10-08 WAC and shall be a person who:

(i) Is not an employee of a school district which is involved in the education or care of the student; and

(ii) Does not have a personal or professional interest which would conflict with his or her objectivity in the hearing;

(2) The hearing shall be conducted in accordance with the provisions of WAC 392-101-005 unless modified by this chapter.

**READOPTED SECTION** (Readopting Order 84-33, filed 9/6/84)

WAC 392-171-551 HEARING RIGHTS. (1) Any party to a hearing initiated pursuant to WAC 392-171-531 has the right to:

(a) Be accompanied and advised by persons with special knowledge or training with respect to the problems of handicapped students;

(b) Be advised and/or represented by an attorney;

(c) Present evidence, including the opinion(s) of qualified experts, confront, cross-examine, and compel the attendance of witnesses;

(d) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(e) Obtain a written verbatim record of the hearing at a cost no greater than the fee charged by the court reporter for transcribing his or her record of the hearing: PROVIDED, That in the event of an appeal to a court of law by the school district, such district shall bear the cost of transcribing the record for appeal purposes and shall make a copy available to the other party at a cost, if any, which is no greater than the school district's cost of copying the original; and

(f) Obtain written findings of fact, conclusions of law and judgments.

(2) Parents who are a party to a hearing have the right to have the child who is the subject of the hearing present.

(3) Parents (or adult students) who are a party to a hearing have the right to open the hearing to the public.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-556 TIMELINE FOR HEARING OFFICER'S DECISION—TIME AND PLACE OF HEARING. (1) Not later than forty-five days after the date of receipt of a request for a hearing pursuant to WAC 392-171-531:

(a) A final decision shall be reached based upon a preponderance of the evidence; and

(b) A copy of the decision consisting of the hearing officer's findings of fact, conclusions of law, and judgment shall be mailed or provided directly to each of the parties and to the superintendent of public instruction by the hearing officer, together with a certification of the date of mailing and the parties to whom it was mailed.

(2) The date of mailing or providing a decision to the parties shall be certified to on the first page of the decision by the person(s) who mails or provides the decision

to the parties. The decision of the hearing officer shall be drafted in a manner which:

(a) Sets forth the findings of fact, conclusions of law and judgment separately, and numbers each findings of fact and conclusion; and

(b) Avoids the revelation of personally identifiable information that is unnecessary to reaching and understanding the decision reached. The surnames of students and their parents shall be indicated by use of their last initial and shall not be spelled out.

(3) A hearing officer may grant specific extensions of time beyond the period set forth in this section at the request of either party.

(4) Each hearing involving oral arguments shall be conducted at a time and place which is reasonably convenient to the parent(s) and student involved.

**READOPTED SECTION** (Readopting Order 84-33, filed 9/6/84)

WAC 392-171-559 PROSPECTIVE APPLICATION TO AMENDMENTS IN WASHINGTON ADMINISTRATIVE CODE AFFECTING HEARINGS. Amendments to the Washington Administrative Code affecting special education hearings and appeals pursuant to chapter 392-171 WAC shall apply prospectively. Complaints filed pursuant to WAC 392-171-531 shall be governed by the chapter 392-171 WAC regulations in effect at the time the complaint is filed.

**READOPTED SECTION** (Readopting Order 84-33, filed 9/6/84)

WAC 392-171-561 FINAL DECISION—APPEAL TO COURT OF LAW. A decision made in a hearing initiated pursuant to WAC 392-171-531 is final, unless modified or overturned by a court of law.

**READOPTED SECTION** (Readopting Order 84-33, filed 9/6/84)

WAC 392-171-576 STUDENT'S STATUS DURING HEARING AND JUDICIAL REVIEW PROCESSES. (1) During the pendency of any administrative or judicial proceeding regarding a complaint initiated pursuant to WAC 392-171-531, unless the school district and the parent(s) of the student (or the adult student) agree otherwise, the student involved in the complaint shall remain in the educational placement he or she was in at the time the complaint was made.

(2) The student, with the consent of the parent(s) (or the adult student), shall be placed in the regular school program until the completion of all such proceedings if the complaint involves an application for initial admission to the school.

**READOPTED SECTION** (Readopting Order 81-25, filed 9/4/81)

WAC 392-171-581 SURROGATE PARENTS. (1) General. Each school district providing a special education program to a nonadult handicapped student shall assure that the rights of the nonadult student are protected when:

(a) No parent (as defined in WAC 392-171-310(4)) can be identified;

(b) The school district, after reasonable efforts, cannot discover the whereabouts of a parent; or

(c) The student is a ward of the state.

(2) Duty of school district. The duty of a school district under this section includes the assignment of a person to act as a surrogate for the parents. This duty includes the establishment of a method:

(a) For determining whether a nonadult student needs a surrogate parent; and

(b) For assigning a surrogate parent to the student.

(3) Criteria for selection of surrogates. Each school district shall assure that a person selected as a surrogate:

(a) Has no interest that conflicts with the interests of the student he or she represents; and

(b) Has knowledge and skills that assure adequate representation of the student.

(4) Nonemployee requirement—Compensation:

(a) A person assigned as a surrogate may not be an employee of a school district and/or other agency which is involved in the education or care of the student; and

(b) A person who otherwise qualifies as a surrogate parent pursuant to this section is not an "employee" of the school district and/or other agency solely because he or she is paid by the school district and/or agency to serve as a surrogate parent.

(5) Responsibilities. A surrogate parent may represent the student in all matters relating to:

(a) The identification, assessment, and educational placement of the student; and

(b) The provision of free special education and related services to the student.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-586 DEFINITION OF "EDUCATION RECORDS" AS USED IN RECORDS RULES. (1) For the purpose of WAC 392-171-596 through 392-171-641 governing handicapped student records, the term "education records" shall mean those records that:

(a) Are directly related to a student; and

(b) Are maintained by a school district or by a party acting for the school district.

(2) The term "education records" does not include:

(a) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:

(i) Are in the sole possession of the maker thereof; and

(ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record and does not refer to an individual who permanently succeeds the maker of the record in his or her position;

(b) Records of a law enforcement unit of a school district which are:

(i) Maintained apart from the records described in subsection (1) of this section;

(ii) Maintained solely for law enforcement purposes; and

(iii) Not disclosed to individuals other than law enforcement officials of the same jurisdiction: PROVIDED, That education records maintained by the school district are not disclosed to the personnel of the law enforcement unit;

(c) Records relating to an individual who is employed by a school district which:

(i) Are made and maintained in the normal course of business;

(ii) Relate exclusively to the individual in that individual's capacity as an employee; and

(iii) Are not available for use for any other purpose: PROVIDED, That this exception from the definition of "education records" does not apply to records relating to an individual in attendance at the school district who is employed as a result of his or her status as a student;

(d) Records relating to an adult student which are:

(i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional acting in his or her professional or paraprofessional capacity;

(ii) Created, maintained, or used only in connection with the provision of treatment to the student; and

(iii) Not disclosed to anyone other than individuals providing the treatment: PROVIDED, That the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the school district;

(e) Records of a school district which contain only information relating to a person after that person was no longer a student at the school district. An example would be information collected by a school district pertaining to the accomplishments of its alumni.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-591 DEFINITIONS USED IN RECORDS RULES—"DESTRUCTION"—"NATIVE LANGUAGE"—AND "PARTICIPATING AGENCY." For the purpose of WAC 392-171-596 through 392-171-641 governing handicapped student records:

(1) "Destruction" shall mean physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(2) "Native language" has the meaning given that term by section 703 (a)(2) of the Bilingual Education Act, which provides essentially as follows:

The term "native language," when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a nonadult student, the language normally used by the parents of the student.

(3) "Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information or from which information is obtained pursuant to this chapter.

**READOPTED SECTION** (Readopting Order 84-48, filed 10/2/84)

WAC 392-171-596 ACCESS RIGHTS. (1) Each school district shall permit parents of handicapped students (or adult students) to inspect and review during school business hours any education records relating to their children or ward (or the adult student) which are collected, maintained, or used by the district under this chapter. The district shall comply with a request promptly and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the student.

(2) The right to inspect and review education records under this section includes:

(a) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(b) The right to request that the school district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(c) The right to have a representative of the parent (or adult student) inspect and review records.

(3) A school district may presume that a parent has authority to inspect and review records relating to his or her child or ward unless the district has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

**READOPTED SECTION** (Readopting Order 84-48, filed 10/2/84)

WAC 392-171-601 RECORD OF ACCESS. Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this chapter (except access by parents, adult students, and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-606 RECORDS ON MORE THAN ONE STUDENT. If any education record includes information on more than one student, the parent(s) of those students (and/or adult students) shall have the right to inspect and review only the information relating to their child or ward (or themselves) or to be informed of that specific information.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-611 LIST OF TYPES AND LOCATIONS OF INFORMATION. Each participating agency shall provide parents (and adult students) on request a list of the types and locations of education records collected, maintained, or used by the agency.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-616 FEES. (1) A participating education agency may charge a fee for copies of records which are made for parents (or adult students) under this chapter if the fee does not effectively prevent the parents (or adult students) from exercising their right to inspect and review those records.

(2) A participating agency may not charge a fee to search for or to retrieve information under this chapter.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-621 AMENDMENT OF RECORDS AT THE REQUEST OF A PARENT OR ADULT STUDENT. (1) A parent of a handicapped student (or an adult student) who believes that information in education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the student may request the participating agency which maintains the information to amend the information.

(2) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time after receipt of the request.

(3) If the agency decides to refuse to amend the information in accordance with the request it shall inform the parent (or adult student) of the refusal and advise the parent (or adult student) of the right to a hearing pursuant to WAC 392-171-626.

(4) The participating agency, on request, shall provide the parent (or adult student) an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

(5) If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and so inform the parent (or adult student) in writing.

(6) If, as a result of the hearing, the participating agency decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it shall inform the parent(s) (or adult student) of the right to place in the records it maintains on the student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(7) Any explanation placed in the records of the student pursuant to this section shall:

(a) Be maintained by the participating agency as part of the records of the student as long as the record or contested portion is maintained by the participating agency; and

(b) Also be disclosed to any party to whom the records of the student (or the contested portion thereof) are disclosed.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-626 HEARING PROCEDURES REGARDING RECORDS.** A hearing initiated pursuant to WAC 392-171-621 to challenge information in education records shall be conducted according to procedures which include at least the following elements:

(1) The hearing shall be held within a reasonable period of time after the participating agency has received the request;

(2) The parent (or adult student) shall be given notice of the date, place, and time reasonably in advance of the hearing;

(3) The hearing may be conducted by any party, including an official of the participating agency, who does not have a direct interest in the outcome of the hearing;

(4) The parent (or adult student) shall be afforded a full and fair opportunity to present evidence relevant to the issues raised pursuant to WAC 392-171-621 and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(5) The participating agency shall provide a written decision to the parent (or adult student) within a reasonable period of time after the conclusion of the hearing; and

(6) The decision of the participating agency shall:

(a) Be based solely upon the evidence presented at the hearing; and

(b) Include a summary of the evidence and the reasons for the decision.

**READOPTED SECTION** (Readopting Order 83-1, filed 3/30/83)

**WAC 392-171-631 CONSENT.** (1) Consent of a parent (or adult student) shall be obtained before personally identifiable information is:

(a) Disclosed to anyone other than officials of participating agencies collecting or using the information under this chapter subject to subsection (2) of this section; or

(b) Used for any purpose other than meeting a requirement imposed by this chapter.

(2) No school district shall release information from education records to participating agencies without the consent of a parent (or adult student) except in those cases in which a release of information without consent is permitted by the rules that implement the federal Privacy Rights of Parents and Students Part 99 of 34 Code of Federal Regulations (CFR) 34 sections 99.1 et seq. See 34 CFR 99.31 (when prior consent not required), 34 CFR 99.35 (disclosure to state and federal officials) and 34 CFR 99.37 (directory information).

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-636 SAFEGUARDS.** (1) Each participating agency shall protect the confidentiality of

personally identifiable information at the collection, storage, disclosure, and destruction stages.

(2) One official at each participating agency shall be designated as the individual responsible for assuring the confidentiality of any personally identifiable information.

(3) All persons collecting or using personally identifiable information shall receive training or instruction regarding:

(a) The policies and procedures on protection of the confidentiality of personally identifiable information set forth in the state's annual program plan; and

(b) 45 CFR 99.1 et seq. (the "Buckley Amendment" rules).

(4) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-641 DESTRUCTION OF INFORMATION.** Each school district shall inform parents (and adult students) when personally identifiable information collected, maintained, or used pursuant to this chapter is no longer needed to provide educational services to the student. The information shall thereafter be destroyed at the request of the parent(s) (or adult student). However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-646 DEFINITION—"PRIVATE SCHOOL HANDICAPPED STUDENT(S)."** For the purpose of WAC 392-171-651 through 392-171-686 "private school handicapped student(s)" means handicapped students enrolled in private schools or agencies but not as the result of a contractual arrangement between a public school district and the private school or agency.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-651 SCHOOL DISTRICT RESPONSIBILITY FOR PRIVATE SCHOOL HANDICAPPED STUDENTS.** Subject to the provisions of WAC 392-171-656 through 392-171-686:

(1) Each school district shall provide special education and related services designed to meet the needs of private school handicapped students who reside in the school district.

(2) Each school district shall provide private school handicapped students with genuine opportunities to participate in special education and related services consistent with the number of those students and their needs.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-656 DETERMINATION OF NEEDS, NUMBERS OF STUDENTS AND TYPES OF SERVICES. The needs of private school handicapped students, the number who will participate, and the types of special education and related services which the school district will provide them shall be determined after consultation with persons knowledgeable of the needs of these students on a basis comparable to that used in providing for the participation under this chapter of handicapped students enrolled in public schools.

READOPTED SECTION (Readopting Order 83-1, filed 3/30/83)

WAC 392-171-661 SERVICE ARRANGEMENTS. (1) Special education and related services to private school handicapped students may be provided through such arrangements as dual enrollment pursuant to chapter 392-134 WAC, educational radio and television, and the provision of mobile educational services and equipment.

(2) No services, material, or equipment of any nature shall be provided to or on the site of any private school or agency subject to sectarian (i.e., religious) control or influence.

(3) Handicapped students enrolled in any private school or agency subject to sectarian control or influence shall be provided services in a manner that:

(a) Maintains a physical and administrative separation between the private and the public school programs; and

(b) Does not benefit the private school at public expense, e.g., pursuant to dual enrollment or shared time arrangements in accordance with chapter 392-134 WAC.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-666 PERSONNEL IN PRIVATE SCHOOLS AND AGENCIES. (1) School district personnel may be made available to nonsectarian private schools and agencies only to the extent necessary to provide services required by the handicapped student for whose needs those services were designed and only when those services are not normally provided by the nonsectarian private school or agency.

(2) Each school district providing services to students enrolled in nonsectarian private schools or agencies shall maintain continuing administrative control and direction over those services.

(3) Services to private school handicapped students shall not include the payment of salaries of teachers or other employees of private schools or agencies, except for services performed outside regular hours of the school day and under public supervision and control.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-671 EQUIPMENT—CONSTRUCTION. (1) Equipment used in the care of students with handicapping conditions in a private school or agency may be placed on nonsectarian private school or agency premises for a limited time, but title to and administrative control over all equipment must be retained and exercised by the school district.

(2) Records shall be kept of equipment and an accounting made of the equipment which shall assure that the equipment is used solely for the purposes of the program.

(3) The equipment shall be removed from the private school or agency if necessary to avoid its being used for other purposes or if it is no longer needed for the purposes of the program or project.

(4) Funds shall not be used to construct facilities for private schools or agencies.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-676 PROHIBITION OF SEGREGATION. Programs or projects carried out in public facilities, and involving joint participation by handicapped students otherwise enrolled in private schools or agencies and handicapped students enrolled in public schools, shall not include classes that are separated on the basis of school enrollment or the religious affiliations of the students.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-681 FUNDS AND PROPERTY NOT TO BENEFIT PRIVATE SCHOOLS. Public funds provided and property derived from those funds shall not inure to the benefit of any private school or agency.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-686 EXISTING LEVEL OF INSTRUCTION. Provisions for serving private school handicapped students shall not include the financing of the existing level of instruction in a private school or agency.

READOPTED SECTION (Readopting Order 83-1, filed 3/30/83)

WAC 392-171-691 ANNUAL APPLICATIONS—CONTENTS. As a condition to the receipt and expenditure of federal special education funds, a school district shall annually submit an application to the superintendent of public instruction or his or her designee on or before such date is announced and conduct its special education and related services program in compliance therewith. The applications shall be made pursuant to forms developed and distributed by the superintendent or his or her designee. Application forms

shall include, but not necessarily be limited to, the following assurance(s) and types of information:

- (1) An assurance that:
  - (a) The school district is in compliance with the provisions of this chapter and the rules implementing PL 94-142 (34 CFR 300.1 et seq.) that may supplement this chapter;
  - (b) That the district shall remain in compliance with this chapter and any such supplemental rules for the entire school year; and
  - (c) That the funds applied for shall be expended in compliance with the application, this chapter, and any such supplemental federal rules;
- (2) The information and assurances required by 34 CFR 300.220 through 34 CFR 300.240 and any other pertinent federal rules;
- (3) Identification of the local district designee responsible for child identification activities and confidentiality of information;
- (4) A description of the procedures and/or activities to be implemented or continued to provide for:
  - (a) Identification, location and evaluation of handicapped children not currently receiving special education and related services;
  - (b) Assurance of confidentiality of personally identifiable information;
  - (c) Implementation of a system for personnel development;
  - (d) Involvement of parents of handicapped children;
  - (e) Participation of handicapped students with non-handicapped students;
  - (f) Placement of handicapped students in the least restrictive environment;
  - (g) Development of individualized education programs for each eligible handicapped student;
  - (h) Availability of career development and vocational education programs for handicapped students;
  - (i) A description of the numbers and types of handicapped students receiving special education and related services by placement option within the district's continuum of alternative placements;
  - (j) A description of the kind of and number of facilities, personnel, and services necessary to meet the district's full educational opportunity goal, including a detailed timetable for reaching that goal; and
  - (k) A description of the use of funds received under PL 94-142 (34 CFR 300.1 et seq.).
- (5) Any other pertinent information requested by the superintendent of public instruction which is necessary for the management of the special education program.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-696 DENIAL OF APPLICATIONS—OPPORTUNITY FOR HEARING.** (1) In the event the superintendent of public instruction or his or her designee proposes to deny, in whole or part, the annual application of a district for federal special education funds, the district shall be provided notice pursuant to RCW 34.04.090 of:

- (a) Intent to deny the application of the district; and

- (b) The district's opportunity for a hearing before the superintendent of public instruction or his or her designee prior to a denial of the application.

- (2) The district's application may be denied, in whole or part, in the event the district fails to request a hearing or the hearing decision upholds the proposed basis for denial.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-701 STAFF QUALIFICATIONS.** All employees of a school district funded in whole or part with state or federal excess cost funds shall be qualified, as follows:

- (1) All employees shall hold such credentials, certificates or permits as are now or hereafter required by the state board of education for the particular position of employment and shall meet such supplemental standards as may be established by the school district of employment. Supplemental standards established by a district may exceed, but not be less than, those established by this section.

- (2) In addition to the requirement of subsection (1) of this section, all teachers shall possess "substantial professional training" and/or "successful prior experience" and support personnel shall meet standards established under the educational staff associate rules of the state board of education, as now or hereafter amended.

- (a) "Successful prior professional experience" as used in this section shall mean at least three full school years of employment as a professional staff member in an approved special education program within the five year period immediately preceding the school year of employment in a position supported in whole or part by excess cost apportionment funds.

- (b) "Substantial professional training" as used in this section shall mean and be evidenced by either an appropriate special education endorsement or recommended placement upon the teaching certificate of an employee issued by the superintendent of public instruction or completion of teacher education program designed to prepare teachers of students with handicapping conditions offered by an institution approved by the state board of education for teacher certification purposes.

- (3) Classified staff shall present evidence of either formal and/or adequate in-service training or successful experience in working with handicapped students.

- (4) The assignment of personnel shall be consistent with training and experience appropriate to the age level (preschool, elementary, secondary) and type of program in which teaching will be performed. District reorganization, reductions in force, and reassignments shall be made in a manner consistent with the requirements of this section.

- (5) The superintendent of public instruction or his or her designee may grant an exception to compliance with any of the staff qualifications imposed by this section which are above and beyond certification requirements imposed by the state board of education, only upon the request of a school district and the provision of satisfactory assurances by the district that noncompliance:

- (a) Is unavoidable;

(b) Will be temporary and not extend beyond the school year for which the exception is requested; and

(c) Will not likely result in a significant reduction in the quality of the district's special education program.

(6) Notwithstanding any staff qualification requirement of this section to the contrary, employees of a school district which possess credentials as required by the state board of education and who were employed during and serving as of termination of the 1974-75 school year in the special education program of the district shall be deemed qualified for purposes of state program approval so long as they continue in such employment with that particular district.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-706 TRANSPORTATION.** (1) Methods. Transportation options for handicapped students shall include the following categories and shall be exercised in the following sequence:

(a) A scheduled school bus;

(b) Contracted transportation, including public transportation; and

(c) Other transportation arrangements, including that provided by parents: **PROVIDED**, That board and room cost in lieu of transportation may be provided whenever the above stated transportation options are not feasible because of the need(s) of a handicapped student or because of the unavailability of adequate means of transportation, in accordance with rules of the superintendent of public instruction.

(2) Welfare of the student. The transportation of a handicapped student shall be in accordance with rules of the superintendent of public instruction governing transportation by public school districts.

(3) Bus aides and drivers. Training and supervision of bus aides and drivers shall be the responsibility of the school district superintendent or his or her designee.

(4) Special equipment. Special equipment may include lifts, wheel chair holders, restrainers, and two-way radios. All such special equipment shall comply with specifications contained in the specifications for school buses as now or hereafter established by the superintendent of public instruction.

(5) Transportation time on bus. Wherever reasonably possible, no student should be required to ride more than sixty minutes one way.

(6) Discipline of handicapped students during transportation. The discipline of a handicapped student during his or her transportation shall be the responsibility of the transporting district.

(7) Transportation for state residential school students to and from the residential school and the sites of the educational program shall be the responsibility of the department of social and health services and each state residential school pursuant to law.

(8) Transportation for a state residential school student, including students attending the state school for the deaf and the state school for the blind, to and from such school and the residency of such student shall be

the responsibility of the district of residency only if the student's placement was made by such district—i.e., an appropriate placement in the least restrictive environment.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-711 FACILITIES.** Construction of special facilities or the remodeling of present facilities in order to meet the special education and related services needs of any handicapped student shall be provided in accordance with rules of the superintendent of public instruction and the state board of education which govern the construction and/or financing of school district facilities: **PROVIDED**, That all educational facilities required for handicapped students in residential school programs shall be the responsibility of department of social and health services as provided by RCW 28A.58.774.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-716 COMPARABLE FACILITIES.** If a school district, in compliance with this chapter, operates a facility that is identifiable as being for handicapped students, the district shall assure that the facility and the services and activities provided therein are comparable in quality to the district's facilities, services, and activities for nonhandicapped students.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-721 PROGRAM LENGTH.** The length of the education program for handicapped students shall be at least as long as the education program for nonhandicapped students in terms of both the number of school days in the regular school year and the average number of hours per school day. If a handicapped student cannot attend school a full school day, the reason shall be documented in his or her education or medical records.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-726 ADMINISTRATION OF MEDICATION.** (1) Medication may be administered to a handicapped student by school district personnel subject to the state professional licensing laws and the following conditions:

(a) The medication shall be administered pursuant to a written order and written instruction from the student's physician; and

(b) The medication shall be supplied by the student's parent(s) (or the adult student).

(2) The orders and instructions shall be current, obtained at least yearly, and reviewed and updated whenever there is a significant change in the student's school activity program, in accordance with policies adopted by the school district.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

WAC 392-171-731 MONITORING. (1) The superintendent of public instruction or his or her designee shall annually monitor selected local school district special education programs. The purposes of monitoring shall be:

(a) To determine the school district's compliance with this chapter and the federal regulations implementing 20 USC Section 1401 et seq. (PL 94-142) and federal and state handicapped laws including validation of information included in school district applications for federal funds;

(b) To provide the school district with technical assistance for improving the quality of its special education program.

(2) The superintendent of public instruction or his or her designee shall develop procedures (including specific timelines) for monitoring school districts. These procedures shall include:

(a) Collection of data and reports;

(b) Conduct of on-site visits;

(c) A review of state and federal special education fund utilization; and

(d) Comparison of a sampling of individualized education programs with the programs actually provided.

(3) Following a monitoring visit, a written monitoring report shall be submitted to the school district. The monitoring report shall include, but not be limited to:

(a) Findings of noncompliance, if any; and

(b) Required corrective actions for remediation of any such instance(s) of noncompliance.

(4) The school district shall have thirty calendar days after the date of its receipt of the monitoring report to provide the office of superintendent of public instruction with:

(a) Supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report;

(b) A written action plan which sets forth the measures the district shall take and time period(s) within which the district shall act in order to remediate the instance(s) of noncompliance;

(c) In the event that the district submits supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report, the office of superintendent of public instruction shall within thirty calendar days provide the district with a determination as to the alteration of the monitoring report. The school district shall, within thirty calendar days of receipt of the determination, provide the office of superintendent of public instruction a written action plan, if any, pursuant to that determination.

(5) The superintendent of public instruction or his or her designee either shall approve the plan as submitted or shall request the school district to make such modifications as are considered necessary. Once an approvable plan has been submitted, the district shall be provided written notice of:

(a) Approval;

(b) The performance expected of the district; and

(c) The schedule for periodic review or verification of the district's progress toward remediation of the instance(s) of noncompliance.

(6) If the school district fails to submit an approvable corrective action plan pursuant to WAC 392-171-731(4) or fails to comply with a corrective action plan approved pursuant to WAC 392-171-731(5), the superintendent of public instruction or his or her designee shall institute procedures to insure corrective action or prompt response to a monitoring report. Such procedures may include one or more of the following:

(a) Verification visits by OSPI staff to:

(i) Determine whether the school district is taking the required corrective action;

(ii) Expedite the school district's response to a monitoring report;

(iii) Provide any necessary technical assistance to the school district in its efforts to comply.

(b) Withhold, in whole or part, a specified amount of state and/or federal special education funds, pursuant to WAC 392-171-696 and 392-171-746.

(c) Initiate request for OSPI audit pursuant to WAC 392-171-736 through 392-171-756 which may result in the recovery of unlawfully received or expended of state and/or federal special education funds.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-736 DEFINITION OF "UNLAWFULLY RECEIVED OR EXPENDED FUNDS." For the purpose of WAC 392-171-741 through 392-171-756, "unlawfully received or expended funds" shall mean any state or federal special education funds received and held or expended by a school district in a manner or for a purpose that is in violation of any provision of:

(1) State statute or rule, including this chapter; or

(2) Any federal rule or condition to funding that may now or hereafter supplement this chapter.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-741 AUDITS. (1) The superintendent of public instruction or his or her designee shall conduct fiscal/program audits of school district special education programs. The purposes of such audits shall be:

(a) To determine compliance or noncompliance with:

(i) A school district's application(s) for state and federal excess cost funds;

(ii) The provisions of this chapter; and

(iii) Any supplemental federal conditions to funding as may now or hereafter exist.

(b) To establish a factual basis for:

(i) The recovery of unlawfully received or expended state or federal special education funds; or

(ii) The initiation of fund withholding proceedings;

(2) Preliminary audit report—Following an audit, a preliminary written audit report shall be submitted to the school district for review and comment. The preliminary audit report shall include, but not be limited to:

(a) Findings of noncompliance which could include comparisons to findings of noncompliance as a result of monitoring, if any; and

(b) Recommendations for remediation of any such instance(s) of noncompliance.

(3) The school district shall have fifteen days after the date of its receipt of the preliminary audit report to provide the superintendent of public instruction or his or her designee a written reply setting forth any supplemental arguments and/or facts that may serve as a basis for alteration of the preliminary finding(s) of noncompliance.

(4) Final audit report—A final written audit report shall be provided to the school district after review of the supplemental arguments and/or facts submitted by the district. The final audit report shall include, but not necessarily be limited to:

(a) Findings of noncompliance, if any; and

(b) Recommendations for remediation of any such instance(s) of noncompliance.

(5) The school district shall have fifteen days after the date of its receipt of the final audit report to provide the superintendent of public instruction or his or her designee a written plan which sets forth the measures the district shall take and time period(s) within which the district shall act in order to remedy the instance(s) of noncompliance.

(6) The superintendent of public instruction or his or her designee shall either approve the plan as submitted or request the school district to make such modifications as are considered necessary. Once an approvable plan has been submitted the district shall be provided written notice of:

(a) Approval;

(b) The performance expected of the district; and

(c) The schedule for periodic review or audit of the district's progress toward remediation of the instance(s) of noncompliance.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-746 FUND WITHHOLDING. (1) In the event a school district fails to submit an approvable remediation plan pursuant to WAC 392-171-741 or fails to submit an approvable corrective action plan pursuant to WAC 392-171-731 or fails to comply with a remediation plan approved pursuant to WAC 392-171-741 or fails to comply with a corrective action plan pursuant to WAC 392-171-731, the superintendent or his or her designee shall provide the school district notice pursuant to RCW 34.04.090 of:

(a) Intent to withhold a specified amount of state and/or federal special education funds; and

(b) The district's opportunity for a hearing before the superintendent of public instruction or his or her designee prior to commencement of the withholding.

(2) Funds may be withheld in whole or part in the event the district fails to request a hearing or the hearing decision upholds the final audit or monitoring in whole or part.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-751 RECOVERY OF FUNDS. (1) If a preliminary audit conducted pursuant to WAC 392-171-741 indicates that a district has unlawfully received and/or expended either state or federal special education funds, the superintendent of public instruction or his or her designee shall provide the school district with an opportunity for an informal conference prior to the final audit report.

(2) If the final audit report sets forth one or more instances of unlawful receipt or expenditure of either state or federal special education funds, the superintendent of public instruction or his or her designee shall take such action as he or she deems necessary to recover the funds including, but not limited to, a reduction in future allocations of any amount of any state funds and/or any amount of federal special education funds to the district.

(3) No right to a hearing in connection with the recovery of funds unlawfully received and/or expended is granted by this chapter.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-756 FUND WITHHOLDINGS TO ENFORCE PARENT APPEAL DECISIONS. The superintendent of public instruction or his or her designee may withhold any amount of state funds and/or any amount of federal special education funds as he or she deems necessary to enforce a decision made on appeal pursuant to WAC 392-171-566 and 392-171-571 without any necessity of a further hearing on the matter.

**READOPTED SECTION** (Readopting Order 88-18, filed 7/11/88)

WAC 392-171-761 RIGHT TO REGISTER AND PROCESS COMPLAINTS. (1) Any person, entity, or organization may register and process complaints alleging one or more violations of this chapter as provided for in chapter 392-168 WAC.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

WAC 392-190-005 PURPOSE—ELIMINATION OF SEX DISCRIMINATION. The purpose of this chapter is to establish rules and regulations which implement chapter 28A.85 RCW. The referenced enactment prohibits discrimination on the basis of sex in grades K-12 of the Washington public schools. Broad federal regulations implementing Title IX of the Education Amendments of 1972 similarly prohibit sex discrimination in federally-assisted education programs or activities. As a result, several substantive areas have been similarly identified and addressed by both state and federal enactments.

It is the intent of this chapter to encompass those similar substantive areas addressed by the Title IX regulations and in some aspects extend beyond the Title IX regulations. Accordingly, compliance with this chapter

should constitute compliance with those similar substantive areas treated in the Title IX regulations, but school districts should be aware that compliance with the Title IX regulations alone may not constitute compliance with this chapter.

Although chapter 28A.85 RCW and the balance of this chapter prohibit sex discrimination in grades K-12 only, the superintendent of public instruction hereby declares pursuant to the authority vested in the superintendent by Article 3, section 22 of the state Constitution that it shall be unlawful for any public school district to discriminate on the basis of sex with regard to any activity conducted by or in behalf of a school district including, but not limited to, preschool, adult education, community education and vocational-technical program activities.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

**WAC 392-190-010 COUNSELING AND GUIDANCE SERVICES—CAREER OPPORTUNITIES—INTERNAL PROCEDURES.** (1) No school district shall engage in discrimination against any person on the basis of sex in the counseling or guidance of students in grades K-12.

(2) Each school district shall devise and use materials, orientation programs, and counseling techniques that will encourage participation in all school programs and courses of study based on factors other than sex and that encourage students to explore subjects and activities not heretofore traditional for their sex.

(3) Each school district which uses testing and other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless (a) such different materials cover the same occupations and interest areas and (b) the use of such different materials is demonstrated to be essential to eliminate sex bias.

(4) Each school district shall develop and use internal procedures for ensuring that all tests and appraisal instruments, career and vocational guidance materials, work/study programs and opportunities, and educational scheduling and/or placement do not discriminate on the basis of sex: **PROVIDED**, That where the use of such instruments or materials or such programs or activities results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the school district shall take such immediate action as is necessary to assure itself that such disproportion is not the result of discrimination in the program or activity or in the instrument or material or its application: **PROVIDED FURTHER**, That where a school district finds that a particular class contains a substantially disproportionate number of individuals of one sex, the district shall take such immediate action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in tests and appraisal instruments, career and vocational guidance materials, work/study programs and opportunities, and educational scheduling and/or placement or by counselors.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-015 COUNSELING AND GUIDANCE—DUTY OF CERTIFICATED AND CLASSROOM PERSONNEL—COORDINATION OF EFFORT.** (1) All certificated and classroom personnel shall encourage students to explore and develop their individual interests in career and vocational technical programs and employment opportunities without regard to sex, including reasonable efforts encouraging students to consider and explore "nontraditional" occupations for men and women: **PROVIDED**, That all certificated and classroom personnel within each local school district shall have access to an educational staff associate (ESA) certificated school counselor(s) or such other appropriate person(s), designated by the school district superintendent to coordinate compliance with the requirements of this section.

(2) All certificated and classroom personnel shall comply fully and immediately with the requirements of this section. The superintendent of each school district shall make the designation(s) required by this section immediately.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-020 INSERVICE TRAINING—SEX BIAS AWARENESS.** Each school district should include sex bias awareness and sex bias elimination training sessions in such inservice training programs as are conducted or provided for certificated and/or classroom personnel.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-025 RECREATIONAL AND ATHLETIC ACTIVITIES—EQUAL OPPORTUNITY—SEPARATE TEAMS.** (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, club or intramural athletics or recreational activity offered by a school district, and no school district shall provide any such athletics or recreational activity separately on such basis. Sports teams and programs offered by a school district shall, regardless of their nature, be equally open to participation by qualified members of both sexes: **PROVIDED**, That in the case of sports and recreational activities offered for students in grades 7 through 12, a school district may maintain separate teams for members of each sex if (a) it can clearly be shown, under the factual circumstances involved in the particular case, that the maintenance of separate teams for boys and girls truly constitutes the best method of providing both sexes, as a whole, with an equal opportunity to participate in the sports or games of their choice and (b) at the same time, a test of substantial equality between the two programs can be found to have been met.

(2) For the purpose of this section and WAC 392-190-050(2) "substantial equality" shall be determined

by considering factors including but not limited to the following:

- (a) The relationship between the skill and compensation of coaching staffs;
- (b) The size of their budgets;
- (c) The quality of competition and game schedules;
- (d) Uniforms;
- (e) Equipment and facilities; and
- (f) Sufficient numbers of participants to warrant separate teams.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

WAC 392-190-030 GENERAL—RECREATIONAL AND ATHLETIC ACTIVITIES—EQUAL OPPORTUNITY FACTORS CONSIDERED. Each school district shall evaluate its recreational and athletic program at least once each year to ensure that equal opportunities are available to members of both sexes with respect to interscholastic, club or intramural athletics which are operated, sponsored, or otherwise provided by the school district.

In determining whether equal opportunities are available to members of both sexes with respect to interscholastic, club or intramural athletics, each school district conducting an evaluation required by this section, and the office of superintendent of public instruction upon receipt of a complaint pursuant to WAC 392-190-075, shall consider several factors, including but not limited to the following where provided by a school district:

- (1) Whether the selection of sports and levels of competition effectively accommodates the interests and abilities of members of both sexes;
- (2) The provision of equipment and supplies;
- (3) The scheduling of games and practice times including the use of playfields, courts, gyms, and pools;
- (4) Transportation and per diem allowances, if any;
- (5) The opportunity to receive coaching and academic tutoring;
- (6) The assignment and compensation of coaches, tutors, and game officials;
- (7) The provision of medical and training facilities and services including the availability of insurance;
- (8) The provision of housing, laundry, and dining facilities and services, if any; and
- (9) Publicity and awards.

Unequal aggregate expenditures within a school district for members of each sex or unequal expenditures for separate male and female teams will not alone constitute noncompliance with this chapter, but the failure to provide the necessary funds for recreational and athletic activities for members of one sex may be considered in assessing the equality of opportunity for members of each sex.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

WAC 392-190-035 RECREATIONAL AND ATHLETIC ACTIVITIES—COMPLIANCE TIME-TABLE—ELEMENTARY AND SECONDARY

LEVEL. (1) Each school district which operates, sponsors, or otherwise provides interscholastic, club or intramural athletics at the elementary school level (K-6) shall provide equal opportunity and encouragement for physical and skill development to all students in the elementary grades consistent with this chapter.

(2) Each school district which operates, sponsors, or otherwise provides interscholastic, club or intramural athletics at the secondary school level (7-12) shall provide equal opportunity and encouragement for physical and skill development to all students in the secondary grades consistent with this chapter.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

WAC 392-190-040 RECREATIONAL AND ATHLETIC ACTIVITIES—STUDENT INTEREST—REQUIRED SURVEY INSTRUMENT. (1) The superintendent of public instruction shall develop a survey instrument to assist each school district in the determination of student interest for male/female participation in specific sports.

(2) A survey instrument shall be administered by each school district at all grade levels where interscholastic, intramural and other sports and recreational activities are conducted. The results of the survey shall be considered in the program planning and development in the area of recreational and athletic activities offered within the school district.

(3) A survey instrument developed pursuant to this section shall be administered at least once every three years within each school district: PROVIDED, That the content of the survey instrument may be modified or amended as deemed appropriate to clarify and assist in the evaluation of student interest.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

WAC 392-190-045 RECREATIONAL AND ATHLETIC ACTIVITIES—FACILITIES. A school district which provides athletic facilities for members of one sex including showers, toilets, and training room facilities for athletic purposes shall provide comparable facilities for members of the opposite sex: PROVIDED, That such facilities may be provided as either separate facilities or shall be scheduled and used separately by members of each sex: PROVIDED FURTHER, That this section shall not be interpreted to require the construction of additional facilities.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

WAC 392-190-050 COURSE OFFERINGS—GENERALLY—SEPARATE SESSIONS OR GROUPS PERMISSIBLE. No school district shall provide any course or otherwise carry out any of its education programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including but not limited to

health, physical education, industrial arts, business, vocational-technical, and home economics courses: **PROVIDED**, That this section shall not be construed to prohibit:

(1) The grouping of students in physical education classes and activities by demonstrated ability as assessed by objective standards of individual performance developed and applied without regard to sex: **PROVIDED**, That where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the school district shall immediately implement appropriate standards which do not have such effect;

(2) The separation of students by sex within physical education classes or activities offered for students in grades 7 through 12 if (a) it can clearly be shown under the factual circumstances involved in the particular case, that the maintenance of a separate physical education class or activity for boys and girls truly constitutes the best method of providing both sexes, as a whole, with an equal opportunity to participate in such class or activity and (b) at the same time, a test of substantial equality between the two classes or activities can be found to have been met;

(3) The conduct of separate sessions for boys and girls with respect to those portions of classes which deal exclusively with human sexuality; and

(4) The conduct of classes and/or activities within which a school district may establish or maintain requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

**WAC 392-190-055 TEXTBOOKS AND INSTRUCTIONAL MATERIALS—SCOPE—ELIMINATION OF SEX BIAS—COMPLIANCE TIMETABLE.** (1) It is the intent of this section to eliminate sex bias in connection with any form of instruction provided by a school district.

(2) The instructional materials policy of each school district required by RCW 28A.58.103 shall incorporate therein, as part of the selection criteria, a specific statement requiring the elimination of sex bias in all textbooks and instructional materials including reference materials and audio-visual materials.

(3) The instructional materials committee of each school district shall establish and maintain appropriate screening criteria designed to identify and eliminate sex bias in all textbooks and instructional materials including reference materials and audio-visual materials: **PROVIDED**, That such selection criteria shall be consistent with the selection criteria endorsed by the state board of education dated December 6, 1974, WAC 180-48-010, as now or hereafter amended, and WAC 180-46-005 through 180-46-060, as now or hereafter amended. One of the aids to identification of sex bias in instructional materials consists of the Washington Models for the Evaluation of Bias Content in Instructional Materials published by the superintendent of public instruction.

(4) In recognition of the fact that current instructional materials which contain sex bias may not be replaced immediately, each school district should acquire supplemental instructional materials or aids to be used concurrent with existing materials for the purpose of countering the sex bias content thereof.

(5) Nothing in this section is intended to prohibit the use or assignment of supplemental instructional materials such as classic and contemporary literary works, periodicals and technical journals which, although they contain sex bias, are educationally necessary or advisable.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-060 COMPLIANCE—LOCAL SCHOOL DISTRICT—DESIGNATION OF RESPONSIBLE EMPLOYEE—NOTIFICATION.** (1) The superintendent of each school district shall immediately designate at least one employee who shall be responsible directly to the superintendent for monitoring and coordinating the district's compliance with this chapter. The employee designated pursuant to this section shall also be charged with the responsibility to investigate any complaint(s) communicated to the school district pursuant to WAC 392-190-065.

(2) Each school district shall, once each year or more often as deemed necessary, publish notice in a manner which is reasonably calculated to inform all students, students' parents, and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this section and the appeal procedure set forth in WAC 392-190-065, WAC 392-190-070 and WAC 392-190-075 as now or hereafter amended.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-065 COMPLIANCE—COMPLAINT PROCEDURE—DISTRICT SUPERINTENDENT.** (1) Upon receipt of a complaint by a school district in the manner herein described, the employee or employees designated pursuant to WAC 392-190-060 shall investigate the allegations set forth and shall institute such other reasonable procedures to effect a prompt resolution of the complaint: **PROVIDED**, That each complaint communicated to the school district shall be (a) written, (b) signed by the complaining party, and (c) set forth specific acts, conditions, or circumstances alleged to be violative of this chapter or the specific acts, conditions, or circumstances that would be prohibited by this chapter.

(2) Upon completion of the investigation required by this section in connection with a complaint communicated to the school district, the designated employee or employees shall provide the district superintendent with a full written report of the complaint and the results of the investigation. The district superintendent shall respond in writing to the complaining party as expeditiously as possible but in no event later than thirty calendar days

following receipt of such complaint by the school district.

(3) The response of the school district superintendent required by this section shall clearly state either (a) that the school district denies the allegations contained in the complaint received pursuant to this section, or (b) the nature of such reasonable corrective measures deemed necessary to eliminate any such act, condition, or circumstance within the school district: PROVIDED, That any such corrective measures deemed necessary shall be instituted as expeditiously as possible but in no event later than thirty calendar days following the school district superintendent's mailing of a written response to the complaining party required by this section.

(4) The complaint procedure required by this section shall not prohibit the processing of grievances by an employee bargaining representative and/or a member of a bargaining unit pursuant to grievance procedures established at the school district level by local bargaining agreement.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

WAC 392-190-070 COMPLIANCE—APPEAL PROCEDURE—LOCAL SCHOOL BOARD. (1) In the event a complainant remains aggrieved as a result of the action or inaction of the superintendent in resolving a complaint as provided in WAC 392-190-065, said complainant may appeal to the school district board of directors by filing a written notice of appeal with the secretary of the school board on or before the tenth day following (a) the date upon which the complainant received the superintendent's response or (b) the expiration of the thirty day response period provided by WAC 392-190-065, whichever occurs first.

(2) An appeal to the board of directors pursuant to this section shall require the board of directors to schedule a hearing to commence on or before the twentieth day following the filing of the written notice of appeal. Both parties shall be allowed to present such witnesses and testimony as the board deems relevant and material. The board of directors shall render a written decision on or before the tenth day following the termination of the hearing, and shall provide a copy to all parties involved.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

WAC 392-190-075 COMPLIANCE—CONTINUED CASE—DUTY OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION. (1) In the event a complainant remains aggrieved with the decision of a school district board of directors rendered pursuant to WAC 392-190-070, the complainant may appeal the board's decision to the superintendent of public instruction. Upon the receipt of a notice of appeal filed in compliance with this section, the superintendent of public instruction shall schedule a hearing to commence on or before the fortieth day thereafter.

(2) A notice of appeal must be received by the superintendent on or before the tenth day following the date upon which the complainant received written notice of

the school board's decision. Furthermore, the notice must be in writing and must set forth (a) a concise statement of the portion or portions of the school board's decision which is appealed from, and (b) the relief requested by the complainant/appellant.

(3) Appeals to the superintendent shall be conducted de novo pursuant to the state Administrative Procedure Act (chapter 34.04 RCW). The complainant/appellant shall have the responsibility for prosecuting his or her case and the school district/respondent shall have the duty of defending the decision or portion thereof appealed.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

WAC 392-190-080 COMPLIANCE—VIOLATIONS—PERMISSIBLE SANCTIONS. In the event a school district is found to be in violation of the requirements of this chapter, the superintendent of public instruction may, by appropriate order pursuant to chapter 34.04 RCW, impose an appropriate sanction or institute appropriate corrective measures, including but not limited to (a) the termination of all or part of state apportionment or categorical moneys to the offending school district, (b) the termination of specified programs wherein such violation or violations are found to be flagrant in nature, (c) the institution of a mandatory affirmative action program within the offending school district, and (d) the placement of the offending school district on probation with appropriate sanctions until such time as compliance is achieved or is assured, whichever is deemed appropriate in the particular case by the superintendent of public instruction.

**READOPTED SECTION** (Readopting Order 80-8, filed 4/15/80)

WAC 392-137-001 PURPOSES. The purposes of this chapter are: (1) To implement RCW 28A.58.240 by setting forth arrangements deemed approved by the superintendent of public instruction under which nonresident and resident students may attend the preschool through twelfth grade programs of any school district without tuition charge;

(2) To implement RCW 28A.58.240 by establishing a reasonable tuition charge for nonresident and resident students whose attendance arrangements in preschool through twelfth grade programs have not been deemed approved by the superintendent of public instruction; and

(3) To implement RCW 28A.58.242 by establishing procedures for filing and conducting appeals from the decision of a resident school district to deny the release of a student to a nonresident district.

**READOPTED SECTION** (Readopting Order 80-8, filed 4/15/80)

WAC 392-137-002 ARRANGEMENTS DEEMED APPROVED—RETENTION AND FILING OF. Any arrangement for the attendance of students which is documented in writing and consistent

with this chapter shall be deemed approved by the superintendent of public instruction.

Attendance agreements and district policies required by this chapter shall be retained by each district as public records and submitted to the superintendent of public instruction upon request.

**READOPTED SECTION** (Readopting Order 80-8, filed 4/15/80)

WAC 392-137-003 NONRESIDENT ATTENDANCE EXEMPT FROM CHAPTER PROVISIONS. The following nonresident attendance arrangements are exempt from the provisions of this chapter:

(1) Interdistrict cooperation programs conducted in accordance with RCW 28A.58.075(7) and chapter 392-135 WAC;

(2) Programs temporarily conducted in behalf of another school district in accordance with RCW 28A.58.225; and

(3) Reciprocity programs with contiguous out-of-state school districts conducted pursuant to RCW 28A.58.250.

Nonresident attendance arrangements exempted from the provisions of this chapter by this section, as now or hereafter amended, are governed by the statutes and rules referenced above and by the rules or policies of a school district that supplement the referenced rules or statutes.

**READOPTED SECTION** (Readopting Order 83-11, filed 8/18/83)

WAC 392-137-010 DEFINITIONS. As used in this chapter, the term: (1) "Residence" shall mean the physical location of a student's principal abode—i.e., the home, house, apartment, etc., within which the student lives the majority of the time. The mailing address of the student—e.g., parent's address or post office box—may be different than the student's principal abode.

(2) "Resident student" shall mean a student:

(a) Whose residence is within the school district of attendance; or

(b) Whose residence is within the boundaries of any military, naval, lighthouse, other United States reservation, national park, national forest, or Indian reservation (provided the student resides upon rented or leased un-deeded lands within the Indian reservation) which is contiguous to the school district of attendance; or

(c) Whose residence is within a school district which does not carry the grades for which the student is eligible to enroll (e.g., a non-high school district).

(3) "Nonresident student" shall mean any student other than a resident student whose residence is within the state of Washington.

(4) "Resident district" shall mean the Washington state school district or districts of which a student is considered to be a resident.

(5) "Nonresident district" shall mean any school district other than a resident school district.

**READOPTED SECTION** (Readopting Order 7-75, filed 12/22/75)

WAC 392-137-015 PERSONS ENTITLED TO ATTEND—TUITION—FREE. A resident student as defined in WAC 392-137-010(2) who is between the ages of four and twenty-one is entitled as a matter of right to attend grades kindergarten through twelve conducted by or in cooperation with the district or districts considered to be his or her resident district tuition-free: PROVIDED, That the student is otherwise eligible to enroll.

**READOPTED SECTION** (Readopting Order 84-37, filed 10/2/84)

WAC 392-137-020 NONRESIDENT STUDENTS UNDER THE AGE OF TWENTY-ONE—MUTUAL AGREEMENT BETWEEN RESIDENT AND NONRESIDENT DISTRICT REQUIRED. (1) A nonresident student who is under the age of twenty-one may be admitted tuition free (but see permissive tuition in WAC 392-137-045(1)) by a nonresident district only pursuant to an agreement between the student's resident district and the nonresident district or pursuant to an order of the superintendent of public instruction pursuant to RCW 28A.58.242 and WAC 392-137-065 or pursuant to an order of a court of law. In the event the student is considered to be a resident of more than one district pursuant to the definition of "resident student" set forth in WAC 392-137-010(2), the agreement shall be between the nonresident district and the district in which the student was last enrolled and is considered to be a resident.

(2) A student's attendance shall be credited in all cases to the school district of enrollment unless:

(a) The superintendent of public instruction is notified by order of the board of directors of a student's resident district provided for in subsection (1) that the student is a resident of its district and is attending a nonresident district without authorization pursuant to an agreement or order of the superintendent or a court of law releasing the student, and

(b) it is established that the student is a resident of the district and that neither such an agreement nor order of the superintendent or a court of law exists.

(3) In the event a district claims that a student attending another district is a resident of its district, the board of directors of such district, in its order, shall set forth the correct residence of the student and the facts upon which such determination was made. A copy of such order shall be provided to the student and the district of enrollment. If the student or the district of enrollment protests the correctness of the student's residence, the board of directors of the district of enrollment shall cause the matter to be investigated and determine within forty-five calendar days whether the student is a resident of the district of enrollment and the district thereby is entitled to claim the student for apportionment purposes. The superintendent of public instruction shall consider the decision of the board of directors of the district of enrollment final unless set aside by a court of law.

(4) In the event it is so established that a student is enrolled in a nonresident district without authorization, the basic education allocation and other state payments in connection with the student's enrollment shall be discontinued until:

- (a) The student enrolls in a resident district,
- (b) An agreement required by subsection (1) is entered into, or
- (c) The superintendent or a court of law orders the release of the student.

(5) In the event an agreement is entered into or the superintendent of public instruction or a court of law orders the release of the student, the basic education entitlement shall be allocated to the nonresident district for the period of the agreement or the order which may be retroactive to the month in which such entitlement was discontinued.

**READOPTED SECTION** (Readopting Order 7-75, filed 12/22/75)

WAC 392-137-025 NONRESIDENT STUDENTS TWENTY-ONE YEARS OF AGE OR OLDER—AGREEMENT BETWEEN STUDENT AND NONRESIDENT DISTRICT REQUIRED. A nonresident student who is twenty-one years of age or older may be admitted by a nonresident district only pursuant to an agreement between the nonresident student and the nonresident district.

**READOPTED SECTION** (Readopting Order 7-75, filed 12/22/75)

WAC 392-137-030 RESIDENT STUDENTS TWENTY-ONE YEARS OF AGE OR OLDER—AGREEMENT BETWEEN STUDENT AND RESIDENT DISTRICT REQUIRED. A resident student who is twenty-one years of age or older may be admitted only pursuant to an agreement between the resident student and the resident district.

**READOPTED SECTION** (Readopting Order 7-75, filed 12/22/75)

WAC 392-137-035 CONTENTS OF AGREEMENTS. Agreements required by WAC 392-137-020, 392-137-025, and 392-137-030 shall set forth:

- (1) The name, age, and grade level of attendance of the student;
- (2) The duration of the agreement;
- (3) A finding that the student, if a nonresident, will be best accommodated in the nonresident district; and
- (4) Such other terms and conditions as the parties deem advisable and as are consistent with this chapter.

**READOPTED SECTION** (Readopting Order 83-11, filed 8/18/83)

WAC 392-137-040 DISTRICT POLICIES—PROCEDURES AND CRITERIA FOR RELEASE OF RESIDENT STUDENTS AND ADMISSION OF NONRESIDENT STUDENTS. Each school district board of directors shall adopt policies which specify the

procedures and criteria pursuant to which resident students under the age of twenty-one may be released to nonresident districts and nonresident students and resident students twenty-one years of age or older may be admitted.

Districts shall grant requests for the release of resident students and requests for the admission of nonresident and resident students only on the basis of the order in which such requests are made and without preference: PROVIDED, That preference may be granted in those cases in which the attendance requested would likely alleviate to a significant extent an existing or probable special hardship or detrimental condition of a financial, educational, safety, or health nature affecting the student or the student's immediate family or custodian: PROVIDED FURTHER, That if a student, or in the case of a minor, the student's parent(s), guardian, or custodian requests a hearing before the board of directors of the resident district and the resident district fails to provide such a hearing within sixty calendar days of receipt of such request for a hearing, the resident district, for the purposes of this chapter, shall be deemed to have released such student to attend the nonresident district.

**READOPTED SECTION** (Readopting Order 83-11, filed 8/18/83)

WAC 392-137-045 TUITION—ENROLLMENT IN COMPLIANCE OR NONCOMPLIANCE WITH AN ARRANGEMENT. (1) The tuition for nonresident students and for resident students twenty-one years of age or older who are enrolled pursuant to the provisions within this chapter or pursuant to an order of the superintendent of public instruction or a court of law releasing the student from his or her resident district, if any tuition is charged, shall be established by the school district of enrollment. In order to avoid infringements upon an individual's right to equal protection of the law, in the event tuition is charged any such student, tuition should be charged all nonresident students and resident students twenty-one years of age or older on the basis of a uniform rate or on the basis of a uniformly applied formula (e.g., tuition based upon the difference between the cost of educating a student in the district or at the grade level of attendance and state and federal funds accruing to the district as a result of the student's enrollment and/or attendance).

(2) In the event it is established by the school district of enrollment or by the superintendent of public instruction pursuant to WAC 392-137-020(2) that a student under twenty-one years of age has been enrolled in a nonresident district without an arrangement prescribed by this chapter, the district of enrollment shall have no discretion as to the tuition to be charged such student. In all such cases, the arrangements for the student's enrollment shall be considered disapproved by the superintendent of public instruction and tuition equal to the per pupil cost of the district of enrollment for the previous school year as computed on Form F-196, Part II, shall be charged the student or if the district has established a higher charge for any nonresident student or resident student twenty-one years of age or older, then an

amount equal to such higher charge shall be charged the student for a full school year. Any such tuition charge, however, may be ratably reduced in the event the student is enrolled part-time and/or for less than a full school year.

**READOPTED SECTION** (Readopting Order 80-8, filed 4/15/80)

**WAC 392-137-051 RIGHT OF APPEAL.** Any student eighteen years of age or more but less than twenty-one years of age, or, in the case of a minor, the student's parent(s), guardian(s), or custodian(s) may appeal the decision of the school district within which the student resides, or the decision of the school district within which the student was last enrolled and is considered to be a resident for attendance purposes by operation of law, to deny the student's request for release to a nonresident school district made pursuant to this chapter to the superintendent of public instruction.

**READOPTED SECTION** (Readopting Order 83-11, filed 8/18/83)

**WAC 392-137-055 APPEAL NOTICE.** (1) Requests for appeal shall be written, signed, and directed to the superintendent of public instruction. Any such notice of appeal shall set forth or be accompanied by the following information:

(a) The name, age, grade level, and residence address of the student and the name, mailing address, and the legal relationship of the person, if any, filing the notice of appeal on behalf of the student;

(b) The school district of residence on the date of the school district's decision to deny a release;

(c) The date of the school district's decision to deny a release;

(d) Either a copy of the minutes of the board of directors of the resident school district which establishes that the board has denied a request to release the student or a written statement by the superintendent of the resident district that the board has taken action denying such a request;

(e) Either a copy of the minutes of the board of directors of the nonresident school district to which a release has been requested that establishes the nonresident district is willing to accept the student or a written statement of the superintendent of the nonresident district that the board has taken action accepting the student or that the board has established a policy accepting all students who are released by an order of the superintendent of public instruction or the court;

(f) An explanation of the special hardship or detrimental condition of a financial, educational, safety, or health nature affecting the student or the student's immediate family or custodian that exists or would exist as a result of the student's attendance in the resident district;

(g) An explanation of how attendance in the nonresident district would allegedly alleviate such special hardship or detrimental condition to a significant extent.

(2) Upon receipt of a notice of appeal which complies with subsection (1) the superintendent of public instruction or his or her designee shall schedule a hearing and provide a notice as required by RCW 34.04.090(1) to the appellant and the school district that denied the student's release.

**READOPTED SECTION** (Readopting Order 87-6, filed 4/28/87)

**WAC 392-137-060 HEARING.** The hearing provided for in WAC 392-137-055(2) shall be conducted in compliance with chapter 392-101 WAC.

**READOPTED SECTION** (Readopting Order 83-11, filed 8/18/83)

**WAC 392-137-065 GROUNDS FOR ORDER OF RELEASE.** (1) It shall be the policy of the superintendent of public instruction to order the release of a student to a nonresident district only in those cases in which the evidence establishes:

(a) That a special hardship or detrimental condition of the nature and effect identified in WAC 392-137-055 (1)(f) exists; and

(b) That such special hardship or detrimental condition is likely to be alleviated to a significant extent in the event the student's release is ordered.

(2) It shall not be the policy of the superintendent of public instruction to order the release of a student to a nonresident district for the purpose of providing enrichment of educational opportunity unless the evidence also establishes:

(a) That a particular student has a unique need for the enrichment of educational opportunity;

(b) That the lack of enrichment of educational opportunity is a special hardship or detrimental condition of the nature and effect identified in WAC 392-137-055 (1)(f) for a particular student; and

(c) That such special hardship or detrimental condition is likely to be alleviated to a significant extent for that particular student in the event the student's release is ordered.

**READOPTED SECTION** (Readopting Order 83-11, filed 8/18/83)

**WAC 392-137-070 PER SE SPECIAL HARDSHIP OR DETRIMENTAL HARDSHIPS.** The following conditions are judged by the superintendent of public instruction to constitute a special hardship or detrimental condition, the proof of which is a per se condition for the order of a release:

(1) A student who was enrolled the previous school year in a nonresident district who will complete in the same nonresident district during the current school year the highest grade offered in the resident district; and

(2) A student who has completed two or more school years in a nonresident district without a release but with the knowledge of such nonresident attendance by the superintendent or any member of the board of directors of the resident district.

**WSR 89-23-002**  
**PREPROPOSAL COMMENTS**  
**DEPARTMENT OF HEALTH**  
 [Filed November 3, 1989, 12:58 p.m.]

Subject of Possible Rule Making: Proposes mandatory reporting relative to podiatrists by health care institutions, podiatric medical associations or societies, health care service contractors and disability insurance carriers, state and federal agencies, professional review organizations, and licensees to report malpractice actions.

Persons may Comment on this Subject in the Following Ways: Written: Department of Health, Podiatry Board, P.O. Box 9012, Olympia, Washington 98504-8001, until November 7, 1989; or Orally: Department of Licensing, Regional Office, Suite 300, 464 12th Avenue, Seattle, WA, November 8, 1989.

Other Information or Comments by Agency at this Time: Proposal under consideration and review by the Podiatry Board at this time.

October 12, 1989  
 Arlene A. Robertson  
 Program Manager

**WSR 89-23-003**  
**PERMANENT RULES**  
**DEPARTMENT OF LABOR AND INDUSTRIES**  
 [Filed November 3, 1989, 3:27 p.m.]

Date of Adoption: November 3, 1989.

Purpose: Implement chapter 216, Laws of 1989, regulating house-to-house sales.

Citation of Existing Rules Affected by this Order: Repealing WAC 296-125-030 (2)(e); and amending WAC 296-125-015.

Statutory Authority for Adoption: RCW 43.22.270.

Other Authority: Chapter 216, Laws of 1989.

Pursuant to notice filed as WSR 89-16-087 on August 2, 1989.

Changes Other than Editing from Proposed to Adopted Version: The permanent rule exempts from coverage sales at the place of residence of the employee.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Chapter 216, Laws of 1989, prohibits minors from engaging in sales house-to-house unless registered with the Department of Labor and Industries. Early implementation is necessary to prevent disruption of ongoing enterprises when the emergency rule expires on November 20, 1989.

Effective Date of Rule: November 20, 1989.

November 3, 1989  
 Joseph A. Dear  
 Director

**AMENDATORY SECTION** (Amending Order 76-15, filed 5/17/76)

WAC 296-125-015 **DEFINITIONS**. For the purposes of this ~~((order))~~ chapter:

(1) A "minor" is a person of either sex who is under the age of 18 years.

(2) "Employ" means to engage, suffer or permit to work.

(3) "Employee" means any minor employed by an employer.

(4) "Employer" means any person, association, partnership, private or public corporation who employs or exercises control over the wages, hours or working conditions of a minor.

(5) "Division" means ~~((industrial-relations))~~ employment standards, apprenticeship and crime victims division, Washington state ((of)) department of labor and industries.

**AMENDATORY SECTION** (Amending Order 77-32, filed 12/30/77)

WAC 296-125-030 **PROHIBITED AND HAZARDOUS EMPLOYMENT**. (1) The following employments are prohibited for all minors, unless specifically permitted in the text of the hazardous occupations orders in nonagricultural occupations of the child labor provisions of the Federal Fair Labor Standards Act, as now or hereafter amended.

(a) Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components.

(b) Occupations involving regular driving of motor vehicles. Occasional driving is permissible if: The minor has a valid state driver's license for the type of driving involved; driving is restricted to daylight hours, vehicle gross weight is under 6,000 pounds; the minor has completed a state-approved driver education course; and seat belts are provided in the vehicle and the minors have been instructed to use them.

(c) All mining operations.

(d) Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill.

(e) Occupations involving operation of power-driven wood-working machines, power-driven metal-forming punching and shearing machines, power-driven bakery machines, power-driven paper products machines, circular saws, band-saws and guillotine shears, elevators and other power-driven hoisting apparatus.

(f) Occupations involving potential exposure to radioactive substances and to ionizing radiations.

(g) Occupations involving slaughtering, meat-packing or processing and rendering.

(h) Occupations involving wrecking, demolition and shipbreaking operations.

(i) All roofing operations.

(j) Occupations involving excavations.

(k) Occupations involving manufacturing of brick, tile and kindred products.

(2) The following types of work are prohibited for all minors:

(a) Work involving operation of or working in proximity to earth-moving machines, cranes, garbage compactors or other heavy equipment of similar nature.

(b) Work in establishments or work places being picketed during the course of a labor dispute.

(c) Work as a nurses' aide, unless the minor is a student in a bona fide nursing training program or has successfully completed such a program.

(d) Work as a maid or bell-hop in motels or hotels, unless the minor is accompanied by a responsible adult whenever the work requires the minor to enter assigned guest rooms.

(e) ~~((Work as a canvasser or peddler from house to house:~~

(f)) Work in shooting galleries, penny arcades, sauna-massage parlors or body painting studios.

#### NEW SECTION

WAC 296-125-110 APPLICABILITY. Unless exempted by Washington state or federal law every employer who, after the effective date of these regulations, employs one or more minor workers in house to house sales or advertises to employ persons in house to house sales specifying in the advertisement a minimum age under twenty-one years, shall have a valid registration certificate to employ minors from the employment standards, apprenticeship and crime victims division, department of labor and industries.

#### NEW SECTION

WAC 296-125-115 DEFINITIONS. For the purposes of WAC 296-125-110 through 296-125-175:

(1) "Employ" means to engage, suffer, or permit to work, but does not include voluntary or donated services performed for no compensation, or without expectation or contemplation of compensation as the adequate consideration for the services performed, for an educational, charitable, religious, state or local government body or agency, or nonprofit organization, or services performed by a newspaper vendor or carrier or a person in the employ of his or her parent or stepparent.

(2) "House to house sales" means a sale or other transaction in consumer goods, the demonstration of products or equipment, the obtaining of orders for consumer goods, or the obtaining of contracts for services, in which the employee personally solicits the sale or transaction at a place other than the place of business of the employer or the residence of the employee.

#### NEW SECTION

WAC 296-125-120 FILING OF REGISTRATION CERTIFICATE. Prior to the employment of one or more minors, each employer seeking to employ minors in house to house sales shall file with the division an application for a registration certificate. When validated by the signature of the division's supervisor of employment standards, such a registration certificate will authorize the employer to employ any number of minor workers in house to house sales in accordance with the conditions established.

#### NEW SECTION

WAC 296-125-125 APPLICATION FOR INITIAL AND RENEWED REGISTRATION. (1) To obtain a registration certificate, an employer must:

(a) Complete an application for a registration certificate on a form provided by the department.

(b) Supply the information required by WAC 296-125-145 if the employer seeks to transport minors out of the state.

(c) Applications for issuance or renewal of a registration certificate must be sent to:

Department of Labor  
& Industries  
ESAC Division  
Mailstop: HC-710  
Olympia, WA 98504

(2) The department shall send a renewal notice to the employer's last recorded address at least forty-five days before the employer's registration certificate expires. Except as provided in WAC 296-125-165, a registration certificate shall be renewed if the employer returns the renewal notice and provides all required information.

#### NEW SECTION

WAC 296-125-130 POSTING. At least one copy of the registration certificate must be posted in plain view of all employees within the confines of the work place specified in the registration certificate.

#### NEW SECTION

WAC 296-125-135 IDENTIFICATION CARDS.

(1) Every employer shall provide an identification card to each minor employee employed in house to house sales in a form prescribed by the director.

(2) Every minor employee employed in house to house sales shall show the identification card to each customer or potential customer.

(3) An identification card shall be in the possession of each minor employee during all work hours.

#### NEW SECTION

WAC 296-125-140 HOUSE TO HOUSE EMPLOYMENT STANDARDS. In addition to the requirements of WAC 296-125-027,

(1) Minors may not be employed in house to house sales during school hours, nor before 7:00 a.m. nor after 9:00 p.m.

(2) During all work hours, minors employed in house to house sales must be supervised by a responsible adult who is at least twenty-one years of age, with each supervisor responsible for no more than five minor employees.

#### NEW SECTION

WAC 296-125-145 TRANSPORTING MINORS OUT-OF-STATE. Prior to transporting minor employees employed in house to house sales out of the state, every employer shall obtain written authorization from the minor's parents or legal guardian.

#### NEW SECTION

WAC 296-125-155 RECORDKEEPING. The employer shall be responsible for obtaining and keeping on

file all information as required in WAC 296-125-050 and 296-125-145. The records shall be made available for inspection and copying at the request of the department.

#### NEW SECTION

WAC 296-125-160 **REVOCATION OF REGISTRATION CERTIFICATE.** The supervisor of employment standards may revoke any employer's registration certificate upon a showing that the conditions of its issuance are not being met, or that other conditions exist which are detrimental to the health, safety, or welfare of the minor.

#### NEW SECTION

WAC 296-125-165 **DENIAL OF REGISTRATION CERTIFICATE.** The department may refuse to issue or renew a registration certificate. If the department refuses to issue or renew a registration certificate for any reason, it shall serve on the employer a notice of denial. The notice of denial shall explain the grounds for denial of the certificate. The department may refuse to renew a registration certificate if the conditions of its initial issuance are not being met.

#### NEW SECTION

WAC 296-125-170 **EMPLOYMENT OF MINORS UNDER THE AGE OF SIXTEEN.** Minors under the age of sixteen are prohibited from employment in house to house sales unless a variance is granted, consistent with all other requirements of this chapter, in accordance with procedures outlined in WAC 296-126-130.

#### NEW SECTION

WAC 296-125-175 **LENGTH OF REGISTRATION PERIOD.** Registration certificates shall be issued for a one-year period.

### **WSR 89-23-004**

#### **PERMANENT RULES**

### **DEPARTMENT OF LABOR AND INDUSTRIES**

[Filed November 3, 1989, 3:28 p.m.]

Date of Adoption: November 3, 1989.

Purpose: To implement changes in eligibility for the crime victims compensation program directed by the 1989 legislature.

Citation of Existing Rules Affected by this Order: Amending WAC 296-30-010.

Statutory Authority for Adoption: RCW 7.68.030.

Other Authority: RCW 7.68.070 (12) and (16) and 51.04.030.

Pursuant to notice filed as WSR 89-14-123 on July 5, 1989; and WSR 89-19-020 on September 11, 1989.

Changes Other than Editing from Proposed to Adopted Version: The version adopted incorporates the department policy that persons need not submit information necessary to determine eligibility for services offered

by Department of Social and Health Services if the crime victims' benefits sought are not services provided under Department of Social and Health Services programs, such as counseling for victims of sexual abuse.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Chapter 5, Laws of 1989 1st ex. sess., prohibits the department from providing crime victims compensation for services covered by certain Department of Social and Health Services programs. Early implementation is necessary to meet this requirement after expiration of the emergency rule on November 10, 1989.

Effective Date of Rule: November 10, 1989.

November 3, 1989

Joseph A. Dear

Director

#### AMENDATORY SECTION (Amending Order 85-37, filed 12/11/85)

WAC 296-30-010 **DEFINITIONS.** Whenever used in these rules, the following words mean:

(1) "Innocent victim" means any person whose injury was not the direct, proximate result of his or her consenting to, provoking, or inciting the criminal act that resulted in the injury.

(2) "Bodily injury" means any harmful or offensive touching, and includes severe emotional distress where no touching takes place when:

(a) Claimant is not the object of the criminal act and:

(i) The distress is intentionally or recklessly inflicted;

(ii) The distress is inflicted by extreme or outrageous conduct;

(iii) The claimant has a reasonable apprehension of imminent bodily harm;

(iv) The claimant is in the immediate vicinity of the criminal act at the time the criminal act takes place.

(b) Claimant is the victim of the criminal act and:

(i) The distress is intentionally inflicted;

(ii) The distress is inflicted by outrageous or extreme conduct; and

(iii) The claimant had a reasonable apprehension of imminent bodily harm.

(3) "Private insurance" means sources of recompense available by contract, such as life or disability insurance.

(4) "Public insurance" means any state or federal statutory welfare and insurance plan that compensates victims or their beneficiaries as a result of the claimed injury or death. This does not include state, federal, or private deferred income retirement plans.

(5) The test used to define "the result of" as used in RCW 7.68.070 (3)(a) and (b) is two pronged. First, it must be determined that cause in fact exists, and second, it must then be determined that proximate cause exists.

(a) Cause in fact exists if "but for" the acts of the victim the crime that produced the injury would not have occurred.

(b) Proximate cause exists if, once cause in fact is found, it is determined that the acts of the victim:

(i) Resulted in a foreseeable injury to the victim;

(ii) Played a substantial role in the injury; and

(iii) Were the direct cause of the injury.

(6) "Institutions maintained and operated by department of social and health services" means those institutions in which the department of social and health services assumes responsibility for medical coverage of the institution's residents.

(7) "Reasonable cooperation" generally exists when the claimant is:

(a) Willing to talk to police and give information to aid in the investigation; and

(b) Willing to assist in the prosecution of the alleged criminal.

(8) A person is "unjustly enriched" within the meaning of RCW 7.68.070(15) when it would be deficient in justice and fairness, or inequitable, to allow that person to obtain, or have control of or access to, benefits or compensation paid as a result of an injury to a victim of crime.

(9) "Department" means the department of labor and industries.

(10) "Services provided" means services covered under chapter 74.09 RCW or Title XIX of the Federal Social Security Act that are: (a) Provided by health services providers with credentials recognized by the department for purposes of payment under chapter 51.36 or 7.68 RCW; and (b) available and equivalent to those services covered by the department under Title 51 or chapter 7.68 RCW.

#### NEW SECTION

**WAC 296-30-025 MEDICAL ASSISTANCE ELIGIBILITY.** The benefits provided under chapter 7.68 RCW that are available and equivalent to those services provided under chapter 74.09 RCW or Title XIX of the Federal Social Security Act are not available to persons eligible for services provided under chapter 74.09 RCW or Title XIX of the Federal Social Security Act, except to the extent that costs for such services exceed service limits established by the department of social and health services. Accordingly:

(1) Applicants for benefits provided under chapter 7.68 RCW shall provide, concurrent with their application for crime victims' benefits, information requested by the department to determine the applicant's probable eligibility for services provided under chapter 74.09 RCW and Title XIX of the Federal Social Security Act. The applicant, or a person on behalf of the applicant, shall send the application and other requested information to the offices of the crime victims' compensation program in Olympia.

(2) The department shall provide application forms for crime victims' benefits, any forms used to determine probable eligibility for services provided under chapter 74.09 RCW or Title XIX of the Federal Social Security Act, and a pamphlet describing the crime victims' compensation program to hospitals, law enforcement agencies, community organizations, prosecutor based victim/witness units and, as requested, to other service groups. The pamphlet shall (a) explain the limitations of benefits provided under chapter 7.68 RCW; (b) provide assistance for an applicant in completing the forms; and (c)

provide an applicant information about where additional assistance is available if the instructions for completing the forms are not understood or if unusual circumstances exist.

(3) Any claimant who is eligible for benefits provided under chapter 7.68 RCW and who the department determines may be eligible for services provided under chapter 74.09 RCW and Title XIX of the Federal Social Security Act, based upon the completed eligibility form referenced above, shall apply to the department of social and health services for a conclusive determination of eligibility for such services.

(4) Because a claimant's circumstances can change and in order to assure that the department provides crime victims' benefits secondary to other available public and private insurance, persons receiving benefits provided under chapter 7.68 RCW but not initially eligible to receive services provided under chapter 74.09 RCW or Title XIX of the Federal Social Security Act shall annually provide information requested by the department to determine the applicant's probable eligibility for services provided under chapter 74.09 RCW and Title XIX of the Federal Social Security Act in order to continue receiving benefits under chapter 7.68 RCW.

(5) The department shall not provide benefits for services provided under chapter 74.09 RCW and Title XIX of the Federal Social Security Act to persons who refuse or who otherwise fail to cooperate or comply in good faith with the requirements of this section, except to the extent that the costs for such services exceed service limits established by the department of social and health services.

(6)(a) Except for claims submitted pursuant to RCW 7.68.170 for sexual assault examinations, or as provided in (b) of this subsection the department shall not consider applications for benefits under chapter 7.68 RCW until the information requested to determine probable eligibility for services provided under chapter 74.09 RCW and Title XIX of the Federal Social Security Act is received by the department.

(b) If the applicant seeks only services that are covered under chapter 7.68 RCW but are not services provided under chapter 74.09 RCW or Title XIX of the Federal Social Security Act, such as appropriate counseling provided by a health care provider pursuant to WAC 296-30-080, the department shall consider applications for benefits under chapter 7.68 RCW without requiring information to determine probable eligibility for other services.

#### **WSR 89-23-005**

#### **NOTICE OF PUBLIC MEETINGS DEPARTMENT OF HEALTH (Board of Physical Therapy)**

[Memorandum—November 1, 1989]

The following future meeting dates have been scheduled for the Washington State Board of Physical Therapy for the year 1990:

January 4, 1990  
March 27, 1990  
May 22, 1989  
July 23-24, 1990  
September 25, 1990  
November 27, 1990

**WSR 89-23-006**  
**RULES OF COURT**  
**STATE SUPREME COURT**  
[November 2, 1989]

IN THE MATTER OF THE ADOPTION OF THE AMENDMENT TO INTERPRETER CODE OF CONDUCT NO. 25700-A-439 ORDER

The Interpreter Advisory Committee having approved the proposed amendment to Interpreter Code of Conduct and the Court having determined that the amendment will aid in the prompt and orderly administration of justice and having further determined that an emergency exists which necessitates an early adoption;

Now, therefore, it is hereby

**ORDERED:**

(a) That the amendment as attached hereto is adopted.

(b) That pursuant to the emergency provisions of GR 9(i), the amendment will be published expeditiously in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 2nd day of November, 1989.

Keith M. Callow

Utter, C. J.

Andersen, J.

Robert F. Brachtenbach

Durham, J.

Dolliver, J.

Dore, J.

Smith, J.

**GENERAL RULE 11.1**  
**CODE OF CONDUCT FOR COURT**  
**INTERPRETERS**

Preamble. All Language interpreters serving in a legal proceedings, whether certified or uncertified, shall abide by the following code of conduct:

A language interpreter who violates any of the provisions of this code is subject to a citation for contempt, disciplinary action or any other sanction that may be imposed by law. The purpose of this Code of Conduct is to establish and maintain high standards of conduct to preserve the integrity and independence of the adjudicative system.

(a) A language interpreter, like an officer of the court, shall maintain high standards of personal and professional conduct that promote public confidence in the administration of justice.

(b) A language interpreter shall interpret or translate the material thoroughly and precisely, adding or omitting nothing, and stating as nearly as possible what has been stated in the language of the speaker, giving consideration to variations in grammar and syntax for both languages involved. A language interpreter shall use the level of communication that best conveys the meaning of the source, and shall not interject the interpreter's personal moods or attitudes.

(c) When a language interpreter has any reservation about ability to satisfy an assignment competently, the interpreter shall immediately convey that reservation to the parties and to the court. If the communication mode or language of the non-English speaking person cannot be readily interpreted, the interpreter shall notify the appointing authority or the court.

(d) No language interpreter shall render services in any matter in which the interpreter is a potential witness, associate, friend, or relative of a contending party, unless a specific exception is allowed by the appointing authority for good cause noted on the record. Neither shall the interpreter serve in any matter in which the interpreter has an interest, financial or otherwise, in the outcome. Nor shall any language interpreter serve in a matter where the interpreter has participated in the choice of counsel.

(e) Except in the interpreter's official capacity, no language interpreter shall discuss, report, or comment upon a matter in which the person serves as interpreter. Interpreters shall not disclose any communication that is privileged by law without the written consent of the parties to the communication, or pursuant to court order.

(f) A language interpreter shall report immediately to the appointing authority in the proceeding any solicitation or effort by another to induce or encourage the interpreter to violate any law, any provision of the rules which may be approved by the courts for the practice of language interpreting, or any provisions of this Code of Conduct.

(g) Language interpreters shall not give legal advice and shall refrain from the unauthorized practice of law.

**WSR 89-23-007**  
**RULES OF COURT**  
**STATE SUPREME COURT**  
[November 2, 1989]

IN THE MATTER OF THE ADOPTION OF THE AMENDMENT TO CrRLJ 3.2(o) NO. 25700-A-440 ORDER

The District and Municipal Court Judges' Association having approved the proposed amendment to CrRLJ 3.2(o) and the Court having determined that the amendment will aid in the prompt and orderly administration of justice and having further determined that an emergency exists which necessitates an early adoption;

Now, therefore, it is hereby

**ORDERED:**

(a) That the amendment as attached hereto is adopted.

(b) That pursuant to the emergency provisions of GR 9(i), the amendment will be published expeditiously in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 2nd day of November, 1989

Keith M. Callow

Robert F. Utter

Andersen, J.

Durham, J.

Dolliver, J.

Dore, J.

Smith, J.

**PROPOSED AMENDMENT TO  
CrRLJ 3.2 (New Section)**

**(o) Forfeitable Fisheries Offenses**

The following offenses shall be forfeitable as a final disposition, in the amounts listed, to include statutory assessments:

WHERE A BAIL AMOUNT IS SHOWN, THE BREAKDOWN IS:	BAIL	60% PSEA	30% PSEA	TOTAL
220-110-030(9) No Hydraulic Approval at Work Site	100	60	30	190

**COMMERCIAL LICENSES**

RCW					
75.28.690					
75.28.010(2)	No Commercial License On Person	42	21	133	
75.28.070	Failure to Display License	70	42	133	
75.28.081	(Deleted)				
WAC					
220-20-012	Sell Without License on Person	70	42	21	133

**COMMERCIAL FOOD FISH**

**COMMERCIAL STURGEON**

WAC					
220-20-020(1)	Undersize Sturgeon (per fish)	70	42	21	133

**COMMERCIAL SALMON**

WAC					
220-20-015(3)	Undersize Salmon	1 fish 70	42	21	133
		2 fish 80	48	24	152
		3 fish 100	60	30	190
		4 fish 120	72	36	228
		Over 4 fish	+38 each fish over		

**COMMERCIAL SHELLFISH**

**COMMERCIAL CLAM**

WAC					
220-52-019(7)	Failure to Possess Geoduck Tract Map Aboard Harvest Vessel	70	42	21	133

**COMMERCIAL CRAB**

220-20-025(2)	Commercial Possession of Soft Shell Crab Up to 6 Crabs	70	42	21	133
220-52-040(4)	Possession of Female Dungeness Crab Up to 6 Crabs	120	72	36	228

**COMMERCIAL CRAWFISH**

WAC					
220-52-060	Possession of Undersize Crawfish Up to 6 Crawfish	70	42	21	133

**COMMERCIAL OYSTER**

WAC					
220-72-073	Failure to Obtain Oyster Transfer Permit	100	60	30	190

**SPORT VIOLATIONS**

**GENERAL**

RCW					
75.25.090	No Personal Use License	40	24	12	76
75.25.140	Failure To Provide License Upon Request or to Provide Signature for Comparison	40	24	12	76
75.25.160	License Falsification	100	60	30	190
WAC					
220-55-070	Invalid Catch Record Card	40	24	12	76
220-55-130	Invalid Personal Use License	40	24	12	76
220-56-115	Personal Use Gear Violations	70	42	21	133
220-56-115(6)	No Physical Control of Gear	40	24	12	76
220-56-140	Wastage of Personal Use Food Fish and Shellfish	100	60	30	190
220-56-175(2)	Failure to Record Catch	25	15	7	47
220-56-175(4)	Failure to Return Catch Record Card	25	15	7	47
Cite Appropriate WAC:					
	Closed Season	70	42	21	133
	Closed Area	70	42	21	133

**SPORT FOOD FISH**

**BOTTOMFISH (EXCEPT LINGCOD)**

WAC					
220-56-235	Overpossession (per fish)	40	24	12	76

**SPORT HALIBUT**

WAC					
220-56-245	Overpossession (per fish)	70	42	21	133

**SPORT HERRING**

WAC					
220-56-240(3)	Overpossession (base)	30	18	9	57
	Plus Per Pound Over Limit	1.06	.63	.31	2

**SPORT LINGCOD**

WAC					
220-56-235	Undersize	40	24	12	76
	Overpossession	1 fish 40	24	12	76
		2 fish 60	42	21	114
		3 fish 80	48	24	152
		4 fish 100	60	30	190
	over 4 fish	+38 each fish over			

**SPORT SMELT**

WAC					
220-56-240(2)	Overpossession (base)	30	18	9	57
	Plus per Pound Over Limit	1.06	.63	.31	2
220-56-265	Unlawful Smelt Gear	40	24	12	76
220-56-275	Failure To Retain First 20 Pounds of Smelt	40	24	12	76

**SPORT STURGEON**

RCW					
75.25.125	No Catch Record Card	40	24	12	76
WAC					
220-56-240(1)	Overpossession (per fish)	70	42	21	133
220-56-282	Sturgeon Gear Violation	40	24	12	76
220-56-290	Sturgeon Closed Hours	70	42	21	76
220-56-295(2)	Gaffing Sturgeon (per fish)	70	42	21	133
220-56-300	(Deleted)				
220-56-305	(Deleted)				

**SPORT SALMON**

RCW					
75.25.100	No Catch Record Card	40	24	12	76
75.25.150	Possession Without License	40	24	12	76
WAC					
220-56-116	Barbed Hook Violation	25	15	7	47
220-56-190	Overpossession	1 fish 70	42	21	133
	Oversize Salmon	1 fish 70	42	21	133
	Undersize Salmon	1 fish 40	24	12	76
		2 fish 60	36	13	114
		3 fish 80	48	24	152
		4 fish 100	60	30	190
	over 4 fish	+38 for each fish over			
220-56-205	Nonbuoyant Lure Violations	70	42	21	133
220-56-210	Fly Fishing Violations	40	24	12	76
220-56-215	Possession of Snagged Salmon (per fish)	70	42	21	133
220-56-225	Closed Hours - Freshwater	70	42	21	133

**SPORT SHELLFISH**

**GENERAL**

WAC					
220-56-312	Overpossession (base) Except: Dungeness Crab; Geoduck; Hardshell Clam; Oyster; Shrimp Plus per limit or fraction in excess of 2 daily bag limits	40 25	24 12	21 7	76 47
220-56-315(2)	Excessive Pots/Ring Nets				
	1 Unit of Gear	40	24	12	76
	2 Units of Gear	60	36	18	114
	3 Units of Gear	80	48	24	152
	Over 3 Units of Gear	+38 each unit over			
220-56-320(1)	Unmarked/Improperly Marked Gear/Floating Line				
	1 Unit of Gear	40	24	12	76
	2 Units of Gear	60	36	18	114
	3 Units of Gear	80	48	24	152
	4 Units of Gear	100	60	30	190
	Over 4 Units of Gear	+38 each unit over			
220-56-320(5)	No Escape Mechanism (per unit)	40	24	12	76
220-56-340(3)	Failure to have Separate Clam Containers	25	15	7	47

**SPORT DUNGENESS CRAB**

WAC					
220-20-025(2)	Personal Use Possession of Soft Shell Crab				
	Up to 6 Crabs	40	24	12	76
	More than 6 Crabs (base)	100	60	30	190
		+38 each crab over 6			
220-56-310(18)	Overpossession				
	Up to 6 Crabs	40	24	12	76
	More than 6 Crabs (base)	100	60	30	190
		+38 each crab over 6			
220-56-320(3)	No Escape Ring	40	24	12	76
220-56-335(1)	Possession of Female Crab				
(2)	Possession of Undersize Crab				
	Up to 6 Crabs	40	24	12	76
	More than 6 Crabs (base)	100	60	30	190
		+38 each crab over 6			
220-56-335(4)	Possession in Field with Back Removed				
	1 Crab	40	24	12	76
	2 Crab	60	36	18	114
	3 Crab	80	48	24	152
	4 Crab	100	60	30	190
	Over 4 Crab	+38 each crab over 4			

**SPORT GEODUCKS**

WAC					
220-56-312	Overpossession				
	1 Clam	40	24	12	76
	2 Clams	60	36	18	114
	3 Clams	80	48	24	152
	4 Clams	100	60	30	190
	Over 4 Clams	+38 for each clam over 4			
220-56-335(2)	Possession of Geoduck Neck Only				
	1 Neck	40	24	23	76
	2 Necks	60	36	18	114
	3 Necks	80	48	24	152
	4 Necks	100	60	30	190
	Over 4 Necks	+38 for each neck over 4			

**SPORT HARDSHELL CLAMS**

WAC					
220-56-312	Overpossession (base)	40	24	12	76
	Plus Per Clam Over Limit	1.06	.63	.31	2
220-56-355(1)	Failure To Fill Holes	25	15	7	47
220-56-355(3)	Undersize Clams (base)	40	24	12	76
	Plus per Clam Undersize	1.06	.63	.31	2

**SPORT OYSTER**

RCW					
75.24.050	Taking Oysters from State Oyster Reserve	70	42	21	133
WAC					
220-56-312	Overpossession (base)	40	24	12	76
	Plus per Oyster over 18	5.27	3.16	1.57	10
220-56-385	Possession in Shell (base)	40	24	12	76
	Plus per Oyster over 18	5.27	3.16	1.57	10

**SPORT RAZOR CLAMS**

RCW					
75.25.150	Possession without License	40	24	12	76
75.25.140(2)	License Not Visible	25	15	7	47
WAC					
220-20-025(1)	Drive on Razor Clam Beds	70	42	21	133
220-56-310	Overpossession				
	First 15 over limit (per clam)	5.27	3.16	1.57	10
	More than 15 over limit	10	6	3	19
220-56-325	Failure to Retain First 15	40	24	12	76
220-56-340	Razor Clam Gear Violation	40	24	12	76

**SPORT SHRIMP**

RCW					
75.25.150	Possession without License	40	24	12	76
WAC					
220-56-312	Overpossession				
	Up to 10 pounds over limit	40	24	12	76
	10 to 20 pounds over limit	60	42	21	114
	20 to 30 pounds over limit	80	48	24	152
	30 to 40 pounds over limit	100	60	30	190
	More than 40 pounds over	+38 for each 10 pounds/fraction			

Reviser's note: The spelling errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 89-23-008**  
**RULES OF COURT**  
**STATE SUPREME COURT**  
[November 2, 1989]

IN THE MATTER OF THE ADOPTION OF THE AMENDMENT TO CR 79 NO. 25700-A-441 ORDER

The Washington State Bar Association having approved the proposed amendment to CR 79 and the Court having determined that the amendment will aid in the prompt and orderly administration of justice and having further determined that an emergency exists which necessitates an early adoption;

Now, therefore, it is hereby

ORDERED:

(a) That the amendment as attached hereto is adopted.

(b) That pursuant to the emergency provisions of GR 9(i), the amendment will be published expeditiously in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 2nd day of November, 1989.

Dore, J.

Robert F. Utter

Keith M. Callow, C.J.

Durham, J.

Dolliver, J.

Andersen, J.

Smith, J.

**CIVIL RULE 79**  
**BOOKS AND RECORDS KEPT BY THE CLERK**

- (a) Unchanged.
- (b) Unchanged.
- (c) Unchanged.

- (d) Unchanged.  
 (e) Destruction of Records. [Reserved. See RCW 36-23.065 and GR 15.]  
 (f) Unchanged.

**WSR 89-23-009**  
**RULES OF COURT**  
**STATE SUPREME COURT**  
 [November 2, 1989]

IN THE MATTER OF THE ADOPTION OF THE AMENDMENTS TO REGULATIONS 103 AND 106 TO RLD 13.5 NO. 25700-A-442 ORDER

The Washington State Bar Association having recommended the adoption of the amendments to Regulations 103 and 106 to RLD 13.5, and the Court having approved the proposed amendments to the regulations;

Now, therefore, it is hereby

**ORDERED:**

That the amendments to Regulations 103 and 106 to RLD 13.5 are hereby adopted.

DATED at Olympia, Washington this 2nd day of November, 1989.

Keith M. Callow

CHIEF JUSTICE

**PROPOSED TRUST ACCOUNT REGULATION**  
**AMENDMENTS**

Regulation 103. [add new section]

(f) When the audit is concluded, if it is determined pursuant to Reg. 104(a) that no further investigation, examination or action is appropriate, the Association's copies of the audit report, working papers or other materials relating to the audit shall be destroyed, except that the Association shall maintain a record showing the identity of any attorney or firm audited and the dates of the audit to ensure that the restrictions of Reg. 105(a) are complied with.

Regulation 106. [add new paragraph at end of regulation]

Part Two may also require disclosure of the account numbers for each separate identifiable bank account maintained as a depository for client funds.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the Supreme Court and appear herein pursuant to the requirements of RCW 34.08.040.

**WSR 89-23-010**  
**RULES OF COURT**  
**STATE SUPREME COURT**  
 [November 2, 1989]

In Re:  
 ESTABLISHMENT OF TEMPORARY

NO. 25700-A-443

**PROCEDURES FOR EXPERIMENTAL  
 USE OF VIDEOTAPE EQUIPMENT  
 TO RECORD COURT PROCEEDINGS** ORDER

**1. SCOPE OF ORDER**

The provisions of this Order apply only when videotape equipment has been used to record the trial court proceeding and are limited to appeals from those counties where the appeal is to Division II or Division III of the Court of Appeals. This Order supersedes the provisions of Orders 25700-A-400 and 25700-A-419. This is a temporary Order and terminates pursuant to Section 4E.

**2. TRIAL COURT PROCEDURES**

A. Official Record. The official record of a videotaped trial court proceeding shall consist of two (2) videotape recordings, recorded simultaneously. One shall be labeled the "A" tape and the other the "B" tape.

B. Identification of the Tapes. The trial court shall label both the "A" tape and the "B" tape on the side and establish an indexing system to track and number tapes. The Office of the Administrator for the Courts is responsible for establishing standards for identifying tapes and for ensuring compliance with those standards.

The label on tapes of trials must include the tape number, the case name and number and the date of the proceeding. The label on miscellaneous tapes must include the tape number and the beginning date of proceedings included on the tape.

C. Certifying the Record. Both the "A" tape and the "B" tape shall bear a label on the top portion of the tape certifying that it is "a full, true and correct record of the proceedings", and the label shall be dated and signed by a person authorized by the trial judge to certify the record. If the tape is a copy of the original record of proceedings, the label must certify it is a "copy of a full, true and correct record" and this label must also be dated and signed by a person authorized by the trial judge to certify copies of tapes.

D. Recording Tape Numbers in Case Files. Each case file shall include the number of the tapes that contain any portion of the proceedings of that case. If any of the listed tapes also include other actions, the information in the file should include the time on the tape where the proceeding in that file started and ended. A copy of the trial log, as outlined below in 2E, can be included in the file to satisfy this requirement.

E. Exhibit List; Trial Log. The trial judge or a designee shall keep a written log of what activity is on each tape. At a minimum the log information for a trial must include the case name and number and tape references to the following: Identification of direct, cross, redirect and recross examination of witnesses; offering and rulings on exhibits; motions; instructions of the court; instructions requested by parties; rulings of the court; and any other references that the court feels are appropriate. The tape references shall include the date, hour, minute and second as shown on the tape.

If the log is for a tape containing numerous miscellaneous actions, the case name and number, type of proceeding, and time of each proceeding must be noted on the log.

The Office of the Administrator for the Courts shall provide a form with a suggested format for maintaining the log and shall review logs periodically for compliance with the provisions in this section.

A copy of the trial log shall be provided with each duplicated tape made for the parties. One copy of the log shall be transferred to the clerk's office with the "A" tape and one copy shall remain with the court with the "B" tape. A copy of the log may also be put into each case file listed in a log to satisfy the requirement above of 2D to file tape numbers of each case.

F. Custody of the Tapes. The "A" copy shall be transferred to the clerk's office and the trial court shall retain the "B" copy, except in those counties where the trial court retains custody of both tapes. The two copies shall be stored separately.

G. Retention of Tapes. If no appeal has been taken one year after disposition of a case, the "B" tape may be erased and recycled.

H. Tape is a Public Record. The tape is a public record unless specifically sealed by the court.

I. Exhibits. By pre-trial order, the trial judge may require that at the time an exhibit is introduced into evidence, a photograph or photographs of the exhibit be submitted and included as part of the official record. The photograph(s) shall serve as part of the official record, and the exhibit itself may be returned for into evidence may be, in the trial judge's discretion, either the transcript of the deposition or a videotape recording of the deposition.

### 3. APPELLATE PROCEDURES

A. Notice of appeal. When the clerk's office sends a notice of appeal of a videotaped proceeding to the appellate court, the notice should be clearly stamped in red, or in another identifiable manner, "Appeal from a videotaped proceeding." This provides the appellate court with notice that the rules governing a videotaped appeal as outlined in this Order should be followed. This provision also applies when the court of appeals transfers an appeal to the Supreme Court.

B. Designation of clerk's papers. The clerk's office shall notify the appellate court when clerk's papers have been designated and shall forward a copy of the designation to the court of appeals. Appellant's brief is due 45 days after this designation and the appellate court needs the information in order to establish the date the brief is due.

C. Record on Review. The Rules of Appellate Procedure (RAP) requiring the report of proceedings to be transcribed in the form of a written record (RAP 9.1(b)) and the Rules pertaining to the transcription and statement of arrangements, content and notice of partial report of proceedings and issues (RAP 9.2 (a)(b), and (c)) are superceded and not applicable to appeals filed under this Order.

Instead, the record on review shall consist of the "A" tape that recorded the proceedings, except that if the case being appealed involves numerous proceedings recorded on portions of multiple tapes, a certified copy of all of the proceedings being appealed, re-recorded in sequence, will be accepted as the record on review.

If multiple proceedings are re-recorded for transfer to the appellate court, they must be recorded at the "SP" mode, which provides for a maximum of two hours of activity on a tape. This will ensure that the quality of the dubbed copy will be the same as the original copies.

D. Transferring the record to Appellate Court. The clerk's office is responsible for transmitting the record on review to the appellate court. The party seeking review has no responsibility to order or to obtain a record for the appellate court.

When a proceeding is appealed, the clerk's office shall refer to the case file to determine which tapes include proceedings that are being appealed. The clerk's office shall transfer the "A" set of tapes when the tapes include only those proceedings being appealed. If there are portions of the case being appealed on several tapes, the clerk's office shall arrange with the court to re-2C. record these portions, in sequence, on another tape(s), and the tapes should be certified at as outlined above in

To avoid accidental erasure, the plastic tab on the left-hand side of the tape should be broken off prior to forwarding tapes to the appellate court.

The tapes should be forwarded to the appellate court along with the clerk's papers and exhibits.

E. Returning tapes to trial court. When mandating a case, the "A" tapes should be returned to the trial court.

F. Duplication of the Tapes. The trial court shall arrange for the duplication of tapes for use by counsel in preparing an appeal. Each party is responsible for contacting the court and obtaining tapes. The court shall charge no more than \$40 for each duplicate videotape requested.

In cases where the requesting party has been declared indigent, the trial court can recover its costs for providing tapes to indigent persons. A statement of the charges should be submitted to the appellate court when the tapes are submitted.

G. Transcripts. No transcript of court proceedings will be part of the record on appeal unless ordered by the trial court pursuant to RAP 9.5, ordered by the appellate court pursuant to RAP 9.10, under Section 4A of this order, or included in the appendix of a brief as provided in 3H of this order. Any exception to this provision must be granted by the judge who presided over the proceedings being appealed.

If a party wants to request an exception to this provision, the request must be made to the trial judge, who is hereby authorized to suspend the provisions of this Order to allow for transcription of part or all of a proceeding. The motion must specify which portions of the proceeding should be transcribed and a justification for the transcription.

In those cases where a transcript is authorized and the requesting party is indigent, the transcript will be paid for by the state at the same rate paid to court reporters.

Typed transcripts must bear certification by the transcriber that states, "I hereby certify that this is a true and correct record of the proceedings. I do further certify that I am in no way related to or employed by any party in this matter, nor to any counsel, nor do I have any interest in this matter." The signature must be notarized.

H. Briefs. The provisions of RAP 10.1 – 10.8 pertaining to briefs apply to appeals from a videotaped proceeding. However, this Order does alter RAP 10.2(a) regarding the timing of filing a brief and RAP 10.4(f) outlining how to reference the record. The changes are as follows:

(1) RAP 10.2(a): Because there is no report of proceedings to be filed, the brief of an appellant or petitioner shall be filed in the appellate court within 45 days after the party seeking review has filed the designation of clerk's papers and exhibits.

(2) RAP 10.4(f): When referring to the record in the brief, the references are made to a segment of the videotape recording. This reference must include the word "TAPE", the number of the videotape (there may be several tapes for one trial) and the month, day, year, hour, minute and second when the reference begins on the tape. For example: (TAPE No. 1, 10/27/87; 14:24:05) The date and time references on the screen are shown exactly as this procedure indicates.

H. Evidentiary Appendix. An appendix of the evidence (hereinafter referred to as evidentiary appendix) consisting of typewritten portions of the proceedings may be attached to a brief on appeal without filing an exception as outlined in 3F above. An evidentiary appendix shall contain transcriptions of only those parts of the videotape recording that support the specific issues or contentions raised in a brief on appeal, or that relate to the question of whether an alleged error was properly preserved for appellate review. This limitation requires that only those portions of a witness's testimony that meet this criteria be transcribed.

(1) Organization of Appendix. Each evidentiary appendix shall include an index that lists each issue on appeal, identifies which portions of the appendix support each issue and includes the tape reference for each portion. Only that part of a witness's testimony that relates to the issue should be included. Every transcribed portion of the proceedings in the appendix must be listed under one of the issues. The index should also include an alphabetical list of witnesses whose testimony is transcribed in the appendix, listing the tape references with the pages of the appendix where each witness' testimony begins and ends. The name of each witness should be included at the place in the appendix where the testimony of that witness begins.

(2) Purpose of Appendix; Sanctions. The purpose of this evidentiary appendix is to enable the appellate court to review the briefs in a coherent way. Inclusion of transcript unnecessary to the disposition of the case imposes a burden on both the parties and the court and may subject counsel to sanctions as set forth below:

(a) The appellate court may deny costs to, or assess costs against, a party who has been responsible for the insertion of unnecessary material into an evidentiary appendix. Moreover, any counsel who so multiplies an appendix in any brief as to increase delay or costs unreasonably may be required by the court to satisfy personally such excess costs, and may be subject to the imposition of sanctions as set forth in RAP 18.9.

(b) The appellate court may strike any part or all of an evidentiary appendix, or brief to which it is attached, which has been determined by the appellate court to contain unnecessary material.

4. FURTHER PROVISIONS

A. Transcription for Appellate Court. The appellate court may arrange to have transcribed any portion of the videotape recordings it determines is necessary for a decision in the case. The costs of transcriptions under this paragraph shall be certified by the Administrator for the Court, or a designee, and shall be paid by the parties to the appeal in such proportions as directed by the appellate court requesting the transcription.

B. Establishment of Local Procedures. The presiding judge of a superior court in which videotape equipment is used to record court proceedings may, by court order, establish further procedures relating to videotape recording of court proceedings, provided such procedures do not conflict with the provisions of this order, or any statute or court rule.

C. Effect of Order on Practice in Court of Appeals. Nothing in this order shall be construed to supersede the provisions of RAP 5.5.

D. Dissemination of this Order. Each judge using videotape equipment to record court proceedings, or a designee, shall provide a copy of this order to each attorney who handles a case in the judge's court. To ensure that each party seeking review is notified, a copy shall be included with the videotape and log given to the parties.

E. Termination. Authority extended under this rule will automatically terminate on June 30, 1990, except for any proceedings that begin prior to the termination of this Order.

DATED at Olympia, Washington this 2nd day of November, 1989.

Keith M. Callow

Utter, C. J.

Brachtenbach, J.

Durham, J.

Dore, J.

Andersen, J.

Dolliver, J.

Smith, J.

**Reviser's note:** The spelling and typographical errors in the above material appeared in the original copy filed by the Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 89-23-011**

**EMERGENCY RULES**

**DEPARTMENT OF FISHERIES**

[Order 89-135—Filed November 3, 1989, 4:30 p.m.]

Date of Adoption: November 3, 1989.

Purpose: Commercial fishing regulations.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-47-522.

Statutory Authority for Adoption: RCW 75.08.080.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The openings in Areas 7 and 7A provide opportunity to harvest the non-Indian share of the United States share of United States and Canadian origin chum salmon. The opening in Area 7B provides opportunity to harvest non-Indian allocation of Nooksack-Samish origin coho and chum, and is necessary to reduce wastage. The in-season area restriction in Area 7B is necessary to maintain an orderly fishery. The opening in Area 8 is necessary to provide an in-season run size update of Skagit origin chum per state-tribal agreement. Openings in Area 8A provide opportunity to harvest the non-Indian allocation of Stillaguamish-Snohomish origin chum, and openings in Area 8D provide opportunity to harvest Tulalip Bay Hatchery origin coho in order to balance treaty/nontreaty allocation shares and reduce wastage of surplus hatchery stocks. The exclusion zone in Area 8A has been modified to provide greater opportunity to harvest Stillaguamish origin chum salmon. Openings in Areas 10 and 11 provide opportunity to harvest the non-Indian allocation of South Sound origin chum stocks. The restriction in Area 10 is necessary to reduce harvest impacts on local chum stocks. Openings in Areas 12 and 12B provide opportunity to harvest the non-Indian allocation of Hood Canal origin chum stocks. The restriction in Area 12B is necessary to reduce interactions between commercial and sport fisheries, and prevent overharvest of local 12B/12C salmon stocks. All other Puget Sound areas are closed to prevent overharvest of local salmon stocks.

Effective Date of Rule: 12:01 a.m., November 5, 1989.

November 3, 1989  
Judith Merchant  
Deputy Director  
for Joseph R. Blum  
Director

### NEW SECTION

**WAC 220-47-523 PUGET SOUND ALL-CITIZEN COMMERCIAL SALMON FISHERY.** *Notwithstanding the provisions of Chapter 220-47 WAC, effective 12:01 AM Sunday November 5th, until further notice, it is unlawful to take, fish for, or possess salmon or Atlantic salmon for commercial purposes taken from the following Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the following open periods and restrictions:*

- \* Areas 7 and 7A – Reef nets may fish from 5 AM to 8 PM daily, Monday and Tuesday November 6 and 7. Purse seines may fish from 5 AM to 8 PM daily, Wednesday and Thursday, November 8 and 9. Gill nets using 6-inch minimum mesh may fish from 4

PM to 8 AM nightly, Wednesday and Thursday November 8 and 9.

- \* Area 7B – Purse seines may fish from 5 AM to 8 PM daily, Monday, Tuesday, Wednesday, Thursday, and Friday, November 6, 7, 8, 9 and 10. Gill nets using 5-inch minimum mesh may fish from 4 PM to 8 AM nightly, Monday, Tuesday, Wednesday, Thursday, and Friday, November 6, 7, 8, 9 and 10. This opening excludes those waters north and east of a line projected from the light at the Port of Bellingham North Terminal to the light at the end of Squalicum Creek waterway.
- \* Area 8 – Purse seines using the 5-inch strip may fish from 5 AM to 8 PM Tuesday, November 7, and gill nets using 6-inch minimum mesh may fish from 4 PM Tuesday November 7 to 8 AM Wednesday November 8.
- \* Area 8D – Purse seines using the 5-inch strip may fish from 5 AM to 8 PM daily, Monday, Tuesday, and Wednesday, November 6, 7, and 8. Gill nets using 5-inch minimum mesh may fish from 4 PM to 8 AM nightly, Monday, Tuesday, and Wednesday, November 6, 7, and 8.
- \* Areas 8A, 10 and 11 – Purse seines using the 5-inch strip may fish from 5 AM to 8 PM daily, Monday, Tuesday, and Wednesday, November 6, 7, and 8. Gill nets using 6-inch minimum mesh may fish from 4 PM to 8 AM nightly, Monday, Tuesday, and Wednesday, November 6, 7, and 8. This opening excludes those waters of Area 8A north of a line extended true west from Kayak Point to the landfall on Camano Island, and those waters of Area 10 in Port Madison west of a line projected 178 degrees from the light at the end of the Indianola Dock to the landfall on the south shore of Port Madison.
- \* Areas 12 and 12B – Purse seines using the 5-inch strip may fish from 5 AM to 8 PM Monday, November 6. Gill nets using 6-inch minimum mesh may fish from 4 PM Monday November 6 to 8 AM Tuesday November 7. This opening excludes those waters of Area 12B south and west of a line projected from Hood Point to Quatsap Point.
- \* Areas 4B, 5, 6, 6A, 6B, 6C, 6D, 7C, 7D, 7E, 9, 9A, 10A, 10C, 10D, 10E, 10F, 10G, 11A, 12A, 12C, 12D, 13, 13A, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, and 13K and all freshwater areas – Closed.

### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 AM Sunday, November 5:

**WAC 220-47-522 PUGET SOUND ALL-CITIZEN COMMERCIAL SALMON FISHERY (89-132)**

**WSR 89-23-012**

**EMERGENCY RULES**

**DEPARTMENT OF FISHERIES**

[Order 89-136—Filed November 3, 1989, 4:31 p.m.]

Date of Adoption: November 3, 1989.

Purpose: Commercial fishing regulations.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-36-02100I.

Statutory Authority for Adoption: RCW 75.08.080.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: There are only 200 coho salmon available for harvest during remainder of the chum salmon fishery. This is not enough to support a 24-hour opening of the commercial fishery and a reduction to a 12-hour opening is necessary to stay within the coho constraint.

Effective Date of Rule: Immediately.

November 3, 1989

Judith Merchant

Deputy Director

for Joseph R. Blum

Director

**NEW SECTION**

**WAC 220-36-02100J GRAYS HARBOR GILL NET SEASON** Notwithstanding the provisions of WAC 220-36-021, and WAC 220-36-031, effective immediately until further notice, it is unlawful to fish for, or possess salmon and sturgeon taken for commercial purposes from any Grays Harbor Salmon Management and Catch Reporting Areas except as provided for in this section:

Open to gill net gear:

6 AM November 5 to 6 PM November 5 in SMCRA 2B

Gill net gear shall be used as provided for in WAC 220-36-015

**REPEALER**

The following section of the Washington Administrative Code is repealed:

**WAC 220-36-02100I GRAYS HARBOR GILL NET SEASON.** (89-134)

**WSR 89-23-013**  
**EMERGENCY RULES**  
**DEPARTMENT OF WILDLIFE**  
**(Wildlife Commission)**

[Filed November 6, 1989, 10:15 a.m.]

Date of Adoption: November 3, 1989.

Purpose: This amendment is necessary to prevent public confusion about hunting geese in Eastern Washington on a legal holiday.

Statutory Authority for Adoption: RCW 77.12.040.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The goose season in the Eastern Washington counties of Adams, Benton, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane and Walla Walla, and east of Satus Pass (U.S. Highway 97) in Klickitat County are designed to open October 14, 1989 – January 14, 1990, on Saturdays, Sundays, Wednesdays and all legal holidays which do not fall on weekends or Wednesdays. An error was made in the adoption of the 1989-90 Upland [game] bird and [migratory] waterfowl pamphlet in which Veterans Day was referenced as November 11. The legal holiday is Friday, November 10. This amendment is necessary to prevent public confusion about hunting geese in Eastern Washington on a legal holiday.

Effective Date of Rule: Immediately.

November 3, 1989

John McGlenn, Chairman

Wildlife Commission

**NEW SECTION**

**WAC 232-28-41301 AMENDMENT TO 1989-90 UPLAND GAME BIRD AND MIGRATORY WATERFOWL HUNTING SEASONS** Notwithstanding the provisions of WAC 232-28-413 the eastern Washington goose season in Adams, Benton, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties, and east of Satus Pass (U.S. Highway 97) in Klickitat County is amended to include November 10, 1989.

**WSR 89-23-014**  
**NOTICE OF PUBLIC MEETINGS**  
**TRANSPORTATION COMMISSION**  
[Memorandum—November 2, 1989]

The December meeting dates for the Washington State Transportation Commission have been changed to Wednesday, December 13 and Thursday, December 14, 1989.

**WSR 89-23-015**  
**RULES COORDINATOR**  
**TRANSPORTATION COMMISSION**  
 [Filed November 6, 1989, 10:29 a.m.]

With the new changes to the Administrative Procedure Act, the Washington State Transportation Commission has designated a new Rules Coordinator. All future information should be directed to Mr. Bill Richeson, Records Manager, Department of Transportation, Transportation Building, KF-01, Olympia, Washington 98504, phone 753-0316.

Anna Peterson  
 Administrator

**WSR 89-23-016**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF**  
**TRADE AND ECONOMIC DEVELOPMENT**  
**(Community Economic Revitalization Board)**  
 [Memorandum—November 3, 1989]

The following schedule of the 1990 regular meetings of the Community Economic Revitalization Board (CERB) is hereby submitted for publication in the Washington State Register:

January 20, 1990  
 March 17, 1990  
 May 17, 1990  
 July 19, 1990  
 September 20, 1990  
 November 15, 1990

The meetings held during the legislative session will be held on Saturdays in Olympia. All other CERB meetings will be held on Thursdays in the Seattle area.

In accordance with Executive Order 79-03, the meeting site has been selected to be barrier free to the greatest extent feasible. Brailled or taped agenda items for the visually impaired and interpreters for those with hearing impairments will be provided if requested at least ten working days in advance.

Any questions regarding the CERB meetings should be sent to CERB Administrator, Community Economic Revitalization Board, Department of Trade and Economic Development, 101 General Administration Building, AX-13, Olympia, WA 98504-0613, phone (206) 586-1667.

**WSR 89-23-017**  
**PERMANENT RULES**  
**WASHINGTON STATE PATROL**  
 [Filed November 6, 1989, 12:34 p.m.]

Date of Adoption: November 6, 1989.  
 Purpose: Bring WAC's into compliance with RCW's from 1989 legislature.

Citation of Existing Rules Affected by this Order:  
 Amending WAC 446-20-285.

Statutory Authority for Adoption: RCW 43.43.838.

Pursuant to notice filed as WSR 89-19-045 on September 18, 1989.

Effective Date of Rule: Thirty-one days after filing.

November 6, 1989  
 George B. Tellevik  
 Chief

**AMENDATORY SECTION** (Amending Order 88-03-A, filed 3/17/88)

WAC 446-20-285 EMPLOYMENT—CONVICTION RECORDS—CHILD AND ADULT ABUSE INFORMATION. After January 1, 1988, certain child and adult abuse conviction information will be furnished by the state patrol upon the submission of a written request of any applicant, business or organization, the state board of education, or the department of social and health services. This information will consist of the following:

(1) Convictions of crimes against children or other persons as defined in RCW 43.43.830(6);

(2) Department of licensing disciplinary board final decisions of specific findings of physical or sexual abuse or exploitation of a child and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary board final decision; and

(3) Civil adjudications of child abuse.

This information will be furnished, consistent with the provisions of chapter 486, Laws of 1987, on an approved request for criminal history information form available from the Washington State Patrol, P.O. Box 2527, Olympia, Washington, 98507-2527.

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

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

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

(c) In the absence of fingerprint cards, the applicant may provide a right thumb fingerprint impression in the area provided on the request for criminal history information form. In the event of a possible match, where the applicant's name and date of birth as submitted varies from that of the record contained by the identification section, the right thumb fingerprint impression will be

used for identification verification purposes only. An exact name and date of birth match will be required for dissemination of conviction information in the absence of a fingerprint card or thumbprint impression for positive identification or verification of record.

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

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

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

**WSR 89-23-018**  
**EMERGENCY RULES**  
**DEPARTMENT OF REVENUE**  
 [Filed November 7, 1989, 1:49 p.m.]

Date of Adoption: November 7, 1989.

Purpose: To set forth the conditions under which sales tax may be included in the advertised price and to describe the taxation of warranties and service agreements.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-107.

Statutory Authority for Adoption: RCW 82.32.300.

Other Authority: *Sound Hyundai, Inc. v. State of Washington*, Thurston County No. 88-2-02100-4.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: A court has ruled that the current version of WAC 458-20-107 is invalid with respect to the taxation of extended warranties because it is inconsistent with the statute, defining a retail sale. The amended rule brings WAC 458-20-107 into conformance with the statute. Immediate adoption will permit the Department of Revenue to administer the tax laws under a valid rule with as little disruption as possible.

Effective Date of Rule: Immediately.

November 7, 1989  
 Edward L. Faker  
 Assistant Director

AMENDATORY SECTION (Amending Order ET 86-1, filed 1/7/86)

WAC 458-20-107 SELLING PRICE—ADVERTISED PRICES INCLUDING SALES TAX—WARRANTIES, MAINTENANCE AGREEMENTS, SERVICE CONTRACTS. (1) SELLING PRICE. Under the provisions of RCW 82.08.020 the retail sales tax is to be collected and paid upon retail sales, measured by the "selling price."

(a) The term "'Selling price' means the consideration, whether money, credits, rights, or other property except trade-in property of like kind, expressed in the terms of money paid or delivered by a buyer to a seller without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, 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 expenses whatsoever paid or accrued and without any deduction on account of losses; . . ." (See RCW 82.08.010(1)).

(b) Concerning the tax liabilities and benefits in connection with "trade-in" transactions, see WAC 458-20-247.

(2) RCW 82.08.050 specifically requires that the retail sales tax must be stated separately from the selling price on any sales invoice or other instrument of sale, i.e., ((contracts,)) sales slips(;) and/or customer billing receipts. (For an exception covering restaurant receipts of Class H liquor licensees, see WAC 458-20-119.) This is required even though the seller and buyer may know and agree that the price quoted is to include state and local taxes, including the retail sales tax. The law creates a "conclusive presumption" that, for purposes of collecting the tax and remitting it to the state, the selling price quoted does not include the retail sales tax. This presumption is not overcome or rebutted by any written or oral agreement between seller and buyer. However, selling prices may be advertised as including the tax or that the seller is paying the tax and, in such cases, the advertised price shall not be considered to be the taxable selling price under certain prescribed conditions explained in this ((rule)) section. Even when prices are advertised as including the sales tax, the actual sales invoices, receipts, ((contracts,)) or billing documents must list the retail sales tax as a separate charge. Failure to comply with this requirement may result in the retail sales tax due and payable to the state being computed on the gross amount charged even if it is claimed to already include all taxes due.

(3) ADVERTISING PRICES INCLUDING TAX. The law provides that a seller may advertise prices as including the sales tax or that the seller is paying the sales tax under the following conditions:

((+)) (a) The words "tax included" are stated immediately following the advertised price in print size at least half as large as the advertised price print size, unless the advertised price is one in a listed series;

~~((2))~~ (b) When advertised prices are listed in series, the words "tax included in all prices" are placed conspicuously at the head of the list in the same print size as the list;

~~((3))~~ (c) If the price is advertised as including tax, the price listed on any price tag shall be shown in the same way, and

~~((4))~~ (d) All advertised prices and the words "tax included" are stated in the same medium, whether oral or visual, and if oral, in substantially the same inflection and volume.

(4) If these conditions are satisfied, as applicable, then price lists, reader boards, menus, and other price information mediums need not reflect the item price and separately show the actual amount of sales tax being collected on any or all items.

(5) The scope and intent of the foregoing is that buyers have the right to know whether retail sales tax is being included in advertised prices or not and that the tax is not to be used for the competitive advantage or disadvantage of retail sellers.

(6) WARRANTIES (GUARANTEES), MAINTENANCE AGREEMENTS, AND SERVICE CONTRACTS. For purposes of this ~~((rule))~~ section, the following definitions apply:

(a) Warranties, sometimes referred to as guarantees, are agreements which call for the replacement or repair of tangible personal property with no additional charge for parts or labor, or both, based upon the happening of some unforeseen occurrence, e.g., the property breaks down.

(b) Maintenance agreements, sometimes referred to as service contracts, are agreements which require the specific performance of repairing, cleaning, altering, or improving of tangible personal property on a regular or periodic basis to ensure its continued satisfactory operation.

(7) WARRANTIES. Manufacturer's warranties are generally included within the retail selling price of the property and no additional charge is made. ~~((However, when any additional charge is made for any warranty protecting tangible personal property sold, additional tax liability is incurred depending on how the warranty is sold. If it is sold by the retail seller of the property protected by the warranty and concomitant with the sale of that property, the entire charge, including the charge for the warranty, is subject to retailing business tax and retail sales tax. This is so even though the warranty charge may be separately billed or separately itemized on any billing. Such warranty sales are deemed to be "for labor and services rendered in respect to . . . installing, repairing, cleaning, altering, imprinting, or improving tangible personal property of or for consumers . . ." and therefor they are "retail sales" under RCW 82.04.050.~~

~~Warranties which are sold by any person who was not the seller of the property protected by the warranty or which are purchased subsequent to and distinct from the original warranty purchased concomitant with the property, are deemed to be services rather than retail sales. Charges for such warranties are subject to the service business tax and are not subject to retail sales tax.)~~

(8) WARRANTIES OTHER THAN MANUFACTURER'S WARRANTIES. Where a warranty on a product is sold by

the seller of the product for a charge separate from the charge for the product, e.g., a warranty extending the manufacturer's warranty, the charge therefore is income subject to the service and other activities classification of the business and occupation tax.

(a) Where a person who sells its own warranty makes repairs required under the warranty it sold, the value of the materials used in making those repairs is subject to use tax, unless the warrantor making such repairs has previously paid either retail sales tax or use tax on such materials.

(b) Where a third party makes repairs under a warranty as described in (8) above, the charge for labor and materials is a retail sale from the party making the repairs to the warrantor. Accordingly, retail sales tax is properly charged to the warrantor, measured by the full selling price charged.

(9) In all events, additional charges, including so-called "deductibles," billed to the property owner, are retail sales, and subject to the retail sales tax.

(10) In certain circumstances, a warrantor may purchase an indemnity contract to protect against losses which may be suffered as a result of the work required under the warranty. Compensation from the indemnifier is in the nature of liquidated damages paid to the seller of the warranty. Such amounts are not subject to the business and occupation tax or the retail sales tax.

(11) MAINTENANCE AGREEMENTS. Maintenance agreements and service contracts require the periodic specific performance of inspecting, cleaning, physical servicing, altering, and/or improving of tangible personal property. ~~((Therefore))~~ Therefore, charges for contracts or agreements of this nature are retail sales, subject to retailing business tax and retail sales tax under all circumstances.

(a) Contractors performing services noted in (11) above under the requirements of agreements sold by them, are not subject to use tax or retail sales tax on materials used by them in making the required services.

(b) Parties subcontracting to the party selling the maintenance agreement are making sales at wholesale, and are required to take from their customer (maintenance seller) a resale certificate as provided in WAC 458-20-102.

(12) In the cases of both warranties and maintenance agreements, any actual additional charge made to the ((consumer)) property owner because of the providing of materials or the performance of actual labor pursuant to such agreements is separately taxable under the retailing business tax and retail sales tax. This includes so-called "deductible" amounts not covered by the warranty or service agreement.

(13) Moreover, if an agreement contains warranty provisions but also requires the actual specific performance of inspection, cleaning, servicing, altering, or improving the property on a regular or periodic basis, without regard to the operating condition of the property, such agreements are fully taxed as ((service)) maintenance agreements, not warranties.

(14) Amounts paid as a commission or other consideration for the service of selling a warranty of a third-party warrantor are generally subject to business and occupation tax under the service and other activities

classification. However, if the seller is licensed under chapter 48.17 RCW with respect to this selling activity, such amounts are subject to business and occupation tax under the insurance agent classification.

**WSR 89-23-019**  
**PERMANENT RULES**  
**HUMAN RIGHTS COMMISSION**  
 [Filed November 7, 1989, 3:22 p.m.]

Date of Adoption: September 28, 1989.

Purpose: To govern the organization and operations of the commission, public access to records, duties of the chief executive and clerk; to provide for protective orders to seal produced documents, and ethics and conflicts of interest guidelines for commissioners and staff.

Citation of Existing Rules Affected by this Order: Amending WAC 162-04-010, 162-04-020, 162-04-026, 162-04-030, 162-04-040, 162-04-050, 162-04-060 and 162-04-070.

Statutory Authority for Adoption: RCW 49.60.120(3).

Pursuant to notice filed as WSR 89-17-115 on August 23, 1989.

Changes Other than Editing from Proposed to Adopted Version: WAC 162-04-010 Definitions, "Chairperson" means the chairperson of the commission (delete the remainder of this sentence).

Effective Date of Rule: Thirty days after filing.

November 7, 1989  
 Winslow Whitman  
 Assistant Attorney General

AMENDATORY SECTION (Amending Order 37, filed 10/27/77)

WAC 162-04-010 DEFINITIONS. In general, words are used ~~((in))~~ with this title in the same meaning as they are used in the law against discrimination, chapter 49.60(~~(- Revised Code of Washington))~~ RCW. See, in particular, RCW 49.60.040. The following words are used ~~((in))~~ with the meaning given, unless the context clearly indicates another meaning.

"Administrative Procedure Act" means chapter ~~((34.04))~~ 34.05 RCW.

"Age" means between ~~((40 and 65))~~ forty and seventy years of age.

"Chairperson" means the chairperson of the commission ~~((or the chairperson of a hearing tribunal, depending on the context)).~~ The word "chairperson" is used in the place of "chairman" where that word appears in the law against discrimination. The chairperson of the commission is the member of the commission designated as chairman by the governor under RCW 49.60.050.

"Civil rule" or "CR" means the superior court civil rules as now or hereafter amended.

"Clerk" means the clerk of the commission appointed pursuant to WAC 162-04-026.

"Commission" means the Washington state human rights commission.

"Complainant" means a person who has filed a complaint under authority of RCW 49.60.230.

"Complaint" means a formal complaint filed with the commission pursuant to RCW 49.60.230 and these rules.

"Executive ~~((secretary))~~ director" means the executive ~~((secretary))~~ director of the commission appointed pursuant to RCW 49.60.120(1).

"Handicap" is short for the ~~((term))~~ phrase "the presence of any sensory, mental, or physical handicap" used in the law against discrimination, and means the full ~~((term))~~ phrase. See WAC 162-22-040.

~~((("Hearing tribunal," or "tribunal," means a hearing tribunal constituted under RCW 49.60.250.))~~

"Law against discrimination" means chapter 49.60 RCW.

"Marital status" refers to the legal status of being married, single, divorced, or widowed.

"Member" means a member of the commission, except where the context ~~((shows that a member of hearing tribunal is meant))~~ indicates another meaning is intended.

"Protected class" means the persons who are members of (or who are treated as members of) one of the groups against whom discrimination is declared to be an unfair practice by the law against discrimination. Protected classes include persons between the ages of ~~((40 and 65))~~ forty and seventy, persons of any race, creed, color, national origin, sex, or marital status, and persons who are handicapped.

"Respondent" means one against whom a complaint has been filed under authority of RCW 49.60.230.

AMENDATORY SECTION (Amending Order 37, filed 10/27/77)

WAC 162-04-020 ORGANIZATION AND OPERATIONS. (1) Membership. The Washington state human rights commission consists of five members, one of whom is designated as chairperson, appointed by the governor for staggered five-year terms.

(2) Meetings. The commission holds regular meetings commencing at 9:30 a.m. on the ~~((third))~~ fourth Thursday of each month, except for November and December, at various places throughout the state. No regular meeting is held in August. The place and dates of the meetings can be learned by writing or calling the commission clerk at the Olympia office at (206) 753-6770.

(3) Quorum. Three members constitute a quorum. The affirmative vote of a majority of those present is action of the commission when there is a quorum at a meeting.

(4) Executive ~~((secretary))~~ director. The executive ~~((secretary))~~ director is the commission's chief executive. He or she is responsible for carrying out the commission's programs and directing the commission's staff.

(5) Authority and duty. It is the commission's duty to administer the law against discrimination, chapter 49.60 RCW, which has as its purpose the elimination and prevention of discrimination because of race, creed, color, national origin, sex, marital status, age or handicap. The commission has the authority and duty to, among other things:

(a) Study and report on all things having an impact on human rights;

(b) Make recommendations to the governor, legislature, and agencies of state and local government;

(c) Create advisory agencies and conciliation councils;

(d) In the areas of employment, public accommodations, real property transactions, credit transactions and insurance transactions, initiate, receive and process complaints of unfair practices, hold hearings, issue orders, and seek enforcement of the orders in court.

(6) Offices. The commission's principal office is 402 Evergreen Plaza Building, Seventh and Capitol Way, Olympia, Washington 98504-3341. Branch offices are maintained at the following locations:

Seattle: ~~((+60+))~~ 1516 Second Avenue  
~~((Building))~~  
~~((Fourth Floor))~~ Suite 400  
Seattle, Washington 98101

Spokane: ~~((Old National Bank Building~~  
~~+1004 Paulsen Building))~~  
W. 905 Riverside Ave.  
Suite 416  
Spokane, Washington 99201-1099

~~((Pasco: East Pasco Neighborhood Facility~~  
~~205 South Wehe~~  
~~Room 28~~  
~~Pasco, Washington 99301))~~

Tacoma: ~~((207))~~ Suite 110 Hess Building  
901 Tacoma Avenue South  
Tacoma, Washington 98402-2101

Yakima: ~~((Yakima Community Center~~  
~~+211 South 7th Street))~~  
Washington Mutual Bldg.  
Suite 441  
32 No. Third St.  
Yakima, Washington 98901-2730

~~((Bellingham: 401 Bellingham National~~  
~~Bank Building~~  
~~Bellingham, Washington 98225))~~

(7) Where to obtain information. Information on the application of the law against discrimination and ~~((much other information))~~ related material is available at all offices of the commission. Information that branch offices are not able to supply may be obtained from the clerk at the ~~((Seattle))~~ Olympia office.

(8) Where to make submissions or requests. In circumstances where no special provision is made by rule in this Title 162 WAC, submissions or requests to the commission may be directed to the executive ~~((secretary))~~ director at either the Olympia or Seattle office.

#### AMENDATORY SECTION (Amending Order 39, filed 1/23/78)

WAC 162-04-026 CLERK. (1) Designation. The executive ~~((secretary))~~ director with the advice and consent of the chairperson shall designate a staff member to serve as clerk of the commission.

(2) Qualifications. The person designated as clerk shall not have any duties involving the investigation or conciliation of complaints or the prosecution of ~~((tribunal))~~ administrative hearings. If the clerk has been actively involved in the investigation or conciliation of a case or the prosecution of ~~((a tribunal))~~ an administrative hearing in any capacity other than as clerk, he or she shall not thereafter serve as clerk for that case, and a substitute clerk shall be designated. The purpose of this subsection is to ensure compliance with chapter 34.05 RCW ((34.04.115)), restricting consultation with hearing officers, and RCW 49.60.250~~((, 2d paragraph))~~ (2).

(3) Duties. The clerk shall have the duty and power to:

(a) Attend commission meetings and provide aid and services to the chairperson and commissioners as requested by the executive ~~((secretary))~~ director.

(b) Assist the chairperson of the commission in ~~((appointing hearing tribunals))~~ requesting appointment of an administrative law judge, issuing notices of hearing and carrying out all other duties of the chairperson under RCW 49.60.250.

(c) Keep custody of the minutes of commission meetings, declaratory rulings, rule-making orders, and the commission's order register, and other records of action by the commissioners.

(d) Keep custody of the file of complaints after they are referred to the commission for action or report of no reasonable cause at a meeting, or upon certification of the file to the chairperson under RCW 49.60.250(1). The clerk shall deliver the investigator's file of cases ready for hearing to the commission's chief counsel at the onset of the contested case process and shall obtain return of the file when litigation is completed.

(e) Respond to requests for information on actions by the commissioners or ~~((hearing tribunals))~~ administrative law judge and furnish copies of records and files in the clerk's possession pursuant to WAC 162-04-030, Public access to records.

(f) Have custody of the commission's seal.

(g) Certify copies of commission records under the commission's seal.

(h) Serve as clerk of ~~((hearing tribunals))~~ administrative hearings. In this capacity, the clerk, subject to the direction of the ~~((tribunal chairperson))~~ administrative law judge, shall keep custody of the official file of the ~~((tribunal))~~ administrative hearing, date stamp and file all papers filed in the proceeding when the ~~((tribunal))~~ hearing is not convened, serve all notices and papers required to be served by the ~~((tribunal))~~ administrative law judge, make the physical arrangements for hearings, provide for making and preserving the record of hearings, ~~((make transportation and other arrangements for tribunal members;))~~ respond to inquiries about ~~((tribunal))~~ administrative practices and procedures, and generally do all things necessary and appropriate for the clerk of ~~((the))~~ a judicial body to do.

(i) Serve as personal advisor to the chairperson of the commission and ~~((hearing tribunals))~~ administrative law judge on matters relating to the hearing process.

(j) Perform such other duties as the chairperson of the commission or the ~~((chairperson of a hearing tribunal))~~ administrative law judge shall assign from time to time, consistent with their duties.

(4) Upon direction from the chairperson of the commission, the ~~((chairperson of a hearing tribunal))~~ administrative law judge, or the executive ~~((secretary))~~ director, whichever is the appropriate authority, the clerk may enter upon his or her own signature, procedural orders, notices of hearing, orders appointing ~~((hearing tribunals))~~ administrative law judges, notices of rule making, and similar items.

(5) Independence. The clerk when assisting the chairperson of the commission to carry out the chairperson's duties under RCW 49.60.250 and when serving as clerk of ~~((a hearing tribunal))~~ an administrative hearing shall be free from supervision of the executive ~~((secretary))~~ director and other staff members of the commission to the extent necessary to ensure that the chairperson of the commission and the ~~((hearing tribunals))~~ administrative law judges are free from influence from staff persons having a ~~((prosecuting))~~ prosecutorial function.

AMENDATORY SECTION (Amending Order 13, filed 2/16/73)

WAC 162-04-030 PUBLIC ACCESS TO RECORDS. (1) Records available.

(a) General rule and exceptions. All public records as defined by ~~((Initiative 276))~~ chapter 42.17 RCW (this includes photographs, tapes, and other materials as well as written documents) prepared, owned, used or retained by the Washington state human rights commission shall be available for public inspection and copying during normal office hours in the office where they are located, except for the following:

(i) Personal information in files maintained for the commission's employees or members to the extent that disclosure would violate their right to privacy.

(ii) The file, except for the complaint, compiled in investigating a complaint filed under RCW 49.60.230, during the time until a finding as provided by RCW 49.60.240 ~~((is reported to))~~ or settlement is adopted by the commission or the case is referred to the attorney general for preparation for public hearing. Specific records in the file may be kept sealed and not made available after this time if the executive ~~((secretary))~~ director has issued a protective order which states the general nature of the records and the reason why they are not open to inspection, and the records are exempt from public inspection under ~~((section 31 of Initiative 276))~~ RCW 42.17.310.

(iii) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when publicly cited by the commission or another agency in connection with any agency action.

(iv) Records which are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(v) Any other information which is exempt from public inspection under ~~((section 31 of Initiative 276))~~ RCW 42.17.310 and where disclosure would violate personal privacy or vital government interest.

(b) Conditions which override the exceptions. Even where it comes within one of the above exceptions to public access, a particular record shall nevertheless be available for inspection and copying if:

(i) Its disclosure would not violate personal privacy or impair a vital governmental interest;

(ii) The information which would violate personal privacy or impair a vital governmental interest can be deleted from the record; or

(iii) The record contains statistical information not descriptive of any readily identifiable person or persons.

(2) Copying. Persons may copy any record which may be inspected. In offices where a copying machine is kept by the commission, machine copies shall be made available to a person on request. No charge shall be made for up to ten sheets in connection with a single request, but ten cents a sheet shall be charged for each sheet beyond ten. Copying facilities may be denied when making them available would unreasonably disrupt the operation of the office, because of the volume of copying or other valid reasons. The absence or unavailability of agency copying facilities shall be given weight in determining whether there are special circumstances justifying removal of a record from the office as provided in ~~((part))~~ subsection (3) of this section.

(3) Protection of records. No record shall be allowed to be removed from a commission office by anyone other than a staff member or other officially authorized person unless special circumstances make the removal necessary or desirable, and protection of the record is reasonably assured. Before such removal is allowed a receipt itemizing the contents of the record and giving the address and telephone number of the place where it will be kept shall be signed by the person taking the record and approved in writing by the person in charge of the office or division responsible for the record.

(4) Personnel records. Requests for inspection of materials in the personnel files of commission employees or members shall be referred to the executive ~~((secretary))~~ director, or in his or her absence, the deputy director, and promptly acted upon by him or her. When inspection is denied, it shall be the responsibility of the person making that decision to issue within ~~((24))~~ twenty-four hours the written statement required by ~~((sections 31(4) and 32 of Initiative 276 identifying section 31(1)(b)))~~ RCW 42.17.310(4) and 42.17.320 identifying RCW 42.17.310 (1)(b) as the exemption authorizing withholding of the record, and explaining how inspection of the record would violate the employee's or commissioner's right of privacy. The decision of the executive ~~((secretary))~~ director or deputy director shall be final agency action for purposes of judicial review.

(5) Other records; review of denial. Requests for inspection of records not in the personnel files of commission employees or members (that is, not covered by ~~((part))~~ subsection (4) of this section) shall be acted upon immediately by the staff person who has charge of the record at the time the request is made. When that

person believes that a request to inspect a record must be denied, he or she shall immediately contact his or her supervisor by telephone and obtain concurrence from the supervisor before denying inspection. The supervisor shall then issue, or cause to be issued, the written statement required by ~~((sections 31(4) and 42 of Initiative 276))~~ RCW 42.17.310(4) and chapter 42.17 RCW identifying the specific exemption authorizing the withholding of the record (or part) and briefly explaining how the exemption applies to the record withheld. A copy of the statement shall be immediately delivered or mailed to the deputy director.

(6) Interpretation. It is the policy of the Washington state human rights commission to carry out the spirit as well as the letter of ~~((Initiative 276))~~ chapter 42.17 RCW, and thus to afford the public maximum access to its records, subject to necessary respect for the right of individuals to privacy and the need for efficient administration of government. This regulation shall be interpreted in light of that spirit and this policy.

NEW SECTION

WAC 162-04-035 PROTECTIVE ORDERS TO SEAL PRODUCED DOCUMENTS. (1) May be requested. Any person who is asked or compelled to produce records may request a protective order to have a particular document or part of document that has been produced or will be produced kept confidential for official use only, without public access.

(2) To whom addressed. Prior to notice of hearing, a request for a protective order shall be made to the chairperson of the commission pursuant to the procedures established in WAC 162-08-020. After notice of hearing, a request for a protective order shall be made by motion to the administrative law judge, as provided in WAC 162-08-263(3).

(3) Form of request. Requests for a protective order shall be in written affidavit form and shall state the requestor's reasons why a protective order should be issued for the documents covered.

(4) Grounds for issuance. A protective order may be made only upon findings that:

(a) The document or part of document is exempt from public disclosure under RCW 42.17.260 and 42.17.310 (Initiative 276) and the commission's implementing regulation, WAC 162-04-030, and;

(b) The requestor has shown legitimate need for confidentiality of the document or part of document.

(5) Form of order. The protective order shall be in writing and shall bear the caption of the case, date of entry of the order, and signature of the executive director or other authorized staff person or the administrative law judge. The text of the order shall contain:

(a) A description in general terms of each document covered by the order. Example: "Report dated ..... of Dr. .... to respondent on results of physical examination of the complainant, two pages."

(b) A statement of the specific exemption from the disclosure provisions of chapter 42.17 RCW authorizing the withholding of the record or part of record and a

brief explanation of how the exemption applies to what is withheld. See RCW 42.17.310(4).

(c) A statement of why there is need for confidentiality of the document or part of document.

(6) Filing of order. The protective order shall be affixed to a sealed envelope containing the protected document and both shall be kept in the case file, or, alternatively, the original order and protected document may be kept at another place and a copy of the protective order placed in the case file along with a notation as to where the original order and protected document are kept.

(7) Effect of order. Except as may be provided in the protective order, documents covered by the protective order shall not be revealed to anyone other than commissioners, members of the commission's staff, and the commission's legal counsel for official purposes and shall not become public when the rest of the file becomes public as provided in WAC 162-04-030 (1)(a)(ii), but:

(a) Nothing shall prevent the use of a protected document in an administrative hearing or court case, including admission of the document into the public record of the hearing or case, and;

(b) Nothing herein is intended to prevent a court from ordering production of a protected document under RCW 42.17.310(3) or other authority.

(8) Other protective orders. Issuance of other kinds of protective orders concerning discovery is governed by WAC 162-08-096.

AMENDATORY SECTION (Amending Order 27, filed 5/21/76)

WAC 162-04-040 STATE ENVIRONMENTAL POLICY ACT. Pursuant to RCW 43.21C.120 and the SEPA guidelines, chapter ~~((197-10))~~ 197-11 WAC, the commission has reviewed its authorized activities and has found them all to be exempt under the provisions of chapter ~~((197-10))~~ 197-11 WAC.

AMENDATORY SECTION (Amending Order 39, filed 1/23/78)

WAC 162-04-050 ETHICS AND CONFLICTS OF INTEREST. (1) Purpose. This section is intended to guide the commission's staff and commissioners on official ethics, and to carry out the policies and purposes of chapter 42.18 RCW, the Executive Conflict of Interest Act, as provided in RCW 42.18.250.

(2) General rule. It is the duty of all employees of the commission and of all commissioners to maintain the highest standard of ethics in all official actions, and specifically to comply strictly with the requirements of the Executive Conflict of Interest Act, chapter 42.18 RCW.

(3) Specific matters. The following applications of the rule are for guidance on common problems and are to serve as examples for extension by analogy; they are not a complete catalog of applications of the general rule:

(a) Dealing with parties. No commission employee who has duties with respect to a complaint pending before the commission shall deal in any way with the complainant or respondent, on a business or personal basis, except for routine transactions done on the same basis as other members of the public transact business with the

party. An employee may continue to deal privately with a public utility or continue to shop at a party's store, if the employee deals with appropriate customer service representatives or salespersons and does not identify his or her official position or mix official business into the transaction. In circumstances unlike these, employees shall either not deal with parties or shall report the matter to the employee's supervisor, who shall relieve the employee of responsibility for the case. Commissioners who have nonroutine dealings with parties shall abstain from voting or other action on the matter.

(b) Accepting things of value. No commission employee or commissioner shall accept anything of economic value from a party to a complaint before the commission, or from any other person who is dealing with the commission, except under circumstances permitted in RCW 42.18.190. Permitting another person to pay for an employee's lunch is within the prohibition of this paragraph, but accepting a cup of coffee under normal office hospitality is not. If the coffee is ordered in a restaurant the prohibition of this section applies.

(c) ~~(Honorariums)~~ Honoraria for speaking. If the speaking engagement is within the course of a person's official duties, acceptance of an honorarium or other compensation is prohibited. RCW 42.18.190. Payment of travel expenses and living expenses while traveling, or reimbursement of the commission for these expenses, is not prohibited, if the trip and payment arrangement have been approved by the employee's supervisor. It is not necessary for a person who is on the program to pay for a meal that is served, or for the price of admission to the seminar, where the custom is to not charge persons on the program for the meal at which they are speaking, or for admission to the seminar. The prohibitions of this subparagraph do not apply to commissioners, because speaking outside of commission meetings is not a duty of commissioners.

(d) Job offers. No employee of the commission shall make or continue an application or request for employment with a party to a case or other matter before the commission while the employee has official duties with respect to that case or matter. If any employee is assigned a case or matter while he or she has an application pending for employment with a party to the case or matter, the employee shall either withdraw the application or report the facts to his or her supervisor ~~(and the supervisor shall)~~. The executive director shall determine whether to relieve the employee from further responsibility for the case or matter. If any employee receives and considers a job offer from a party to a case or other matter pending before the commission with which the employee has official responsibilities, the employee shall report the facts to his or her supervisor and the supervisor shall relieve the employee from any further responsibility for the case or matter.

(4) Indirect transactions. These rules and the Executive Conflict of Interest Act apply to conflicts of interest and ethical problems whether they come directly or indirectly through members of a person's family, through corporations of which the employee is an officer, director, trustee, partner, or employee, or through other means.

AMENDATORY SECTION (Amending Order 35, filed 9/2/77)

WAC 162-04-060 EXECUTIVE ~~((SECRETARY))~~ DIRECTOR MAY DELEGATE DUTIES. Unless a statute or rule provides otherwise, all duties and powers assigned to the executive ~~((secretary))~~ director may be delegated by the executive ~~((secretary))~~ director to other staff persons of the commission, with the executive ~~((secretary))~~ director remaining responsible. The general practice of the commissioners is to assign all staff duties and powers to the executive ~~((secretary))~~ director, with the understanding that the executive ~~((secretary))~~ director will allocate and reallocate the tasks among the staff and see that the tasks are performed.

AMENDATORY SECTION (Amending Order 35, filed 9/2/77)

WAC 162-04-070 EXECUTIVE ~~((SECRETARY))~~ DIRECTOR MAY ISSUE OPINIONS. (1) Authorization. The executive ~~((secretary))~~ director may issue written opinions to persons who request advice as to the application of the law against discrimination or rules or practices of the commission. The opinions shall not be inconsistent with the statute, or the regulations or policies of the commission.

(2) Review by commission. The executive ~~((secretary))~~ director shall send a copy of each opinion to each commissioner before, or promptly after, it is sent to the person requesting it. Any commissioner may have the question of commission approval, disapproval, or revision of an opinion put on the agenda of a commission meeting, and the commission shall then approve, disapprove, or revise the opinion.

(3) Revocation or revision. An opinion of the executive ~~((secretary))~~ director may be revoked or revised at any time by the executive ~~((secretary))~~ director, or by action of the commissioners at a meeting. The revocation or revision shall not be effective as to the person who requested the opinion until that person has notice of the revocation or revision.

(4) Supersedure. An opinion of the executive ~~((secretary))~~ director is automatically superseded by any material change in the applicable statutes, regulations, or case law. Notice to the person who requested the opinion is not necessary for supersedure under this paragraph.

(5) Reliance. When any person has relied in good faith on an opinion of the executive ~~((secretary))~~ director, the commission will not thereafter assert a contrary position against that person, unless the opinion is revoked or revised, or is superseded by a material change in the applicable statutes, regulations, or case law. This paragraph covers persons other than the person who requested the opinion, if the persons have justifiedly relied on the opinion.

(6) Subdelegation. The executive ~~((secretary))~~ director may authorize members of the commission's staff or the commission's legal counsel to issue opinions in the name of the executive ~~((secretary))~~ director, subject to the supervision of the executive ~~((secretary))~~ director, and subject to all of the requirements of this section.

(7) Authentication. Nothing shall be an opinion of the executive (~~secretary~~) director for purposes of this section unless it is designated as such in its caption or in its text.

**WSR 89-23-020**  
**PERMANENT RULES**  
**HUMAN RIGHTS COMMISSION**  
 [Filed November 7, 1989, 3:27 p.m.]

Date of Adoption: September 28, 1989.

Purpose: To govern all forms of practice and procedure before the commission and before administrative law judges appointed to hear contested cases brought by the commission, including, but not limited to, complaint processing, discovery, administrative hearings, decisions, declaratory rulings and rule making.

Citation of Existing Rules Affected by this Order: Repealing WAC 162-08-108, 162-08-111, 162-08-114, 162-08-116, 162-08-121, 162-08-131, 162-08-135, 162-08-141, 162-08-151, 162-08-155, 162-08-161, 162-08-171, 162-08-212, 162-08-215, 162-08-217, 162-08-275, 162-08-278, 162-08-284, 162-08-295, 162-08-296 and 162-08-621; amending WAC 162-08-011, 162-08-013, 162-08-015, 162-08-017, 162-08-019, 162-08-021, 162-08-041, 162-08-051, 162-08-061, 162-08-062, 162-08-071, 162-08-072, 162-08-081, 162-08-091, 162-08-093, 162-08-094, 162-08-096, 162-08-098, 162-08-099, 162-08-101, 162-08-106, 162-08-109, 162-08-190, 162-08-201, 162-08-211, 162-08-221, 162-08-231, 162-08-241, 162-08-251, 162-08-261, 162-08-265, 162-08-268, 162-08-271, 162-08-282, 162-08-286, 162-08-288, 162-08-291, 162-08-292, 162-08-294, 162-08-298, 162-08-301, 162-08-305, 162-08-311, 162-08-600, 162-08-610 and 162-08-700.

Statutory Authority for Adoption: RCW 49.60.120(3).

Pursuant to notice filed as WSR 89-17-098 on August 22, 1989.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 34.05.250 requires that any agency rule of procedure which differs from the model rules include in the order of adoption a finding stating the reasons for variance. WAC 162-08-190 through 162-08-311 differ from the model rules and the commission's findings are stated below.

**General Explanation and Findings of the Commission.**

WAC 162-08-190 through 162-08-311 cover administrative hearings and decisions under RCW 49.60.250, rule-making and declaratory orders, subjects which are also covered by the model rules, WAC 10-08-001 through 10-08-261. The major differences between the commission rules and the model rules fall into three categories: Those differences which are mandated by RCW 49.60.250, which governs administrative hearings brought under the law against discrimination; those differences which are authorized by various provisions of

the Administrative Procedure Act, chapter 34.05 RCW, such as, rules of discovery (WAC 162-08-263) authorized by RCW 34.05.446(2); and those guidelines which the commission has found necessary in several years of experience for the orderly conduct of administrative hearings, rule making procedures, and the promulgation of declaratory orders.

**Specific Rules Which Differ From the Model Rules, and Findings of the Commission in Support Thereof**

WAC 162-08-190 implements certain requirements of RCW 49.60.250(1) with respect to certification and custody of the commission file in case of failure to conciliate under RCW 49.60.240. There is no comparable provision under the model rules. The commission rule is necessary to implement the requirement of RCW 49.60.250(1) that: "In case of failure to reach an agreement for the elimination of such unfair practice, and upon entry of findings to that effect, the entire file, . . . shall be certified to the chairperson of the commission."

WAC 162-08-201 provides guidelines for prehearing amendment of the complaint in accordance with RCW 49.60.250(1). There is no comparable provision in the model rules. The commission rule is necessary to implement the provision in RCW 49.60.250(1) which requires that the chairperson of the commission " . . . [S]hall cause to be issued and served in the name of the commission a written notice, together with a copy of the complaint, as the same may have been amended, requiring the respondent to answer the charges of the complaint at a hearing before the administrative law judge, at a time and place specified in such notice."

WAC 162-08-211 provides that the commission chairperson will request appointment of an administrative law judge as required in RCW 49.60.250(1). There is no comparable provision in the model rules. This commission rule is necessary to implement the provision in RCW 49.60.250(1) which requires that, "The chairperson of the commission shall there upon request the appointment of an administrative law judge under Title 34 RCW to hear the complaint. . . ."

WAC 162-08-221 provides that notice of hearing shall be given to all parties in accordance with RCW 49.60.250 and 34.05.434, except that the clerk may omit the time and place of hearing with the explanation that these will be set later by the administrative law judge. WAC 162-08-221(2). This procedure differs from the model rule WAC 10-08-040 only in that the administrative law judge may determine the time and place for hearing.

WAC 162-08-221 also provides for attachment of an amended complaint to the notice of hearing along with information concerning the respondent's obligation to file an answer. These requirements are not contained in the model rule, WAC 10-08-040, or in RCW 34.05.434. The commission has found it necessary to inform respondents concerning the nature of the complaint against them, as required by RCW 49.60.250(1), and their obligation to answer the charges in order to frame

the contested issues for trial. WAC 10-08-040 also provides for appointment of a qualified interpreter for limited English speaking or hearing impaired persons. This information is included in the commission's notice of hearing form, although it is not specifically mentioned in the regulation WAC 162-08-221.

WAC 162-08-231 establishes the contents of the record of the administrative hearing in accordance with RCW 34.05.437. This provision differs from the model rule in that offers of settlement are specifically excluded from the record, as required by RCW 49.60.250(2).

WAC 162-08-241 provides guidelines for the form in which papers filed with the administrative law judge in a human rights hearing are to be prepared. There is no similar provision in the model rules. The commission has found that the form guidelines, which generally parallel CR 10 of the Civil Rules of Superior Court, are necessary for an orderly record and proper organization of the documents which are contained therein.

WAC 162-08-251 requires every respondent to file an answer to the amended complaint, including any affirmative defenses to be asserted at the hearing. No such requirement appears in the model rules. The commission has found that in order to prepare evidence and argument on the issues raised by the respondent, particularly those related to affirmative defenses, it is necessary to have actual notice of these defenses before the hearing. This is consistent with CR 12(b) of the Civil Rules of Superior Court.

WAC 162-08-253 provides that no counterclaims or cross claims will be heard by the administrative law judge in a human rights hearing. There is no such provision in the model rules. The commission finds that this rule is necessary in order to inform parties to the hearing that its purpose is limited to determining whether or not an unfair practice has occurred, and that it is not intended to dispose of all claims which might arise between them.

WAC 162-08-255 provides for entry of a default order when a respondent who has been served with a notice of hearing and amended complaint fails to answer as required by WAC 162-08-251. There is no such provision in the model rules. The commission has found that a default procedure is necessary to deal with respondents who choose to ignore the notice of hearing and amended complaint filed against them.

WAC 162-08-261 provides for the independent appearance of and participation by the complainant in an administrative hearing. There is no such provision in the model rules. This procedure is adopted by the commission in order to implement the statutory provision, RCW 49.60.250(2), which provides "that the complainant may retain independent counsel and submit testimony and be fully heard."

WAC 162-08-263 provides for discovery in accordance with the procedures available under CR 28 through 37 of the Civil Rules of Superior Court. No such discovery procedures are provided for in the model rules. The commission has determined that opportunity for discovery is essential to the preparation and full presentation of issues raised in a human rights hearing, and such rules are authorized by RCW 34.05.446(2).

WAC 162-08-265 provides for amendments of pleadings. No such provision is found in the model rules. The commission has determined that formal pleadings, including an amended complaint and answer, and the opportunity to amend those pleadings upon reasonable terms, are necessary to the full and orderly presentation of the issues in a human rights hearing.

WAC 162-08-268 provides for voluntary dismissal of a party's case or claim. No such provision is found in the model rules. The commission has found that such a provision is necessary to dispose of those claims which a party does not intend to pursue at hearing and which can therefore be disposed of without further proceeding.

WAC 162-08-271 provides a procedure for motions made to the administrative law judge. The model rules contain no such procedure. The commission has determined that a motion procedure is essential to the orderly preparation and presentation of the issues in human rights cases.

WAC 162-08-282 provides a procedure for summary judgment to dispose of legal issues concerning which there is no genuine issue as to any material fact. The model rules contain no such procedure for summary judgment. The commission has determined that summary judgment should be used to dispose of issues of law in a human rights proceeding which do not require an evidentiary hearing. This procedure is similar to CR 56 of the Civil Rules of Superior Court.

WAC 162-08-286 provides a procedure for prehearing conference, including premarking of documents for admission into evidence. This is similar to model rule, WAC 10-08-130, except that the model rule does not provide for premarking of documents but instead directs the parties to consider admissions of the genuineness of documents. The commission has found that the additional step of premarking documents facilitates their entry into the record at the hearing, particularly where there are a large number of exhibits.

WAC 162-08-288 establishes who the parties are in the hearing before the administrative law judge and provides a procedure for joining additional parties. The model rules contain no such provision. The commission has determined that identifying the parties and their respective roles in the hearing process is necessary to an orderly proceeding, both because the commission usually presents the case in support of the complainant, and because discovery may reveal the existence of additional parties for whom relief can be obtained within the scope of the charges made in the amended complaint.

WAC 162-08-291 provides for the use of photographic and recording equipment at administrative hearings, subject to the discretion of the administrative law judge who may exclude or limit the use of such equipment to avoid disruption. This is similar to model rule, WAC 10-08-190, except that the commission rule contains additional guidelines for special lighting and the pooling of television cameras which has occurred at some human rights hearings in the past.

WAC 162-08-291 also provides for recording and transcription of testimony taken in accordance with RCW 34.05.566. Model rule, WAC 10-08-170 provides

for the recording of such testimony but makes no provision for its transcription or for payment for such transcription. The commission has found it necessary to assess the cost of transcription in accordance with this rule upon petition for judicial review.

WAC 162-08-292 differs from RCW 34.05.452 and model rule, WAC 10-08-140 in two respects: WAC 162-08-292 (5) and (6) permit the administrative law judge to take official notice of general, technical, or scientific facts within his or her specialized knowledge, and utilize that specialized knowledge in evaluating the evidence; WAC 162-08-292(7) forbids the admission of evidence concerning efforts or negotiations for conciliation in accordance with RCW 49.60.250(2), except where the respondent denies that such efforts and negotiations have taken place. The commission has found that some administrative law judges have specialized knowledge of a general, technical, or scientific nature which helps to evaluate the evidence at hearings, and intends that this knowledge be utilized. The commission has also found it necessary to exclude evidence of efforts or negotiations for conciliation, except where this statutory requirement is made an issue, in order to comply with RCW 49.60.250(2).

WAC 162-08-298(1) establishes that the administrative law judge has authority to exercise the commission's general jurisdiction to eliminate and prevent discrimination by means of remedies contained in an order directed to any respondent found guilty of an unfair practice. This regulation in subsection (2) outlines the general objectives of the law against discrimination, and subsection (3) requires that any respondent found guilty of an unfair practice be ordered to cease and desist. This regulation in subsection (4) lists examples of remedies which are appropriate for achieving the objectives of the law. This regulation in subsection (5) establishes that the payment of either punitive damages or fines is not authorized as a remedy for any unfair practice. This regulation in subsection (6) provides guidelines for the treatment of unemployment compensation. This regulation in subsection (7) establishes the identity of those for whom remedies may be ordered. This regulation in subsection (8) establishes guidelines for achieving the public purposes of the law against discrimination, and subsection (9) provides for retention of jurisdiction by the administrative law judge for the purpose of modifying or supplementing the initial order. The model rules do not provide for any of the above procedures or guidelines. The commission has found that these procedures and guidelines are essential for the purpose of giving notice to the parties and guidance to the administrative law judge with respect to drafting, amending, and supplementing an order containing appropriate remedies for implementing the purposes of the law against discrimination.

WAC 162-08-301 provides for an initial (or "preliminary") decision and a final decision of the administrative law judge, the latter to be entered within thirty days of receipt of comments upon the former. This differs from both RCW 34.05.461(1) and model rule, WAC 10-08-210, which mention only an initial decision by

the administrative law judge and contemplate a final decision by either the agency itself or someone designated by the agency. The reason for this difference is that RCW 49.60.250 (5) and (6) provide for findings and an order to be issued by the administrative law judge in final form, rather than a proposed decision (or "initial" decision) as under the model rules. The commission has found that the practice of state administrative law judges is to issue an initial, "preliminary," decision containing findings of fact, conclusions of law and an order. Then the parties are invited to make comments within a specified period of time after which the administrative law judge issues final findings, conclusions, and an order. This practice has been incorporated in the commission regulation WAC 162-08-301.

WAC 162-08-305(1) establishes that orders obtained by commission counsel are public reparations orders in which the beneficiaries have no property right until the benefit are actually received. Only the commission, therefore, may enforce such an order, in accordance with WAC 162-08-305(2), or compromise its terms, in accordance with WAC 162-08-305(3). There is no such provision in the model rules. The commission has found that it is necessary to spell out the nature of these public reparations orders in order to avoid confusion as to who has authority to seek and obtain enforcement, or to compromise their terms.

WAC 162-08-311 follows RCW 34.05.470 with respect to procedures for, and the effect of, a petition (or "motion") for reconsideration, except that the administrative law judge rather than the agency is the decision maker under the commission regulation WAC 162-08-311. This differs from model rule, WAC 10-08-215 only in that the petition for reconsideration is to be filed with the commission clerk under the commission rule, rather than the person who entered the order as is the case under the model rule. This difference follows from the earlier commission regulation, WAC 162-08-041(7), under which the clerk receives all papers to be filed with the administrative law judge and maintains custody of the official file. WAC 162-08-190(4).

#### RULE MAKING

WAC 162-08-600 establishes a procedure for filing requests for advance notice of rule making, as provided in RCW 34.05.320(3). The model rules contain no such provision. The commission has found it necessary to provide such a procedure by regulation in order to facilitate the filing of requests from individuals and organizations who do wish to receive advance notice of rule making, as authorized by the Administrative Procedure Act and the law against discrimination, RCW 49.60.120(3).

WAC 162-08-610 provides general guidelines for the form and content of petitions for adoption, amendment or repeal of a commission rule. This rule implements RCW 34.05.330, which provides: "Each agency may prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition." Model rule, WAC 10-08-260 provides more specific guidelines concerning the form for petitions for

rule making. These model rule guidelines actually complement the requirements of WAC 162-08-610, and there is no inconsistency between the two.

### DECLARATORY ORDERS

WAC 162-08-700 supplements the provisions of RCW 34.05.240 with respect to: The form, contents, and filing of petitions for a declaratory order; the procedural rights of persons in relation to such an order; and the disposition of such petitions. Agencies are authorized by RCW 34.05.240(2) to adopt rules covering these subjects. In addition, WAC 162-08-700 provides for revocation or revision of declaratory orders (WAC 162-08-700(6)), supersedure of declaratory orders (WAC 162-08-700(7)), action in reliance upon a declaratory order of the commission (WAC 162-08-700(8)), and appointment of a commissioner, or a panel of commissioners, or an administrative law judge, to conduct a hearing before issuing a declaratory order (WAC 162-08-700(9)). None of these additional procedures are provided for in the model rules. The commission has found that each of these procedures needs to be spelled out as it has done in WAC 162-08-700 (6), (7), (8) and (9), in order to provide notice to the public and guidance to the commission staff concerning the appropriate steps to be taken when these questions and these procedures arise or are invoked.

Effective Date of Rule: Thirty days after filing.

November 7, 1989

Winslow Whitman

Assistant Attorney General

### I GENERAL

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-011 SCOPE OF RULES. (1) General. These rules (chapter 162-08 WAC) shall govern all practice and procedure before the commission, including practice before ~~((hearing tribunals))~~ administrative law judges.

~~((Uniform rules inapplicable. These rules are intended to be comprehensive and the uniform rules contained in chapter 1-08 WAC shall not be applicable.))~~ The commission hereby readopts the rules of practice and procedure contained in chapter 162-08 WAC, as amended herein, except for WAC 162-08-108, 162-08-111, 162-08-114, 162-08-116, 162-08-121, 162-08-131, 162-08-135, 162-08-141, 162-08-151, 162-08-155, 162-08-161, 162-08-171, 162-08-212, 162-08-215, 162-08-217, 162-08-275, 162-08-278, 162-08-284, 162-08-295, and 162-08-296, which are hereby repealed or replaced as shown below.

(3) Relation to statutes. These rules supplement the statutory procedures in the Administrative Procedure Act, chapter ~~((34.04))~~ 34.05 RCW, and the law against discrimination, chapter 49.60 RCW. Where provisions of the law against discrimination are inconsistent with the Administrative Procedure Act, the Administrative Procedure Act governs. RCW ~~((34.04.910))~~ 34.05.030(4).

(4) Amendments apply to pending cases. An amendment to this chapter applies to cases pending at the time of the adoption of the amendment, unless the amendment or rule-making order says that it does not apply to pending cases. An amendment to this chapter does not require that anything already done be redone to comply with the amendment, unless the amendment expressly says so.

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-013 INTERPRETATION—WAIVER. (1) Interpretation. These rules shall be interpreted liberally to promote justice and to facilitate the decision of cases on the merits.

(2) Waiver. ~~The chairperson of the commission or ((of a tribunal, on the chairperson's))~~ an administrative law judge, on their own initiative or on motion of a party, may waive or alter the procedures in any of these rules and may enlarge or shorten the time within which an act must be done in a particular case, in order to serve the ends of justice. ~~((The chairperson of the commission or of a tribunal may condition a waiver or alteration of rules on satisfaction by a party or attorney of terms in the manner provided in WAC 162-08-115 [162-08-015]. In addition, the chairperson of a tribunal may condition the waiver or alteration of rules on payment by a person or attorney of compensation to any person injured by departure from the rules, in the manner provided in WAC 162-08-115.))~~

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-015 SANCTIONS. (1) ~~((Tribunal))~~ Administrative hearings. In a case which has been noted for hearing the ~~((chairperson of the tribunal on the chairperson's))~~ administrative law judge, on his or her own initiative or on motion of a party, may order a party or counsel who uses these rules for the purpose of delay, or who fails to comply with these rules or other procedures previously ordered, to satisfy terms or pay compensatory damages including attorney's fees to any other person who has been harmed by the delay or the failure to comply. The ~~((chairperson))~~ administrative law judge may condition the right of a party to take specific action or raise specific defenses on satisfaction of the terms of the order or payment of the damages and attorney's fees. The ~~((chairperson))~~ administrative law judge may condition the right of a counsel to participate further in the case ~~((on))~~ upon satisfaction of the terms of an order or payment of the damages and attorney's fees. The ~~((tribunal))~~ administrative law judge shall incorporate in ~~((its))~~ his or her final order any sanctions order which has not been complied with, so that the sanctions order may be enforced as provided in RCW 49.60.260 and 49.60.270 and appealed from as provided in RCW ~~((34.04.130))~~ 34.05.514.

(2) Other proceedings. In a proceeding not covered by ~~((paragraph))~~ subsection (1) of this section, the chairperson of the commission may order a person or counsel who uses these rules for the purpose of delay, or who fails to comply with these rules or other procedures previously ordered, to satisfy terms, and the chairperson may condition further participation in a proceeding on compliance with these rules or orders imposing terms, but the chairperson of the commission shall not impose sanctions in the form of payment of damages or attorney's fees.

~~((3) Debarment of attorneys. A lawyer or other person appearing in a representative capacity who consistently violates the rules of the commission or who uses them for delay, or who consistently violates the orders of the chairperson of the commission or of a hearing tribunal or tribunals, may be debarred or suspended from practicing before the commission, or may be required to meet terms as a condition of continuing to practice before the commission. No person shall be debarred, suspended, or subjected to conditions under this subsection except upon vote of the commission after a hearing of which the person shall have at least twenty days notice and where the person shall have the opportunity to show cause why he or she should not be so debarred, suspended, or subjected to conditions. A hearing under this subsection shall be held only if a commissioner or a tribunal member has requested one and the commissioners have voted to hold one. When the commissioners have voted for a hearing, the chairperson of the commission shall determine how the hearing shall proceed and shall see that notice under RCW 34.04.090 is issued.))~~

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

#### WAC 162-08-017 USAGE AND DEFINITIONS.

(1) Usage. In this chapter, unless the context indicates otherwise, the following words are used in the senses here expressed:

"Shall" expresses a command.

"May" expresses permission.

"Will" expresses the future occurrence of an event.

"Must" expresses a requirement that has to be met only if a person chooses to do something which the person is free to do or not to do. Example: "A respondent who wishes to raise any matter constituting an avoidance or affirmative defense . . . must plead the matter as an affirmative defense . . ."

(2) Definitions. In this chapter, unless the context indicates otherwise, the following words are used in the meaning here given:

"Administrative hearing" means a public hearing brought pursuant to RCW 49.60.250.

"Case" means the entire proceeding following from the filing of a complaint under RCW 49.60.230.

"Commission" means the Washington state human rights commission as an institution, whether acting through the commissioners, ~~((a hearing tribunal))~~ an administrative law judge, the executive ~~((secretary))~~ director or staff, its legal counsel, or others, except where the context indicates one of the narrower meanings.

"Conciliation" means the process provided in RCW 49.60.240 for the elimination by conference, conciliation, and persuasion of an unfair practice after a finding has been made that there is reasonable cause for believing that the unfair practice has been or is being committed.

~~("Hearing" means the public session of a hearing tribunal to receive the evidence on which a case will be decided. It is the equivalent of "trial" in court practice.))~~

"Person" has the broad meaning given the word in RCW 49.60.040. It includes the commission.

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-019 PROCEDURE WHEN NONE IS SPECIFIED. (1) Any orderly procedure. To take care of a problem for which no procedure is specified by this chapter, the Administrative Procedure Act, chapter ~~((34.04))~~ 34.05 RCW, or the law against discrimination, chapter 49.60 RCW, any orderly procedure may be used. Appropriate procedures may be taken from the Washington civil rules for superior courts, the federal rules of civil procedure, or the rules of other administrative agencies of the state of Washington or of the United States.

(2) By chairperson. The chairperson of the commission or ~~((of a hearing tribunal))~~ an administrative law judge may specify the procedure to be used to dispose of any matter not covered by this chapter, or any matter covered by a rule that has been waived or altered in the interest of justice under authority of WAC 162-08-013.

~~((3) By others. A person who wishes to address a matter for which no procedure has been specified in this chapter or the statutes may choose an appropriate procedure, identify it, and commence to act upon it. If the chairperson of the commission or hearing tribunal, as appropriate, finds that the matter is one that should not be addressed, the chairperson shall decline to respond to the attempted procedure, with the explanation that this is done because the object of the procedure is not appropriate for commission or tribunal action. If the chairperson finds that the object is appropriate but the chosen procedure is not appropriate, the chairperson shall specify an appropriate procedure to be used.))~~

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-021 WHO MAY APPEAR AND PRACTICE. No person other than the following may appear in a representative capacity before the commission or before an administrative law judge for a human rights hearing:

(1) Washington lawyer. An attorney at law entitled to practice before the supreme court of the state of Washington;

(2) Other lawyer. An attorney at law entitled to practice before the highest court of record of any other state,

if attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by Washington law;

(3) Legal intern. A legal intern licensed to engage in the practice of law in the state of Washington under admission to practice Rule 9;

(4) Officer, etc. A bona fide officer, partner, or full time employee of an association, partnership, or corporation appearing for the association, or one of its members for the partnership, or corporation.

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-041 SERVICE AND FILING OF PAPERS. (1) How served. Service of papers may be made personally or by first-class mail, registered or certified mail, or telegraph, or by leaving a copy at the principal office or place of business of the person to be served.

(2) Who serves. The commission shall cause to be served all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be caused to be served by the party filing it.

(3) Upon whom served. All papers served by the commission or any party shall be served at the time of filing upon all counsel of record and upon parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact.

(4) Service on commission. In a ~~((pending matter in which))~~ matter pending before the commission or an administrative law judge in which the commission is being represented by the attorney general or a staff person other than the clerk, service on the commission shall be made by serving the attorney or staff person who is acting for the commission. In such matters, filing a paper with the clerk is not service on the commission. Service of a petition for judicial review under the administrative procedure act, chapter 34.05 RCW, is governed by RCW 34.05.542 and not by these rules.

(5) Service by mail. If service is made by mail, the papers shall be deposited in the post office addressed to the person on whom they are being served, with the postage prepaid. Unless earlier receipt is shown, service by mail shall be deemed complete upon the third day following the day upon which the papers are placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday following the third day.

(6) Filing, generally. Papers required to be filed with the commission shall be deemed filed on actual receipt at the commission's Olympia or Seattle office, or other place previously specified, accompanied by proof of service on any parties required to be served.

(7) Filing with ~~((hearing tribunal))~~ administrative law judge. Papers required to be filed with ~~((a hearing tribunal))~~ an administrative law judge shall be filed with the clerk, ~~((Fourth Floor, 1601 Second Avenue Building, Seattle, 98101))~~ 402 Evergreen Plaza, Mailstop FJ-41, Olympia, WA 98504, unless otherwise directed. They must be accompanied by proof of service on all parties required to be served. The original of each paper shall be filed, accompanied by ~~((four))~~ two copies ~~((for use by the tribunal members and clerk))~~.

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-051 FORM OF PAPERS. Except for papers filed with ~~((a hearing tribunal))~~ an administrative law judge (covered by WAC 162-08-241) and any other papers where the form is specified by rule, papers may be submitted in any form. The commission requests, but does not require, that all papers be typewritten on white paper of letter size (8 1/2 x 11").

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-061 RELATIONSHIP OF COMMISSION TO COMPLAINANT. (1) Commission's role and objectives. In investigating cases the commission seeks to ascertain the facts in order to make an impartial finding of "reasonable cause" or ~~((not))~~ "no reasonable cause". It has no predisposition in favor of either complainants or respondents. If "reasonable cause" is found, then the objective of the commission is to obtain the remedy that will best eliminate the unfair practices and prevent their recurrence. The judgment as to what will eliminate an unfair practice for purposes of reaching an agreement under RCW 49.60.240 is made initially by the executive ~~((secretary))~~ director, or other staff persons pursuant to the executive ~~((secretary's))~~ director's direction, and ultimately by the commissioners. The judgment as to what will eliminate an unfair practice and carry out the purposes of the human rights law after hearing under RCW 49.60.250 is made by the ~~((hearing tribunal))~~ administrative law judge.

(2) Independence from complainant. A court confines its judgment to the parties before it, and it seeks to resolve in a single action the entire dispute between them. The commission was not designed to compete with the courts as a forum for the vindication of private rights; its task is to work for the public good of eliminating and preventing discrimination. If the commission were obligated to dispose of every contention between a complainant and respondent arising out of the alleged discrimination, then its resources would be diverted from this central task. RCW 49.60.020 preserves the civil and criminal remedies of a person who has filed a complaint under the law against discrimination, and RCW 49.60.030 authorizes suits directly in court, in order to free the commission to work for the remedy best designed to eliminate and prevent discrimination. In negotiating a settlement or seeking an order, the commission generally

works for provisions restoring the complainant as nearly as possible to the position he or she would be in if he or she had not been discriminated against, because this is usually an effective way to eliminate the discrimination and prevent its recurrence. But where, in the commission's judgment, provisions fully restoring the complainant (for instance, reinstatement to the job with back pay) would be inadequate to eliminate a pattern of discrimination, the commission will hold out for additional terms, even though the respondent is willing to settle on the basis of full relief for the complainant only. In different circumstances, the commission may determine that discrimination will be effectively eliminated and prevented by an order that does not afford the complainant every item of relief to which he or she may have a legal claim. The commission assumes that persons who complain to it are as interested in the elimination and prevention of discrimination in general as in their individual cases. If a person is interested only in relief for himself or herself, he or she is advised to seek his or her remedy directly in court. In any event, a person who is dissatisfied with the commission's disposition of his or her complaint may still assert in court any outstanding personal claims which he or she may have against the respondent.

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

#### WAC 162-08-062 CONCURRENT REMEDIES.

(1) Other remedies. The law against discrimination preserves other remedies (RCW 49.60.020) and provides for lawsuits in court (RCW 49.60.030(2)) in addition to an administrative remedy. A person may simultaneously sue in state court, file a complaint with the commission, pursue federal remedies, and sometimes proceed under a local ordinance. Persons should be aware, however, that general rules of law prevent recovering more than once for the same item of injury and sometimes bind a litigant to the result of the first case that is determined, whatever its outcome.

(2) Abeyance—Real estate transactions. Real estate transactions complaints will be held in abeyance during the pendency of a federal proceeding unless the federal proceeding has been deferred pending state action, as is provided by RCW 49.60.226.

(3) Abeyance—General rule. A complaint of an unfair practice other than in real estate transactions will be held in abeyance during the pendency of a case in federal or state court litigating the same claim, whether under the law against discrimination or a similar law, unless the executive ((~~secretary~~)) director or the commissioners direct that the complaint continue to be processed. A complaint of an unfair practice other than in real estate transactions will not be held in abeyance during pendency of a federal, state, or local administrative proceeding, unless the executive ((~~secretary~~)) director or commissioners determine that it should be held in abeyance.

## II COMPLAINTS

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 40, filed 10/12/79)

WAC 162-08-071 COMPLAINTS BY AGGRIEVED PERSONS. (1) Scope of section. This section applies to complaints by persons claiming to be aggrieved by an alleged unfair practice filed under RCW 49.60.230(1), and to complaints by employers or principals filed under RCW 49.60.230(3). Complaints issued by the commission are covered by WAC 162-08-072.

(2) Signature and oath. A complaint shall be in writing, signed by the complainant or the complainant's lawyer, and sworn to before a notary public or other person authorized by law to administer oaths, or subscribed and signed under the following declaration: "I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct." Notarial service for this purpose is available without charge at all offices of the commission.

(3) Contents. A complaint shall contain the following:

(a) The name of the person making the complaint;

(b) The name, address and telephone number, if any, of the person against whom the complaint is made, if known to the complainant;

(c) A specific charge of an unfair practice(s);

(d) A clear and concise statement of the facts which constitute the alleged unfair practice(s);

(e) The date or dates of the alleged unfair practice(s), and if the alleged unfair practice is of a continuing nature, the dates between which said continuing acts of discrimination are alleged to have occurred.

(4) Forms. Printed complaint forms are available at all commission offices.

(5) Time for filing. The complaint must be filed within six months after the date of occurrence of the alleged unfair practice(s). RCW 49.60.230. If the alleged unfair practice is of a continuing nature, the date of the occurrence of the unfair practice shall be deemed to be any date subsequent to the commencement of the alleged unfair act up to and including the date when the alleged unfair practice stopped.

(6) Computation of time. The six month period for filing a complaint expires at 5:00 p.m. on the day before the corresponding day of the sixth month following the event. If this day is a Saturday, Sunday, or a legal holiday, the time expires at 5:00 p.m. on the next day which is not a Saturday, Sunday, or legal holiday. For example, a complaint of an event occurring on 5 January would ordinarily have to be filed by 5:00 p.m. on 4 July, but since 4 July is a legal holiday, the time for filing the complaint would expire at 5:00 p.m. on 5 July, or at 5:00 p.m. Monday, if 5 July comes on a Saturday or Sunday.

(7) Technical defects. A complaint shall not be considered defective (~~because it lacks any technical requirement, including the oath, if the technical requirement is later met or if no one is legally harmed~~) if the defect is technical and can be corrected by subsequent amendment. The statutory requirements set forth in RCW 49.60.230, including the requirement of a signature under oath, are jurisdictional and failure to comply cannot be corrected by subsequent amendment.

READOPTED/AMENDATORYSECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-072 COMPLAINTS ISSUED BY COMMISSION. (1) Who may initiate. Complaints issued by the commission under RCW 49.60.230(2) may be initiated by the commissioners or by the executive ((secretary)) director personally.

(2) By commissioners. Initiation of a complaint by the commissioners shall be by motion at a meeting. The executive ((secretary)) director shall transcribe a carried motion from the minutes onto a paper designated "complaint," attest it with a signature, and process it.

(3) By executive ((secretary)) director. The executive ((secretary)) director may initiate a commission complaint by personally signing a document saying that the commission has reason to believe that the person shown as respondent has been engaged or is engaged in an unfair practice, identifying the nature of the unfair practice, and the facts on which it is based. The executive ((secretary)) director shall notify each commissioner in advance of issuing a complaint, or if advance notice is not possible because of an emergency, or because a commissioner cannot be reached, or for other reason, the executive ((secretary)) director shall give the notice as soon after issuing the complaint as possible. Any commissioner may have placed on the agenda of the next commission meeting the question of whether the complaint shall stand. If this is done, the commissioners shall vote to sustain or rescind the complaint, after such debate and deliberation as is appropriate, but without taking testimony, or hearing arguments or reports from anyone but commissioners and staff, except as the commission by vote may direct.

(4) Basis for commission complaint. A commission complaint may be issued when the commission "has reason to believe that any person has been engaged in an unfair practice." RCW 49.60.230(2). The basis of belief for a complaint is different from the basis for a finding under RCW 49.60.240 of "reasonable cause for believing that an unfair practice has been or is being committed." The finding of reasonable cause or not is based on the commission's own investigation and ascertainment of facts after receipt of a complaint. The basis of belief for the purpose of initiating a commission complaint is information from any source sufficient, in the judgment of the commission, to justify an investigation and finding of whether or not there is reasonable cause for believing that an unfair practice has been or is being committed.

READOPTED/AMENDATORYSECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-081 AMENDMENT OF COMPLAINT PRIOR TO NOTICE OF HEARING. (1) Scope of section. This section governs amendments of complaints prior to the time of amendment for the purpose of hearing. Amendment of a complaint for the purpose of hearing is governed by WAC 162-08-201. Amendments after notice of hearing are governed by WAC 162-08-265.

(2) General rule. A complaint, or any part thereof, may be fairly and reasonably amended as a matter of right at any time.

(3) By whom. The complaint may be amended by any of the following: The complainant, the commissioners, or the executive ((secretary)) director or any member of the commission's staff who is authorized by the executive ((secretary)) director to amend complaints.

(4) Form. Amendment of a complaint may be done by rewriting and ((superceding)) superseding the entire text of the complaint or by filing a supplemental paper containing only the amendment.

(5) Not necessary for finding. The investigation pursuant to RCW 49.60.240 will cover the ~~((respondent's treatment of all persons who may have been affected by the unfair practice alleged in a))~~ factual allegations and unfair practices charged in the complaint, and a reasonable cause finding will apply to all persons affected by the unfair practice(s) that is (are) found. The complainant may or may not be one of those persons. No amendment of the complaint is necessary for such a finding. ~~((Also, if reasonable cause to believe that an unfair practice not alleged in the complaint is discovered in the course of investigating the complaint, a finding may be made to that effect as provided in WAC 162-08-094(3) and the case will proceed on that basis, without the necessity of amending the complaint.))~~

(6) Identification of respondents. No amendment of a complaint is necessary to make corrections in the identification of respondents in the findings of fact, if the respondents newly designated have notice of the complaint, or are given notice of the complaint, or reasonably should have known of the complaint. The findings of fact may correct the names or identification of respondents by substituting correct names, by adding persons as respondents, or by deleting persons as respondents.

(7) Findings supersede complaint. The findings supersede the complaint in identifying the ~~((issues))~~ unfair practices and persons before the commission in the case, and continue to do so until and unless an amended complaint for purposes of hearing is filed under WAC 162-08-201.

READOPTED/AMENDATORYSECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-091 WITHDRAWAL OF COMPLAINT. (1) Consent necessary. A complaint or any part thereof may be withdrawn only with the consent of the ~~((commissioners))~~ commission.

(2) Form. A request for withdrawal of a complaint must be in writing and signed by the complainant and must state in full the reasons why withdrawal is requested. Blank forms may be obtained at commission offices.

III INVESTIGATION OF COMPLAINTS—  
FINDINGSREADOPTED/AMENDATORYSECTION (Readopting and Amending Order 39, filed 1/23/78)

WAC 162-08-093 REFERENCE TO STAFF. Unless the chairperson of the commission directs otherwise for a particular complaint, all complaints shall be investigated by the section of the staff designated for that purpose by the executive ((secretary)) director, and the executive ((secretary)) director shall have full power to assign and reassign cases for investigation by particular staff persons, and to assign and reassign staff persons to the section of the staff that investigates complaints, on a full time or part time basis.

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-094 INVESTIGATION. (1) Copy of complaint to respondent. Within a reasonably prompt time after a complaint is filed the staff shall furnish a copy of the complaint to the respondent and shall afford the respondent an opportunity to reply in writing. No error or omission in carrying out this step shall affect the validity of the complaint or prevent further processing of it.

(2) Preliminary evaluation of complaint. If the allegations of the complaint, if true, show no basis for commission action, then the staff without further investigation may enter a finding of no reasonable cause or write a recommendation for a finding of no jurisdiction, or other appropriate disposition.

(3) Scope of investigation. The investigation ~~((will ordinarily be directed at))~~ is limited to ascertaining the facts concerning the unfair practice(s) alleged in the complaint. ~~((It is appropriate to compare the treatment of others with that of the complainant, and to see whether others of the complainant's class have also been treated the way the complaint says the complainant was. If in the course of investigation the investigator finds evidence of unrelated unfair practices the investigator may report this to his or her supervisor for evaluation as to whether the commission should initiate an amendment or a separate complaint, or, if sufficient facts are already at hand, the investigator may prepare findings on the unrelated unfair practice, after notifying the respondent of an intention to do so and giving the respondent a chance to comment on or rebut the facts in the possession of the investigator. The investigation may include ascertaining whether an unfair practice is part of a pattern.))~~ RCW 49.60.240.

#### NEW SECTION

WAC 162-08-09501 METHODS OF OBTAINING INFORMATION<sup>1</sup>. (1) Pursuant to RCW 49.60.140 and 49.60.240, as part of the investigative process, staff members of the commission may obtain information by one or more of the following methods: Subpoenas, oral questions, written questions and answers, requests for specific documents and records.

(2) Use of these methods is available only to commission staff. Since the investigation is an internal agency process, and not an adversarial proceeding, use of the

methods for obtaining information described in subsection (1) of this section are available only to commission staff members.

(3) Scope of inquiry. Commission staff members may obtain information regarding any matter, not privileged, which is relevant to the complaint filed with the commission.

(4) Methods of obtaining information.

(a) SUBPOENA AND SUBPOENA DUCES TECUM. Subpoenas may be issued by the chairperson of the commission, any member of the commission designated by the chairperson, the executive director, or any staff member designated by the executive director, to compel the appearance of any person to give information relevant to a complaint which is under investigation.

(i) Subpoenas may be served in any manner authorized by WAC 162-08-041 and RCW 49.60.140 for the service of papers generally.

(ii) Pursuant to RCW 49.60.170, witnesses shall be paid the same fees and mileage as are paid witnesses in the courts of this state, and by the same party who would pay if the proceeding were before a court of this state. Any person authorized to issue subpoenas who desires the attendance of a witness residing outside of the county in which attendance is desired, or more than twenty miles from the place where attendance is desired, may compel the attendance of the witness by subpoena accompanied by ten dollars, tickets or other arrangements for travel, or an appropriate mileage allowance if the witness agrees to travel by automobile, plus not less than one day's per diem at the rate specified by law for witnesses required to attend court proceedings. The executive director may order additional amounts for meals, lodging, and travel as the executive director may deem reasonable for the attendance of the witness, consistent with RCW 5.56.010 and other statutes governing allowances for witnesses in the courts of this state, if the witness objects to the arrangements or amounts provided by the person issuing the subpoena.

(iii) The party who calls an expert witness shall pay the professional fee charged by the expert witness and all other costs of the expert's testimony. If the other party's or parties' questioning of an expert witness exceeds the time taken by the party who requested the expert, they shall reimburse the party who called the expert witness for that portion of the fee charged by the expert witness and the other costs of the expert's testimony.

(iv) Questions relating to subpoenas shall be addressed by the executive director. Motions relating to subpoenas shall be addressed by the executive director or chairperson of the commission pursuant to the procedures set forth in WAC 162-08-019.

(b) ORAL QUESTIONS AND ANSWERS. Oral questions and answers may be taken in any reasonable manner at any time after a complaint has been filed with the commission, provided all parties are notified that the information may be transcribed and used as evidence in any hearing arising out of the matter under investigation.

(i) Oral questions and answers may be taken before a member of the commission's staff who is not involved in the investigation of the complaint or matter, or before a

person who has been commissioned to administer oaths by the chairperson of the commission, or before any person who is a notary public.

(ii) Record of examination. Questions and answers may be recorded mechanically or video-taped.

(iii) If signature is not waived, the witness shall have five days after submission of the transcription of their answers to register desired changes and sign it, and if the witness does not sign in the time allowed, the recording official may, the officer may certify the accuracy of the transcription.

(iv) The recording officer shall certify the transcription in the manner provided in CR 30(f) and shall send or deliver the original transcript to the clerk, unsealed. The recording officer need not notify parties of the transmittal.

(v) Upon receipt of a transcription certified as above, the clerk shall examine it to verify that it has been certified, and if it has been, the clerk shall file it. A transcription that has been so filed is published and is available for any use to which a deposition may be put, except to the extent that use is limited by a protective order (see WAC 162-08-096).

(vi) Transcriptions may be used in the same manner as depositions may be used under the civil rules for superior court, particularly CR 32.

(vii) Errors and irregularities in question and answer procedure are waived unless they substantially prejudice a party and are promptly objected to.

(c) WRITTEN QUESTIONS AND ANSWERS. Any commission staff person may serve written questions and answers on any party to be answered under oath.

(i) Form. Each written question shall be followed by adequate space for the answer.

(ii) Time for answer. Written questions shall be answered within ten days after service, unless their number, together with others served by the commission within the last ten days, exceed twenty questions, in which event they shall be answered within twenty days.

(d) PRODUCTION OF DOCUMENTS AND RECORDS. Any staff member authorized by the commission may request production of documents and records relevant to a matter under investigation and issue a subpoena duces tecum for the same material when not produced upon request.

Time for response. The party upon whom the request for production is served shall serve its written response within ten days, unless the parties have stipulated to, or the commission staff person has specified, a shorter or longer time.

<sup>1</sup> This section is intended to cover informal methods of obtaining information pursuant to RCW 49.60.140 and 49.60.240. When more formal methods of discovery are invoked, WAC 162-08-263 applies.

## READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-096 PROTECTIVE ORDERS ((~~TO SEAL PRODUCED DOCUMENTS~~)). (1) ((~~May be requested. Any person who is asked or subpoenaed to produce records may request a protective order to have a~~

~~particular document or part of document that has been produced or will be produced kept confidential for official use only, without public access.~~

~~(2) To whom addressed. Prior to notice of hearing, a request for a protective order shall be made to the executive secretary. After notice of hearing, a request for a protective order shall be made by motion to the chairperson of the tribunal, as provided in WAC 162-08-131(3).~~

~~(3) Form of request. Unless otherwise agreed with a staff person, requests for a protective order shall be in writing and shall state the requestor's reasons why a protective order should be issued for the documents covered.~~

~~(4) Grounds for issuance. A protective order may be made only upon findings that:~~

~~(a) The document or part of document is exempt from public disclosure under RCW 42.17.260 and 42.17.310 (Initiative 276) and the commission's implementing regulation, WAC 162-04-030, and;~~

~~(b) The requestor has shown legitimate need for confidentiality of the document or part of document.~~

~~(5) Form of order. The protective order shall be in writing and shall bear the caption of the case, date of entry of the order, and signature of the executive secretary or other authorized staff person or the chairperson of the tribunal. The text of the order shall contain:~~

~~(a) A description in general terms of each document covered by the order. Example: "Report dated ..... of Dr. .... to respondent on results of physical examination of the complainant, two pages."~~

~~(b) A statement of the specific exemption from the disclosure provisions of Initiative 276 authorizing the withholding of the record or part of record and a brief explanation of how the exemption applies to what is withheld. See RCW 42.17.310(4).~~

~~(c) A statement of why there is need for confidentiality of the document or part of document.~~

~~(6) Filing of order. The protective order shall be affixed to a sealed envelope containing the protected document and both shall be kept in the case file, or, alternatively, the original order and protected document may be kept at another place and a copy of the protective order placed in the case file along with a notation as to where the original order and protected document are kept.~~

~~(7) Effect of order. Except as may be provided in the protective order, documents covered by the protective order shall not be revealed to anyone other than commissioners, members of the commission's staff, and the commission's legal counsel for official purposes and shall not become public when the rest of the file becomes public as provided in WAC 162-04-030 (1)(a)(ii), but:~~

~~(a) Nothing shall prevent the use of a protected document in an administrative hearing or court case, including admission of the document into the public record of the hearing or case, and;~~

~~(b) Nothing herein is intended to prevent a court from ordering production of a protected document under RCW 42.17.310(3) or other authority.~~

~~(8) Other protective orders. Issuance of other kinds of protective orders concerning discovery is governed by~~

~~WAC 162-08-131(3):)~~ Upon motion by a party or by the person from whom information is sought pursuant to ~~WAC 162-08-09501~~, and for good cause shown, the chairperson of the commission may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense caused by revealing private information, or trade secrets, including all orders a court can make under CR 26(c).

(2) If a motion for a protective order is denied in whole or in part, the chairperson may, on such terms and conditions as are just, order that any party or person provide or permit information to be revealed subject to the provisions of ~~WAC 162-08-097~~.

(3) The chairperson may, on such terms and conditions as are just, grant a protective order sealing the produced documents pursuant to ~~WAC 162-04-035~~.

#### NEW SECTION

~~WAC 162-08-097 FAILURE TO PROVIDE INFORMATION.~~ (1) Order compelling production of information. The chairperson of the commission is authorized to make any order that a court could make under CR 37(a), including an order awarding expenses of the motion to compel production of information pursuant to ~~WAC 162-08-09501~~. The executive director, upon reasonable notice to other parties and all persons affected thereby, may obtain an order compelling production of information by motion to the chairperson of the commission. The form of the motion and the procedure for its disposition is governed by ~~WAC 162-08-019~~. When taking testimony under oath, the proponent of the question may either complete or adjourn the examination before moving for an order compelling production of information.

(2) Enforcement of an order compelling production of information. If the party fails to comply with a subpoena compelling production of information, the matter may be turned over to counsel for the commission for enforcement of the order in superior court.

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

~~WAC 162-08-098 FINDINGS.~~ (1) General. The findings document shall contain (a) findings of fact, and (b) an ultimate finding of reasonable cause or no reasonable cause for believing that an unfair practice has been or is being committed, or a finding on jurisdiction, as provided in (2) of this section.

(2) Jurisdictional dispositions. When the facts found show that the matter is not within the jurisdiction of the commission, the ultimate finding shall be "no jurisdiction" rather than "reasonable cause" or "no reasonable cause." In extraordinary circumstances where the commission technically has jurisdiction but for overriding reasons of law or policy is unable to properly exercise its jurisdiction, the ultimate finding may be "jurisdiction declined." An example of such an extraordinary circumstance is a complaint against the commission itself.

(3) Scope of reasonable cause finding. A finding of reasonable cause shall specify the unfair practice found and, as nearly as possible, the person or persons against whom the unfair practice has been committed. If the facts show an unfair practice against a class of persons, the class shall be indicated to the extent possible. ~~((If unfair practices unrelated to those alleged in the complaint are found while investigating the complaint, findings may be made also on such unfair practices, after following the procedure provided in ~~WAC 162-08-094(3):)~~)~~

(4) Action by commissioners. Findings of no reasonable cause shall be reported to the commissioners at a meeting, and shall thereafter stand as the action of the commission unless the commissioners vote to set aside a particular finding ~~((, either on motion of a commissioner, or on petition for reconsideration under ~~RCW 49.60.255 and ~~WAC 162-08-101~~~~)).~~ Findings of reasonable cause ~~((shall not be reported to the commissioners, but))~~ shall be used by the staff for the purpose of endeavoring to eliminate the unfair practices by conference, conciliation, and persuasion. Proposed findings of "no jurisdiction" or "jurisdiction declined" shall be reported to the commissioners and shall become commission action when approved by vote of the commissioners at a meeting.

(5) Effect of findings. ~~((The findings (rather than the complaint) identify what unfair practices the commission's staff has or has not reasonable cause to believe have been or are being committed. See ~~WAC 162-08-081(7)~~. A finding of reasonable cause for believing that an unfair practice has been or is being committed is the basis for staff efforts to eliminate the unfair practice by conference, conciliation, and persuasion.))~~ A finding that there is or is not reasonable cause for believing that an unfair practice has been or is being committed is not an adjudication of whether or not an unfair practice has been or is being committed.

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

~~WAC 162-08-099 TERMINATION OF A CASE WITHOUT FINDINGS OF FACT.~~ (1) Authorized. The commission in appropriate circumstances may terminate its action on a case without making findings of fact pursuant to RCW 49.60.240. This section provides procedures in some of the circumstances.

(2) Withdrawal of complaint. No findings or other procedures in RCW 49.60.240 and 49.60.250 are necessary when the complainant has requested withdrawal of the complaint and the commissioners have consented to the withdrawal pursuant to ~~WAC 162-08-091~~.

(3) Settled before finding. A case may be settled before findings of fact are made, when the commission's staff and a respondent have entered into a written settlement agreement (prefinding settlement). Prefinding settlement agreements shall be presented to the commissioners. The commissioners, if they approve, shall enter an order setting forth the terms of the agreement, using the same procedure as if the agreement were presented to the commissioners under RCW 49.60.240 and ~~WAC~~

162-08-106 after findings of fact. A prefinding settlement is not binding on the commission until the commissioners vote to accept it and issue their order (~~and the commissioners' acceptance and order are subject to reconsideration as provided in this paragraph. An aggrieved complainant may petition for reconsideration of a prefinding settlement and the commission may act on the petition in the manner provided in WAC 162-08-108 for reconsideration of terms of a postfinding agreement~~)).

(4) Administrative closure. A case may be administratively closed by vote of the commissioners when the complaint has been resolved informally, or has been adjudicated in another forum, or has become moot, or cannot be investigated because the complainant or respondent cannot be found, or when other circumstances justify administrative closure. Administrative closure is an official termination of work on a complaint prior to completion of the entire statutory process, letting the complaint lie in its present posture. A case that has been administratively closed can be administratively reopened by vote of the commissioners.

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

#### WAC 162-08-101 RECONSIDERATION OF FINDINGS ((OF NO REASONABLE CAUSE)).

~~((1) Form of petition. A petition for reconsideration pursuant to RCW 49.60.255 of a finding that there is no reasonable cause for believing that an unfair practice has been or is being committed shall be in writing and shall state specifically the grounds on which it is based.~~

~~(2) Copy to respondent. The clerk shall serve a copy of the petition on the respondent or respondents.~~

~~(3) Scheduling. For purposes of scheduling reconsiderations under RCW 49.60.255 the "next regular meeting" of the commission shall be deemed to be the next regular meeting coming ten days or more after the clerk has served the respondent with notification of the reconsideration. The complainant, or a respondent who intends to appear before the commission at the reconsideration, may request that the matter be held over to a subsequent commission meeting in order to reduce travel expense or for other good reason. The clerk may reschedule reconsiderations to carry out this paragraph.~~

~~(4) Nature of proceeding. Reconsideration of findings is not an adversary hearing and is not a contested case for purposes of the Administration Procedure Act, chapter 34.04 RCW. The only issues before the commission are whether the staff's investigation was adequate and whether the finding of no reasonable cause follows from the facts. The burden is on the complainant to convince the commission to exercise its discretion to set aside the prior action. The commission will not itself make a finding of fact. It will either continue to accept the original findings of fact or send the complaint back to the staff for reinvestigation and entry of new findings.~~

~~(5) Procedure before commission.~~

~~(a) Complainant's role. The complainant has the right to appear before the commission in person or by counsel~~

~~and "present such facts, evidence and affidavits of witnesses as may support the complaint." If the complainant does not appear at the scheduled hearing the petition may be ruled upon on the basis of the written materials in the possession of the commission. The commission requests that the facts and evidence be put into writing and, along with affidavits, be filed with the clerk in time to permit distribution to commissioners and the respondent prior to the meeting. Live testimony may be presented only with the permission of the chairperson. Any person testifying as a witness will not be subject to cross examination or placed under oath unless the chairperson chooses to do so, but any person testifying, as well as the complainant and respondent and their attorneys, may be questioned by commissioners and staff. The time allowed for hearing a reconsideration shall be within the control of the chairperson and will ordinarily not exceed 15 minutes for the complainant's presentation.~~

~~(b) Staff's role. The chairperson may, and upon request of any commissioner shall, call upon staff persons to inform the commission of the staff's reasons for prior action and its recommendations for future action.~~

~~(c) Respondent's role. A respondent has no duty to appear or present any facts, evidence, or affidavits of witnesses, but the respondent has the right to be present at the reconsideration in person or by counsel and to speak to the commission for a reasonable time, ordinarily equal to that allowed to the complainant. A respondent may present facts, evidence, or affidavits of witnesses in the manner provided for complainants, but respondents are asked not to do so unless there is actual need for the material. No adverse inference will be made from a respondent's choice not to submit materials or not to attend a reconsideration.~~

~~(6) Decision on reconsideration of finding. The petition shall be granted or denied, in the discretion of the commission.~~

~~(a) Reconsideration granted. If reconsideration is granted the finding is set aside and the case is returned to the staff for reinvestigation and entry of a new finding based on the facts as ascertained on reinvestigation.~~

~~(b) Reconsideration denied. If reconsideration is denied, the finding of no reasonable cause stands as the commission's final disposition of the case. The disposition is not appealable, see *Mattox v. Washington State Board Against Discrimination*, 13 Wn.App. 406, 535 P.2d 470 (1975), but the finding of no reasonable cause does not prevent the complainant from suing the respondent in court.~~

~~(7) Expedited procedure. Upon written waiver by both parties of their right to appear before and have a petition for reconsideration determined by the full commission, the chairperson may direct that the matter be heard and decided by a single designated commissioner, at a time and place to be established by the commissioner delegated to hear the case in question. A determination by a single commissioner under the expedited procedure shall be considered to be done on behalf of the commission, and there shall be no appeal of the decision to the full commission. The clerk shall report any decision rendered under the expedited procedure to the full commission, within a reasonable time after the decision~~

~~is rendered. Upon request of any commissioner, the determination of the single commissioner shall be put on the agenda of the next meeting and reviewed by the full commission. Reconsideration hearings under the expedited procedure shall be conducted in the same manner as reconsideration requests before the full commission, except as otherwise specified in this subsection.~~

~~(8) Limitation on petitions for reconsideration. No more than one petition for reconsideration may be filed under the provisions of RCW 49.60.255 by the same complainant in the same case.~~

~~(9) Other reconsideration. Reconsideration of the terms of a conciliated agreement is governed by WAC 162-08-172 [162-08-108]. Nothing in this section shall prevent the commission from reconsidering its disposition of a complaint without findings of fact or on jurisdictional grounds, either on petition or on its own motion, when it would serve the end of justice to do so. The procedure in this section may be used to request reconsideration of the disposition of a complaint without findings of fact or on jurisdictional grounds.) The commission may reconsider and correct any finding in which errors affecting the result are brought to its attention.~~

#### IV CONCILIATION

##### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-106 APPROVAL OF AGREEMENTS. An agreement reached between the commission's staff and a respondent under RCW 49.60.240 shall be reduced to writing, signed by the respondent and a member of the commission's staff, and presented to the commissioners at a meeting. The agreement is not binding on the commission until the commissioners vote to accept it (~~(, and the commissioners' acceptance is subject to their power to reconsider the terms of agreement under RCW 49.60.255 and WAC 162-08-108).~~).

##### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-109 BREACH OF CONCILIATED AGREEMENT. If an agreement and order for the elimination of an unfair practice made under RCW 49.60.240 is breached, the executive (~~(secretary)~~) director may take action appropriate in the circumstances, including one or more of the following:

(1) Specific enforcement. Bringing an action in superior or district court for specific enforcement of the agreement, or for damages pursuant to the conciliation agreement;

(2) Setting aside. Recommending to the commissioners that the agreement and order be set aside, in whole or in part, and that the case be returned to the staff for renewed conference, conciliation and persuasion, or to be referred to commission counsel for hearing; or

(3) Report to prosecuting attorney. Reporting the violation to the appropriate prosecuting attorney for prosecution under RCW 49.60.310.

((SUBPOENAS))

((DISCOVERY))

((PREHEARING PROCEDURE))

#### V ADMINISTRATIVE HEARINGS BEFORE AN ADMINISTRATIVE LAW JUDGE

##### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-190 CERTIFICATION OF FILE.

(1) General. Certification of the file to the chairperson as provided in RCW 49.60.250 in case of failure to reach an agreement under RCW 49.60.240 for the elimination of an unfair practice shall be done in the manner provided in this section.

(2) Who certifies. Certification shall be done by the clerk.

(3) Form of certificate. The certificate shall be in writing and dated and signed by the clerk and shall be in substantially the following form: "I certify that the attached is the entire file, including the complaint and all findings made, of the Washington state human rights commission staff for the complaint included in the file."

(4) Custody of file. The certified file, including the certificate, shall be held in the custody of the clerk, who shall see that it is available for use by the chairperson of the commission and counsel for the commission, and for examination and copying by others.

##### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-201 PREHEARING AMENDMENT OF COMPLAINT. (1) Required. Before a case is noted for hearing, counsel for the commission shall prepare an amended complaint as provided in this section in accordance with RCW 49.60.250(1).

(2) Basis for. The amended complaint shall be based on the facts as they are believed by the commission's counsel and staff to exist at the time the amended complaint is signed.

(3) Scope. The amended complaint shall identify the persons who are proper parties for the hearing and the matters to be heard. It need not be limited to parties or matters mentioned in the complaint filed under RCW 49.60.230, and it need not include all parties or matters mentioned in that complaint.

(4) Form. The complaint shall be in the form designated in WAC 162-08-241.

(5) Contents. The amended complaint shall contain the following:

(a) Identification of the specific unfair practice or practices alleged.

(b) A ~~((clear and concise))~~ short and plain statement of the ~~((facts))~~ factual allegations which form the basis for the alleged unfair practices.

(c) A request for relief, setting out the terms or substance of the order which the executive (~~(secretary)~~) director believes would be appropriate for the ~~((tribunal))~~

administrative law judge to enter if the matters alleged in the complaint are proven to be true.

(6) Pleading statutory steps. It is not necessary for counsel for the commission to plead that the statutory steps prior to the amended complaint have been completed. All statutory steps prior to hearing will be deemed to have been properly completed unless an issue is raised by specific negative averment in an answer as provided in WAC 162-08-251~~((5))~~ (7).

(7) Signing. The amended complaint shall be signed by counsel for the commission and verified by the executive ~~((secretary))~~ director or a staff member designated by the executive ~~((secretary))~~ director to verify on behalf of the executive ~~((secretary))~~ director.

## READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-211 APPOINTMENT OF ~~((HEARING TRIBUNAL))~~ ADMINISTRATIVE LAW JUDGE. ~~((1))~~ When appointed. When the file has been certified (WAC 162-08-190) and counsel for the commission has prepared an amended complaint for hearing (WAC 162-08-201) the chairperson of the commission shall ~~((appoint a hearing tribunal))~~ request the appointment of an administrative law judge as provided in RCW 49.60.250 and this section.

~~((2))~~ Qualifications of tribunal members. Commissioners are qualified by virtue of their office to serve as tribunal members. A person other than a commissioner who is appointed as a member of a hearing tribunal shall have the following qualifications, in the judgment of the chairperson of the commission:

(a) Agreement with the purposes of the law against discrimination, and the ability and willingness to follow and apply the law against discrimination and the regulations, declaratory rulings, and other formal interpretations of the law against discrimination made by vote of the commissioners (as distinguished from interpretations of the commission's staff or legal counsel), see WAC 162-08-278(7);

(b) Knowledge of civil rights law, or of the problems with which the law against discrimination is concerned, or of the type of unfair practice alleged, or of the industry, circumstances or situation of the respondent in the case, or of the community or region where the alleged events occurred, or other knowledge or background that will help the person to understand the issues to be considered;

(c) Ability to judge the case fairly, without partiality toward the complainant, counsel for the commission, the respondent, or any other participant in the hearing; and

(d) Willingness to devote the time necessary to fully hear the case and decide it with reasonable promptness.

(3) Sources of tribunal members. Any person may volunteer to serve as a hearing tribunal member by submitting in writing to the clerk the person's name, address, and telephone number, and a statement of qualifications, including the matters covered in part (2) of this

~~section. The clerk shall supply blank forms on which to make submissions, and the clerk may assist persons by taking the information orally or by telephone and preparing the form for signature. The clerk shall keep a file of submitted forms, which shall be open to public inspection. The chairperson of the commission shall consult the file when appointing hearing tribunals, but the chairperson shall not be limited to the appointment of persons who have volunteered. If the chairperson solicits the service of a person who has not already volunteered, the person shall sign a statement in the form provided by this subsection and file it with the clerk for inclusion in the file with the volunteered names. This paragraph does not apply to commissioners.~~

~~(4) Chairperson of tribunal. The chairperson of each hearing tribunal shall be either a member of the commission or an attorney at law. The chairperson of the commission shall designate one of the members of the hearing tribunal to serve as chairperson of the hearing tribunal. If the chairperson of the tribunal resigns, is removed, or otherwise becomes unable to serve, the chairperson of the commission shall designate another member to serve as chairperson. The designation may be of the new member appointed to take the chairperson's place, or of another member, if the other member is qualified to serve as chairperson.~~

~~(5) Alternative tribunal member. The chairperson of the commission may appoint a fourth person as an alternative tribunal member. If a vacancy in tribunal membership other than chairperson occurs prior to the hearing, the alternative member thereupon becomes an active member, whether or not the alternative member has participated in prehearing proceedings. If such a vacancy occurs after commencement of the hearing, the alternative member becomes an active member only if he or she has attended the hearing up to the time when the vacancy occurs.~~

~~(6) Acceptance of appointment and responsibilities. Each tribunal member shall execute in writing and file with the clerk a document in substantially the following form:~~

~~"I accept appointment as a member of the hearing tribunal which will hear the case captioned above for the Washington state human rights commission.~~

~~I certify that, to my knowledge, I have no conflicts of interest which would interfere with my ability to judge fairly and impartially.~~

~~I promise to judge this case with fairness and impartiality to all parties and persons.~~

~~I agree with the purposes of the law against discrimination and I will follow and apply the law against discrimination and the regulations, declaratory rulings, and other formal interpretations of the law against discrimination made by vote of the commissioners.~~

I am willing to devote the time necessary to fully hear the case and decide it with reasonable promptness.

Dated \_\_\_\_\_  
\_\_\_\_\_  
(Signature)

A person who serves as a hearing tribunal member for several cases may file a single document in similar form but saying instead that the person will not accept appointment to a case where the person's interests interfere with the person's ability to judge fairly and impartially. The clerk shall file the document for an individual case in the file for the case and shall file a document for more than one case in a separate file under the person's name or, alternatively, in one case file with a copy in the file of each other case on which the person serves.

~~(7) Vacancies. Vacancies in tribunal membership caused by resignation, disability, removal under WAC 162-08-215, or other cause, and not filled by an alternative tribunal member under part (3) of this section shall be filled through appointment by the chairperson of the commission in the manner provided for appointment of original tribunal members. If filling a vacancy would make necessary the repetition of a substantial amount of work, the chairperson may leave a vacancy unfilled and the case may proceed before a tribunal of two, as provided in WAC 162-08-278.)~~

READOPTED/AMENDATORY SECTION (Readopting and Amending Order 37, filed 10/27/77)

WAC 162-08-221 NOTICE OF HEARING. (1) Applicable statutes. When ~~((a hearing tribunal))~~ an administrative law judge has been appointed, the clerk shall give notice of hearing to all parties as provided in RCW 49.60.250 and ~~((34.04.090(1)))~~ 34.05.434.

(2) Indefinite time. The clerk may, in his or her discretion, omit the time and place of hearing from the notice with the explanation that the time and place will be set by later notice from the ~~((tribunal chairperson))~~ administrative law judge, given at least twenty days in advance of the time of hearing.

(3) Issues. The notice of hearing shall state that the issues involved in the hearing are (a) whether the respondent committed the unfair practices stated in the amended complaint, and, if so, (b) what order is appropriate. A copy of the amended complaint shall be attached to the notice of hearing.

(4) Notice of rules. The notice of hearing shall inform the respondent of the answer rule, WAC 162-08-251, and it shall inform the complainant of a complainant's rights and options under WAC 162-08-261.

(5) Consolidation of cases. The ~~((chairperson, in the original notice of hearing or by amended notice of hearing,))~~ administrative law judge may consolidate cases when they involve common questions of law or fact.

READOPTED/AMENDATORY SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-231 RECORD, PLEADINGS. (1) Record. The record of ~~((a tribunal))~~ an administrative hearing shall include the items specified in RCW ~~((34.04.090))~~ 34.05.437, including, but not limited to:

- ~~((a))~~ (a) All pleadings, motions, ~~((intermediate rulings))~~ briefs, proposed findings of fact and conclusions of law and initial or final orders, objections, but not offers of settlement (RCW 49.60.250(2));
- (b) Evidence received or considered;
- (c) A statement of matters officially noticed;
- ~~((d))~~ (d) ~~((Questions and offers of proof, objections, and rulings thereon;~~
- ~~((e))~~ (e) Proposed findings and exceptions;
- ~~((f))~~ (f) Any decision, opinion, or report by the officer presiding at the hearing. ~~((a))~~

It shall also include the chairperson's order appointing the hearing tribunal and the statement of acceptance of appointment and responsibilities filed by tribunal members pursuant to WAC 162-08-211(6).))

(2) Pleadings. Pleadings for ~~((a tribunal))~~ an administrative hearing shall include the notice of hearing with amended complaint attached and any amended complaints subsequently filed, plus any answers or replies filed under WAC 162-08-251, and the original complaint if, but only if, the complainant elects to proceed under it as provided in WAC 162-08-261.

(3) Proceedings before notice of hearing not part of record. ~~((Except for the order appointing the hearing tribunal and statements of acceptance of appointment and responsibilities filed by tribunal members pursuant to WAC 162-08-211(6);))~~ No findings or other parts of the commission's record of action on the complaint prior to notice of hearing shall be included in the record of the ~~((tribunal))~~ administrative hearing unless the particular document is offered and admitted into evidence.

(4) Custody. The clerk shall keep custody of the official record of the ~~((tribunal))~~ administrative hearing as provided in WAC 162-04-026 ~~((162-08-026))~~ (3)(h) and shall keep the ~~((tribunal))~~ administrative law judge file separate from the file of the original complaint, investigation, and conciliation, of which the clerk has custody under WAC 162-04-026 ~~((162-08-026))~~ (3)(d) and 162-08-190.

(5) Record for appeal ~~((or enforcement))~~. The record certified to the court for the purpose of judicial review under RCW ~~((34.04.130 or enforcement under RCW 49.60.260))~~ shall include the record of the tribunal hearing plus all motions for removal of tribunal members for cause under WAC 162-08-215 and motions objecting to the panel under WAC 162-08-217, and all other papers filed because of such motions)) 34.05.510 et seq. shall comply with RCW 34.05.566.

(6) Record for enforcement. The record to be filed in an enforcement proceeding shall include the final order of the administrative law judge and any other portions of the record required by the court.

READOPTED/AMENDATORY SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-241 FORM OF PAPERS FILED WITH ~~((TRIBUNAL))~~ ADMINISTRATIVE LAW

JUDGE. (1) Caption. The notice of hearing shall include a full caption in substantially the following form:

BEFORE THE ((WASHINGTON STATE))  
ADMINISTRATIVE LAW JUDGE FOR A HUMAN  
RIGHTS COMMISSION HEARING  
((TRIBUNAL))

WASHINGTON STATE HUMAN RIGHTS  
COMMISSION, PRESENTING THE CASE  
IN SUPPORT OF THE COMPLAINT OF  
JAMES DOE, complainant,

v.

NO.

ROE ENTERPRISES, INC., PHYLLIS  
ROE, PRESIDENT, AND RICHARD  
ROE, SECRETARY, respondent(s).

Papers filed thereafter may have a short caption in substantially the following form:

BEFORE THE ((WASHINGTON STATE))  
ADMINISTRATIVE LAW JUDGE FOR A HUMAN  
RIGHTS COMMISSION HEARING  
((TRIBUNAL))

WASHINGTON STATE HUMAN  
RIGHTS COMMISSION EX REL.  
DOE, complainant,

v.

NO.

ROE ENTERPRISES, INC., ET  
AL., respondent(s)

(2) Form in general. Papers filed with ~~((a tribunal))~~ an administrative law judge shall be in the form used for superior court practice. See in particular Rule 10, civil rules for superior court.

(3) Signing. Every pleading, motion or other paper filed on behalf of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall similarly date and sign proceedings, motions and other papers and give the party's address. The signature of a party or of an attorney constitutes a certificate by that person ~~((that the person has read the pleading, motion, or other paper, that to the best of the person's knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. If a pleading, motion, or other paper is not signed or is signed with intent to defeat the purpose of this rule it, or the appropriate part of it, may be stricken as sham and false and the hearing may proceed as though the pleading or other paper, or part, had not been filed. Similar action may be taken if scandalous or indecent matter is inserted))~~ in accordance with the provisions of Rule 11, civil rules for superior court.

READOPTED/AMENDATORY  
SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-251 ANSWER. (1) Required. Every respondent shall file an answer to the amended complaint attached to the notice of hearing, and to any subsequent amendments or complaints that are filed.

(2) Content. The answer shall set out and assert every defense, in law or fact, to the claims of the complaint being answered.

(3) Waiver of defenses not pleaded. Defenses not pleaded in an answer are waived.

(4) Time for filing. An answer shall be filed within twenty days after notice of hearing is served, unless ~~((the date of hearing is less than 40 days from the date when notice of hearing is served, in which event an answer must be filed within half of the intervening time. Example: If the date of hearing is 25 days after the notice is served, the answer must be filed by the close of the 13th day after the notice is served))~~ an extension of time is granted in writing by the administrative law judge.

(5) Form of defenses and denials. A respondent shall state in short and plain terms its defenses to each claim asserted and shall admit or deny ~~((the))~~ each averment((s)) of the amended complaint. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a respondent intends in good faith to deny only a part or a qualification of an averment, the respondent shall specify so much of it as is true and material and shall deny only the remainder.

(6) Affirmative defenses. A respondent who wishes to raise any matter constituting an avoidance or affirmative defense, including those required to be set forth affirmatively by CR 8(c), must plead the matter as an affirmative defense in the respondent's answer. Among the matters which must be pleaded as affirmative defenses are the following:

- (a) A bona fide occupational qualification;
- (b) Business necessity that justifies a practice that has a discriminatory effect; and
- (c) That another statute or rule of law precludes or limits enforcement of the law against discrimination, or regulations or precedents of the commission.

(7) Statutory steps. Any defense that the hearing cannot be held because the respondent has been prejudiced because statutory steps prior to hearing have not been taken, or because of some irregularity in statutory procedure, must be pleaded in the answer by specific negative averment, which shall include such supporting particulars as are within the answering respondent's knowledge or could reasonably have been learned by the answering respondent.

(8) Obligation of good faith. The assertion of denials and defenses is subject to the obligation of good faith set out in WAC 162-08-241(3) and CR-11.

(9) Reply. Unless the ~~((tribunal))~~ administrative law judge orders that a reply to an answer be filed, none shall be necessary. Averments in an answer shall be deemed denied or avoided.

NEW SECTION

WAC 162-08-253 NO COUNTERCLAIMS OR CROSS CLAIMS. Jurisdiction of the administrative law judge is limited to determining whether unfair practices have occurred, and counterclaims and cross claims will not be heard.

NEW SECTION

WAC 162-08-255 DEFAULT ORDER. (1) Entry of default order. When a respondent who has been served with a notice of hearing and amended complaint fails to answer in accordance with WAC 162-08-251, and that fact is made to appear by motion and affidavit, a motion for default may be made and served upon respondent requiring an answer within five days. If respondent fails to answer as required in the motion for default, the administrative law judge may enter an order of default providing for the relief requested in the amended complaint upon proof of service of the motion for default as provided in WAC 162-08-041.

(2) Setting aside default order. Within ten days of being served, the party against whom a default order is entered may move to have it set aside. The administrative law judge may grant or deny such motion as justice requires.

READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-261 COMPLAINANT'S PARTICIPATION. (1) Notice of independent appearance. A complainant who desires to submit testimony or otherwise participate in the hearing as a party and not to leave the case in support of the complaint to be presented solely by counsel for the commission, must serve and file a notice of independent appearance within ten days after the notice of hearing is served on that complainant. The notice shall state the address where notices to the complainant shall be sent and it shall state whether the complainant elects to prove additional charges as provided in paragraph (2) of this rule.

(2) Election to prove additional charges. A complainant who has filed a notice of independent appearance stating an intention to ((do so)) prove additional charges in accordance with RCW 49.60.250(2), may at the hearing offer proof of averments included in the original complaint or in amendments to the original complaint made by the complainant, whether or not the averments are included in the amended complaint under which counsel for the commission is proceeding. For purposes of this section, the complainant may amend the original complaint without regard to intervening amendments made by the commission. The complainant may serve and file an amended complaint with a notice of independent appearance, or thereafter as provided by these rules. If no amended complaint is served with a notice of independent appearance that states an intention to prove additional charges, the clerk shall promptly place the original complaint in the file for the ((hearing tribunal)) administrative law judge. Nothing done by the complainant under this rule shall place any duty on counsel

for the commission to seek to prove matters not averred in the amended complaint accompanying the notice of hearing, or subsequent amendments by the commission.

(3) Appearance without election. If the complainant files a notice of independent appearance which does not state that he or she elects to prove additional charges, then the complainant's participation in the hearing shall be confined to the matters raised by the amended complaint filed with the notice of hearing, and subsequent amendments made by the commission.

(4) When no independent appearance. If the complainant does not file a notice of independent appearance as provided by this rule, the case in support of the complaint shall be presented solely by counsel for the commission.

NEW SECTION

WAC 162-08-263 DISCOVERY—ADMINISTRATIVE HEARING. The commission has determined that discovery will be available in adjudicative proceedings in accordance with RCW 34.05.446(2).

(1) Methods. Upon certification of the file pursuant to WAC 162-08-190, and request for the appointment of an administrative law judge pursuant to WAC 162-08-211, any party may obtain discovery by the methods provided in CR 26(a). The procedures regarding these methods of discovery are found at CR 28 through 37 as now or hereafter amended and are hereby incorporated in this section.

(2) Scope of discovery. Any party may obtain discovery regarding any matter not privileged which is relevant to the amended complaint prepared by counsel for the commission or the additional charges filed by the complainant pursuant to WAC 162-08-261.

(3) Protective order. Rulings on motions for protective orders regarding discovery brought under this section shall be made by the administrative law judge pursuant to the provisions of WAC 162-08-271.

(4) Order compelling discovery. The administrative law judge is authorized to make any order that a court could make under CR 37(a), including an order awarding expenses of the motion to compel discovery. Motions for an order compelling discovery and the procedure for its disposition are governed by WAC 162-08-271.

READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-265 AMENDMENT OF PLEADINGS. (1) Right to amend. A party to ((a tribunal hearing)) an administrative hearing may amend a pleading once as a matter of course at any time more than twenty days before the date set for hearing. Otherwise, a party may amend a pleading only by leave of the ((chairperson of the tribunal)) administrative law judge or by written consent of all adverse parties.

(2) Action on motions to amend. The ((chairperson of the tribunal)) administrative law judge shall freely give leave to amend when justice so requires. The ((chairperson)) administrative law judge may designate a time for

filing an answer to amended pleadings that may be answered, and may reschedule other dates, including the hearing date, if this is necessary to assure that issues for hearing are fully and properly framed.

(3) Form of amendment. An amendment other than one made on the record during a hearing must be in writing. A written amendment may be in the form of either a revised pleading superseding the entire text of the amended pleading, or a supplemental paper containing only the amendment.

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

#### WAC 162-08-268 VOLUNTARY DISMISSAL.

(1) Prior to day of hearing. Prior to the day when the hearing of a case commences the commission or any other party on the side supporting the complaint may voluntarily dismiss the party's case or a claim by serving and filing a written notice of dismissal.

(2) After hearing commenced. After a hearing has commenced the commission or any other party on the side supporting the complaint may move for voluntary dismissal of the party's case or a claim. A motion that is made before the party rests at the conclusion of its opening case shall be granted as a matter of right. A motion made after that time may be granted if good cause is shown, and the grant may be subject to such terms and conditions as the ~~((tribunal))~~ administrative law judge deems proper.

(3) Effect of dismissal. A voluntary dismissal concludes the ~~((tribunal))~~ administrative proceeding as to the dismissed party or claim, but is not an adjudication of the merits of the issues before the ~~((tribunal))~~ administrative law judge (that is, the merits may still be adjudicated in another forum if the party has a right to sue in ~~((the other))~~ another forum). A voluntary dismissal of one claim does not extinguish any other claim, and a voluntary dismissal by one party does not dismiss any other party. If the commission takes a voluntary dismissal of the case in support of the complaint the entire case is closed, unless the complainant has appeared independently under WAC 162-08-261 or another person has intervened as a party on the side of the complaint pursuant to WAC 162-08-288(4), in which circumstance the hearing shall proceed with the remaining parties.

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-271 MOTIONS ~~((OUTSIDE OF HEARING))~~ BEFORE ADMINISTRATIVE LAW JUDGE. (1) Scope of section. This section governs all motions made to the ~~((chairperson of the commission or of a tribunal))~~ administrative law judge except those made orally on the record during ~~((a))~~ an administrative hearing ~~((or other public session))~~.

(2) Form. A motion must be in writing. It must state the order or other relief requested and the grounds for the motion. It may be accompanied by affidavits. It must

be supported by legal authorities, set out in the motion or in a supporting brief.

(3) ~~((Answering statements))~~ Response. Any party may serve and file ~~((an answering statement))~~ a response within five days after the motion has been served on that party.

(4) Filing. The original and ~~((four copies))~~ one copy of every motion and ~~((answering statement))~~ response, with supporting papers, must be filed with the clerk, along with proof of service.

(5) Ruling. When the ~~((chairperson))~~ administrative law judge has received ~~((answering statements))~~ a response from all parties, or five days have elapsed since the last party was served, the ~~((chairperson))~~ administrative law judge shall rule on the motion without oral argument, unless the ~~((chairperson))~~ administrative law judge, in his or her discretion, orders that argument be heard.

~~((6))~~ Examiner for chairperson of the commission. ~~The chairperson of the commission in his or her discretion may appoint a hearing examiner to analyze a particular motion and to hear argument on it, if argument is ordered, and to make a proposal for decision. The hearing examiner may be a member of the commission or a lawyer or other person educated in the law. The examiner's proposal for decision shall be served on all parties and every party shall have seven days to serve and file exceptions and written argument before the chairperson makes the final ruling.~~

(7) Tribunal review. Review by a hearing tribunal of rulings of its chairperson is governed by WAC 162-08-275.

(8) Summary judgment. Special rules for motions for summary judgment are set out in WAC 162-08-282.)

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-282 SUMMARY JUDGMENT. (1) Authorized. At any time prior to the tenth day before the date of a hearing, any party may serve and file a motion for summary judgment in the party's favor as to all or part of the case.

(2) Procedure. The usual procedure for motions made ~~((outside of hearing))~~ before an administrative law judge, WAC 162-08-271, shall apply except where this section provides a different procedure.

(3) Response. Any party may serve and file opposing affidavits and ~~((an answering statement))~~ a response, or either of these, within ~~((ten))~~ seven days after the motion for summary judgment has been served on that party.

(4) ~~((Action by full tribunal. Motions for summary judgment shall be decided by the full tribunal.~~

~~((5)))~~ When decided. The ~~((tribunal))~~ administrative law judge shall decide a motion for summary judgment promptly after ten days have elapsed since the motion was ~~((served and))~~ filed ~~((on all other parties))~~ with the administrative law judge.

~~((6)))~~ (5) Oral argument optional. Oral argument shall be heard only if ordered by the ~~((tribunal))~~ administrative law judge.

~~((7))~~ (6) What is decided. The ~~((tribunal's))~~ administrative law judge's final order shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, and other documents and evidence properly before the ~~((tribunal))~~ administrative law judge, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of whether an unfair practice has been committed although there is a genuine issue as to the amount or nature of relief to be ordered. Otherwise, summary judgment shall be denied.

~~((8))~~ (7) Orders when case not fully adjudicated on motion. If summary judgment is not ordered for the whole case or for all of the relief asked and a hearing is necessary, the ~~((tribunal))~~ administrative law judge shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. The ~~((tribunal))~~ administrative law judge may summon counsel for all parties and interrogate them for this purpose. The ~~((tribunal))~~ administrative law judge shall then make an order specifying the facts that appear without substantial controversy, including the extent to which the amount or nature of relief is not in controversy, and directing such further proceedings as are just. At the hearing, the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

~~((9))~~ (8) Form of affidavits; further testimony. Supporting and opposing affidavits must be made on personal knowledge, must set forth facts that would be admissible in evidence, and must show affirmatively that the affiant is competent to testify to what is stated. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to the affidavit or served with it. The ~~((tribunal))~~ administrative law judge may permit affidavits to be supplemented or opposed by depositions or by further affidavits.

~~((10))~~ (9) When affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot, for reasons stated, present by affidavit facts essential to justify the party's opposition, the ~~((tribunal))~~ administrative law judge may refuse the motion, or ~~((it))~~ may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had, or the ~~((tribunal may make))~~ administrative law judge may issue such other order as is just.

~~((11))~~ (10) Affidavits made in bad faith. Should it appear to the satisfaction of the ~~((tribunal))~~ administrative law judge at any time that any of the affidavits were presented in bad faith or solely for the purpose of delay, the ~~((tribunal))~~ administrative law judge shall order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the party to incur, including reasonable attorney's fees. The ~~((tribunal))~~ administrative law judge shall include this order in ~~((its))~~ the final order.

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-286 PREHEARING CONFERENCE. (1) Conference. The ~~((chairperson of the tribunal, or the tribunal))~~ administrative law judge, as a matter of discretion, with or without a motion from a party, may direct the attorneys for the parties to appear before the ~~((chairperson or tribunal))~~ administrative law judge for a conference to consider:

- (a) The simplification of the issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining admissions of fact and of documents which will be premarked for admission into evidence in order to avoid unnecessary proof;
- (d) The limitation of the number of expert witnesses; and
- (e) Other matters that may aid in the disposition of the case.

(2) Order. The ~~((chairperson or tribunal))~~ administrative law judge shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements of counsel. The order when served and filed controls the subsequent course of the case, unless it is modified at the hearing to prevent manifest injustice.

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-288 PARTIES. (1) Who are parties. The parties to the hearing shall be the commission, through its counsel presenting the case in support of the complaint, a complainant who has filed a notice of independent appearance under WAC 162-08-261, the respondent or respondents named in the notice of hearing or an amended notice of hearing, and a person who moves to intervene and is permitted to do so by order of the ~~((chairperson of the commission))~~ administrative law judge.

(2) Adding parties. Any party may move to join an additional party or parties. The motion must be directed to the ~~((chairperson of the commission))~~ administrative law judge. If the motion is granted, the ~~((chairperson of the commission shall issue))~~ administrative law judge shall cause to be issued an amended notice of hearing showing the addition of the party or parties and making such other provisions as are appropriate for an orderly hearing.

(3) Substituting parties. If death, incompetency, transfer of interest, or other occurrence should make the substitution of parties necessary or desirable, the ~~((chairperson of the tribunal))~~ administrative law judge may make the substitution by order. The ~~((chairperson of the tribunal))~~ administrative law judge may act on his or her own motion, or on motion of a party or of the person asking to be substituted for a party.

(4) Intervention. A person claiming an interest in the subject matter of the hearing may move to intervene. The motion must be directed to the ~~((chairperson of the tribunal))~~ administrative law judge. The ~~((chairperson))~~ administrative law judge shall grant or deny the motion as a matter of discretion.

(5) Factors considered. The ~~((chairperson of the commission or tribunal))~~ administrative law judge in ruling on a motion to add a party shall be guided by whether the presence of the party will be helpful in carrying out the purposes of the law against discrimination (compare WAC 162-08-061). In addition, the ~~((chairperson))~~ administrative law judge shall consider whether adding the party will cause unnecessary delay or will divert the hearing from the objectives of the statute and of the commission's amended complaint. The ~~((chairperson))~~ administrative law judge need not follow court rules or precedents on the joinder of parties.

(6) Not class actions. Hearings under RCW 49.60-.250 are not class actions, in the technical sense of that term in court practice. The commission, presenting the case in support of a complaint, may ask that a respondent be ordered to pay back pay or to afford other relief to all persons injured by an unfair practice, and the ~~((tribunal))~~ administrative law judge may issue such an order to carry out the purposes of the law against discrimination (WAC 162-08-298(6)). If such an order is made, the right to have the payments made will belong to the commission, not to the injured persons (WAC 162-08-305). The legal rights of persons of the class alleged to have been injured are not at issue in the case, and those persons are not bound by the ~~((tribunal's))~~ administrative law judge's decision unless they accept the benefits of it in full satisfaction of their potential claims. Only the commission and the respondent and other persons named as parties are bound by the order of ~~((a tribunal))~~ an administrative law judge.

## VI ADMINISTRATIVE HEARING AND DECISION

### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 38, filed 10/27/77)

#### WAC 162-08-291 CONDUCT OF HEARINGS.

(1) Reference to law. Hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, chapter ~~((34.04))~~ 34.05 RCW, RCW 49.60.250, and these rules.

(2) ~~((Chairperson))~~ Administrative law judge presides. The ~~((chairperson of the tribunal))~~ administrative law judge shall preside as provided in WAC ~~((162-08-275(2)))~~ 162-08-211.

(3) Hearings shall be public. All ~~((tribunal))~~ administrative hearings shall be open to the public. Photographs and recordings of the proceedings may be made, subject to such conditions as the ~~((chairperson))~~ administrative law judge may impose to prevent interference with the orderly conduct of the hearing. Special lighting for photographic purposes may be used only if the ~~((chairperson))~~ administrative law judge has determined

in advance that it will not be distracting. The ~~((chairperson))~~ administrative law judge may order news media to use one or more television cameras on a pooling basis if the number of cameras interferes with the conduct of the hearing.

(4) Record of testimony. The clerk shall determine whether the record of testimony taken at a hearing shall be made by mechanical means or by a court reporter.

(5) Copies of record. When the record has been ~~((made by the commission's staff))~~ recorded by mechanical means, rather than by a court reporter, a party ordering a copy of the record or part thereof under RCW ~~((34.04.090(5)))~~ 34.05.566 must pay the reasonable cost of transcription, as determined by the clerk, in advance of delivery of the copy. ~~((This paragraph shall not apply to transcription of the record for purposes of appeal (the superior court will fix and assess the cost of preparation of the record on appeal).))~~ When the record is transcribed and copies of documents are made for transmittal to a reviewing court under RCW 34.05.566, the costs of transcription and copying may be charged to a nonindigent petitioner in accordance with RCW 34.05.566(3).

### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-292 EVIDENCE. (1) General rules on admissibility. ~~((Hearing tribunals))~~ Administrative law judges shall admit and give probative effect to evidence that is admissible in the superior courts of the state of Washington in a nonjury trial ~~((; or that is admissible under the Federal Rules of Evidence))~~. In addition, ~~((tribunals))~~ an administrative law judge may admit and give probative effect to other evidence on which ~~((possesses probative value commonly accepted by))~~ reasonably prudent persons are accustomed to rely in the conduct of their affairs. ~~((Tribunals))~~ Administrative law judges shall give effect to the rules of privilege recognized ~~((by law))~~ in the courts of this state. ~~((Tribunals))~~ Administrative law judges may exclude ~~((incompetent;))~~ irrelevant, immaterial, and unduly repetitious evidence. ~~((In general, tribunals shall admit on a non-technical basis all evidence that will be practically helpful in deciding the case or evaluating other evidence, and (except for privileged material) shall exclude evidence only if it will not be practically helpful or will lead off into side issues that would unduly prolong the case if they were tried.))~~

(2) Identification of exhibits. All exhibits requested by any party shall be identified by a single series of numbers, in the order that the proposed exhibits are marked for identification. The numbers may be preceded by code letters indicating the acting party, including "C" for the commission, and "R" for a respondent. Example: The first exhibit, marked at the request of the commission, is C1. The second exhibit, if offered by a respondent, is R2, whether or not C1 was admitted.

(3) Stipulations encouraged. Counsel are requested to mark proposed exhibits in advance of hearing and to stipulate to the admission of all exhibits that will not be objected to.

(4) Copies of documents and exhibits. Unless excused from doing so by the ~~((chairperson of the tribunal))~~ administrative law judge, a party offering a document or other exhibit in evidence must furnish copies to all other parties ~~((and file five copies))~~.

(5) Official notice. The ~~((hearing tribunal))~~ administrative law judge may take notice of judicially cognizable facts, and in addition may take notice of general, technical, or scientific facts within ~~((the))~~ his or her specialized knowledge ~~((of its members))~~. Any party may, by motion, ask the ~~((tribunal))~~ administrative law judge to take official notice of facts or material. When the ~~((tribunal))~~ administrative law judge takes official notice of any facts or material, the ~~((chairperson of the tribunal))~~ administrative law judge must notify the parties of what is noticed and afford them reasonable opportunity to contest the noticed facts. This may be done at any time before the ~~((tribunal's))~~ administrative law judge's order becomes final.

(6) Evaluation of evidence. The ~~((tribunal's))~~ administrative law judge's findings of fact shall be based exclusively on the evidence presented at the administrative hearing and on matters officially noticed, but the ~~((tribunal members))~~ administrative law judge may utilize ~~((their))~~ his or her experience, technical competence, and specialized knowledge in evaluating the evidence.

(7) Efforts at conciliation excluded. Any endeavors or negotiations for conciliation made under RCW 49.60.240 shall not be received in evidence as proof of whether or not an unfair practice was committed. RCW 49.60.250(2). If a respondent denies that the statutory step of endeavoring to eliminate the unfair practice by conference, conciliation, and persuasion took place, then evidence of whether such endeavors were made may be admitted, but the contents and details of offers, counteroffers, and discussions shall be excluded to the maximum extent possible. The commission's findings made pursuant to RCW 49.60.240 are prima facie evidence that the investigation, conciliation, and other statutory steps have been taken. In addition, offers of settlement or compromise and statements made in settlement or compromise negotiations, at any stage of the case, are privileged from use as proof of whether or not an unfair practice was committed. Evidence of such an offer or statement shall be excluded upon claim of the privilege by the party that made the offer or statement.

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-294 CLAIMS OF SELF INCRIMINATION—IMMUNITY. (1) How claimed. A natural person who is testifying under oath, may, instead of answering a question, decline to answer the question on the ground that the testimony or evidence required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture.

(2) Procedure before compelling testimony. Before compelling testimony after the privilege against self incrimination has been invoked (and thereby exempting the witness from prosecution) the ~~((chairperson of the tribunal))~~ administrative law judge shall ask examining

counsel and also counsel for the commission to state their positions on whether the witness should be ordered to answer. Counsel for the commission may ask that the ruling be deferred for such time as is necessary for counsel for the commission to consult with other public officers before responding. The position of counsel for the commission and other public officers shall be given due weight by the ~~((chairperson or tribunal))~~ administrative law judge in deciding whether to order the witness to answer.

(3) Inference from silence after immunity acquired. If the witness declines to answer the question after acquiring exemption from prosecution, the ~~((hearing tribunal))~~ administrative law judge may consider the silence as evidence and may draw such inferences from it as are warranted by the facts surrounding the incident.

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-298 REMEDIES. (1) Power of ~~((tribunal))~~ administrative law judge. The ~~((tribunal))~~ administrative law judge has the power to exercise the general jurisdiction of the commission to eliminate and prevent discrimination by means of orders to respondents who have been found after hearing to have engaged in an unfair practice or practices.

(2) General objectives. An order should generally both eliminate the effects of an unfair practice and prevent the recurrence of the unfair practice. The effects of an unfair practice are eliminated by restoring the victims of the unfair practice as nearly as possible to the position they would have been in if the unfair practice had not occurred. It is appropriate to eliminate the effects of the unfair practice on persons other than the complainant or complainants, and to consider the deterrent effect of an order on persons other than the respondent or respondents. The objective of the law is to eliminate and prevent discrimination, not merely to provide treatment for victims of discrimination.

(3) Cease and desist. In every case where the ~~((tribunal))~~ administrative law judge finds that a respondent has engaged in an unfair practice the ~~((tribunal))~~ administrative law judge shall order the respondent to cease and desist from that unfair practice.

(4) Examples of remedies. Included among remedies that will effectuate the purposes of the law against discrimination in an appropriate case are the following:

(a) An order to hire persons who have been unfairly denied employment;

(b) An order to reinstate persons who have been unfairly terminated, downgraded, or reclassified;

(c) An order to upgrade persons who have been unfairly denied promotion;

(d) An order to pay back pay to a person or persons who would have had a job but for the unfair practice of the respondent;

(e) An order to pay an amount equal to the difference in pay between the job the persons had and the job they would have had but for the unfair practice of the respondent;

(f) An order restoring employment benefits, such as insurance benefits, retirement contributions, sick leave, vacation benefits, seniority standing, etc., lost or not gained because of an unfair practice;

(g) An order to admit persons to membership in a union which has unfairly excluded the persons and dispatch them to jobs in accordance with uniform rules applicable to all members;

(h) An order to merge or otherwise restructure a seniority system that unfairly disadvantages a protected class of persons;

(i) An order to rent or sell real property to persons who have been unfairly denied the property;

(j) An order to grant credit to persons who have been unfairly denied credit;

(k) An order to reimburse or compensate persons for the excess cost of credit caused by an unfair practice;

(l) An order to issue or renew insurance to persons who have been unfairly denied the insurance;

(m) An order to pay a sum of money up to one thousand dollars to compensate persons for humiliation and mental suffering caused by an unfair practice;

(n) An order to pay a sum of money up to ~~(( \$1000 ))~~ one thousand dollars to a complainant who has been denied the right to be free from discrimination in a real property transaction, based simply on the loss of the statutory right (RCW 49.60.225);

(o) An order to pay interest on money that should have been paid at an earlier time, but for the unfair practice. Interest may be calculated at the current market rate for unsecured personal loans from institutions other than small loan companies licensed under chapter 31.08 RCW;

(p) An order to not retaliate against a complainant, witness, or other person for filing a complaint, testifying, or assisting in ~~(( a case ))~~ any proceeding under chapter 49.60 RCW;

(q) An order to institute affirmative programs, practices, or procedures that will eliminate an unfair practice or its effects, or will prevent the recurrence of the unfair practice;

(r) An order for any other remedy which is available under comparable civil rights laws of the United States or other states.

This list is not exhaustive. ~~(( A tribunal ))~~ An administrative law judge may make any order that will effectuate the purposes of the law against discrimination, that is in compliance with the rules of the commission, and that is not otherwise prohibited by law.

(5) Remedies not authorized. ~~(( A hearing tribunal ))~~ An administrative law judge is not authorized to order:

(a) The payment of punitive damages;

(b) The payment of fines payable to the state.

(6) Treatment of unemployment compensation. When an order is made for payment of wages lost during a time when the beneficiary of the order was receiving unemployment compensation, the amount of the award shall not be reduced by the amount of unemployment compensation received. The order may make provision for payment of the portion of the award covered by unemployment compensation jointly to the beneficiary and

the Washington state department of employment security, or to the department alone. (Under Washington law, it is the duty of the employee to reimburse the department of employment security when back pay is received for a period during which the employee collected unemployment compensation.)

~~((7))~~ ~~(( Burden of proof of noninjury from unfair practice. When a showing has been made that a respondent has committed an unfair practice with respect to a person, but the respondent contends that nevertheless the person did not lose pay or other benefits because the person would not have been hired, granted credit, etc., for reasons other than the unfair practice, the burden is on the respondent to prove that the person would not have received the pay, credit, etc., for the other reasons. ))~~

~~((8))~~ ~~(( Persons for whom relief can be ordered. The ((tribunal)) administrative law judge may order that remedies for an unfair practice be paid or accorded to the named complainant or complainants, and, in addition, to any other persons((;)) identified ((or unidentified, who have)) as having been injured by the unfair practice. ((The tribunal may prescribe formulas for ascertaining the remedy for unknown victims, and may order the respondent to take actions to identify and find the unknown victims. An order for relief to all of the victims of an unfair practice does not convert the case into a class action (WAC 162-08-288(6)). ))~~

~~((9))~~ ~~((8))~~ Nature and purpose of order. ~~(( A tribunal ))~~ An administrative order is one means of carrying out the public purpose of the law against discrimination: To eliminate and prevent certain discrimination. The ~~((tribunal))~~ administrative law judge in framing its order shall be guided by this public purpose. The ~~((tribunal's))~~ administrative law judge's task is not the determination of private rights. See WAC 162-08-061, 162-08-062. The ~~((tribunal))~~ administrative law judge is not required to observe conventional common law or equity principles in fashioning ~~((its))~~ the order. The guiding principle for the ~~((tribunal))~~ administrative law judge is whether a particular remedy will effectuate the purposes of the law against discrimination. An order requiring a respondent to pay money to a person as back pay, or to compensate for some other loss, is not a private award of damages, but is a public reparation order. Only the commission can enforce the order. The beneficiary has no property right in the money until he or she receives it. See WAC 162-08-305.

~~((10))~~ ~~((9))~~ Retention of jurisdiction. In appropriate cases the ~~((tribunal))~~ administrative law judge in ~~((its))~~ his or her order may retain jurisdiction for a reasonable period of time for the purpose of determining compliance with ~~((its))~~ his or her order or issuing orders supplementing or modifying the original order. If the ~~((tribunal))~~ administrative law judge does not retain jurisdiction through a provision of ~~((its))~~ his or her order ~~((the tribunal))~~ he or she has no jurisdiction to modify or supplement ~~((its))~~ his or her order, except on reconsideration (WAC 162-08-311). Retention of jurisdiction by the ~~((tribunal))~~ administrative law judge under this subsection does not prevent the ~~((tribunal's))~~ administrative law judge's order from being final for the purpose of judicial review or enforcement.

READOPTED/AMENDATORYSECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-301 (~~ORDER~~), FINDINGS (~~AND~~), CONCLUSIONS, AND ORDER. (1) (~~Required. In every hearing the tribunal shall set out its final decision in an order, accompanied by findings of fact, conclusions of law, and an opinion explaining the reasons for its decision.~~

(2) ~~Disagreement among members. When the hearing tribunal is not unanimous, the decision of two members shall control. Any member may file or announce a concurring or dissenting opinion.~~

(3) ~~Opinion. The tribunal's opinion may be given orally on the record or it may be written. Tribunals are encouraged to retire and deliberate immediately after the hearing has been concluded and to reconvene and announce their decision on the record immediately after it has been reached, if they are able to do so.~~

(4) ~~Factual basis for decision. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. RCW 34.04.090(6). In determining the case the tribunal shall not consider factual information that is not made a part of the record of the case. RCW 34.04.100(2).~~

(5) ~~Drafting findings, conclusions, and order. Unless the tribunal reserves the task to itself, counsel for the prevailing party shall prepare a draft of findings of fact, conclusions of law, and an order. If counsel for the prevailing party has not served and filed the draft within 15 days after the tribunal has announced or served and filed its opinion, then counsel for any party may do so. The draft, whether prepared by counsel or the tribunal itself, shall be served on all parties and on the clerk for transmittal to all tribunal members. Any counsel for a party and any party not represented by counsel may serve and file written comments, objections, or alternative drafts within ten days after being served with the original draft. After the expiration of the ten day period for all parties, the tribunal shall consider the original draft and all comments, objections and alternative drafts and shall sign and file its findings of fact, conclusions of law, and order.~~

(6) ~~Form of findings of fact. The findings of fact shall consist of a concise statement of each fact found upon each contested issue of fact. RCW 34.04.120.~~

(7) ~~Notice of order. The clerk shall deliver or mail a copy of the order, findings of fact, and conclusions of law to each party and to each attorney of record for a party. RCW 34.04.120)) Preliminary decision of administrative law judge. In every administrative hearing the administrative law judge shall prepare preliminary findings of fact, conclusions of law, and order in accordance with WAC 10-08-210, which shall be mailed to the parties and their counsel for comments, objections, and proposed corrections.~~

(2) Final decision of administrative law judge. After the expiration of thirty days from the receipt of comments upon the preliminary decision, the administrative law judge will issue a final decision which is enforceable in accordance with RCW 49.60.260.

READOPTED/AMENDATORYSECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-305 NATURE OF ORDERS—ENFORCEMENT. (1) Nature of orders. Orders obtained by counsel for the commission are public reparation orders, not adjudications of private rights between respondents and persons aggrieved by the respondents' unfair practices. When a respondent is ordered to rehire or compensate a person, the person who is the beneficiary of the order has no property right in the job, money, etc., until the person receives it.

(2) Enforcement of order. Only the commission, through its counsel, has the authority to enforce an order of ((a hearing tribunal)) an administrative law judge. RCW 49.60.260.

(3) Compromise of order. The commission, acting in good faith, may compromise an order of ((a hearing tribunal)) an administrative law judge, with or without the consent of the beneficiaries of the order.

READOPTED/AMENDATORYSECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-311 RECONSIDERATION. (1) Motion. Within ten days after being served with the final order of ((a tribunal)) an administrative law judge, any party may serve and file a motion for reconsideration with the commission clerk. The motion shall identify the points that the party desires to have reconsidered and shall fully state the reasons for reconsideration. The motion shall in all other respects proceed as provided in ((WAC 162-08-271)) RCW 34.05.470.

(2) Finality for appeal. When a motion for reconsideration has been filed, the order of the ((tribunal)) administrative law judge shall not be deemed final for purposes of appeal until the ruling on the motion has been served.

(3) Reconsideration not necessary for appeal. Motions for reconsideration should be made only when a party feels that the ((tribunal)) administrative law judge has overlooked or misunderstood something. It is not necessary to file a motion for reconsideration in order to appeal. RCW 34.05.470(5).

VII RULE MAKINGREADOPTED/AMENDATORYSECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-600 REQUESTS FOR ADVANCE NOTICE OF RULE MAKING. (1) Form. Requests for advance notice of rule making proceedings, as provided in RCW ((34.04.025)) 34.05.320(3), shall be in writing and shall give the name of the requesting person or organization, and the address to which the notice is to be sent.

(2) Duration. Requests for advance notice of rule making proceedings will be honored for a period of three years after the date of the request, and may be renewed

by written notice to the commission containing the information required for the original request.

(3) Where filed. Requests for advance notice of rule making proceedings should be filed at the Olympia office of the commission, attention ((~~legal division~~)) rules coordinator.

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 35, filed 9/2/77)

WAC 162-08-610 PETITIONS FOR RULE MAKING. Petitions to the commission for the promulgation, amendment, or repeal of a rule under RCW ((~~34.04.060~~)) 34.05.330 shall include a statement of the reasons for the requested action, and may be accompanied by a brief of any applicable law. Petitions for the promulgation of a rule shall set out the full text of the proposed rule. Petitions for the amendment of a rule shall identify the rule by its WAC number, and shall contain the complete text of the rule as proposed to be amended, showing additions by underlining the new words and showing deletions by marking them over with a dotted line. Petitions for repeal of a rule shall identify the rule by WAC number, and may quote its text.

#### VIII DECLARATORY ((~~RULINGS~~)) ORDERS

#### READOPTED/AMENDATORY

SECTION (Readopting and Amending Order 37, filed 10/27/77)

WAC 162-08-700 DECLARATORY ((~~RULINGS~~)) ORDERS. (1) Contents of petition. A petition for a declaratory ((~~ruling~~)) order under RCW ((~~34.04.080~~)) 34.05.240 shall contain the following in addition to the requirements of RCW 34.05.240(1):

(a) A statement of the question on which the declaratory ((~~ruling~~)) order is sought;

(b) A full statement of the facts giving rise to the question;

(c) A statement of the basis for the petitioner's interest in the question.

(2) Form. A petition for a declaratory ((~~ruling~~)) order may be in any form, including the form of a letter or a pleading.

(3) Where filed. Petitions for declaratory ((~~rulings~~)) orders shall be filed with the clerk.

(4) Confirmation, investigation. In order to determine the full facts giving rise to the question the executive ((~~secretary~~)) director may require the petitioner to submit additional information, and may make an independent investigation.

(5) ((~~Consideration and disposition. The commissioners will:~~

(a) ~~Issue a nonbinding declaratory ruling;~~

(b) ~~Notify the petitioner that no declaratory ruling will be issued; or~~

(c) ~~Set a time and place for hearing argument or evidence on the question, notify the petitioner of them, and issue either a binding or nonbinding declaratory ruling after the hearing.)~~ Notice and disposition. Within fifteen days after receipt of a petition for a declaratory order,

the commission will give notice of the petition to all persons to whom notice is required by law. Within thirty days after receipt of a petition for a declaratory order, the commission will:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances; or

(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition; or

(c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its actions. See RCW 34.05.240(5).

(6) Revocation or revision. A declaratory ((~~ruling~~)) order may be revoked or revised at any time by vote of the commissioners at a meeting. The revocation or revision shall not be effective as to the person who requested the declaratory ((~~ruling~~)) order until that person has notice of the revocation or revision.

(7) Supersedure. A declaratory ((~~ruling~~)) order is automatically superseded, without need for notice, by any material change in the statutes, or by a decision of the Washington supreme court or court of appeals that is contrary to the declaratory ((~~ruling~~)) order.

(8) Reliance. When any person has relied in good faith on a declaratory ((~~ruling~~)) order of the commission, the commission will not thereafter assert a contrary position against that person, unless the declaratory ((~~ruling~~)) order is revoked, revised, or superseded under subsection (7) of this section. This paragraph (8) covers persons other than the person to whom the declaratory ((~~ruling~~)) order was issued, if the persons have justifiedly relied on the declaratory ((~~ruling~~)) order.

(9) Use of ((~~examiner~~)) administrative law judge. The commissioners may direct that a hearing for the purpose of issuing a declaratory ((~~ruling~~)) order shall be held before a member of the commission, or a panel of members of the commission, or ((~~a hearing examiner~~)) an administrative law judge. The member, panel, or ((~~examiner~~)) administrative law judge shall hear testimony and argument, receive exhibits and other testimony, evaluate the material, and make a proposal for decision by the commissioners, to be considered and decided in the manner provided in RCW ((~~34.04.110~~)) 34.05.410 through 34.05.494.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 162-08-108 RECONSIDERATION OF TERMS OF AGREEMENT.

WAC 162-08-111 WHO MAY ISSUE SUBPOENAS.

WAC 162-08-114 SERVICE OF SUBPOENAS.

WAC 162-08-116 WITNESS FEES AND ALLOWANCES.

WAC 162-08-121 MOTIONS RELATING TO SUBPOENAS.

WAC 162-08-131 DISCOVERY.

WAC 162-08-135 DEPOSITIONS.

WAC 162-08-141 INTERROGATORIES TO PARTIES.  
 WAC 162-08-151 PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES.  
 WAC 162-08-155 PHYSICAL AND MENTAL EXAMINATION OF PERSONS.  
 WAC 162-08-161 REQUEST FOR ADMISSION.  
 WAC 162-08-171 FAILURE TO MAKE DISCOVERY—SANCTIONS.  
 WAC 162-08-212 COMPENSATION AND EXPENSES OF TRIBUNAL MEMBERS.  
 WAC 162-08-215 REMOVAL OF TRIBUNAL MEMBERS FOR CAUSE.  
 WAC 162-08-217 OBJECTION TO MANNER OF APPOINTMENT.  
 WAC 162-08-275 POWERS OF TRIBUNAL CHAIRPERSON.  
 WAC 162-08-278 POWERS AND PROCEDURES OF HEARING TRIBUNAL.  
 WAC 162-08-284 NO COUNTERCLAIMS OR CROSS-CLAIMS.  
 WAC 162-08-295 CONSULTATION ON ISSUES.  
 WAC 162-08-296 DEFAULT BY RESPONDENT.  
 WAC 162-08-621 CONSIDERATION OF ECONOMIC VALUES.

**WSR 89-23-021**  
**PROPOSED RULES**  
**PUBLIC EMPLOYMENT**  
**RELATIONS COMMISSION**  
 [Filed November 7, 1989, 3:42 p.m.]

Original Notice.

Title of Rule: Chapter 391-08 WAC, Rules of practice and procedure—Public employment relations commission.

Purpose: See below.

Statutory Authority for Adoption: RCW 41.58.050, 28B.52.080, 41.56.090 and 41.59.110.

Statute Being Implemented: See below.

Summary: See below.

Reasons Supporting Proposal: See below.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Marvin L. Schurke, 603 Evergreen Plaza Building, Olympia, 753-3444.

Name of Proponent: Public Employment Relations Commission, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: See below.

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

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

Proposal Changes the Following Existing Rules: See below.

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

WAC 391-08-001 Application and scope of chapter 391-08 WAC.

Purpose: Introduces chapter 391-08 WAC as "procedural." Makes cross-references to other rules.

Statute: Chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW (hereinafter: "substantive statutes"), generally.

Summary: Refers user to other rules, as follows: Chapter 10-08 WAC for conduct of "contested cases"; chapter 391-25 WAC for representation cases; chapter 391-35 WAC for unit clarification cases; chapter 391-45 WAC for unfair labor practice cases; chapter 391-55 WAC for impasse resolution cases; chapter 391-65 WAC for grievance arbitration cases; and chapter 391-95 WAC for union security cases. Provides that special rules prevail over general rules.

Reasons: Chapter 34.05 RCW (APA) and RCW 34.05.250 permits agencies to adopt rules different from model rules by stating reasons for variance. WAC 10-08-001 is similar.

Explanation: Amendment of existing rule with more detailed cross-references identifying the areas where PERC does things differently than chapter 10-08 WAC.

WAC 391-08-003 Policy—Construction—Waiver.

Purpose: Promotes labor peace.

Statute: RCW 41.58.005(1).

Summary: Provides for liberal construction of rules and waiver of rules where there is no prejudice to parties.

Reasons: RCW 34.05.060 encourages informal settlements. RCW 34.05.050 permits waivers by parties. WAC 10-08-230 "encourages" agencies to explore early, informal settlements, but declares how settlements will be embodied in writing and implemented, including burden on agency to provide written description of the resolution to the persons involved.

Explanation: Readoption of existing rule is in harmony with the purpose of WAC 10-08-230, but is more suited to labor-management practice, where parties are accustomed to writing out and signing their own settlement agreements.

WAC 391-08-007 Definitions.

Purpose: Defines certain terms of art.

Statute: Substantive statutes, generally.

Summary: Defines "agency," "commission," "executive director," "labor dispute" and "presiding officer."

Reasons: Chapter 34.05 RCW does not define roles within agency. Model rules silent and also repeals former definition of "presiding officer."

Explanation: Readoption of existing rule is substantive as to definition of "labor dispute" patterned after federal precedent; efficient as to definition of "presiding officer." PERC actually uses working titles of "hearing officer" and "examiner" in APA cases, so "presiding officer" is a handy catch-all. (PERC uses "mediator" and "arbitrator" in non-APA cases); and efficient as to other terms, which permit greater precision in other rules.

**WAC 391-08-010 Appearance and practice before agency—Who may appear.**

**Purpose:** Limits practice before PERC.

**Statute:** Substantive statutes, generally.

**Summary:** Permits Washington attorneys, union agents and employer agents to practice before PERC, without limitation. Permits out-of-state attorneys to practice before PERC on reciprocity basis.

**Reasons:** RCW 34.05.428 provides:

(1) A party to an adjudicative proceeding may participate personally or, if the party is a corporation or other artificial person, by a duly authorized representative.

(2) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, if permitted by provision of law, other representative.

Chapter 10-08 WAC is silent with repeal of WAC 10-08-020. PERC finds it advisable to give meaning to the statutory term "duly authorized representative" in the context of labor-management relations and a long history of practice by nonattorneys in this field.

**Explanation:** Readoption of the existing rule is consistent with the legislative history of the APA. The problem of excluding union business agents and management consultants from practice before PERC was pointed out to the legislature during hearings on the APA, and it softened the original language of the bill. While it might be argued that neither the APA nor PERC's rule is completely consistent with the supreme court's admission to practice (APR) rule 8(b) (which does not require "reciprocity" for out-of-state attorneys, but requires them to "associate" for the case with an in-state attorney), the supreme court ducked the question of "unauthorized practice of law" in a recent Board of Industrial Insurance Appeals case. PERC sees a number of Oregon attorneys in the Vancouver area, and sees the Aitchison firm state-wide. Out-of-state attorneys might qualify under the "duly authorized" agents language of RCW 34.05.428(1). Readoption of the PERC rule will avoid further clouding of the issue at this time.

**WAC 391-08-020 Appearance and practice before agency—Standards of conduct.**

**Purpose:** Provide for exclusion from practice before PERC.

**Statute:** Substantive statutes, generally.

**Summary:** Permits presiding officer to exclude representative for misconduct at hearing. Permits PERC to exclude persons from practice, upon notice and hearing, for misconduct of an aggravated character.

**Reasons:** RCW 34.05.428 leaves open possibility of nonattorney practitioners before administrative agencies. Model rules silent with repeal of WAC 10-08-020.

**Explanation:** Readoption of existing rule as deterrent to misconduct. Permits agency sanctions, particularly as to nonattorney practitioners who are not regulated by the Washington State Bar Association.

**WAC 391-08-030 Appearance and practice before agency—Appearance by former employee of agency or former member of attorney general's staff.**

**Purpose:** Limits practice by former PERC and AG staff.

**Statute:** Substantive statutes, generally.

**Summary:** Former PERC staff and AG staff are barred from representing parties in any case that was pending before PERC while the person was associated with the agency.

**Reasons:** Chapter 34.05 RCW silent. Model rules silent with repeal of WAC 10-08-020.

**Explanation:** Readoption of existing rule protects impartiality and PERC's appearance of fairness. PERC's "mediation" role is particularly sensitive and vulnerable to damage if a former insider were to show up representing a party on a case where insider knowledge could have been gained.

**WAC 391-08-040 Appearance and practice before agency—Former employee as witness.**

**Purpose:** Limit testimony by former PERC and AG staff.

**Statute:** Substantive statutes, generally.

**Summary:** Former PERC staff and AG staff barred from testifying for any party in any case which was pending before PERC while the person was associated with the agency.

**Reasons:** APA silent. WAC 10-08-140(4) limits the exclusion to "expert witness" testimony, and only where the person was actually involved with the particular case while associated with the agency.

**Explanation:** Readoption of existing rule protects impartiality and PERC's appearance of fairness. PERC's "mediation" role is particularly sensitive and vulnerable to damage if a former insider were to show up testifying on behalf of a party on a case where insider knowledge could have been gained.

**WAC 391-08-100 Service of process—Computation of time.**

**Purpose:** Provide standards for computing time periods.

**Statute:** Substantive statutes, generally.

**Summary:** Time periods computed by calendar days to end on business day, except Saturdays, Sundays and Holidays excluded for periods of less than seven days.

**Reasons:** APA silent. WAC 10-08-080 is identical.

**Explanation:** Readoption of existing rule maintains consistency. PERC needs to have some rule for PERC cases that are not governed by the APA. The standards should continue to be identical for all types of cases.

**WAC 391-08-110 Service of process—By whom served.**

**Purpose:** Repeal redundant requirement for service of papers.

**Statute:** Substantive statutes, generally.

**Summary:** PERC to serve papers it issues. All other papers to be served by originating party.

**Reasons:** RCW 34.05.437(3) requires originating party to serve papers unless agency rules provide otherwise.

WAC 10-08-110(1) requires originating party to serve papers filed with presiding officer.

Explanation: Repeal of existing rule maintains consistency. This rule could perhaps have been repealed when chapter 10-08 WAC was first adopted. WAC 391-08-120 will adequately cover the situation.

**WAC 391-08-120 Service of process—Filing and service of papers.**

Purpose: Regulates filing and service of papers.

Statute: Substantive statutes, generally.

Summary: Filing means actual receipt by agency. Originating party to serve other parties by mail, etc., including fax. Documents intended for commission or executive director to be filed only in Olympia office.

Reasons: RCW 34.05.010(6) defines "filing" as actual receipt by agency at place designated by agency. RCW 34.05.437(3) requires originating party to serve papers (by deposit in mail, etc., or by fax if permitted by agency rule) unless agency rules provide otherwise. WAC 10-08-110 permits filing of any papers for agency at any office of the agency and permits service by fax.

Explanation: Amendment of existing rule, to avoid operational problems. PERC's rule was patterned after the original WAC 10-08-110, but was amended in 1988 to require filings for the commission or executive director at Olympia office. PERC has experienced problems with attempts to file time-critical papers at PERC's Yakima and Spokane offices at times when nobody was present to verify the date and time of filing. WAC 391-08-120 (4)(b) should also say that papers to be filed with a presiding officer may be filed at: "The office of the presiding officer or the Olympia office." Amendment to include service by "fax" is also proposed.

**WAC 391-08-160 Service of process—Opportunity for hearing.**

Purpose: Repeal redundant requirement for public hearings in contested cases.

Statute: RCW 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150.

Summary: PERC contested case hearings open to the public. Parties may appear and participate.

Reasons: RCW 34.05.449(5) provides for hearings in adjudicative proceedings to be open to the public. Model rules are silent following repeal of portions of WAC 10-08-190 which required hearings to be public.

Explanation: Repeal of existing rule maintains consistency. The subject is adequately covered by statute.

**WAC 391-08-180 Service of process—Continuances.**

Purpose: Regulates requests for continuances.

Statute: Substantive statutes, generally.

Summary: Parties may move for continuance, with notice to other parties, for good cause. Presiding officer may grant.

Reason: RCW 34.05.449(1) empowers presiding officer to regulate course of proceedings. WAC 10-08-090 makes explicit requirement for party seeking continuance to do leg-work with other parties in advance of making request to agency.

Explanation: Amendment of PERC rule to parallel model rule will maintain consistency. The same standards would be made effective for PERC cases not governed by the APA or the model rules. PERC traditionally asked parties to do the leg-work.

**WAC 391-08-200 Definition of issues—Before hearing.**

Purpose: Repeal redundant admonition on parties to clarify issues before hearing.

Statute: Substantive statutes, generally.

Summary: Toothless language dates back to chapter 1-08 WAC model rules promulgated by Code Reviser.

Reason: RCW 34.05.431 authorizes agencies to hold prehearing conference to simplify issues. WAC 10-08-035 suggests that application should state issue to be adjudicated. WAC 10-08-130 authorizes agency to hold prehearing conference to simplify issues.

Explanation: Repeal of existing rule maintains consistency. This concept is now adequately covered in the APA and model rules.

**WAC 391-08-210 Definition of issues—Prehearing conference.**

Purpose: Repeal redundant rule on prehearing conferences.

Statute: RCW 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150.

Summary: PERC adopted a rule duplicating WAC 10-08-130, because PERC conducts representation case prehearing conferences prior to the issuance of a notice of hearing.

Reason: RCW 34.05.431(1) requires agency to adopt rules specifying conditions and manner in which prehearing conferences are to be held. WAC 10-08-130 amended only to use "adjudicative proceedings" terminology.

Explanation: Repeal of existing rule maintains consistency. The model rules now cover the period prior to issuance of a notice of hearing, so PERC no longer needs to have its own rule. (PERC needs to adopt "when and how" rules for prehearing conferences in chapters 391-25, 391-35, 391-45 and 391-95 WAC.)

**WAC 391-08-230 Summary judgment.**

Purpose: Regulates issuance of summary judgments.

Statute: RCW 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150.

Summary: PERC may decide case by summary judgment if pleadings show there is no issue of fact.

Reason: Summary judgment procedures formerly set forth in RCW 34.04.090(3) have disappeared from the new APA, but RCW 34.05.416 permits the agency to decide that no adjudicative proceeding will be conducted. The model rules are silent.

Explanation: Readoption of the existing rule will enhance efficiency. PERC adopted its rule after experience with going to hearing just to entertain an obvious motion for dismissal in cases where no disputed issues had been identified. PERC's "preliminary ruling" procedures for

unfair labor practice and union security cases are consistent with RCW 34.05.416, and avoid these situations.

#### WAC 391-08-300 Subpoenas—Discovery—Form.

Purpose: Subpoena powers limited to hearings; "discovery" not permitted.

Statute: RCW 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150.

Summary: Subpoenas to identify agency, title of proceeding and case number, and hearing where returnable. Prehearing discovery is not allowed.

Reason: APA is silent as to form of subpoena. RCW 34.05.446(2) permits agency to determine, by rule, whether discovery is to be available in adjudicative proceedings and, if so, which forms of discovery may be used. Except as otherwise provided by agency rules, discovery is up to the presiding officer. WAC 10-08-120 provides for subpoenas to, inter alia, identify agency, title of proceeding and case number. Model rules silent on discovery following repeal of WAC 10-08-020, which left authority in "discovery" area to the agencies.

Explanation: Amendment, with amendment of title, will fulfill APA requirement to state what "discovery" will be allowed. Consistent with National Labor Relations Board practice, PERC has not permitted "discovery." Discovery rules found in chapter 1-08 WAC were thus omitted from chapter 391-08 WAC, and silence continued to suffice while chapter 10-08 WAC left the matter to the agency. The new APA requires the agency to adopt a rule. The form of subpoena is covered by WAC 10-08-120, but this rule can be converted to limit the use of subpoena.

#### WAC 391-08-310 Subpoenas—Issuance to parties.

Purpose: Limitation on use of subpoena power to call PERC staff member as witness in proceeding before PERC.

Statute: RCW 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150.

Summary: Subpoena may be issued ex parte. Attorneys may sign subpoena on their license. No subpoena issued or given effect to call PERC staff member as witness.

Reason: RCW 34.05.446(1) provides for issuance of subpoena by agency or attorney, with party requesting issuance of subpoena paying witness fees, etc., per RCW 34.05.446(7). WAC 10-08-120 requires that subpoena identify requesting party, agency and case; regulates service; regulates quashing; but repeals prohibition on subpoena of PERC staff member as witness in before PERC.

Explanation: Readoption of existing rule is needed to protect PERC's impartiality. PERC's "mediation" role is particularly sensitive and vulnerable to damage if an insider shows up testifying for a party. The exclusion of PERC staff from subpoena was adopted by the Chief Administrative Law Judge in the original chapter 10-08 WAC rules, because the sensitive nature of PERC's "mediation" function was recognized and there was no

other way to make such a limitation effective. The repealer by the Chief Administrative Law Judge recognizes that PERC has the freedom to adopt its own rule. The commission has already readopted the existing rule on an emergency basis so that this area will not be left to chance.

#### WAC 391-08-315 Interpreters.

Purpose: Provides for use and compensation of interpreters in "adjudicative proceedings" covered by the APA.

Statute: Chapter 2.42 RCW and RCW 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150.

Summary: Adopts model rule with modification to delete agency responsibility for payment of interpreters beyond that required by chapter 2.42 RCW.

Reason: RCW 2.42.040 makes a distinction between "criminal" and related proceedings (where the governmental body initiating the proceedings is responsible for the fees and expenses of the interpreter) and "other legal proceedings" (where the fees and expenses of the interpreter are borne by the impaired person unless indigent, and only then by the agency conducting the proceeding). RCW 2.42.170 recites that an interpreter is entitled to fees and expenses, without assigning responsibility for their payment. WAC 10-08-150(17) makes the agency responsible for the fees and expenses of all interpreters.

Explanation: Adoption of model rule in modified form will limit the circumstances under which the agency must pay for the fees and expenses of interpreters. AGO 1989 No. 10 infers that the distinction between "criminal" and "other legal proceedings" remains viable, and a modified rule is proposed on advice from the Office of the Attorney General that the model rule is over-broad as to the financial obligations of the agency. Additionally, the legislature amended chapter 2.42 RCW in 1989 to create a qualifications process for interpreters through the administrator for the courts, which may turn out to be different than as detailed in the model rules.

#### WAC 391-08-500 Declaratory rulings authorized.

#### WAC 391-08-510 Declaratory rulings—Petition.

Purpose: Repeal of redundant rules on declaratory rulings.

Statute: Substantive statutes, generally.

Summary: PERC rules now provide for form, filing, service and disposition of declaratory ruling petitions.

Reason: RCW 34.05.240 permits petitions for declaratory orders and sets forth detailed procedures. Model rules set forth detailed procedures for issuing declaratory orders at WAC 10-08-250, 10-08-251 and 10-08-252.

Explanation: Repeal of existing rule to maintain consistency. This subject is now adequately covered by the APA and by the model rules.

#### WAC 391-08-600 Agency decisions—Form and content.

Purpose: Repeal of redundant PERC rule.

Statute: RCW 35.05.461 [34.05.461], 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150.

Summary: Specifies form and content of decisions, parallel to provisions of original WAC 10-08-210.

Reason: RCW 35.05.461 [34.05.461] controls contents of orders. WAC 10-08-210 is now expanded to cover "initial or final" orders.

Explanation: Repeal of existing rule to maintain consistency. PERC formerly needed to have such a rule to regulate the form and content of orders issued by the commission on petitions for review of initial orders. This subject is now adequately covered by the APA and the model rules.

#### WAC 391-08-610 Agency decisions—Service.

Purpose: Regulates service of initial and final decisions in "adjudicative proceedings" covered by the APA.

Statute: RCW 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150.

Summary: Calls for service of decisions on each party, as well as on their attorneys.

Reason: RCW 34.04.120 requirement for service on party as well as upon attorney seems to have disappeared in new APA. RCW 34.05.461(9) says simply orders to be served "on each party." Model rules are silent.

Explanation: Readoption of existing rule to avoid problems. The requirement for service on the party, as well as its attorney, was adopted in 1975 (perhaps out of distrust of the attorneys to keep their clients informed?). PERC may want to continue the practice informally or by rule, regardless of APA silence.

#### WAC 391-08-630 Agency ((~~decisions~~))—Structure— Substitution for executive director.

Purpose: Specify agency structure and delegation of authority.

Statute: RCW 41.58.010 and 41.58.015.

Summary: Describes commission as impartial (all "public members") body; describes executive director as full-time agency head; provides for senior staff member not involved with case to act in place of executive director when he/she is disqualified or unavailable.

Reason: RCW 34.05.220 (1)(b) requires each agency to adopt rules stating its organization and general course and method of operations. Chapter 10-08 WAC is silent.

Explanation: Amendment, with amendment of title, to comply with requirement of new APA. Delegation of authority beyond executive director is operational necessity in some cases.

#### WAC 391-08-800 Agency records—Public access.

Purpose: Describe agency records available to public.

Statute: Chapter 42.17 RCW, and substantive statutes generally.

Summary: PERC to maintain docket, calendar and case files.

Reason: Effective July 1, 1990, RCW 42.17.260 will require agency to make records and index available to public. Chapter 10-08 WAC is silent.

Explanation: Readoption of existing rule pending further study is indicated. The existing rule dates back to the chapter 1-08 WAC model rules promulgated by the

Code Reviser. The public disclosure law, chapter 42.17 RCW imposes its own access requirements. PERC has relied upon its computer system and upon commercially published indexes of its decisions. The "APA clean-up bill" permits agencies to satisfy their "indexing" obligations by making available a commercially published index used by the agency. PERC may want to name the two local publishers in its rules, to divert inquiries in their direction.

#### WAC 391-08-810 Agency records—Confidentiality.

Purpose: Makes specific records exempt from public disclosure.

Statute: RCW 28B.52.060, 41.56.070, 41.56.100, 41.56.440, 41.58.020, 41.59.120 and 49.08.010.

Summary: Excludes "showing of interest evidence" and "mediation" records from public disclosure.

Reason: RCW 34.05.010 (3)(b) excludes showing of interest determinations and mediation from "agency action" subject to the APA. Chapter 10-08 WAC is silent.

Explanation: Readoption of existing rule protects impartiality of PERC and substantive rights of parties. Court of Appeals decision affirms exclusion of "showing of interest" evidence from disclosure. These matters were excluded from the coverage of the APA in recognition of their sensitive and vulnerable nature if subjected to disclosure.

#### WAC 391-08-820 Agency offices.

Purpose: Specifies addresses of PERC offices.

Statute: Substantive statutes, generally.

Summary: Specifies PERC's principal office address in Olympia and its branch offices in Yakima and Spokane.

Reason: RCW 34.05.220 (1)(b) requires each agency to adopt rules stating how the public may obtain information and make submissions or requests. Chapter 10-08 WAC is silent.

Explanation: Readoption of the existing rule with corrected address (mailstop) information and telephone numbers will comply with the new APA.

This rule formerly contained information on PERC's branch offices. A conscious decision was made to delete that information, because PERC's branch offices in Spokane and Yakima are one-person stations that [are] not staffed on a full-time basis during normal office hours of state agencies, and so are not equipped to receive filings of time-critical documents. The "filing" problem will be taken care of in WAC 391-08-120.

#### WAC 391-08-900 Petitions for rule making—Who may petition.

#### WAC 391-08-910 Petitions for rule making—Form.

#### WAC 391-08-920 Petitions for rule making—Agency must consider.

#### WAC 391-08-930 Petitions for rule making—Notice of disposition.

Purpose: Repeal redundant rules on petitions for rule making.

Statute: Chapter 34.05 RCW and substantive statutes, generally.

Summary: PERC rules now set forth details for form, filing and disposition of requests for rule making.

Reason: RCW 34.05.330 permits any person to petition an agency for rule making. Agency may prescribe form and procedure. WAC 10-08-260 and 10-08-261 specify form and content of petitions for rule making.

Explanation: Repeal of existing rule to maintain consistency. Subject is now covered by APA and model rules.

Hearing Location: Second Floor Conference Room, Evergreen Plaza Building, 711 Capitol Way, Olympia, WA, on January 12, 1990, at 2:30 p.m.

Submit Written Comments to: Marvin L. Schurke, by January 10, 1990.

Date of Intended Adoption: January 12, 1990.

November 7, 1989  
Marvin L. Schurke  
Executive Director

AMENDATORY SECTION (Amending Order 83-01, filed 12/1/83, effective 1/1/84)

WAC 391-08-001 APPLICATION AND SCOPE OF CHAPTER 391-08 WAC. Chapter 391-08 WAC has been added to the Washington Administrative Code by the public employment relations commission pursuant to the authority of section 12, chapter 288, Laws of 1975 1st ex. sess. (RCW 41.59.110); sections 14 and 20, chapter 296, Laws of 1975 1st ex. sess. (RCW 28B.52.080 and 41.56.040); and section 3, chapter 5, Laws of 1975 2nd ex. sess. (RCW 41.58.050), to promulgate comprehensive and uniform rules for practice and procedure before the agency. The provisions of chapter 1-08 WAC shall not be applicable to proceedings before the agency. This chapter sets forth general rules applicable to all types of proceedings before the agency, and should be read in conjunction with the provisions of:

(1) Chapter 10-08 WAC which contains rules promulgated by the chief administrative law judge governing the conduct of ((contested cases)) adjudicative proceedings under chapters 391-25, 391-35, 391-45 and 391-95, except:

(a) WAC 10-08-035, which is supplanted by detailed requirements in WAC 391-25-070, 391-25-090, 391-35-050, 391-45-050, and 391-95-110;

(b) WAC 10-08-050, which relates to procedures of the office of administrative hearings, and so is inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-110, which is supplanted by WAC 391-08-120;

(d) WAC 10-08-120, to the extent that it is further limited by WAC 391-08-040 and 391-08-310;

(e) WAC 10-08-140, to the extent that it is further limited by WAC 391-08-040 and 391-08-310;

(f) WAC 10-08-150, which is supplanted by WAC 391-08-315;

(g) WAC 10-08-211, which is supplanted by WAC 391-25-390, 391-25-590, 391-35-210, 391-35-230, 391-45-350, 391-45-370, 391-95-270, and 391-95-280; and

(h) WAC 10-08-230, which is supplanted by WAC 391-25-150, 391-25-220, 391-25-230, 391-25-250, 391-25-270, 391-35-070, 391-35-140, 391-45-070, 391-45-090, 391-45-260, and 391-95-200.

(2) Chapter 391-25 WAC, which contains rules relating to proceedings on petitions for investigation of questions concerning representation of employees.

(3) Chapter 391-35 WAC, which contains rules relating to proceedings on petitions for clarification of an existing bargaining unit.

(4) Chapter 391-45 WAC, which contains rules relating to proceedings on complaints charging unfair labor practices.

(5) Chapter 391-55 WAC, which contains rules relating to the resolution of impasses occurring in collective bargaining.

(6) Chapter 391-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement.

(7) Chapter 391-95 WAC, which contains rules relating to determination of union security disputes arising between employees and employee organizations certified or recognized as their bargaining representative.

In the event of a conflict between general rule in this chapter and a special rule in another chapter applicable to a particular proceeding, the special rule shall govern.

READOPTED SECTION (Readopting Order 77-1, filed 1/27/77)

WAC 391-08-003 POLICY—CONSTRUCTION—WAIVER. The policy of the state being primarily to promote peace in labor relations, these rules and all other rules adopted by the agency shall be liberally construed to effectuate the purposes and provisions of the statutes administered by the agency, and nothing in any rule shall be construed to prevent the commission and its authorized agents from using their best efforts to adjust any labor dispute. The commission and its authorized agents may waive any requirement of the rules unless a party shows that it would be prejudiced by such a waiver.

READOPTED SECTION (Readopting Order 83-01, filed 12/1/83, effective 1/1/84)

WAC 391-08-007 DEFINITIONS. As used in Title 391 WAC:

(1) "Agency" means the public employment relations commission, its officers and agents;

(2) "Commission" means the public employment relations commission;

(3) "Executive director" means the officer of that title appointed by the commission pursuant to RCW 41.58.015(2);

(4) "Labor dispute" means any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(5) "Presiding officer" means an agency official(s), examiner, hearing officer or other person authorized to act on behalf of the agency.

READOPTED SECTION (Readopting Order 77-1, filed 1/27/77)

WAC 391-08-010 APPEARANCE AND PRACTICE BEFORE AGENCY—WHO MAY APPEAR. No person may appear in a representative capacity before the agency or its designated hearing officer other than the following:

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

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

(3) A bona fide officer, employee or other authorized representative of: (a) Any employer subject to the jurisdiction of the agency, or (b) any labor or employee organization.

READOPTED SECTION (Readopting Order 77-1, filed 1/27/77)

WAC 391-08-020 APPEARANCE AND PRACTICE BEFORE AGENCY—STANDARDS OF CONDUCT. Misconduct at any hearing conducted by the commission or a member of its staff shall be ground for summary exclusion from the hearing. Misconduct of an aggravated character, when engaged in by an attorney or other person acting in a representative capacity pursuant to WAC 391-08-010, shall be ground for suspension or disbarment by the commission after due notice and hearing.

READOPTED SECTION (Readopting Order 77-1, filed 1/27/77)

WAC 391-08-030 APPEARANCE AND PRACTICE BEFORE AGENCY—APPEARANCE BY FORMER EMPLOYEE OF AGENCY OR FORMER MEMBER OF ATTORNEY GENERAL'S STAFF. No former member of the commission, former employee of the agency or former member of the attorney general's staff shall, at any time after severing his employment with the agency or with the attorney general, appear in a representative capacity on behalf of any party in connection with any case or proceeding which was pending before the agency during the time of his employment with the agency.

READOPTED SECTION (Readopting Order 77-1, filed 1/27/77)

WAC 391-08-040 APPEARANCE AND PRACTICE BEFORE AGENCY—FORMER EMPLOYEE AS WITNESS. Except upon the express written consent of the commission, no former member of the commission, former employee of the agency or former member of the attorney general's staff shall, at any time after severing his employment with the agency or with the attorney general, appear as a

witness on behalf of any party in connection with any case or proceeding which was pending before the agency during the time of his employment with the agency.

READOPTED SECTION (Readopting Order 83-01, filed 12/1/83, effective 1/1/84)

WAC 391-08-100 SERVICE OF PROCESS—COMPUTATION OF TIME. In computing any period of time prescribed or allowed by any applicable statute or rule, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

AMENDATORY SECTION (Amending Order 88-01, filed 5/31/88)

WAC 391-08-120 SERVICE OF PROCESS—FILING AND SERVICE OF PAPERS. (1) All notices, pleadings, and other papers filed with the agency or the presiding officer shall be served upon all counsel and representatives of record and upon parties not represented by counsel or upon their agents designated by them or by law.

(2) Service shall be made personally or, unless otherwise provided by law, by first class, registered, or certified mail, ((or)) by telegraph; by electronic telefacsimile transmission and same-day mailing of copies; or by commercial parcel delivery company.

(3) Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed ~~((, and by telegraph)).~~ Service by telegraph shall be regarded as completed when deposited with a telegraph company properly addressed and with charges prepaid. Service by electronic telefacsimile transmission shall be regarded as completed upon production by the telefacsimile device of confirmation of transmission. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company with charges prepaid.

(4) Papers required to be filed with the agency or with the presiding officer shall be deemed filed upon actual receipt during office hours at:

(a) The Olympia office of the commission for any papers required to be filed with the commission, the executive director, or the agency generally; or

(b) ~~((Any))~~ The office of ((the agency or of)) the presiding officer or the Olympia office of the commission for any papers required to be filed with the presiding officer.

(5) Where proof of service is required by statute or rule, filing the papers with the presiding officer, together with ~~((either an acknowledgment of service or))~~ one of the following ~~((certificate))~~ shall constitute proof of service:

~~((I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by delivering a copy thereof in person to (names) or by mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent.~~

Dated at ..... this ... day of ....., 19....  
(signature<sup>h</sup>)

(a) An acknowledgement of service.

(b) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all parties of record in the proceeding by delivering a copy thereof in person to (names).

(c) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all parties of record in the proceeding by:

(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(ii) Telegraphing a copy thereof, properly addressed with charges prepaid, to each party to the proceeding or to his or her attorney or authorized agent; or

(iii) Transmitting a copy thereof by electronic telefacsimile device, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or

(iv) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial parcel delivery company.

AMENDATORY SECTION (Amending Order 83-01, filed 12/1/83, effective 1/1/84)

WAC 391-08-180 SERVICE OF PROCESS—CONTINUANCES. (1) Postponements, continuances, extensions of time, and adjournments may be ordered by the presiding officer on his or her own motion or may be granted on timely request of any party, with notice to all other parties, showing good and sufficient cause therefor.

(2) A request for a continuance made prior to the hearing date may be oral or in writing and shall state that the party seeking the continuance has notified all other parties of the request and that either all other parties agree to the continuance or that all parties do not agree to the continuance. If all parties do not agree to the continuance, the presiding officer shall promptly schedule a prehearing conference to receive argument and to rule on the request.

READOPTED SECTION (Readopting Order 81-01, filed 1/6/81)

WAC 391-08-230 SUMMARY JUDGMENT. A summary judgment may be issued if the pleadings and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law. Motions for summary judgment made in advance of a hearing shall be filed with the agency and served on all other parties to the proceeding.

AMENDATORY SECTION (Amending Order 83-01, filed 12/1/83, effective 1/1/84)

WAC 391-08-300 SUBPOENAS—DISCOVERY—FORM. (1) Every subpoena shall state the name of the agency as: State of Washington, public employment relations commission; and shall state the title of the proceeding and case number.

(2) The power of subpoena shall be limited to compelling the testimony of witnesses and production of documents or other tangible evidence at hearings conducted by the agency.

(3) Pursuant to the authority delegated to the agency by RCW 34.05.446(2), discovery shall not be available in proceedings before the agency.

READOPTED SECTION (Readopting Order 83-01, filed 12/1/83, effective 1/1/84)

WAC 391-08-310 SUBPOENAS—ISSUANCE TO PARTIES. Subpoenas requiring the attendance and testimony of witnesses or the production of evidence shall be issued ex parte to any party to a case: PROVIDED, HOWEVER, That no subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, any member of the commission or any member of the agency staff in any proceeding before the agency. The commission or its hearing officer or examiner shall issue subpoenas upon the application of counsel or other representative authorized to practice before the agency, and may condition the issuance of subpoenas to parties not so represented upon a showing of general relevance and reasonable scope of the testimony or evidence sought. Attorneys may act under the authority conferred by RCW 34.04.105 (2)(a).

NEW SECTION

WAC 391-08-315 INTERPRETERS. (1) An "impaired person" is any person who is a hearing impaired person or a limited-English-speaking person.

(2) A "hearing impaired person" is a person who, because of a hearing impairment or speech defects, cannot readily understand or communicate in spoken language; and includes persons who are deaf, deaf and blind, or hard of hearing.

(3) A "limited-English-speaking person" is a person who, because of a non-English-speaking cultural background cannot readily speak or understand the English language.

(4) A "qualified interpreter" is a person who is qualified to act as interpreter under chapter 2.42 RCW as now or hereafter enacted.

(5) An "intermediary interpreter" is a person who is qualified to act under chapter 2.42 RCW as now or hereafter enacted.

(6) When an impaired person is a party to an adjudicative proceeding under chapter 391-25, 391-35, 391-45 or 391-95 WAC, the presiding officer shall, in the absence of a written waiver signed by the impaired person, require the appointment of a qualified interpreter to assist the impaired person throughout the proceedings. The right to a qualified interpreter may not be waived except when:

(a) The impaired person requests a waiver through the use of a qualified interpreter;

(b) The representative, if any, of the impaired person consents; and

(c) The presiding officer determines that the waiver has been made knowingly, voluntarily, and intelligently.

(7) Waiver of a qualified interpreter shall not preclude the impaired person from claiming his or her right to a qualified interpreter at a later time during the proceedings.

(8) The presiding officer shall make a preliminary determination that an interpreter is able in the particular proceeding to interpret accurately all communication to and from the impaired person. This determination shall be based upon the testimony or stated needs of the impaired person, the interpreter's education, certifications, and experience in interpreting adjudicative proceedings, and the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding, and the interpreter's impartiality. The parties or their representatives may question the interpreter as to his or her qualifications and impartiality.

(9) If at any time during the proceeding, in the opinion of the impaired person, the presiding officer or a qualified observer, the interpreter does not provide accurate and effective communication with the impaired person, the presiding officer shall require the appointment of another qualified interpreter.

(10) If the communication mode or language of a hearing impaired person is not readily interpretable, the interpreter or hearing impaired person shall notify the presiding officer, who shall require the appointment of an intermediary interpreter to assist the qualified interpreter.

(11) The mode of interpretation shall be as permitted by chapter 2.42 RCW or WAC 10-08-150, as now or hereafter amended.

(12) A qualified interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law. A qualified interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending.

(13) The presiding officer shall explain to the impaired party that a written decision or order will be issued in English, and that the party may contact the interpreter for a translation of the decision. If the party has a right to review of the order or decision, the presiding officer shall orally inform him or her during the hearing of the right and the time limits to request review.

(14) At the hearing, the interpreter for a limited-English-speaking party shall provide to the presiding officer the interpreter's telephone number written in the primary language of the impaired party. A copy of such telephone number shall be attached to the decision or mailed to the impaired party. A copy of the decision or order shall also be mailed to the interpreter for use in translation.

(15) In any proceeding involving a hearing impaired person, the presiding officer may order that the testimony of the hearing impaired person and the interpretation of the proceeding by the qualified interpreter be visually recorded for use as the official transcript of that portion of the proceedings. Where simultaneous translation is used for interpreting statements of limited-English-speaking persons, the foreign language statements shall be recorded simultaneously with the English language statements by means of a separate tape recorder.

(16) A qualified interpreter appointed under this section is entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses.

(17) The costs of providing the interpreter shall be borne by the impaired party or by the party who calls the impaired person as a witness, unless the impaired party is indigent under the standards applied in criminal proceedings in the superior court for Thurston County and thus unable to pay for the interpreter, in which case the cost shall be borne as an administrative cost by the commission.

(18) The cost of providing the interpreter may be a taxable cost of any proceeding in which costs are taxed.

**READOPTED SECTION** (Readopting Order 83-01, filed 12/1/83, effective 1/1/84)

WAC 391-08-610 AGENCY DECISIONS—SERVICE. Every final order issued by the agency shall be served on each party or upon the agency designated by the party or by law to receive service of such papers; and a copy shall be furnished to any counsel or person appearing for a party in a representative capacity.

**AMENDATORY SECTION** (Amending Resolution No. 85-01, filed 9/16/85)

WAC 391-08-630 AGENCY (~~DECISIONS~~) STRUCTURE—SUBSTITUTION FOR EXECUTIVE DIRECTOR. (1) The public employment relations commission and its staff maintain an impartial role in all proceedings pending before the agency.

(2) The commission consists of three citizen members appointed by the governor with the advice and consent of the senate, pursuant to RCW 41.58.010. The members of the commission serve on a part-time basis only. All of the members of the commission represent the interests of the public. The commission reserves to itself a policy-making and appellate-review function.

(3) The executive director appointed by the commission pursuant to RCW 41.58.015(2) is the full-time agency head, with authority to act in administrative and personnel matters. Authority is also delegated to the executive director to make substantive decisions in certain types of cases, subject in adjudicative proceedings to the right of the parties to appeal to the commission.

(4) The commission's professional staff is appointed pursuant to RCW 41.58.015(3). A "multifunctional" staffing pattern is used, whereby individual members of the commission's professional staff are assigned from time to time to conduct any or all of the types of dispute resolution services provided by the agency. Authority is delegated to members of the professional staff to make decisions as "examiner" under chapters 391-45 and 391-95 WAC. The executive director may delegate authority to members of the professional staff to make decisions in certain situations under chapters 391-25 and 391-35 WAC.

(5) In the event the executive director disqualifies himself or herself from participation in a decision (or preliminary ruling as may be required under WAC 391-25-390, 391-35-190, or 391-45-110;) the most senior (in terms of length of service with this agency) member of the agency's mediation staff, who has not been directly involved in the particular circumstances shall make decisions and rulings otherwise required of the executive director.

**READOPTED SECTION** (Readopting Order 77-1, filed 1/27/77)

WAC 391-08-800 AGENCY RECORDS—PUBLIC ACCESS. The agency will maintain for public inspection: (1) An index to all proceedings filed with and processed by the agency; (2) a docket for each proceeding filed with and processed by the agency showing the actions taken on and the final resolution of each such proceeding; (3) a schedule of hearing dates assigned in particular cases; and (4) the files for all proceedings, including all documents filed with the agency in the particular case, except materials held in confidence as provided in WAC 391-08-810.

**READOPTED SECTION** (Readopting Order 77-1, filed 1/27/77)

WAC 391-08-810 AGENCY RECORDS—CONFIDENTIALITY. The agency, in order to protect the privacy of individual employees and in order to respect the confidential nature of the mediation process, shall not permit the disclosure to any person of (1) evidence filed as a showing of interest in support of a representation petition or motion for intervention, or (2) notes and memoranda made by any member of the commission or its staff as a recording of communication made or received while acting in the capacity of a mediator between the parties to a labor dispute.

**AMENDATORY SECTION** (Amending Order 80-4, filed 9/30/80, effective 11/1/80)

WAC 391-08-820 AGENCY OFFICES. (1) The agency maintains its principal office in the city of Olympia, Washington at 603 Evergreen Plaza, 711 Capitol Way, Olympia, Washington 98504. The mailing address of the Olympia office is: 603 Evergreen Plaza, FJ-61, Olympia, Washington 98504.

(2) The agency maintains a branch office at West 55 Mission, Suite 1, Spokane, Washington 99201.

(3) The agency maintains a branch office at 322 Washington Mutual Bank Building, 32 North Third Street, Yakima, Washington 98901.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 391-08-110 SERVICE OF PROCESS—BY WHOM SERVED.

WAC 391-08-160 SERVICE OF PROCESS—OPPORTUNITY FOR HEARING.  
 WAC 391-08-200 DEFINITION OF ISSUES—BEFORE HEARING.  
 WAC 391-08-210 DEFINITION OF ISSUES—PREHEARING CONFERENCE.  
 WAC 391-08-500 DECLARATORY RULINGS AUTHORIZED.  
 WAC 391-08-510 DECLARATORY RULINGS—PETITION.  
 WAC 391-08-600 AGENCY DECISIONS—FORM AND CONTENT.  
 WAC 391-08-900 PETITIONS FOR RULE MAKING—WHO MAY PETITION.  
 WAC 391-08-910 PETITIONS FOR RULE MAKING—FORM.  
 WAC 391-08-920 PETITIONS FOR RULE MAKING—AGENCY MUST CONSIDER.  
 WAC 391-08-930 PETITIONS FOR RULE MAKING—NOTICE OF DISPOSITION.

**WSR 89-23-022**  
**PROPOSED RULES**  
**PUBLIC EMPLOYMENT**  
**RELATIONS COMMISSION**  
 [Filed November 7, 1989, 3:43 p.m.]

Original Notice.

Title of Rule: Chapter 391-25 WAC, Representation case rules.

Purpose: See below.

Statutory Authority for Adoption: RCW 41.58.050, 28B.52.080, 41.56.090 and 41.59.110.

Statute Being Implemented: See below.

Summary: See below.

Reasons Supporting Proposal: See below.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Marvin L. Schurke, 603 Evergreen Plaza Building, Olympia, 753-3444.

Name of Proponent: Public Employment Relations Commission, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: See below.

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

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

Proposal Changes the Following Existing Rules: See below.

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

WAC 391-25-001 Scope—Contents—Other rules.

Purpose: Introduces chapter 391-25 WAC, makes cross-references to other rules.

Statute: Chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW (hereinafter: "substantive statutes"), generally.

Summary: Refers to other rules, as follows: Chapter 10-08 WAC for conduct of "adjudicative proceedings", generally; chapter 391-08 WAC for general procedural rules; chapter 391-35 WAC for unit clarification cases; chapter 391-45 WAC for unfair labor practice cases; chapter 391-55 WAC for impasse resolution cases;

chapter 391-65 WAC for grievance arbitration cases; and chapter 391-95 WAC for union security cases.

Reasons: RCW 34.05.250 permits agencies to adopt rules different from model rules by stating reasons for variance. WAC 10-08-001 is similar.

Explanation: Readoption of existing rule is necessary to identify the areas where PERC does things differently than chapter 10-08 WAC. Details of the interface between chapters 391-08 and 10-08 WAC are specified in WAC 391-08-001.

WAC 391-25-002 Sequence and numbering of rules—Special provisions.

Purpose: Descriptive only.

Statute: Substantive statutes, generally.

Summary: Explains how rules are numbered to identify exceptions to general rules.

Reasons: RCW 41.58.005(1) admonishes PERC to be "uniform" in the administration of state collective bargaining laws. This WAC chapter regulates proceedings under several different statutes under PERC's jurisdiction. Those statutes have many similarities and some differences.

Explanation: Readoption of existing rule is necessary to preserve a numbering scheme in which exceptions to general rules immediately follow the general rule on the same subject. (General rules applicable to all of the statutes under PERC's jurisdiction have WAC numbers divisible by ten; if a particular statute requires a deviation from the general rule, it receives a separate number in the same decile.)

WAC 391-25-010 Petition for investigation of a question concerning representation of employees—Who may file.

Purpose: Specifies who may file representation petition with PERC.

Statute: RCW 28B.52.080, 41.56.040, 41.58.050 and 41.59.110.

Summary: General rule is that representation petition may be filed by an individual employee, group of employees, employee organization, employer or their agents.

Reasons: RCW 34.05.010(11) does not define who may file representation petition. RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Model rules silent with repeal of WAC 10-08-020.

Explanation: Readoption of existing rule is necessary to avoid any suggestion of conflict with the new APA. This is fundamentally a substantive policy drawn from the applicable statutes.

WAC 391-25-012 Special provision—Educational employees.

Purpose: Special rule on representation petitions concerning certificated employees of K-12 school districts.

Statute: RCW 41.59.070 (1) and (4).

Summary: Excludes employers from filing representation petitions involving certificated employees of K-12 school districts.

**Reasons:** Unique feature of a particular substantive statute is captured in this rule, which has limited applicability to a discrete segment of PERC's clientele.

**Explanation:** Readoption of existing rule is necessary to avoid any suggestion of conflict with the new APA. This is fundamentally a substantive policy drawn from the applicable statute.

#### WAC 391-25-030 Petition—Time for filing.

**Purpose:** Specifies time periods in which representation petitions may be filed.

**Statute:** RCW 28B.52.080, 41.56.070, 41.58.050 and 41.59.070.

**Summary:** Establishes "contract bar" and "certification bar" time periods when representation petitions will not be processed.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.413(2) specifies that an adjudicative proceeding can be initiated at any time. RCW 34.05.416 permits agency to determine circumstances when adjudicative proceeding will not be held. WAC 10-08-230 encourages informal settlements. Substantive statutes administered by PERC contain "contract bar" and "certification bar" concepts which are designed to preserve stability for obtaining settlements, consistent with long standing federal precedent in the labor-management relations field.

**Explanation:** Readoption of existing rule is necessary to avoid any suggestion of conflict with the new APA. This is fundamentally a substantive policy drawn from the applicable statutes and agency expertise.

#### WAC 391-25-050 Petition form—Number of copies—Filing—Service.

**Purpose:** Specifies number of copies and filing of petition at Olympia office; requires service on other parties.

**Statute:** RCW 28B.52.080, 41.56.060, 41.56.070 and 41.59.070.

**Summary:** Party initiating representation case with PERC must file original and three copies with PERC's Olympia office, and must serve other parties.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-035 provides loosely for an "application for an adjudicative proceeding." WAC 10-08-110 would permit filing at "any" office of the agency.

**Explanation:** Readoption of existing rule is necessary to avoid claim of conflict with model rules. An original and three copies of documents are needed for circulation to the members of the commission in the event of intra-agency appeals. Filing at the Olympia office is necessary because PERC's Yakima and Spokane offices are not staffed on a full-time basis (making it difficult to ascertain compliance with "contract bar" and "certification bar" time limitations) and because all docketing and initial processing by the executive director are performed at Olympia.

#### WAC 391-25-070 Contents of petition.

**Purpose:** Specifies contents of representation petition.

**Statute:** RCW 28B.52.080, 41.56.060, 41.56.070, 41.59.070 and 41.59.080.

**Summary:** Requires identifying information for agency docket records and for efficient processing by PERC. Requires petitioning party to identify type of representation issue as: Organizing of unorganized employees; seeking a change of bargaining representatives; or an effort to decertify an existing representative.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-035 is permissive as to the use of forms provided by an agency and provides loosely for an "application for an adjudicative proceeding" to specify the issue to be adjudicated in the proceeding.

**Explanation:** Readoption of existing rule is necessary to facilitate prompt agency response to representation petitions, by requiring the details needed for case processing. Repeal of WAC 10-08-020 cast doubt on PERC's authority to require use of its forms under the model rules.

#### WAC 391-25-090 Contents of petition filed by employer.

**Purpose:** Allows representation petitions to be filed by an employer.

**Statute:** RCW 28B.52.080, 41.56.040 and 41.58.050.

**Summary:** General rule permitting employers to file representation petitions if specified conditions exist. Provides detailed list of requirements for employer petitions.

**Reasons:** RCW 34.05.010(11) does not define who may file representation petition. RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-035 is permissive as to the use of forms provided by an agency. Model rules otherwise silent with repeal of WAC 10-08-020.

**Explanation:** Readoption of existing rule is necessary to avoid any suggestion of conflict with the new APA. This is fundamentally a substantive policy drawn from the applicable statutes and agency expertise. It is of utmost importance to insure that employers are not engaged in coercive attempts to decertify existing bargaining representatives. The existing rule gives clear guidance as to what information an employer must provide if the employer files a representation petition.

#### WAC 391-25-092 Special provision—Educational employees.

**Purpose:** Special rule on representation petitions concerning certificated employees of K-12 school districts.

**Statute:** RCW 41.59.070 (1) and (4).

**Summary:** Excludes employers from filing representation petitions involving certificated employees of K-12 school districts.

**Reasons:** Unique feature of a particular substantive statute is captured in this rule, which has limited applicability to a discrete segment of PERC's clientele.

**Explanation:** Readoption of existing rule is necessary to avoid any suggestion of conflict with the new APA. This is fundamentally a substantive policy drawn from the applicable statute.

## WAC 391-25-110 Supporting evidence.

Purpose: Requires evidence of employee support in the filing of representation cases.

Statute: RCW 28B.52.080, 41.56.070 and 41.59.070.

Summary: Requires 30% "showing of interest" to support representation petition filed by employees or union. Specifies requirements for such supporting documentation.

Reasons: RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.413(2) specifies that an adjudicative proceeding can be initiated at any time. RCW 34.05.416 permits agency to determine circumstances when adjudicative proceeding will not be held. WAC 10-08-230 encourages informal settlements. Substantive statutes administered by PERC contain "showing of interest" concept which is designed to preserve stability for obtaining settlements, consistent with long standing federal precedent in the labor-management relations field.

Explanation: Readoption of existing rule is necessary to avoid any suggestion of conflict with the new APA. This is fundamentally a substantive policy drawn from the applicable statutes and agency expertise.

## WAC 391-25-130 List of employees.

Purpose: Requires employer to provide list of employees to PERC and, under certain circumstances, to others.

Statute: RCW 28B.52.080, 41.56.070, 41.58.050 and 41.59.070.

Summary: Requires employers to provide lists of employees in proposed bargaining unit. The showing of interest is compared against the list of employees to determine whether petition is supported by requisite percentage of employees.

Reasons: RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.413(2) specifies that an adjudicative proceeding can be initiated at any time. RCW 34.05.416 permits agency to determine circumstances when adjudicative proceeding will not be held. WAC 10-08-230 encourages informal settlements. Substantive statutes administered by PERC contain "showing of interest" concept, consistent with long standing federal precedent in the labor-management relations field. Rule calling for early exchange of information promotes informal settlements.

Explanation: Readoption of existing rule is necessary to avoid any suggestion of conflict with the new APA. This is fundamentally a substantive policy drawn from the applicable statutes and agency expertise.

## WAC 391-25-140 Notice to employees.

Purpose: Requires notice to inform employees of the existence of representation proceedings.

Statute: RCW 28B.52.080, 41.56.050, 41.58.050 and 41.59.110.

Summary: Employer is obligated to post PERC-provided notices to advise employees that a representation proceeding has been initiated.

Reasons: RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency.

While RCW 34.05.413(5) discusses the initiation of adjudicative proceedings, many representation cases can be resolved without the need for hearing. WAC 10-08-230 encourages informal settlements. Rule calling for early exchange of information promotes informal settlements.

Explanation: Readoption of existing rule is necessary to avoid any suggestion of conflict with the new APA. This is fundamentally a substantive policy drawn from the applicable statutes and agency expertise, to reduce or eliminate interference with employee rights due to miscommunications or misinformation.

## WAC 391-25-150 Amendment and withdrawal.

Purpose: Allows amendment and withdrawal of representation petitions.

Statute: RCW 28B.52.080, 41.56.060, 41.56.070, 41.58.050 and 41.59.110.

Summary: Petitioning party may withdraw or amend representation petition under conditions that the executive director or commission may impose.

Reasons: RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.060 encourages informal settlements. WAC 10-08-230 provides for informal settlements, but does not clearly cover amendments or withdrawals of petitions.

Explanation: Readoption of existing rule is necessary to avoid conflict with the model rules. The parties to representation cases are creating ongoing relationships and are quite capable of drafting and signing their own settlement agreements, so that informal settlements are frequently communicated to PERC as a simple "amendment" or "withdrawal" of a case.

## WAC 391-25-170 Intervention—By incumbent representative.

Purpose: Regulates intervention by incumbent exclusive bargaining representative in representation proceedings.

Statute: RCW 28B.52.080, 41.56.070, 41.58.050 and 41.59.070.

Summary: Permits incumbent union to intervene within specified time, without making a showing of interest.

Reasons: RCW 34.05.443 regulates "intervention" by reference to other provisions of law. Incumbent exclusive bargaining representative is entitled under federal and state precedent to (rebuttable) presumption of continuing majority status.

Explanation: Readoption of existing rule is necessary to avoid any suggestion of conflict with the new APA. This is fundamentally a substantive policy drawn from the applicable statutes and agency expertise, to make the traditional "presumption" of majority status to suffice for the 10% showing of interest.

## WAC 391-25-190 Intervention—By organization other than incumbent.

Purpose: Regulates intervention by interested parties other than incumbent in representation proceedings.

Statute: RCW 28B.52.080, 41.56.070, 41.58.050 and 41.59.070.

**Summary:** Requires 10% showing of interest by organization other than incumbent exclusive bargaining representative.

**Reasons:** RCW 34.05.443 regulates "intervention" by reference to other provisions of law. Substantive statutes administered by PERC contain "showing of interest" concept, consistent with long standing federal precedent in the labor-management relations field.

**Explanation:** Readoption of existing rule is necessary to avoid any suggestion of conflict with the new APA. This is fundamentally a substantive policy drawn from the applicable statutes and agency expertise.

#### WAC 391-25-210 Showing of interest confidential.

**Purpose:** Prohibits disclosure of employees' sentiments regarding union representation.

**Statute:** RCW 28B.52.080, 41.56.070, 41.58.050 and 41.59.070.

**Summary:** Maintains strict confidentiality of authorization cards submitted as "showing of interest" in support of representation petition.

**Reasons:** RCW 34.05.010 (3)(b) specifically exempts determinations of the sufficiency of showings of interest from the definition of "agency action." RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Substantive statutes administered by PERC contain "showing of interest" concept, consistent with long standing federal precedent in the labor-management relations field.

**Explanation:** Readoption of existing rule is necessary to avoid any suggestion of conflict with the new APA. This is fundamentally a substantive policy drawn from the applicable statutes and agency expertise.

#### WAC 391-25-220 Prehearing conferences.

**Purpose:** To encourage settlements prior to investing state resources in a formal hearing.

**Statute:** RCW 28B.52.073, 41.56.040, 41.58.050 and 41.59.110.

**Summary:** Prehearing conferences will routinely be conducted in representation cases, to deal with both procedural and substantive matters.

**Reasons:** RCW 34.05.060 encourages informal settlements. RCW 34.05.431(1) requires agency to adopt rules specifying conditions and manner in which prehearing conferences are to be held. WAC 10-08-130 provides for conduct of prehearing conferences. WAC 10-08-230 provides for informal settlements, but imposes obligations on the agency which are not common on labor-management relations.

**Explanation:** Adoption of new rule is necessary to continue successful existing procedures and to meet the requirements of the new APA. PERC uses "prehearing conferences" in virtually all representation cases.

#### WAC 391-25-230 Election agreements.

**Purpose:** To encourage settlements prior to investing state resources in a formal hearing.

**Statute:** RCW 28B.52.080, 41.56.060, 41.56.070, 41.58.050, 41.59.070 and 41.59.080.

**Summary:** Specifies items to be stipulated (in accordance with agency-provided form) to proceed to representation election without a hearing.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-230 encourages the settlement of adjudicative proceedings prior to hearing, but only generally specifies the items to be agreed upon and the form of their submission to the agency.

**Explanation:** Readoption of existing rule is necessary to preserve efficiency while advancing the preference for informal settlements. The election agreement procedure eliminates the need for litigation, and allows for an election to be conducted as quickly as possible, in most PERC representation cases.

#### WAC 391-25-250 Cross-check agreements.

**Purpose:** To encourage settlements prior to investing state resources in a formal hearing.

**Statute:** RCW 28B.52.080, 41.56.060, 41.56.070 and 41.58.050.

**Summary:** General rule specifying items to be stipulated (in accordance with agency-provided form) to proceed to representation cross-check without a hearing.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-230 encourages the settlement of adjudicative proceedings prior to hearing, but only generally specifies the items to be agreed upon and the form of their submission to the agency.

**Explanation:** Readoption of existing rule is necessary to preserve efficiency while advancing the preference for informal settlements. The cross-check agreement procedure eliminates the need for litigation, and allows for an election to be conducted as quickly as possible, in some PERC representation cases.

#### WAC 391-25-252 Special provision—Educational employees.

**Purpose:** Special rule on representation petitions concerning certificated employees of K-12 school districts.

**Statute:** RCW 41.59.070 (1) and (4).

**Summary:** Excludes representation proceedings involving certificated employees of K-12 school districts from the cross-check procedures of WAC 391-25-250.

**Reasons:** Unique feature of a particular substantive statute is captured in this rule, which has limited applicability to a discrete segment of PERC's clientele.

**Explanation:** Readoption of existing rule is necessary to avoid any suggestion of conflict with the new APA. This is fundamentally a substantive policy drawn from the applicable statute.

#### WAC 391-25-253 Special provision—Academic employees.

**Purpose:** Special rule on representation petitions concerning academic employees of community college districts.

**Statute:** RCW 28B.52.030 and 28B.52.080.

**Summary:** Excludes representation proceedings involving academic employees of community college districts from the cross-check procedures of WAC 391-25-250.

**Reasons:** Unique feature of a particular substantive statute is captured in this rule, which has limited applicability to a discrete segment of PERC's clientele.

**Explanation:** Readoption of existing rule is necessary to avoid any suggestion of conflict with the new APA. This is fundamentally a substantive policy drawn from the applicable statute.

#### WAC 391-25-270 Supplemental agreements.

**Purpose:** To encourage settlements prior to investing state resources in a formal hearing.

**Statute:** RCW 28B.52.080, 41.56.060, 41.56.070, 41.58.050, 41.59.070 and 41.59.080.

**Summary:** Specifies items to be stipulated (in accordance with agency-provided form) to proceed to representation election or cross-check without a hearing, while reserving specific issues for determination after the question concerning representation is determined.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-230 encourages the settlement of adjudicative proceedings prior to hearing, but only generally specifies the items to be agreed upon and the form of their submission to the agency.

**Explanation:** Readoption of existing rule is necessary to preserve efficiency while advancing the preference for informal settlements. The supplemental agreement procedure eliminates the need for litigation, and allows for an election to be conducted as quickly as possible, in some PERC representation cases.

#### WAC 391-25-290 Notice of hearing.

**Purpose:** Explains procedure for determining whether to issue a notice of hearing in a representation case.

**Statute:** RCW 28B.52.080, 41.56.040, 41.58.050 and 41.59.110.

**Summary:** Authorizes executive director to determine whether a notice of hearing will be issued in a representation case. Specifies parties to whom notices of hearing are to be issued.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.434 sets out the type of information generally required in notices of hearing. WAC 10-08-040 prescribes specific rules as to the contents of the notice. RCW 34.05.416 provides for the disposition of cases where the agency concludes that no adjudicative proceeding should be conducted.

**Explanation:** Readoption of existing rule delegates substantive decision-making authority to the executive director, to conduct what amounts to an automatic "summary judgment" on the contents of the complaint, and does not conflict with the model rules.

#### WAC 391-25-299 Special provision—Private sector employees.

**Purpose:** Limits PERC authority to conduct representation cases involving private sector employees.

**Statute:** Chapter 49.08 RCW.

**Summary:** PERC suspends processing of private sector representation cases in absence of consent of all parties.

**Reasons:** PERC conducts representation proceedings in the private sector only as "arbitration" or "mediation" exercises under chapter 49.08 RCW, and then only by consent of all parties.

**Explanation:** Readoption of existing rule is necessary to continue substantive policy exempting private sector employees and employers from PERC proceedings absent their mutual consent.

No "small business" impact is anticipated, since no change is proposed. (Parties to which this rule applies may be subject to representation proceedings before the National Labor Relations Board under federal law.)

#### WAC 391-25-310 Hearings—Who shall conduct.

**Purpose:** Defines who may hear representation cases.

**Statute:** RCW 28B.52.080, 41.56.060, 41.56.070, 41.59.070, 41.59.080 and 53.18.015.

**Summary:** Hearing officer can be PERC staff member or agency designee. Hearing officers may be substituted.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-050 discusses the use of personnel supplied by the Office of Administrative Hearings, but PERC is exempt from the Office of Administrative Hearings and chapter 34.12 RCW. The chief administrative law judge does not govern the matters covered by this rule.

**Explanation:** Readoption of existing rule is necessary because the "agency head" generally does not generally preside over PERC's adjudicative hearings.

#### WAC 391-25-350 Hearings—Nature and scope.

**Purpose:** Defines representation hearings as investigatory.

**Statute:** RCW 28B.52.080, 41.56.060, 41.56.070, 41.59.070, 41.59.080 and 53.18.015.

**Summary:** Defines the hearing as public and investigatory between parties, with agency taking impartial, but active, role.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.449(5) provides for hearings to be "public" but model rules are silent following repeal of language in WAC 10-08-190. In addition, the rule no longer speaks to sequestering of witnesses. Chapter 34.05 RCW and chapter 10-08 WAC are written to apply to "adjudicative proceedings" where the agency itself takes an advocacy role, and so do not adequately describe the "impartial" investigatory role of PERC in representation hearings.

**Explanation:** Amendment of existing rule is necessary to define the impartial investigatory posture of PERC, while permitting the sequestering of witnesses. This will not conflict with the model rules' directives, and will maintain important components of PERC hearings.

**WAC 391-25-370 Blocking charges—Suspension of proceedings—Request to proceed.**

**Purpose:** Suspends representation proceedings in cases where unfair labor practices have also been filed.

**Statute:** RCW 28B.52.080, 41.56.070, 41.58.050 and 41.59.070.

**Summary:** Permits suspension of representation proceedings where unfair labor practice charges have been filed affecting the situation. Permits party that filed the unfair labor practice complaint to request to proceed by waiving right to file objections on conduct covered by unfair labor practice case.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.416 permits agency to determine that no adjudicative proceeding should be conducted. Chapter 10-08 WAC is silent. This rule delegates substantive decision-making authority to the executive director, to suspend one subtype of adjudicative proceeding before the agency pending the outcome of another subtype of adjudicative proceeding, consistent with federal precedent.

**Explanation:** Readoption of the existing rule follows well-accepted policy in this area. Although affecting procedure, the decision concerning the sequence of case processing is fundamentally substantive in nature, based on federal precedent which requires that "laboratory conditions" be maintained for employees to exercise free choice in an election.

**WAC 391-25-390 Proceedings before the executive director.**

**Purpose:** Delegates decision-making authority in representation matters and sets forth limited rights of appeal at this stage of the proceedings.

**Statute:** RCW 28B.52.080, 41.56.060, 41.56.070, 41.58.050, 41.59.070 and 41.59.080.

**Summary:** Delegates decision-making authority to executive director for initial decision on all representation case issues. Permits delegation of certain types of issues to hearing officer. Limits right of appeal at this stage of case to "jurisdiction" and dismissals.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 41.58.015(2) permits commission to delegate decision-making authority, subject to right of parties to petition for review by full commission. WAC 10-08-211 calls for a 20-day period for filing a petition for review after any initial decision.

**Explanation:** Readoption of the existing rule continues a well-accepted and efficient procedure.

(1) Representation cases involve a limited number and type of issues, and consistency of agency policy is vital to the process of labor-management relations. The existing rule centralizes representation case determinations, making the executive director responsible for overall consistency as well as the outcomes of individual cases.

(2) Delays in resolution of representation disputes are particularly destructive, so PERC has made a policy decision to "postpone" the right of parties to appeal until after the election or cross-check, when practical considerations (e.g., the actual outcome of the election) and

other potential issues (e.g., misconduct during the pre-election campaign) can be merged into one review of the case by the commission. This procedure was developed by analysis of the bottlenecks in the procedures of other labor relations agencies, and has been highly successful in operation for more than 10 years.

**WAC 391-25-391 Special provision—Public employees.**

**Purpose:** Permits executive director to order a cross-check to resolve a representation dispute in certain circumstances.

**Statute:** RCW 41.56.060.

**Summary:** Special rule for use in cases arising under chapter 41.56 RCW, where only one employee organization is involved in the proceedings. Allows executive director to order a cross-check of employment records to determine a representation case.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Chapter 10-08 WAC is silent. RCW 41.56.060 specifically permits determination of question concerning representation by cross-check methodology.

**Explanation:** Readoption of the existing rule implements statutory and expedient alternative method for determining certain representation matters.

**WAC 391-25-410 Cross-check of records.**

**Purpose:** Specifies procedures for cross-check of employment records.

**Statute:** RCW 41.56.060.

**Summary:** General rule specifying what constitutes acceptable "employment records" for purposes of cross-checks. Details procedures to be followed in determining a question concerning representation by cross-check.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Chapter 10-08 WAC is silent. RCW 41.56.060 specifically permits determination of question concerning representation by cross-check methodology.

**Explanation:** Readoption of the existing rule implements statutory and expedient alternative method for determining certain representation disputes. Cross-check procedures were controversial when PERC came into existence. The existing rule (which reflects long-established agency policy and practice) is the product of substantial debate in earlier rule-making proceedings, and has been well-received by the parties.

**WAC 391-25-412 Special provision—Educational employees.**

**Purpose:** Special rule on representation proceedings involving certificated employees of K-12 school districts.

**Statute:** RCW 41.59.070.

**Summary:** Cross-check procedures of WAC 391-25-410 are made inapplicable to cases arising under chapter 41.59 RCW.

**Reasons:** RCW 41.59.070 requires elections to determine questions concerning representation involving certificated employees of K-12 school districts, except as a remedy for massive unfair labor practices.

**Explanation:** Readoption of existing rule implements the applicable statute. A "bargaining order" or "cross-

check order" would be issued as part of an unfair labor practice decision, where appropriate.

**WAC 391-25-413 Special provision—Academic employees.**

**Purpose:** Special rule on representation proceedings involving academic employees of community college districts.

**Statute:** RCW 28B.52.030 and 28B.52.080.

**Summary:** Cross-check procedures of WAC 391-25-410 are made inapplicable to cases arising under chapter 28B.52 RCW.

**Reasons:** RCW 28B.52.030 and 28B.52.080 refer only to elections to determine questions concerning representation involving academic employees of community college districts.

**Explanation:** Readoption of existing rule implements the applicable statute.

**WAC 391-25-430 Notice of election.**

**Purpose:** Sets forth procedures for the issuance and posting of election notices.

**Statute:** RCW 28B.52.080, 41.56.060, 41.56.070, 41.58.050 and 41.59.070.

**Summary:** Describes the procedures for the issuance and posting of election notices. Details elements to be included in the election notice.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Chapter 10-08 WAC is silent.

**Explanation:** Readoption of existing rule is needed to deal with an area not covered by the model rules. This type of notice is distinctly different from the "notice of hearing" regulated by WAC 10-08-040. At this point in the proceedings, a hearing may or may not have been held or necessary. The specifics of representation election procedures are fundamentally substantive in nature, drawn from federal precedent and agency expertise.

**WAC 391-25-450 Disclaimers.**

**Purpose:** Allows employee organization to have its name removed from the ballot in representation election.

**Statute:** RCW 28B.52.080, 41.56.070, 41.58.050 and 41.59.070.

**Summary:** Permits an organization to withdraw its name from consideration in a representation case; imposes sanctions for disclaimer made after election choices have been presented officially to eligible voters.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Chapter 10-08 WAC is silent.

**Explanation:** Readoption of existing rule is needed to deal with an area not covered by the model rules. This rule is fundamentally substantive in nature, and follows long-established agency policy based on federal precedent and agency expertise.

**WAC 391-25-470 Electioneering.**

**Purpose:** Impose substantive limitations on preelection campaign conduct by parties and their representatives.

**Statute:** RCW 28B.52.080, 41.56.060, 41.58.050 and 41.59.070.

**Summary:** Prohibits "captive audience" meetings with eligible voters within 24 hours prior to opening of polls or while mail ballots are out to voters; prohibits electioneering at polling places.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Chapter 10-08 WAC is silent.

**Explanation:** Readoption of existing rule is necessary to maintain substantive provisions dealing with election campaigns, following long-established federal and agency precedent and agency expertise.

**WAC 391-25-490 Election procedures—Balloting.**

**Purpose:** Details balloting procedures.

**Statute:** RCW 28B.52.080, 41.56.060, 41.58.050 and 41.59.070.

**Summary:** Specifies that all elections shall be by secret ballot. Prohibits absentee balloting. Describes use of "on-site" and "mail ballot" procedures.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Chapter 10-08 WAC is silent.

**Explanation:** Readoption of existing rule to provide guidelines for the actual voting process, consistent with federal precedent and agency expertise.

**WAC 391-25-510 Challenged ballots.**

**Purpose:** Provide a means to resolve challenges to voter eligibility issues.

**Statute:** RCW 28B.52.080, 41.56.040, 41.58.050 and 41.59.110.

**Summary:** Establishes procedures to be followed if a voter is challenged. Where challenged ballots are sufficient in number to affect the outcome of the election, the representation dispute will be held in abeyance while the eligibility of the challenged voters is determined.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Chapter 10-08 WAC is silent.

**Explanation:** Readoption of existing rule is necessary because the rule deals with substantive issues not covered by the APA or model rules. The PERC rule is drawn from federal precedent, the applicable statutes and agency expertise.

**WAC 391-25-530 Votes needed to determine election.**

**Purpose:** Explains necessary percentages to determine a representation election.

**Statute:** RCW 28B.52.080, 41.56.070, 41.58.050 and 41.59.070.

**Summary:** General rule provides that unit determination elections shall be decided by a majority of those eligible to vote. Provides that representation elections shall be decided by a majority of those voting.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Chapter 10-08 WAC is silent.

**Explanation:** Readoption of existing rule implements substantive provisions of applicable statutes, consistent with federal precedent and agency expertise.

**WAC 391-25-531 Special provision—Public employees.**

**Purpose:** Special rule for certain elections under chapter 41.56 RCW.

**Statute:** RCW 41.56.070.

**Summary:** In the event of two or more employee organizations appearing on a representation ballot under chapter 41.56 RCW, a majority of those employees eligible to vote must select one of the choices listed to validate a result on the first ballot.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Chapter 10-08 WAC is silent.

**Explanation:** Readoption of existing rule implements the applicable statute.

**WAC 391-25-550 Tally sheet.**

**Purpose:** Explains vote counting procedures at the close of a representation election.

**Statute:** RCW 28B.52.080, 41.56.070, 41.58.050 and 41.59.070.

**Summary:** Specifies that a tally sheet shall be prepared at the close of the polls in a representation election. Provides that challenged ballots may affect the outcome of an election.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Chapter 10-08 WAC is silent.

**Explanation:** Readoption of existing rule is necessary to set forth election procedures which are not otherwise covered by the APA or the model rules. The tally of ballots starts the period for "appeal."

**WAC 391-25-570 Procedure following inconclusive election.**

**Purpose:** Establishes procedures for run-off election in the event the initial representation election is inconclusive.

**Statute:** RCW 28B.52.080, 41.56.070, 41.58.050 and 41.59.070.

**Summary:** Provides that a run-off election will be conducted between the two choices receiving the most votes in the initial election. Provides for limited right of "appeal" where a party claims that a choice is improperly being excluded from the run-off election.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Chapter 10-08 WAC is silent.

**Explanation:** Readoption of existing rule is necessary to set forth election procedures and substantive policies not otherwise covered by the APA or by the model rules. The limited right to appeal is in harmony with the purposes of WAC 391-25-390.

**WAC 391-25-590 Filing and service of objections.**

**Purpose:** Explains appeal procedures after a representation election or cross-check has been conducted.

**Statute:** RCW 28B.52.080, 41.56.070, 41.58.050 and 41.59.070.

**Summary:** Provides a seven day appeal period following the issuance of tally sheet reporting results of representation election or cross-check. Specifies the grounds

for appeal as either: Misconduct during preelection campaign; or previous rulings in the case. Requires service of objections on opposing parties.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-211 establishes a 20 day appeal period for review of "initial orders." Federal precedent and labor-management relations practice generally permits only a one-week period for appeal of "campaign misconduct" following an election.

**Explanation:** Readoption of existing rule is necessary because the model rule appeal period would cause undue disruption of the representation process. The existing rule enhances the prompt resolution of representation issues, by merging the opportunity for appeal of prior rulings with the traditional opportunity to file "objections." This procedure has been efficient and effective for PERC and its clientele for more than 10 years.

**WAC 391-25-610 Procedure where no objections are filed.**

**Purpose:** Delegates final authority where there is no appeal or objection to a conclusive election.

**Statute:** RCW 28B.52.080, 41.56.060, 41.56.070, 41.58.050 and 41.59.070.

**Summary:** Delegates authority to executive director to issue a final certification if there are no challenges to the conduct of a conclusive election. That certification closes the representation case.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.464(1) permits agency to delegate final order authority in certain types of cases. Chapter 10-08 WAC is silent.

**Explanation:** Readoption of existing rule is necessary to the prompt disposition of representation cases where there is no appeal or further controversy.

**WAC 391-25-630 Procedure where objections are filed.**

**Purpose:** Specifies appeal procedures in representation cases.

**Statute:** RCW 28B.52.080, 41.56.040, 41.58.050 and 41.59.110.

**Summary:** Authorizes executive director to conduct hearing where objections to preelection campaign conduct raise issues of fact. Provides for transfer of full record to commission.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Election "objections" may raise new fact issues giving rise to a right to a hearing.

**Explanation:** Readoption of existing rule is necessary. The APA and model rules contain different appeal procedures which anticipate that the factual record will already be complete. The existing rule is derived from federal precedent an agency practices that have been efficient for more than 10 years. Any change of these well-established appeal procedures would create problems for the parties.

**WAC 391-25-650 Briefs and written arguments on objections.**

**Purpose:** Provides time periods for the submission of briefs in support of appeals from representation cases.

**Statute:** RCW 28B.52.080, 41.56.060, 41.56.070, 41.58.050 and 41.59.070.

**Summary:** Specifies that appeal briefs must be filed within 14 days following specified events. Requires filing of briefs at the Olympia office and service on opposing parties.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-211 establishes periods for filing of appeal briefs.

**Explanation:** Readoption of the existing rule is appropriate to reflect the unique nature of representation cases. The APA and model rules contain different appeal procedures which anticipate that the factual record will already be complete. The existing rule is derived from federal precedent and agency practices that have been efficient for more than 10 years. Any change of these well-established appeal procedures would create problems for the parties.

**WAC 391-25-670 Commission action on objections.**

**Purpose:** Describes commission action when appeals are filed.

**Statute:** RCW 28B.52.080, 41.56.060, 41.58.050 and 41.59.070.

**Summary:** Permits commission to ask for oral arguments on appeals, and to make appropriate remedial orders.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. The model rules are silent as to the actual conduct of appeals procedures before an appellate body. The commission itself makes the "initial" ruling on "objections" concerning misconduct during election campaigns.

**Explanation:** Readoption of existing rule reflects unique nature of representation proceedings and does not conflict with the APA or model rules.

**Hearing Location:** Second Floor Conference Room, Evergreen Plaza Building, 711 Capitol Way, Olympia, WA, on January 12, 1990, at 2:30 p.m.

**Submit Written Comments to:** Marvin L. Schurke, by January 10, 1990.

**Date of Intended Adoption:** January 12, 1990.

November 7, 1989  
Marvin L. Schurke  
Executive Director

**AMENDATORY SECTION** (Amending Order 80-5, filed 9/30/80, effective 11/1/80)

**WAC 391-25-001 SCOPE—CONTENTS—OTHER RULES.** This chapter governs proceedings before the public employment relations commission on petitions for investigation of questions concerning representation of employees. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 10-08 WAC which contains rules promulgated by the chief administrative law judge governing the conduct of adjudicative proceedings under chapter 391-25 WAC, except:

(a) WAC 10-08-035, which is supplanted by detailed requirements in WAC 391-25-070;

(b) WAC 10-08-050, which relates to procedures of the office of administrative hearings, and so is inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is supplanted by WAC 391-25-390 and 391-25-590; and

(d) WAC 10-08-230, which is supplanted by WAC 391-25-150, 391-25-220, 391-25-230, 391-25-250, and 391-25-270.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission.

((2)) (3) Chapter 391-35 WAC, which contains rules relating to proceedings on petitions for clarification of an existing bargaining unit.

((3)) (4) Chapter 391-45 WAC, which contains rules relating to proceedings on complaints charging unfair labor practices.

((4)) (5) Chapter 391-55 WAC, which contains rules relating to resolution of impasses occurring in collective bargaining.

((5)) (6) Chapter 391-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement.

((6)) (7) Chapter 391-95 WAC, which contains rules relating to determination of union security disputes arising between employees and employee organizations certified or recognized as their bargaining representative.

**READOPTED SECTION** (Readopting Order 83-02, filed 12/1/83, effective 1/1/84)

**WAC 391-25-002 SEQUENCE AND NUMBERING OF RULES—SPECIAL PROVISIONS.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (professional negotiations—academic faculties of community college districts) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 49.08 RCW (private sector employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

**WAC 391-25-010 PETITION FOR INVESTIGATION OF A QUESTION CONCERNING REPRESENTATION OF EMPLOYEES—WHO MAY FILE.** A petition for investigation of a question concerning representation of employees, hereinafter referred to as a "petition," may be filed by any employee, group of employees, employee organization, employer or their agents.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

**WAC 391-25-012 SPECIAL PROVISION—EDUCATIONAL EMPLOYEES.** A petition may be filed under chapter 41.59 RCW only by an employee organization or its agents (RCW 41.59.070(1)), or by employees, one of whom shall be designated as agent (RCW 41.59.070(4)).

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

**WAC 391-25-030 PETITION—TIME FOR FILING.** In order to be timely filed:

(1) Where there is a valid written and signed collective bargaining agreement in effect covering an appropriate bargaining unit which includes any or all of the employees to be affected by the petition, a petition must be filed during the period not more than ninety nor less

than sixty days prior to the expiration date of the collective bargaining agreement, or after the expiration thereof.

(2) Where a certification has been issued by the agency covering an appropriate bargaining unit which includes any or all of the employees to be affected by the petition, a petition must be filed not less than twelve months following the date of the certification.

(3) Where neither subsections (1) nor (2) of this section are applicable, a petition may be filed at any time.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

**WAC 391-25-050 PETITION FORM—NUMBER OF COPIES—FILING—SERVICE.** Each petition shall be prepared on a form furnished by the commission or on a facsimile thereof. The original and three copies of the petition shall be filed with the agency at its Olympia office. The party filing the petition shall serve a copy on the employer and on each employee organization named in the petition as having an interest in the proceedings.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

**WAC 391-25-070 CONTENTS OF PETITION.** Each petition shall contain:

(1) The name and address of the employer and, if known, the name, address and telephone number of the employer's principal representative in matters concerning relationships between the employer and its employees.

(2) A description of the bargaining unit which the petitioner claims to be appropriate, specifying inclusions and exclusions, and, if known, the approximate number of employees in such bargaining unit.

(3) The names and, if known, the addresses and telephone numbers of the principal representatives of any organizations which may claim to represent any of the employees in the bargaining unit which the petitioner claims to be appropriate.

(4) A statement that: (a) The employer declines, after having been requested to do so, to recognize the petitioner as the exclusive representative of the employees in the bargaining unit which the petitioner claims to be appropriate, or (b) the employees in the bargaining unit which the petitioner claims to be appropriate wish to change their exclusive bargaining representative, or (c) the employees in the bargaining unit do not wish to be represented by an employee organization.

(5) Any other relevant facts.

(6) The name, address and affiliation, if any, of the petitioner and the name, address and telephone number of the principal representative, if any, of the petitioner.

(7) The signature and, if any, the title of the petitioner or its representative.

**READOPTED SECTION** (Readopting Order 88-02, filed 5/31/88)

**WAC 391-25-090 CONTENTS OF PETITION FILED BY EMPLOYER.** Each petition filed by an employer shall contain all of the information required by WAC 391-25-070, except for that required by WAC 391-25-070(4), and shall conform to the following additional requirements:

(1) Each petition filed by an employer shall contain a statement that the employer has been presented with a demand by an organization seeking recognition as the exclusive representative of the employees in the bargaining unit described in the petition.

(2) WAC 391-25-110 shall not be applicable to such petitions.

(3) Where the status of an incumbent exclusive bargaining representative is questioned, the employer shall attach such affidavits and other documentation as may be available to it to demonstrate the existence of a good faith doubt concerning the representation of its employees. To constitute a basis for a good faith doubt under this paragraph, signature documents provided to the employer by employees must be in a form which would qualify as supporting evidence under WAC 391-25-110 if filed by the employees directly with the commission.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

**WAC 391-25-092 SPECIAL PROVISION—EDUCATIONAL EMPLOYEES.** WAC 391-25-090 is inapplicable to petitions filed under chapter 41.59 RCW. See WAC 391-25-012.

**READOPTED SECTION** (Readopting Order 88-02, filed 5/31/88)

**WAC 391-25-110 SUPPORTING EVIDENCE.** The original petition shall be accompanied by a showing of interest indicating that the petitioner has the support of not less than thirty percent of the employees in the bargaining unit which the petitioner claims to be appropriate. The showing of interest must be timely filed under the same standards applicable to the petition, and must consist of individual authorization cards or letters signed and dated by employees in the bargaining unit claimed appropriate. Such authorization cards shall not be valid unless signed and dated during the ninety-day period preceding the filing of the petition or the filing of such evidence with the agency, whichever is later.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

**WAC 391-25-130 LIST OF EMPLOYEES.** The employer shall submit to the commission a list containing the names and last known addresses of all of the employees in the bargaining unit described in the petition. Following administrative determination that the petition is supported by a sufficient showing of interest, the employer shall, upon request, provide a copy of the list of names and addresses to the petitioner. Following granting of a motion for intervention, the employer shall, upon request, provide a copy of the list of names and addresses to the intervenor.

**READOPTED SECTION** (Readopting Order 88-02, filed 5/31/88)

**WAC 391-25-140 NOTICE TO EMPLOYEES.** The employer shall post a notice to employees, in the form specified by the commission, advising of the existence of proceedings under this chapter. The agency shall furnish the employer with copies of such notice, and the employer shall post them in conspicuous places on its premises where notices to affected employees are usually posted.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

**WAC 391-25-150 AMENDMENT AND WITHDRAWAL.** Any petition may be amended or withdrawn by the petitioner under such conditions as the executive director or the commission may impose.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

**WAC 391-25-170 INTERVENTION—BY INCUMBENT REPRESENTATIVE.** An organization which demonstrates that it has been the exclusive representative of all or any part of the bargaining unit involved in proceedings under this chapter during the year preceding the filing of the petition may, by motion, intervene in the proceedings and, upon granting of its motion for intervention, shall be entitled to participate in the proceedings and to have its name listed as a choice on the ballot in any election. No motion for intervention shall be considered if made after the close of the hearing on the petition or more than seven days after the filing and posting of an election agreement or cross-check agreement.

**READOPTED SECTION** (Readopting Order 88-02, filed 5/31/88)

**WAC 391-25-190 INTERVENTION—BY ORGANIZATION OTHER THAN INCUMBENT.** An organization not covered by WAC 391-25-170 may, by motion, intervene in proceedings under this chapter and, upon granting of its motion for intervention, shall be entitled to participate in the proceedings and have its name listed as a choice on the ballot in any election. The motion for intervention shall be supported by a showing of interest indicating that the intervenor has the support of not less than ten percent of the employees in the bargaining unit which the petitioner claims to be appropriate or of not less than thirty percent of the employees in whatever different bargaining unit the intervenor claims to be appropriate. The showing of interest must consist of individual authorization cards or letters signed and dated by employees in the bargaining unit claimed appropriate. Such authorization cards shall not be valid unless signed and dated during the ninety-day period preceding the filing of the motion for intervention or the filing of such evidence with the agency, whichever is later. The showing of interest shall be made confidentially to the agency at or before the time the motion for intervention is made: PROVIDED,

HOWEVER, That a motion for intervention may be granted conditionally subject to the subsequent furnishing of a showing of interest under such conditions as the agency may impose to avoid undue delay of the proceedings. No motion for intervention shall be considered if made after the close of the hearing on the petition or more than seven days after the filing and posting of an election agreement or cross-check agreement.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-210 **SHOWING OF INTEREST CONFIDENTIAL.** The question of whether a showing of interest requirement for a petition or for intervention has been satisfied is a matter for administrative determination by the agency and may not be litigated at any hearing. The agency shall not disclose the identities of employees whose authorization cards or letters are filed in support of a petition or motion for intervention. In order to preserve the confidentiality of the showing of interest and the right of employees freely to express their views on the selection of a bargaining representative, the agency shall not honor any attempt to withdraw or diminish a showing of interest.

**NEW SECTION**

WAC 391-25-220 **PREHEARING CONFERENCES.** The commission routinely conducts prehearing conferences to discuss with the parties all contested issues of law and fact which may arise in representation cases. The parties are encouraged to reach binding stipulations on all issues during the course of the prehearing conference. Such stipulations are embodied in election agreements, cross-check agreements, and/or supplemental agreements provided for in this chapter.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-230 **ELECTION AGREEMENTS.** Where an employer and all other parties agree on a representation election, they may file an election agreement with the executive director. Such election agreement shall contain:

(1) The name and address of the employer and the name, address and telephone number of its principal representative.

(2) The names and addresses of all other parties participating in the election agreement and the names, addresses and telephone numbers of their principal representatives.

(3) A description of the bargaining unit agreed to be appropriate, specifying inclusions and exclusions, and the number of employees in such unit.

(4) A statement by all parties that: (a) No organization is known which is or may be entitled to intervene as an incumbent representative, or (b) the incumbent representative is a party to the election agreement, or (c) the incumbent representative has abandoned the unit as evidenced by documentation attached to the election agreement.

(5) A statement by all parties that no other organization is known which claims to represent any of the employees in the bargaining unit; that all parties agree that a question concerning representation exists; that a hearing is waived; and that the agency is requested to proceed to conduct an election and certify the results.

(6) A list, attached to the election agreement as an appendix, containing the names of the employees eligible to vote in the election and the eligibility cut off date for the election. If the parties request that the election be conducted by mail ballot, the list shall include the last known address of each of the employees eligible to vote. If no eligibility cut off date is specified by the parties, the eligibility cut off date shall be the date on which the election agreement is filed.

(7) The suggestions of the parties as to the location, the day or days of the week and the time or times of day for the conduct of the election, or that the election be conducted by mail ballot.

(8) The signatures and, if any, the titles of all parties or their representatives.

The original and one copy of the election agreement shall be filed with the agency at its Olympia office, and copies shall be posted by the employer in conspicuous places on the employer's premises where notices to affected employees are usually posted. The election agreement shall remain posted for at least seven days after it is filed with the agency (ten days after it is deposited in the United States mail addressed to the agency).

Upon the filing of an election agreement conforming to the foregoing requirements and seeking an election in an appropriate bargaining

unit, the executive director shall proceed to conduct an election. Objections to the election by a party to the election agreement shall be limited to matters relating to specific conduct affecting the results of the election.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-250 **CROSS-CHECK AGREEMENTS.** Where only one organization is seeking certification as the representative of unrepresented employees, the employer and the organization may file a cross-check agreement with the executive director. Such cross-check agreement shall contain:

(1) The name and address of the employer and the name, address and telephone number of its principal representative.

(2) The name and address of the organization and the name, address and telephone number of its principal representative.

(3) The description of the bargaining unit agreed to be appropriate, specifying inclusions and exclusions and the number of employees in such unit.

(4) A statement by the parties that no other organization is known which claims to represent any of the employees in the bargaining unit; that the parties agree that a question concerning representation exists; that a hearing is waived; and that the agency is requested to conduct and certify the results of a cross-check of individually signed and dated authorization cards or membership records submitted by the organization against the employment records of the employer.

(5) A list, attached to the cross-check agreement as an appendix, containing the names of the employees in the bargaining unit.

(6) The suggestions of the parties as to the time and place where the records to be cross-checked can be made available to the agency.

(7) The agreement of the parties to be bound by the results of the cross-check.

(8) The signatures and, if any, the titles of the representatives of the parties.

The original and one copy of the cross-check agreement shall be filed with the agency at its Olympia office, and copies thereof shall be posted by the employer in conspicuous places on the employer's premises where notices to affected employees are usually posted. The cross-check agreement shall remain posted for at least seven days after it is filed with the agency (ten days after it is deposited in the United States mail addressed to the agency).

Upon the filing of a cross-check agreement conforming to the foregoing requirements and seeking a cross-check in an appropriate bargaining unit, the executive director shall proceed with the cross-check of records. The cross-check may be conducted at any time following the execution of a cross-check agreement; but no certification shall be issued until seven days have elapsed following the filing and posting of the cross-check agreement. Where a motion for intervention is timely filed and granted, no certification shall be issued on the basis of the cross-check.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-252 **SPECIAL PROVISION—EDUCATIONAL EMPLOYEES.** WAC 391-25-250 is inapplicable to petitions filed under chapter 41.59 RCW.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-253 **SPECIAL PROVISION—ACADEMIC EMPLOYEES.** WAC 391-25-250 is inapplicable to petitions filed under chapter 28B.52 RCW.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-270 **SUPPLEMENTAL AGREEMENTS.** Where the parties are able to agree generally on the matters to be set forth in an election agreement under WAC 391-25-230 or a cross-check agreement under WAC 391-25-250, but are unable to agree on limited issues concerning the definition of the bargaining unit or employee eligibility, they may expedite the determination of the question concerning representation while reserving their disagreement for subsequent determination by filing a supplemental agreement under this rule together with an agreement under WAC 391-25-230 or 391-25-250. Such supplemental agreement shall contain:

(1) The names of all parties to the election agreement or cross-check agreement and the case number of the proceedings.

(2) Identification of the employees or classifications as to which a dispute exists, together with the identification of the position taken by each party on the dispute.

(3) A statement by all parties requesting that employees affected by the supplemental agreement be permitted to vote by challenged ballot or be challenged for purposes of a cross-check, subject to a subsequent determination of the dispute; and that the certification of the results of the election or cross-check not be withheld pending the determination of the dispute unless the challenges are sufficient in number to affect the outcome.

(4) The signatures and, if any, the titles, of the representatives of the parties.

The original and one copy of the supplemental agreement shall be filed with the agency together with the agreement filed under WAC 391-25-230 or 391-25-250, and shall be posted with such agreement.

Upon the filing of a supplemental agreement, the executive director shall proceed with the determination of the question concerning representation. If the challenges are sufficient in number to affect the outcome, they shall be determined prior to the issuance of a certification. Otherwise, a conditional certification shall be issued which shall be amended upon final disposition of the issues framed in the supplemental agreement.

#### READOPTED SECTION (Readopting Order 88-02, filed 5/31/88)

WAC 391-25-290 NOTICE OF HEARING. After a petition has been filed, if it appears to the executive director that there is reasonable cause to believe that a question concerning representation exists, there shall be issued and served on the employer and on all organizations listed in the petition and on any organization having theretofore intervened, a notice of hearing before a hearing officer at a time and place fixed therein. Any such notice of hearing may be amended or withdrawn before the close of the hearing.

#### READOPTED SECTION (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-299 SPECIAL PROVISION—PRIVATE SECTOR EMPLOYEES. The commission lacks authority to proceed in representation disputes under chapter 49.08 RCW absent the agreement of all parties. The executive director shall not proceed in such matters unless an agreement is filed under WAC 391-25-230 or 391-25-250. WAC 391-25-290 through 391-25-390 shall not be applicable to proceedings under chapter 49.08 RCW except for hearings and issues submitted under WAC 391-25-270.

#### READOPTED SECTION (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-310 HEARINGS—WHO SHALL CONDUCT. Hearings may be conducted by the commission, by the executive director, by a member of the agency staff or by any other individual designated by the commission or executive director as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding.

#### AMENDATORY SECTION (Amending Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-350 HEARINGS—NATURE AND SCOPE. Hearings shall be public and shall be limited to matters concerning the determination of the existence of a question concerning representation, the appropriate bargaining unit and questions of eligibility. During the course of the hearing, the hearing officer may, upon motion by any party, or upon his or her own motion, sequester witnesses. It shall be the duty of the hearing officer to inquire fully into all matters in issue and to obtain a clear and complete factual record upon which the commission and the executive director may discharge their duties under the pertinent statutes and these rules.

#### READOPTED SECTION (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-370 BLOCKING CHARGES—SUSPENSION OF PROCEEDINGS—REQUEST TO PROCEED. (1) Where representation proceedings have been commenced under this chapter and:

(a) A complaint charging unfair labor practices is filed under the provisions of chapter 391-45 WAC; and

(b) It appears that the facts as alleged may constitute an unfair labor practice; and

(c) Such unfair labor practice could improperly affect the outcome of a representation election; the executive director may suspend the representation proceedings under this chapter pending the resolution of the unfair labor practice case.

(2) The complainant(s) in the unfair labor practice case may file a request to proceed, in writing, with the executive director. Such request to proceed shall identify, by case number, the representation proceedings for which it is made, shall request that those representation proceedings be continued notwithstanding the pending unfair labor practice case, and shall acknowledge that the commission will not entertain objections based on conduct alleged in the unfair labor practice case. Upon the filing of a request to proceed conforming to the foregoing requirements the executive director shall resume the processing of the representation petition and shall summarily dismiss any objections filed in conflict with the request to proceed.

(3) Where a complaint charging unfair labor practices is filed after the filing of an election agreement or issuance of a direction of election, the executive director shall proceed with the determination of the question concerning representation, subject to the right of any party to file objections as provided in WAC 391-25-590.

#### READOPTED SECTION (Readopting Order 88-02, filed 5/31/88)

WAC 391-25-390 PROCEEDINGS BEFORE THE EXECUTIVE DIRECTOR. The executive director may proceed forthwith upon the record, after submission of briefs or after hearing, as may be appropriate. The executive director shall determine whether a question concerning representation exists, and shall issue a direction of election, dismiss the petition or make other disposition of the matter. Unless otherwise provided in a direction of election, the cut-off date for eligibility to vote in an election shall be the date of issuance of the direction of election. Where the executive director determines that employee eligibility issues exist, the executive director may delegate authority to the hearing officer to decide those issues. Such actions shall be subject to review by the commission only as follows:

(1) Except for rulings as to whether the employer is subject to the jurisdiction of the commission, a direction of election and any accompanying rulings shall not be subject to review by the commission except upon objections timely filed under WAC 391-25-590.

(2) An order of dismissal shall be subject to review by the commission on its own motion or at the request of any party made within twenty days following the date of the order. Briefs or written arguments shall be submitted as provided in WAC 391-25-650. Unless the matter is transferred to the commission for review, an order of dismissal issued by the executive director shall have the same force and effect as if issued by the commission.

#### READOPTED SECTION (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-391 SPECIAL PROVISION—PUBLIC EMPLOYEES. Where only one organization is seeking certification as the representative of unrepresented employees, and the showing of interest submitted in support of the petition indicates that such organization has been authorized by a substantial majority of the employees to act as their representative for the purposes of collective bargaining, and the executive director finds that the conduct of an election would unnecessarily and unduly delay the determination of the question concerning representation with little likelihood of altering the outcome, the executive director may issue a direction of cross-check. The direction of cross-check and any accompanying rulings shall not be subject to review by the commission except upon objections timely filed under WAC 391-25-590.

#### READOPTED SECTION (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-410 CROSS-CHECK OF RECORDS. Where a cross-check of records is to be conducted to determine a question concerning representation, the organization shall submit to the agency original individual cards or letters signed and dated by employees in the bargaining unit not more than ninety days prior to the filing of the petition and indicating that such employees authorize the named organization to represent them for the purposes of collective bargaining,

or shall submit to the agency membership records maintained by the organization as a part of its business records containing the names of employees and indicating those employees currently members in good standing. The employer shall make available to the agency original employment records maintained as a part of its business records containing the names and signatures of the employees in the bargaining unit. Prior to the commencement of the cross-check, the organization may file a request that the question concerning representation be determined by a representation election and such requests shall be honored. Where the organization files a disclaimer or a request for election after the commencement of the cross-check, the cross-check shall be terminated and the organization shall not seek to be certified in the bargaining unit for a period of at least one year thereafter. All cross-checks shall be by actual comparison of records submitted by the parties. The agency shall not disclose the names of employees giving representation authorization in favor of or appearing on the membership rolls of the organization. Upon the conclusion of the comparison of records, the agency officer conducting the cross-check shall prepare and furnish to the parties a tally sheet containing the number of employees in the bargaining unit, the number of employee records examined and the number of employee records counted as valid evidence of representation.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-412 SPECIAL PROVISION—EDUCATIONAL EMPLOYEES. WAC 391-25-410 is inapplicable to petitions filed under chapter 41.59 RCW.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-413 SPECIAL PROVISION—ACADEMIC EMPLOYEES. WAC 391-25-410 is inapplicable to petitions filed under chapter 28B.52 RCW.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-430 NOTICE OF ELECTION. When an election is to be conducted, the agency shall furnish the employer with appropriate notices, and the employer shall post them in conspicuous places on its premises where notices to affected employees are usually posted. The notice shall contain:

- (1) The description of the bargaining unit or voting group(s) in which the election is to be conducted.
- (2) The date(s), hours and polling place(s) for the election.
- (3) The cut-off date, if any, or other criteria to be applied in establishing eligibility to vote in the election.
- (4) A statement of the purpose of the election and the question to be voted upon or a sample ballot.

Notices of the election shall be posted for at least seven days prior to the opening of the polls. In computing such period, the day of posting shall be counted, but the day on which the polls are opened shall not be counted. The reproduction of any document purporting to suggest, either directly or indirectly, that the agency endorses a particular choice may constitute grounds for setting aside an election upon objections properly filed.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-450 DISCLAIMERS. An organization may file a disclaimer and have its name removed from the ballot: PROVIDED, HOWEVER, That if such a disclaimer is filed after the issuance of a notice of election, the organization filing the disclaimer shall not seek to be certified in that bargaining unit for a period of at least one year thereafter.

**READOPTED SECTION** (Readopting Order 88-02, filed 5/31/88)

WAC 391-25-470 ELECTIONEERING. (1) Employers and organizations are prohibited from making election speeches on the employer's time to massed assemblies of employees:

- (a) Within twenty-four hours before the scheduled time for the opening of the polls for an election conducted under "in person" voting procedures; or

- (b) Within the period beginning with the issuance of ballots to employees for an election conducted under "mail ballot" voting procedures and the tally of ballots.

(2) There shall be no electioneering at or about the polling place during the hours of voting.

Violations of this rule shall be grounds for setting aside an election upon objections properly filed.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-490 ELECTION PROCEDURES—BALLOTING. All elections shall be by secret ballot. Multiple questions, including unit determination elections, may be submitted to employees at the same time on separate ballots. Absentee balloting shall not be allowed. The agency may conduct elections by mail ballot when it appears that an election by "in person" procedures would result in undue delay, or would effectively deprive some eligible employees of their opportunity to vote. If mail balloting is used, the notice required by these rules shall be mailed to each eligible voter and no less than ten days shall be provided between the date on which ballot materials are mailed to eligible employees and the deadline for return of the ballots. Each party may be represented by observers of its own choosing, subject to such limitations as the executive director may prescribe: PROVIDED, HOWEVER, That no management official having authority over bargaining unit employees nor any officer or paid employee of an organization shall serve as observer.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-510 CHALLENGED BALLOTS. Any observer or the election officer may challenge, for good cause, the eligibility of any person seeking to cast a ballot in the election. No person shall be denied the right to cast a challenged ballot. The election officer shall not have authority to resolve challenges at the polls, and the ballot of the challenged voter shall be placed in a sealed envelope identifying the voter and the observer or election officer challenging the eligibility of the voter. The ballot shall not be opened until the challenge is resolved. Any party may withdraw a challenge previously made and, unless the eligibility of the voter is challenged by another party or by the election officer, the challenge shall thereby be resolved. If the challenged ballots are insufficient in number to affect the results of the election, they shall be impounded and no ruling shall be made thereon. If the challenged ballots are sufficient in number to affect the results of the election, the election officer shall, after the close of the polls, ascertain the position of each party as to each challenged ballot and shall include such information in his report. If challenges raise material questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties a notice of hearing before a hearing officer. The rules relating to the conduct of hearings on petitions shall govern hearings on challenges; except that the scope of the hearing shall be limited to matters relevant to the disposition of the challenged ballots. The executive director shall have authority to rule on all challenges except those made by a party to preserve an objection to a ruling previously made by the executive director as to the eligibility of the challenged voter. If challenges of a type excepted from the authority of the executive director are sufficient in number to affect the results of the election, the matter shall be transferred to the commission for its determination under the provisions of WAC 391-25-670.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-530 VOTES NEEDED TO DETERMINE ELECTION. (1) Unit determination elections shall be decided by a majority of those eligible to vote in the election.

(2) Representation elections shall be decided by a majority of those voting. Where there are only two choices on the ballot, a tie vote shall result in a certification of no representative.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

WAC 391-25-531 SPECIAL PROVISION—PUBLIC EMPLOYEES. Where there are three or more choices on the ballot, representation elections shall be decided by a majority of those eligible to vote in the election.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

**WAC 391-25-550 TALLY SHEET.** Upon closing the polls, the election officer shall prepare and furnish to each of the parties a tally of the votes cast on unchallenged ballots and the number of challenged ballots. After the subsequent resolution of challenged ballots affecting the results of the election, a revised tally shall be issued and furnished to the parties. The tally shall indicate whether the results of the election were conclusive or inconclusive.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

**WAC 391-25-570 PROCEDURE FOLLOWING INCONCLUSIVE ELECTION.** In any election in which there are more than two choices on the ballot, if none of the choices receives the number of votes necessary to determine the election, a run-off election shall be held providing for selection between the two choices receiving the largest numbers of valid ballots cast in the inconclusive election. Any organization to be excluded from a run-off election may file objections to specific conduct affecting the results of the inconclusive election. Where the choice of "no representative" is to be excluded from a run-off election, the employer or decertification petitioner may file objections to specific conduct affecting the results of the inconclusive election. Such objections shall be resolved prior to the conduct of a run-off election. All run-off elections shall be determined as provided in WAC 391-25-530.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

**WAC 391-25-590 FILING AND SERVICE OF OBJECTIONS.** Within seven days after the tally has been served under WAC 391-25-410 or under WAC 391-25-550, any party may file objections with the commission. Objections may consist of:

(1) Designation of specific conduct improperly affecting the results of the election, by violation of these rules, by the use of deceptive campaign practices improperly involving the commission and its processes, by the use of forged documents, or by coercion or intimidation or threat of reprisal or promise of reward to eligible voters, and/or

(2) Designation of one or more previous rulings or directions in the matter which the objecting party desires to have reviewed by the commission.

Objections shall contain, in separate numbered paragraphs, statements of the specific conduct, if any, alleged to have improperly affected the results of the election and, in separate numbered paragraphs, the specific rulings or directions, if any, which the party filing the objections desires to have reviewed. The original and three copies of the objections shall be filed with the commission at its Olympia office, and the party filing the objections shall serve a copy on each of the other parties to the proceedings. Objections must be timely filed, whether or not challenged ballots are sufficient in number to affect the results of the election.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

**WAC 391-25-610 PROCEDURE WHERE NO OBJECTIONS ARE FILED.** If no objections are filed within the time set forth above, and if any challenged ballots are insufficient in number to affect the determination of the question concerning representation, and if no run-off election is to be held, the executive director shall forthwith certify the results of the proceedings, with the same force and effect as if issued by the commission. The proceedings will thereupon be closed.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

**WAC 391-25-630 PROCEDURE WHERE OBJECTIONS ARE FILED.** (1) Objections to conduct improperly affecting the results of an election shall be referred to the executive director for investigation. If the objections raise material questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties a notice of hearing before a hearing officer. Hearings on objections to conduct affecting the results of an election may be consolidated with hearings on challenged ballots in the same proceeding. The rules relating to the conduct of hearings on petitions shall govern

hearings on objections, except that the scope of the hearing shall be limited to matters relevant to the disposition of the objections.

(2) Objections to prior rulings and/or directions in the matter shall be referred directly to the commission.

**READOPTED SECTION** (Readopting Resolution No. 85-01, filed 9/16/85)

**WAC 391-25-650 BRIEFS AND WRITTEN ARGUMENTS ON OBJECTIONS.** All parties shall be entitled to submit briefs or written arguments for consideration by the commission. The briefs or written arguments of all parties shall be due simultaneously, as follows:

(1) The deadline for the filing of briefs or written arguments shall be fourteen days following the later of:

(a) The close of an investigation under WAC 391-25-630(1);

(b) The issuance of a transcript of a hearing held under WAC 391-25-630(1); or

(c) The filing of objections under WAC 391-25-590(2).

(2) The commission, the executive director or the designee of the executive director may, for good cause, grant any party an extension of the time for filing of its brief or written argument where a request for additional time is made prior to the deadline previously established.

The original and three copies of any brief or written argument shall be filed with the commission at its Olympia office and a copy shall be served on each of the other parties. If a party presents an issue which requires study of a statute, rule, regulation, or finding of fact, the party should set out the material portions of the text verbatim or include them by facsimile copy in the text or in an appendix to the brief.

**READOPTED SECTION** (Readopting Order 80-5, filed 9/30/80, effective 11/1/80)

**WAC 391-25-670 COMMISSION ACTION ON OBJECTIONS.** In all cases where objections have been filed, the entire record in the proceedings shall be transferred to the commission. The commission may request the parties to appear before it to make oral argument as to certain of the issues or all of the issues in the matter. The commission shall determine the objections and any challenged ballots referred to the commission pursuant to WAC 391-25-510, and shall issue appropriate orders.

## WSR 89-23-023

### PROPOSED RULES

### PUBLIC EMPLOYMENT RELATIONS COMMISSION

[Filed November 7, 1989, 3:44 p.m.]

#### Original Notice.

Title of Rule: Chapter 391-35 WAC, Unit clarification case rules.

Purpose: See below.

Statutory Authority for Adoption: RCW 41.58.050, 28B.52.080, 41.56.090 and 41.59.110.

Statute Being Implemented: See below.

Summary: See below.

Reasons Supporting Proposal: See below.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Marvin L. Schurke, 603 Evergreen Plaza Building, Olympia, 753-3444.

Name of Proponent: Public Employment Relations Commission, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: See below.

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

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

Proposal Changes the Following Existing Rules: See below.

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

#### WAC 391-35-001 Scope—Contents—Other rules.

Purpose: Introduces chapter 391-35 WAC, makes cross-references to other rules.

Statute: Chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW (hereinafter: "substantive statutes"), generally.

Summary: Refers to other rules, as follows: Chapter 10-08 WAC for conduct of "adjudicative proceedings," generally; chapter 391-08 WAC for general procedural rules; chapter 391-25 WAC for representation cases; chapter 391-45 WAC for unfair labor practice cases; chapter 391-55 WAC for impasse resolution cases; chapter 391-65 WAC for grievance arbitration cases; and chapter 391-95 WAC for union security cases.

Reasons: RCW 34.05.250 permits agencies to adopt rules different from model rules by stating reasons for variance. WAC 10-08-001 is similar.

Explanation: Readoption of existing rule is necessary to identify the areas where PERC does things differently than chapter 10-08 WAC. Details of the interface between chapters 391-08 and 10-08 WAC are specified in WAC 391-08-001.

#### WAC 391-35-002 Sequence and numbering of rules—Special provisions.

Purpose: Descriptive only.

Statute: Substantive statutes, generally.

Summary: Explains how rules are numbered to identify exceptions to general rules.

Reasons: RCW 41.58.005(1) admonishes PERC to be "uniform" in the administration of state collective bargaining laws. This WAC chapter regulates proceedings under several different statutes under PERC's jurisdiction. Those statutes have many similarities and some differences.

Explanation: Readoption of existing rule is necessary to preserve a numbering scheme in which exceptions to general rules immediately follow the general rule on the same subject. (General rules applicable to all of the statutes under PERC's jurisdiction have WAC numbers divisible by ten; if a particular statute requires a deviation from the general rule, it receives a separate number in the same decile.)

#### WAC 391-35-010 Petition for clarification of an existing bargaining unit—Who may file.

Purpose: Specifies who may file a bargaining unit clarification petition with PERC.

Statute: Substantive statutes, generally.

Summary: Specifies that unit clarification petitions may be filed only by the employer or the incumbent exclusive bargaining representative of a bargaining unit.

Reasons: RCW 34.05.010(11) does not define who may file unit clarification petition. RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Model rules silent with repeal of WAC 10-08-020.

Explanation: Readoption of existing rule is necessary to avoid any suggestion of conflict with the new APA. This is fundamentally a substantive policy drawn from the applicable statutes. The counterpart federal agency (National Labor Relations Board) and some counterpart agencies in other states mix unit clarification rules with their representation case rules, but the commission felt that was confusing. Hence a separate set of rules was adopted for unit clarification which parallel certain portions of the representation case rules in chapter 391-25 WAC.

#### WAC 391-35-020 Petition—Time for filing.

Purpose: Establishes time periods in which unit clarification petitions can be filed.

Statute: Substantive statutes, generally.

Summary: Provides that petitions dealing with claims of "confidentiality" or "changed circumstances" can be filed at any time. Other issues must first be raised in collective bargaining, and petition must be filed before a new collective bargaining agreement is signed.

Reasons: RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.416 permits agency to determine when adjudicative proceeding will not be conducted. RCW 34.05.220(4) "encourages" agencies to codify legal principles enunciated in agency decisions as rules.

Explanation: Readoption of the existing rule continues substantive policy adopted in 1988 as a codification of the commission's decision in *Toppenish School District*, Decision 1143-A (PECB, 1981).

#### WAC 391-35-030 Petition form—Number of copies—Filing—Service.

Purpose: Specifies number of copies and filing of petition at Olympia office; requires service on other parties.

Statute: RCW 28B.52.080, 41.56.060 and 41.59.080.

Summary: Party initiating unit clarification case with PERC must file original and three copies with PERC's Olympia office, and must serve other parties.

Reasons: RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-035 provides loosely for an "application for an adjudicative proceeding." WAC 10-08-110 would permit filing at "any" office of the agency.

Explanation: Readoption of existing rule is necessary to avoid claim of conflict with model rules. An original and three copies of documents are needed for circulation to the members of the commission in the event of intra-agency appeals. Filing at the Olympia office is necessary because PERC's Yakima and Spokane offices are not staffed on a full-time basis (making it difficult to ascertain compliance with "contract bar" and "certification bar" time limitations) and because all docketing and initial processing by the executive director are performed at Olympia.

#### WAC 391-35-050 Contents of petition.

Purpose: Specifies contents of unit clarification petition.

Statute: RCW 28B.52.080, 41.56.060 and 41.59.080.

**Summary:** Requires identifying information for agency docket records and for efficient processing by PERC. Requires petitioning party to identify positions at issue and basis for claim of unit inclusion or exclusion.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-035 is permissive as to the use of forms provided by an agency and provides loosely for an "application for an adjudicative proceeding" to specify the issue to be adjudicated in the proceeding.

**Explanation:** Readoption of existing rule is necessary to facilitate prompt agency response to unit clarification petitions, by requiring the details needed for case processing. Repeal of WAC 10-08-020 cast doubt on PERC's authority to require use of its forms under the model rules.

#### WAC 391-35-070 Amendment and withdrawal.

**Purpose:** Allows amendment and withdrawal of unit clarification petitions.

**Statute:** RCW 28B.52.080, 41.56.060, 41.58.050 and 41.59.080.

**Summary:** Petitioning party may withdraw or amend unit clarification petition under conditions that the executive director or commission may impose.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.060 encourages informal settlements. WAC 10-08-230 provides for informal settlements, but does not clearly cover amendments or withdrawals of petitions.

**Explanation:** Readoption of existing rule is necessary to avoid conflict with the model rules. The parties to unit clarification cases have ongoing relationships and are quite capable of drafting and signing their own settlement agreements, so that informal settlements are frequently communicated to PERC as a simple "amendment" or "withdrawal" of a case.

#### WAC 391-35-080 Prehearing conferences.

**Purpose:** To encourage settlements prior to investing state resources in a formal hearing.

**Statute:** RCW 28B.52.073, 41.56.040, 41.58.050 and 41.59.110.

**Summary:** Prehearing conferences may be conducted in unit clarification cases at the discretion of the hearing officer, to deal with both procedural and substantive matters.

**Reasons:** RCW 34.05.060 encourages informal settlements. RCW 34.05.431(1) requires agency to adopt rules specifying conditions and manner in which prehearing conferences are to be held. WAC 10-08-130 provides for conduct of prehearing conferences. WAC 10-08-230 provides for informal settlements, but imposes obligations on the agency which are not common on labor-management relations.

**Explanation:** Adoption of new rule is necessary to continue successful existing procedures and to meet the requirements of the new APA. Since the parties have an ongoing relationship and usually have the issues clearly framed before the case comes to PERC, the commission uses "prehearing conferences" only occasionally in unit

clarification cases, and then mostly to deal with "procedural" matters.

#### WAC 391-35-090 Notice of hearing.

**Purpose:** Explains procedure for determining whether to issue a notice of hearing in a unit clarification case.

**Statute:** RCW 28B.52.080, 41.56.060, 41.58.050 and 41.59.080.

**Summary:** Authorizes executive director to determine whether a notice of hearing will be issued in a unit clarification case. Specifies parties to whom notices of hearing are to be issued.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.434 sets out the type of information generally required in notices of hearing. WAC 10-08-040 prescribes specific rules as to the contents of the notice. RCW 34.05.416 provides for the disposition of cases where the agency concludes that no adjudicative proceeding should be conducted.

**Explanation:** Readoption of existing rule delegates substantive decision-making authority to the executive director, to conduct what amounts to an automatic "summary judgment" on the contents of the complaint, and does not conflict with the model rules.

#### WAC 391-35-099 Special provision—Private sector employees.

**Purpose:** Limits PERC authority to conduct unit clarification cases involving private sector employees.

**Statute:** Chapter 49.08 RCW.

**Summary:** PERC suspends processing of private sector unit clarification cases in absence of consent of all parties.

**Reasons:** PERC conducts representation and unit clarification proceedings in the private sector only as "arbitration" or "mediation" exercises under chapter 49.08 RCW, and then only by consent of all parties.

**Explanation:** Readoption of existing rule is necessary to continue substantive policy exempting private sector employees and employers from PERC unit clarification proceedings absent their mutual consent. No "small business" impact is anticipated, since no change is proposed. (Parties to which this rule applies may be subject to representation proceedings before the National Labor Relations Board under federal law.)

#### WAC 391-35-110 Consolidation of proceedings.

**Purpose:** Allows consolidation of simultaneous unit clarification and representation proceedings.

**Statute:** Substantive statutes, generally.

**Summary:** Permits consolidation of "bargaining unit description" issues into a single case, thereby saving agency resources and expediting final resolution of representation and clarification issues.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Chapter 10-08 WAC is silent.

**Explanation:** Readoption of existing rule is necessary to effect efficiency where multiple parties seek to address the same or related issues through the separate, but similar, PERC procedures.

**WAC 391-35-130 Hearings—Who shall conduct.**

**Purpose:** Defines who may hear unit clarification cases.

**Statute:** RCW 28B.52.080, 41.56.060, 41.56.070, 41.59.070, 41.59.080 and 53.18.015.

**Summary:** Hearing officer can be PERC staff member or agency designee. Hearing officers may be substituted.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-050 discusses the use of personnel supplied by the Office of Administrative Hearings, but PERC is exempt from the Office of Administrative Hearings and chapter 34.12 RCW.

**Explanation:** Readoption of existing rule is necessary because the "agency head" generally does not preside over PERC's adjudicative hearings. The chief administrative law judge does not govern the matters covered by this rule.

**WAC 391-35-170 Hearings—Nature and scope.**

**Purpose:** Defines unit clarification hearings as investigatory.

**Statute:** RCW 28B.52.080, 41.56.060, 41.59.080 and 53.18.015.

**Summary:** Defines the hearing as public and investigatory between parties, with agency taking impartial, but active, role.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.449(5) provides for hearings to be "public" but model rules are silent following repeal of language in WAC 10-08-190. In addition, the rule no longer speaks to sequestering of witnesses. Chapter 34.05 RCW and chapter 10-08 WAC are written to apply to "adjudicative proceedings" where the agency itself takes an advocacy role, and so do not adequately describe the "impartial" investigatory role of PERC in unit clarification hearings.

**Explanation:** Amendment of existing rule is necessary to define the impartial investigatory posture of PERC, while permitting the sequestering of witnesses. This will not conflict with the model rules' directives, and will maintain important components of PERC hearings.

**WAC 391-35-190 Proceedings before the executive director.**

**Purpose:** Delegates decision-making authority in unit clarification matters.

**Statute:** RCW 28B.52.080, 41.56.060, 41.58.050 and 41.59.080.

**Summary:** Delegates decision-making authority to executive director for initial decision on all unit clarification case issues. Permits delegation of certain types of issues to hearing officer.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 41.58.015(2) permits commission to delegate decision-making authority, subject to right of parties to petition for review by full commission.

**Explanation:** Readoption of the existing rule continues a well-accepted and efficient procedure. Unit clarification cases involve a limited number and type of issues,

and consistency of agency policy is vital to the process of labor-management relations. The existing rule centralizes unit clarification case determinations, making the executive director responsible for overall consistency as well as the outcomes of individual cases.

**WAC 391-35-210 Proceedings before the commission—Petition for review.**

**Purpose:** Allows for intraagency review of an initial decision by the commission.

**Statute:** RCW 28B.52.080, 41.56.060, 41.58.050 and 41.59.080.

**Summary:** Within 20 days following the issuance of an initial decision, the parties may petition for intraagency review ("appeal") of the initial decision.

**Reasons:** RCW 34.05.464(1) authorizes agencies to provide, by rule, for intraagency review of initial orders. WAC 10-08-211 specifies a 20-day period for all intraagency appeals, but specifies a 10-day period for filing of appeal briefs.

**Explanation:** Readoption of existing rule is necessary to the efficient operation of PERC. The procedures and briefing schedules specified in the model rule are different from those established by PERC after actual experience with the types of issues encountered in labor-management relations.

**WAC 391-35-230 Filing and service of cross-petition for review.**

**Purpose:** Allows a party to file a cross-petition for review of an initial decision.

**Statute:** RCW 28B.52.080, 41.56.060, 41.58.050 and 41.59.080.

**Summary:** Allows an additional 7 days for the filing of a cross-petition for review.

**Reasons:** RCW 34.05.464(1) authorizes agencies to provide, by rule, for intraagency review of initial orders. WAC 10-08-211 specifies a 20-day period for all intraagency appeals, and does not contemplate cross-petitions for review.

**Explanation:** Readoption of existing rule is necessary to preserve a procedure that has worked well for PERC and its clientele up to this time. PERC adopted the "cross-petition" procedure to obviate the filing of "strategic" appeals that might otherwise be withheld.

**WAC 391-35-250 Commission action.**

**Purpose:** Requires the commission to make a determination of a decision that it reviews.

**Statute:** RCW 28B.52.080, 41.56.060, 41.58.050 and 41.59.080.

**Summary:** Transfers entire case to the commission when intraagency appeal procedures have been invoked. Permits commission to call for oral argument.

**Reasons:** RCW 34.05.464(1) authorizes agencies to provide, by rule, for intraagency review of initial orders. WAC 10-08-211 does not deal with oral argument.

**Explanation:** Readoption of existing rule is necessary to specify agency action on appeals, consistent with RCW 34.05.464(1).

Hearing Location: Second Floor Conference Room, Evergreen Plaza Building, 711 Capitol Way, Olympia, Washington, on January 12, 1990, at 2:30 p.m.

Submit Written Comments to: Marvin L. Schurke, by January 10, 1990.

Date of Intended Adoption: January 12, 1990.

November 7, 1989  
Marvin L. Schurke  
Executive Director

AMENDATORY SECTION (Amending Order 80-6, filed 9/30/80, effective 11/1/80)

WAC 391-35-001 SCOPE—CONTENTS—OTHER RULES. This chapter governs proceedings before the public employment relations commission on petitions for clarification of existing bargaining units. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 10-08 WAC which contains rules promulgated by the chief administrative law judge governing the conduct of adjudicative proceedings under chapter 391-35 WAC, except:

(a) WAC 10-08-035, which is supplanted by detailed requirements in WAC 391-35-050;

(b) WAC 10-08-050, which relates to procedures of the office of administrative hearings, and so is inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is supplanted by WAC 391-35-210 and 391-35-230; and

(d) WAC 10-08-230, which is supplanted by WAC 391-35-070 and 391-35-140.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission.

((2)) (3) Chapter 391-25 WAC, which contains rules relating to proceedings on petitions for investigation of questions concerning representation of employees.

((3)) (4) Chapter 391-45 WAC, which contains rules relating to proceedings on complaints charging unfair labor practices.

((4)) (5) Chapter 391-55 WAC, which contains rules relating to resolution of impasses occurring in collective bargaining.

((5)) (6) Chapter 391-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement.

((6)) (7) Chapter 391-95 WAC, which contains rules relating to determination of union security disputes arising between employees and employee organizations certified or recognized as their bargaining representative.

READOPTED SECTION (Readopting Order 83-03, filed 12/1/83, effective 1/1/84)

WAC 391-35-002 SEQUENCE AND NUMBERING OF RULES—SPECIAL PROVISIONS. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule, numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (professional negotiations—academic faculties of community college districts) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 49.08 RCW (private sector employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

READOPTED SECTION (Readopting Order 80-6, filed 9/30/80, effective 11/1/80)

WAC 391-35-010 PETITION FOR CLARIFICATION OF AN EXISTING BARGAINING UNIT—WHO MAY FILE. In the absence of a question concerning representation, a petition for clarification of an existing bargaining unit may be filed by the employer, the exclusive representative or their agents, or by the parties jointly.

READOPTED SECTION (Readopting Order 88-03, filed 5/31/88)

WAC 391-35-020 PETITION—TIME FOR FILING. (1) Disputes concerning status as a "confidential employee" may be filed at any time.

(2) Except as provided in subsection (1) of this section, where there is a valid written and signed collective bargaining agreement in effect, a petition for clarification of the covered bargaining unit will be considered timely only if:

(a) The petitioner can demonstrate, by specific evidence, substantial changed circumstances during the term of the collective bargaining agreement which warrant a modification of the bargaining unit by inclusion or exclusion of a position or class; or

(b) The petitioner can demonstrate that, although it signed the current collective bargaining agreement covering the position or class at issue in the unit clarification proceedings, (i) it put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position or class via the unit clarification procedure, and (ii) it filed the petition for clarification of the existing bargaining unit prior to signing the current collective bargaining agreement.

READOPTED SECTION (Readopting Order 80-6, filed 9/30/80, effective 11/1/80)

WAC 391-35-030 PETITION FORM—NUMBER OF COPIES—FILING—SERVICE. Each petition for clarification of an existing bargaining unit shall be prepared on a form furnished by the commission or shall be prepared in conformance with WAC 391-35-050. The original and three copies of the petition shall be filed with the agency at its Olympia office. If the petition is filed other than as a jointly filed petition, the party filing the petition shall serve a copy on the other party to the collective bargaining relationship in which the disagreement arises.

READOPTED SECTION (Readopting Order 80-6, filed 9/30/80, effective 11/1/80)

WAC 391-35-050 CONTENTS OF PETITION. Each petition for clarification of an existing bargaining unit shall contain:

(1) The name and address of the employer and the name, address and telephone number of the employer's principal representative for the purposes of collective bargaining.

(2) The name, address and affiliation, if any, of the exclusive representative, and the name, address and telephone number of its principal representative.

(3) The description of the existing bargaining unit, specifying inclusions and exclusions and the number of employees in such bargaining unit.

(4) Identification of the proceeding in which any certification of representatives was issued or the date of the recognition agreement, and the history of any modifications of the bargaining unit subsequent thereto.

(5) A description of the proposed clarification, including the position(s), classification(s) or group(s) in issue, the number of employees in each such position, classification or group, the present bargaining unit inclusion or exclusion status of each such position, classification or group and identification of the party proposing that the present status be changed.

(6) The names and addresses of any other employee organizations claiming to represent any employees affected by the proposed clarification(s), and brief description(s) of the contracts, if any, covering such employees.

(7) A statement of the reasons for the proposed clarification.

(8) Any other relevant facts.

(9) The signature(s) and, if any, the title(s) of the representative(s) of the petitioner(s).

**READOPTED SECTION** (Readopting Order 80-6, filed 9/30/80, effective 11/1/80)

WAC 391-35-070 AMENDMENT AND WITHDRAWAL. Any petition may be amended or withdrawn by the petitioner(s) under such conditions as the executive director or the commission may impose.

**NEW SECTION**

WAC 391-35-080 PREHEARING CONFERENCES. The hearing officer has discretion to conduct a prehearing conference to discuss with the parties all issues of law, fact, and procedure which may arise in unit clarification cases. The parties are encouraged to reach binding stipulations on such matters during the course of the prehearing conference.

**READOPTED SECTION** (Readopting Order 80-6, filed 9/30/80, effective 11/1/80)

WAC 391-35-090 NOTICE OF HEARING. After a petition for clarification of an existing bargaining unit has been filed, if it appears to the executive director that a disagreement exists which might appropriately be the subject of an order clarifying an existing bargaining unit, there shall be issued and served on the employer and on the exclusive representative a notice of hearing before a hearing officer at a time and place fixed therein. Any such notice may be amended or withdrawn prior to the close of the hearing.

**READOPTED SECTION** (Readopting Order 80-6, filed 9/30/80, effective 11/1/80)

WAC 391-35-099 SPECIAL PROVISION—PRIVATE SECTOR EMPLOYEES. The commission lacks authority to proceed in unit clarification proceedings under chapter 49.08 RCW absent the agreement of all parties. The executive director shall not proceed in such matters unless a written agreement is filed by the parties to submit their dispute for arbitration by the commission under chapter 49.08 RCW and these rules.

**READOPTED SECTION** (Readopting Order 80-6, filed 9/30/80, effective 11/1/80)

WAC 391-35-110 CONSOLIDATION OF PROCEEDINGS. If a proceeding initiated by a petition for clarification under WAC 391-35-010 is pending at the same time as a proceeding involving all or any part of the same bargaining unit initiated by a petition for investigation of a question concerning representation filed pursuant to WAC 391-25-010, the proceedings shall be consolidated and all issues concerning the description of the bargaining unit shall be resolved in the consolidated proceedings.

**READOPTED SECTION** (Readopting Order 80-6, filed 9/30/80, effective 11/1/80)

WAC 391-35-130 HEARINGS—WHO SHALL CONDUCT. Hearings may be conducted by the commission, by the executive director, by a member of the agency staff or by any other individual designated by the commission or executive director as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding.

**AMENDATORY SECTION** (Amending Order 80-6, filed 9/30/80, effective 11/1/80)

WAC 391-35-170 HEARINGS—NATURE AND SCOPE. Hearings shall be public and shall be limited to matters concerning the determination of the petition for clarification of an existing bargaining unit. During the course of the hearing, the hearing officer may, upon motion by any party, or upon his or her own motion, sequester witnesses. It shall be the duty of the hearing officer to inquire fully into all matters in issue and to obtain a full and complete factual record upon which the commission or the executive director may discharge their duties under the pertinent statutes and these rules.

**READOPTED SECTION** (Readopting Resolution No. 85-01, filed 9/16/85)

WAC 391-35-190 PROCEEDINGS BEFORE THE EXECUTIVE DIRECTOR. The executive director may proceed forthwith

upon the record, after submission of briefs or after hearing, as may be appropriate. The executive director shall determine the status of each position, classification or group of employees over which there is a disagreement and issue an order clarifying bargaining unit, dismiss the petition or make other disposition of the matter. Where the executive director determines that employee eligibility issues exist, the executive director may delegate authority to the hearing officer to decide those issues.

**READOPTED SECTION** (Readopting Resolution No. 85-01, filed 9/16/85)

WAC 391-35-210 PROCEEDINGS BEFORE THE COMMISSION—PETITION FOR REVIEW. The final order of the executive director shall be subject to review by the commission on its own motion, or at the request of any party made within twenty days after the date of the order. The original and three copies of the petition for review shall be filed with the commission at its Olympia office and the party filing the petition shall serve a copy on any other parties. The petition for review shall identify the actions or rulings claimed to be in error. Any party to the proceeding may, within fourteen days after the filing of the petition for review, file briefs or written arguments for consideration by the commission. The original and three copies of any brief or written argument shall be filed with the commission at its Olympia office and a copy shall be served on the other party. The commission, the executive director or the designee of the executive director may, for good cause, grant any party an extension of the time for filing of its brief or written argument where a request for additional time is made prior to the deadline previously established. The commission may request the parties to appear before it to make oral argument as to certain of the issues or all of the issues. If a party presents an issue which requires study of a statute, rule, regulation, or finding of fact, the party should set out the material portions of the text verbatim or include them by facsimile copy in the text or in an appendix to the brief.

**READOPTED SECTION** (Readopting Order 80-6, filed 9/30/80, effective 11/1/80)

WAC 391-35-230 FILING AND SERVICE OF CROSS-PETITION FOR REVIEW. Where a petition for review has been timely filed under WAC 391-35-210, any party who has not previously filed a petition for review may, within seven days after the last date on which a petition for review may be filed, file a cross-petition for review. Such cross-petition for review shall be filed and served in the same manner as a petition for review. Upon the filing of a cross-petition for review, the deadline for the submission of briefs or written arguments shall be extended by seven days.

**READOPTED SECTION** (Readopting Order 80-6, filed 9/30/80, effective 11/1/80)

WAC 391-35-250 COMMISSION ACTION. The executive director shall transfer the entire record in the proceeding to the commission. The commission shall determine the status of each position, classification or group covered by the petition for review, and shall issue appropriate orders.

**WSR 89-23-024**

**PROPOSED RULES  
PUBLIC EMPLOYMENT  
RELATIONS COMMISSION**  
[Filed November 7, 1989, 3:45 p.m.]

Original Notice.

Title of Rule: Chapter 391-45 WAC, Unfair Labor Practice Case Rules.

Purpose: See below.

Statutory Authority for Adoption: RCW 41.58.050, 28B.52.080, 41.56.090 and 41.59.110.

Statute Being Implemented: See below.

Summary: See below.

Reasons Supporting Proposal: See below.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Marvin L. Schurke, 603 Evergreen Plaza Building, Olympia, 753-3444.

Name of Proponent: Public Employment Relations Commission, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: See below.

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

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

Proposal Changes the Following Existing Rules: See below.

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

**WAC 391-45-001 Scope—Contents—Other rules.**

Purpose: Identifies chapter, makes cross-references to other rules.

Statute: Chapters 28B.52, 41.56, 41.58, 41.59 and 53.18 RCW (hereinafter: "substantive statutes"), generally.

Summary: Refers to other rules, as follows: Chapter 10-08 WAC for conduct of "adjudicative proceedings", generally; chapter 391-08 WAC for general procedural rules; chapter 391-25 WAC for representation cases; chapter 391-35 WAC for unit clarification cases; chapter 391-55 WAC for impasse resolution cases; chapter 391-65 WAC for grievance arbitration cases; and chapter 391-95 WAC for union security cases.

Reasons: RCW 34.05.250 permits agencies to adopt rules different from model rules by stating reasons for variance. WAC 10-08-001 is similar.

Explanation: Amendment of existing rule to identify the areas where PERC does things differently than chapter 10-08 WAC. Details of the interface between chapters 391-08 and 10-08 WAC are specified in WAC 391-08-001.

**WAC 391-45-002 Sequence and numbering of rules—Special provisions.**

Purpose: Explanatory only.

Statute: Substantive statutes, generally.

Summary: Explains how rules are numbered to identify exceptions to general rules.

Reasons: RCW 41.58.005(1) admonishes PERC to be "uniform" in the administration of state collective bargaining laws. This WAC chapter regulates proceedings under several different statutes under PERC's jurisdiction. Those statutes have many similarities and some differences.

Explanation: Readoption of existing rule is necessary to preserve a numbering scheme in which exceptions to general rules immediately follow the general rule on the same subject. (General rules applicable to all of the statutes under PERC's jurisdiction have WAC numbers divisible by ten; if a particular statute requires a deviation from the general rule, it receives a separate number in the same decile.)

**WAC 391-45-010 Complaint charging unfair labor practice—Who may file.**

Purpose: Defines who may be a complainant.

Statute: RCW 28B.52.065, 41.56.040, 41.58.040, 41.59.060 and 53.18.015.

Summary: Defines "complainant" to include any employee, group of employees, employee organization, employer or their agents.

Reasons: RCW 34.05.010(11) does not define who may file a complaint charging unfair labor practices. RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Model rules silent with repeal of WAC 10-08-020.

Explanation: Readoption of existing rule to insure that standing to file a complaint charging unfair labor practices will not be artificially limited.

**WAC 391-45-019 Special provision—Private sector employees.**

Purpose: Excludes private sector employees and employers from the coverage of chapter 391-45 WAC.

Statute: RCW 49.08.020.

Summary: Provides that unfair labor practice procedures are not applicable to private sector employees and employers.

Reasons: Chapter 49.08 RCW does not allow unfair labor practices to be filed by private sector parties at the state level.

Explanation: Readoption of existing rule to exempt private sector employees and employers from unfair labor practice proceedings before PERC.

No "small business" impact is anticipated, since no change is proposed. (Parties to which this rule applies may be subject to unfair labor practice proceedings before the National Labor Relations Board under federal law.)

**WAC 391-45-030 Form—Number of copies—Filing—Service.**

Purpose: Specifies number of copies and filing of complaints at Olympia office; requires service on other parties.

Statute: RCW 28B.52.073, 41.56.170, 41.59.150 and 53.18.015.

Summary: The party initiating an unfair labor practice case must file an original and three copies with PERC's Olympia office and must serve the respondent(s).

Reasons: RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-035 provides loosely for an "application for an adjudicative proceeding." WAC 10-08-110 would permit filing at "any" office of the agency.

Explanation: Readoption of existing rule to avoid any claim of conflict with model rules. An original and three copies of documents are needed for circulation to the members of the commission in the event of intraagency appeals. Filing at the Olympia office is necessary because PERC's Yakima and Spokane offices are not staffed on a full-time basis (making it difficult to ascertain the time of "filing" for purpose of administering a six-month "statute of limitations") and because all

docketing and initial processing by the executive director are performed at the Olympia office.

**WAC 391-45-050 Contents of complaint charging unfair labor practices.**

**Purpose:** Details information to be included in a complaint charging unfair labor practices.

**Statute:** RCW 28B.52.073, 41.56.170, 41.56.180, 41.59.150 and 53.18.015.

**Summary:** Requires identifying information for agency docket records and detailed statement of alleged facts for efficient processing by PERC.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-035 provides loosely for an "application for an adjudicative proceeding" to specify the issue to be adjudicated in the proceeding.

**Explanation:** Readoption of existing rule to avoid conflict with model rules at WAC 10-08-035 and to obtain details needed by PERC for the efficient processing of cases.

**WAC 391-45-070 Amendment.**

**Purpose:** Defines how complaints of unfair labor practices can be amended.

**Statute:** RCW 28B.52.073, 41.56.140, 41.56.150, 41.56.170, 41.59.140 and 53.18.015.

**Summary:** Complaints may be amended by motion of the complainant.

**Reasons:** Chapter 10-08 WAC does not clearly cover amendments to complaints.

**Explanation:** Readoption of existing rule, because amendments to complaints are allowed by the applicable substantive statutes.

**WAC 391-45-090 Withdrawal.**

**Purpose:** Defines how unfair labor practices complaints can be withdrawn.

**Statute:** RCW 28B.52.073, 41.56.140, 41.56.150, 41.59.140 and 53.18.015.

**Summary:** Complaints can be withdrawn under conditions established by the agency.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.060 encourages informal settlements. WAC 10-08-230 provides for informal settlements, but does not clearly cover withdrawals of complaints.

**Explanation:** Readoption of existing rule to avoid conflict with the model rules. Most parties to unfair labor practice cases have ongoing relationships and are quite capable of drafting and signing their own settlement agreements, so that informal settlements are frequently communicated to PERC as a simple "withdrawal" of a case.

**WAC 391-45-110 Initial processing by executive director.**

**Purpose:** Requires review of complaints to determine whether they state a cause of action.

**Statute:** RCW 28B.52.073, 41.56.140, 41.56.150, 41.59.140 and 53.18.015.

**Summary:** Assuming all of the facts alleged in the complaint to be true and provable, the executive director determines whether, as a matter of law, an unfair labor practice violation could be found. If not, the complaint is dismissed by written order.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.416 provides for the disposition of cases where the agency concludes that no adjudicative proceeding should be conducted. This rule delegates substantive decision-making authority to the executive director, to conduct what amounts to an automatic "summary judgment" on the contents of the complaint.

**Explanation:** Readoption of existing rule to insure that invalid complaints are dismissed at the earliest opportunity, with minimum investment of state resources, and that legitimate cases are sent to hearing.

**WAC 391-45-130 Examiner—Who may act.**

**Purpose:** Defines who may hear the complaints.

**Statute:** RCW 28B.52.073, 41.56.160, 41.56.170, 41.59.110 and 53.18.015.

**Summary:** Examiner can be PERC staff member or agency designee; with notice, examiners can be substituted.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-050 discusses the use of personnel supplied by the Office of Administrative Hearings, but PERC is exempt from the Office of Administrative Hearings and chapter 34.12 RCW.

**Explanation:** Readoption of existing rule because the "agency head" generally does not preside over PERC's adjudicative hearings. The chief administrative law judge does not govern the matters covered by this rule.

**WAC 391-45-170 Notice of ((hearing)) right to answer.**

**Purpose:** Defines rights concerning filing of answer.

**Statute:** RCW 28B.52.073, 41.56.170, 41.59.150 and 53.18.015.

**Summary:** Requires notice of hearing to provide for the date for filing an answer, and allows amendment of the notice.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-040 regulates the contents of the notice of hearing, other than the requirement for an answer.

**Explanation:** Amendment of existing rule title because the right to answer is secured by the substantive statutes administered by PERC.

**WAC 391-45-190 Answer—Filing—Service.**

**Purpose:** Specifies procedures for filing of answer to complaint charging unfair labor practices.

**Statute:** RCW 28B.52.073, 41.56.170, 41.59.150 and 53.18.015.

**Summary:** The respondent must file the original and three copies of its answer by the date listed on the notice of hearing, and must serve the opposing party.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency.

WAC 10-08-040 regulates the contents of the notice of hearing, other than the requirement for an answer.

Explanation: Readoption of existing rule to avoid claim of conflict with model rules. An original and three copies of documents are needed for circulation to the members of the commission in the event of intraagency appeals.

WAC 391-45-210 Answer—Contents and effect of failure to answer.

Purpose: Details required contents for answer and consequences of failure to answer.

Statute: RCW 28B.52.073, 41.56.170, 41.59.150 and 53.18.015.

Summary: Answer must respond specifically to allegations of complaint; if not, facts alleged in complaint are generally admitted.

Reasons: RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Chapter 34.05 RCW and chapter 10-08 WAC are silent on effects of failure to file answer.

Explanation: Readoption of existing rule because the "answer" is required by substantive statutes administered by PERC.

WAC 391-45-230 Amendment of answer.

Purpose: Allows for answers to be amended.

Statute: RCW 28B.52.073, 41.56.170, 41.59.150 and 53.18.015.

Summary: Answer may be amended when complaint is amended, or upon proper motion.

Reasons: RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Chapter 34.05 RCW and chapter 10-08 WAC are silent on effects of failure to file answer.

Explanation: Readoption of existing rule because the "answer" is required by substantive statutes administered by PERC.

WAC 391-45-250 Motion to make complaint more definite and certain.

Purpose: Allows a respondent to obtain sufficient information to enable it to prepare its answer.

Statute: RCW 28B.52.073, 41.56.170, 41.59.150 and 53.18.015.

Summary: The respondent may move for more details to be supplied by the complaining party. The examiner is authorized to rule on such motions.

Reasons: RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-035 provides loosely for an "application for an adjudicative proceeding" to specify the issue to be adjudicated in the proceeding. WAC 391-45-050 requires more detailed information than model rule.

Explanation: Readoption of existing rule because this is the first opportunity the respondent has to respond to the complaint. (The executive director makes the preliminary ruling under WAC 391-45-110 without input from the respondent.)

WAC 391-45-260 Settlement conference—Prehearing conference.

Purpose: To encourage settlements prior to investing state resources in a formal hearing.

Statute: RCW 28B.52.073, 41.56.160, 41.59.150 and 53.18.015.

Summary: A member of the commission staff (other than the assigned examiner) may request the parties attend a voluntary "settlement conference," to examine the facts and legal theories presented along with case precedent. Whether or not a "settlement conference" has been held, the examiner may hold a "prehearing conference" to deal with procedural matters related to the hearing.

Reasons: RCW 34.05.060 encourages informal settlements. RCW 34.05.431(1) requires agency to adopt rules specifying conditions and manner in which prehearing conferences are to be held. WAC 10-08-130 provides for conduct of prehearing conferences. WAC 10-08-230 provides for informal settlements, but imposes obligations on the agency which are not common on labor-management relations.

Explanation: Amendment of existing rule to continue a successful procedure and to meet the requirements of the new APA. The "settlement conference" procedure was developed by PERC based on experience in the field, and has been a successful method in many cases. PERC uses conventional "prehearing conferences" from time to time where the pleadings and prehearing motions indicate that it would be appropriate to do so.

WAC 391-45-270 Hearings—Nature and scope.

Purpose: Defines unfair labor practice hearings as adversarial.

Statute: RCW 28B.52.073, 41.56.170, 41.59.150 and 53.18.015.

Summary: Defines the hearing as public and adversarial between parties, with agency impartial. Places the burden of proof on the complainant.

Reasons: RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Chapter 34.05 RCW and chapter 10-08 WAC are written to apply to "adjudicative proceedings" where the agency itself takes an advocacy role, and so do not adequately describe the "impartial" role of PERC in unfair labor practice hearings.

Explanation: Amendment of existing rule to clearly define the impartial posture of PERC, to allow for the sequestering of witnesses and to assign the burden of proof.

WAC 391-45-290 Briefs and proposed findings.

Purpose: Allows filing of written legal argument.

Statute: RCW 28B.52.073, 41.56.180, 41.59.150 and 53.18.015.

Summary: On their own volition, or at the direction of the examiner, the parties to an unfair labor practice may file written legal argument in support of their position.

Reasons: RCW 34.05.461(7) provides for the filing of briefs and proposed findings. RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. Chapter 10-08 WAC is silent.

Explanation: Readoption of existing rule is convenient, so that the parties who are already dealing with a substantive statute and three sets of rules (chapters 10-08, 391-08 and 391-45 WAC) will not need to refer to the APA for this fairly obscure provision.

#### WAC 391-45-310 Examiner decision.

Purpose: Empowers examiner to issue initial findings of fact, conclusions of law and an order.

Statute: RCW 28B.52.073, 41.56.180, 41.59.150 and 53.18.015.

Summary: After the close of the hearing, the examiner is to issue findings of facts, conclusions of law and an order.

Reasons: RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.461 regulates form and contents of initial order.

Explanation: Readoption of existing rule to delegate substantive decision-making authority to the examiner for the initial decision. The commission is a reviewing body in unfair labor practice proceedings.

#### WAC 391-45-330 Withdrawal or modification of examiner decision.

Purpose: Allows examiner to modify the decision upon discovery of a mistake or new evidence.

Statute: RCW 28B.52.073, 41.56.180, 41.59.150 and 53.18.015.

Summary: Within 20 days following the issuance of a decision (i.e., prior to the expiration of the time for filing a petition for intraagency review), the examiner can withdraw or modify the decision if a mistake is discovered, or newly-discovered evidence is claimed.

Reasons: RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.461 regulates form and contents of initial order.

Explanation: Readoption of existing rule to delegate substantive decision-making authority to the examiner to continue to act under these limited circumstances. The commission is a reviewing body in unfair labor practice proceedings.

#### WAC 391-45-350 Petition for review of examiner decision.

Purpose: Allows for intraagency review of an examiner's decision by the commission.

Statute: RCW 28B.52.073, 41.56.180, 41.59.150 and 53.18.015.

Summary: Within 20 days following the issuance of an examiner's decision, the parties may petition for intraagency review ("appeal") of the examiner's decision. The commission may "lift" a case for review on its own motion within 30 days following the issuance of the examiner's decision.

Reasons: RCW 34.05.464(1) authorizes agencies to provide, by rule, for intraagency review of initial orders. WAC 10-08-211 specifies a 20-day period for all intraagency appeals, does not contemplate review on motion

of the commission, and specifies a 10-day period for filing of appeal briefs.

Explanation: Readoption of existing rule is necessary to the efficient operation of PERC. The procedures and briefing schedules specified in the model rule are different from those established by PERC after actual experience with the types of issues encountered in labor-management relations. The commission needs the authority to review a decision on its own motion, where an evident defect or order contrary to commission policy would otherwise be left standing by action or omission of the parties.

#### WAC 391-45-370 Filing and service of cross-petition for review.

Purpose: Allows a party to file a cross-petition for review of an examiner's decision.

Statute: RCW 28B.52.073, 41.56.180, 41.59.150 and 53.18.015.

Summary: Allows an additional 7 days for the filing of a cross-petition for review.

Reasons: RCW 34.05.464(1) authorizes agencies to provide, by rule, for intraagency review of initial orders. WAC 10-08-211 specifies a 20-day period for all intraagency appeals, and does not contemplate cross-petitions for review.

Explanation: Readoption of existing rule is necessary to preserve a procedure that has worked well for PERC and its clientele up to this time. PERC adopted the "cross-petition" procedure to obviate the filing of "strategic" appeals that might otherwise be withheld.

#### WAC 391-45-390 Commission action.

Purpose: Requires the commission to make a determination of a decision that it reviews.

Statute: RCW 28B.52.073, 41.56.180, 41.59.150 and 53.18.015.

Summary: Transfers entire case to the commission when intraagency appeal procedures have been invoked. Permits commission to call for oral argument.

Reasons: RCW 34.05.464(1) authorizes agencies to provide, by rule, for intraagency review of initial orders. WAC 10-08-211 does not deal with oral argument.

Explanation: Readoption of existing rule is necessary to specify agency action on appeals, consistent with RCW 34.05.464(1).

#### WAC 391-45-410 Unfair labor practice remedies.

Purpose: Allows a remedial order to be issued if an unfair labor practice is found to have been committed.

Statute: RCW 28B.52.073, 41.56.160, 41.59.150 and 53.18.015.

Summary: If an unfair labor practice is found, a remedial order will be issued. Details formula to use if back pay is involved.

Reasons: Substantive rule implementing remedial powers conferred on commission by chapters 28B.52, 41.56 and 41.59 RCW.

Explanation: Readoption of existing rule is necessary to preserve substantive requirements drawn from statutes or agency policy and expertise.

**WAC 391-45-430 Motion for temporary relief.**

**Purpose:** Allows the commission to issue an injunction in certain unfair labor practice situations.

**Statute:** RCW 28B.52.073 and 41.59.150.

**Summary:** The commission may seek court intervention to preserve the status quo pending the completion of unfair labor practice proceedings, if the complainant would have no adequate remedy and would suffer irreparable harm if it had to wait for completion of the administrative adjudication process. Procedures for filing of motion and for response are specified.

**Reasons:** RCW 34.05.578(4) provides for agency to seek temporary relief. Chapter 10-08 WAC is silent. RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency.

**Explanation:** Readoption of existing rule to preserve special procedures drawn from agency expertise and substantive statutes administered by PERC. Temporary relief has been rarely used, but has been effective in most cases where invoked.

**WAC 391-45-431 Special provision—Public employees.**

**Purpose:** Makes WAC 391-45-430 temporary relief procedures inapplicable to parties under chapter 41.56 RCW.

**Statute:** RCW 41.56.190.

**Summary:** Parties to cases under chapter 41.56 RCW are precluded from using the temporary relief procedure through PERC.

**Reasons:** RCW 34.05.578(4) provides for agency to seek temporary relief. Chapter 10-08 WAC is silent.

**Explanation:** Readoption of existing rule will continue the traditional exclusion from "temporary relief" based on the language of RCW 41.56.190 (which has been interpreted as limiting the authority of the commission to seek judicial relief until 30 days had passed after the issuance of the final agency "order").

RCW 34.04.578 [34.05.578] is a separate source of authority for the agency to seek temporary relief within 30 days after its "order" is issued, but falls short of a general authorization to seek an injunction.

**WAC 391-45-550 Collective bargaining—Policy.**

**Purpose:** Promotes bilateral collective bargaining.

**Statute:** RCW 28B.52.073, 41.56.030(4), 41.59.020(2) and 53.18.015.

**Summary:** Parties may bring any subject to the bargaining table; the commission exclusively determines whether a subject is a mandatory or permissive subject of bargaining.

**Reasons:** APA is silent.

**Explanation:** Readoption of existing rule to avoid any suggestion of conflict with the new APA. This is fundamentally a substantive policy drawn from agency expertise and the statutes it administers.

**WAC 391-45-552 Special provision—Educational employees.**

**Purpose:** Promotes good faith collective bargaining.

**Statute:** RCW 41.59.110 and 41.59.120.

**Summary:** Requires parties to submit written proposals and to give justifications while bargaining, and to use

mediation and fact finding procedures to resolve disputes.

**Reasons:** APA is silent.

**Explanation:** Readoption of existing rule to avoid any suggestion of conflict with the new APA. This is fundamentally a substantive policy drawn from agency expertise and the statutes it administers.

**Hearing Location:** Second Floor Conference Room, Evergreen Plaza Building, 711 Capitol Way, Olympia, Washington, on January 12, 1990, at 2:30 p.m.

**Submit Written Comments to:** Marvin L. Schurke, by January 10, 1990.

**Date of Intended Adoption:** January 12, 1990.

November 7, 1989

Marvin L. Schurke

Executive Director

**AMENDATORY SECTION** (Amending Order 80-7, filed 9/30/80, effective 11/1/80)

**WAC 391-45-001 SCOPE—CONTENTS—OTHER RULES.** This chapter governs proceedings before the public employment relations commission on complaints charging unfair labor practices. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 10-08 WAC, which contains rules promulgated by the chief administrative law judge governing the conduct of adjudicative proceedings under chapter 391-45, except:

(a) WAC 10-08-035, which is supplanted by detailed requirements in WAC 391-45-050;

(b) WAC 10-08-050, which relates to procedures of the office of administrative hearings, and so is inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is supplanted by WAC 391-45-350 and 391-45-370; and

(d) WAC 10-08-230, which is supplanted by WAC 391-45-070, 391-45-090, and 391-45-260.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission.

((2)) (3) Chapter 391-25 WAC, which contains rules relating to proceedings on petitions for investigation of questions concerning representation of employees.

((3)) (4) Chapter 391-35 WAC, which contains rules relating to petitions for clarification of existing bargaining units.

((4)) (5) Chapter 391-55 WAC, which contains rules relating to resolution of impasses occurring in collective bargaining.

((5)) (6) Chapter 391-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement.

((6)) (7) Chapter 391-95 WAC, which contains rules relating to determination of union security disputes arising between employees and employee organizations certified or recognized as their bargaining representative.

**READOPTED SECTION** (Readopting Order 83-04, filed 12/1/83, effective 1/1/84)

**WAC 391-45-002 SEQUENCE AND NUMBERING OF RULES—SPECIAL PROVISIONS.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule, numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (professional negotiations—academic faculties of community college districts) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 49.08 RCW (private sector employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

WAC 391-45-010 COMPLAINT CHARGING UNFAIR LABOR PRACTICES—WHO MAY FILE. A complaint charging that any person has engaged in or is engaging in an unfair labor practice, hereinafter referred to as a "complaint" may be filed by any employee, group of employees, employee organization, employer or their agents.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

WAC 391-45-019 SPECIAL PROVISION—PRIVATE SECTOR EMPLOYEES. The provisions of chapter 391-45 WAC are inapplicable to private sector collective bargaining under chapter 49.08 RCW.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

WAC 391-45-030 FORM—NUMBER OF COPIES—FILING—SERVICE. Charges shall be in writing, in the form of a complaint of unfair labor practices. The original and three copies shall be filed with the agency at its Olympia office. The party filing the complaint shall serve a copy on each party named as a respondent.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

WAC 391-45-050 CONTENTS OF COMPLAINT CHARGING UNFAIR LABOR PRACTICES. Each complaint shall contain, in separate numbered paragraphs:

(1) The name and address of the party filing the complaint, hereinafter referred to as the complainant, and the name, address and telephone number of its principal representative.

(2) The name(s) and address(es) of the person(s) charged with engaging in, or having engaged in, unfair labor practices, hereinafter referred to as the respondent(s), and, if known, the names, addresses and telephone numbers of the principal representatives of the respondent(s).

(3) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

(4) A listing of the sections of the Revised Code of Washington (RCW) alleged to have been violated.

(5) A statement of the relief sought by the complainant.

(6) The signature and, if any, the title of the person filing the complaint.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

WAC 391-45-070 AMENDMENT. Any complaint may be amended upon motion made by the complainant to the executive director or the examiner prior to the transfer of the case to the commission.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

WAC 391-45-090 WITHDRAWAL. Any complaint may be withdrawn by the complainant under such conditions as the executive director or the commission may impose.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

WAC 391-45-110 INITIAL PROCESSING BY EXECUTIVE DIRECTOR. The executive director shall determine whether the facts as alleged may constitute an unfair labor practice within the meaning of the applicable statute. If it is determined that the facts as alleged do not, as a matter of law, constitute a violation, the executive director

shall issue and cause to be served on all parties an order of dismissal containing the reasons therefor; otherwise, the executive director shall cause the contents of the charge to be issued and served as a complaint of unfair labor practices, shall assign the matter to an examiner and shall notify the parties of such assignment. An order of dismissal issued pursuant to this section shall be subject to a petition for review as provided in WAC 391-45-350.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

WAC 391-45-130 EXAMINER—WHO MAY ACT. The examiner may be a member of the agency staff or any other individual designated by the commission or executive director. Upon notice to all parties, an examiner may be substituted for the examiner previously presiding.

**AMENDATORY SECTION** (Amending Order 80-7, filed 9/30/80, effective 11/1/80)

WAC 391-45-170 NOTICE OF ((HEARING)) RIGHT TO ANSWER. The examiner shall issue and cause to be served on the parties a notice of hearing at a time and place specified therein. Attached to the notice of hearing shall be a copy of the complaint as approved by the executive director under WAC 391-45-110. The notice of hearing shall specify the date for the filing of an answer, which shall be not less than ten days prior to the date set for hearing. Any such notice of hearing may be amended or withdrawn before the close of the hearing.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

WAC 391-45-190 ANSWER—FILING AND SERVICE. The respondent(s) shall, on or before the date specified therefor in the notice of hearing, file with the examiner the original and three copies of its answer to the complaint, and shall serve a copy on the complainant.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

WAC 391-45-210 ANSWER—CONTENTS AND EFFECT OF FAILURE TO ANSWER. An answer filed by a respondent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. The failure of a respondent to file an answer or the failure to specifically deny or explain in the answer a fact alleged in the complaint shall, except for good cause shown, be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of the respondent of a hearing as to the facts so admitted.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

WAC 391-45-230 AMENDMENT OF ANSWER. The respondent may amend its answer at any time prior to the hearing. During the hearing or subsequent thereto, it may amend its answer in any case where the complaint has been amended, within such period as may be fixed by the examiner or the commission. Whether or not the complaint has been amended, the answer may, in the discretion of the examiner or the commission, be amended upon motion under such terms and within such period as may be fixed by the examiner or the commission.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

WAC 391-45-250 MOTION TO MAKE COMPLAINT MORE DEFINITE AND CERTAIN. If a complaint is alleged by a respondent to be so indefinite as to hamper the respondent in the preparation of its answer, such respondent may, on or before the date specified for the filing of an answer, file a motion requesting an order directing that the complaint be made more definite and certain. Such motion shall be filed with the examiner and served by the moving party on the complainant and on any other parties. The filing of such motion will extend the time during which the respondent must file and serve an answer

until such date as the executive director or examiner may set. The examiner may require the complainant to file and serve a statement supplying information necessary to make the complaint definite and certain.

**AMENDATORY SECTION** (Amending Order 88-05, filed 5/31/88)

**WAC 391-45-260 SETTLEMENT CONFERENCE.** (1) Prior to hearing, the parties may be requested to participate in a settlement conference conducted by a member of the commission staff other than the assigned examiner. During the course of a settlement conference, the parties will be encouraged, on factual and legal grounds including precedent on the particular subject, to resolve the unfair labor practice dispute. Participation in the settlement conference is voluntary, and the refusal of a party to participate shall not prejudice the nonparticipating party in any manner.

(2) Whether or not a "settlement conference" has been held, the examiner may hold a "prehearing conference" to deal with procedural matters related to the hearing.

**AMENDATORY SECTION** (Amending Order 80-7, filed 9/30/80, effective 11/1/80)

**WAC 391-45-270 HEARINGS—NATURE AND SCOPE.** Hearings shall be public and shall be adversary in nature, limited to matters concerning the unfair labor practices alleged in the complaint. The complainant shall prosecute its own complaint and shall have the burden of proof. During the course of the hearing, the examiner may, upon motion by any party, or on his or her own motion, sequester witnesses. It shall be the duty of the examiner to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice so as to obtain a clear and complete factual record on which the examiner and commission may discharge their duties under these rules: PROVIDED, HOWEVER, That such duty of the examiner shall not be construed as authorizing or requiring the examiner to undertake the responsibilities of the complainant with respect to the prosecution of its complaint or of the respondent with respect to the presentation of its defense.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

**WAC 391-45-290 BRIEFS AND PROPOSED FINDINGS.** Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings of fact, conclusions of law and order, or both, at such time as may be fixed by the examiner. The examiner may direct the filing of briefs when he or she deems such filing warranted by the nature of the proceeding or of particular issues therein.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

**WAC 391-45-310 EXAMINER DECISION.** After the close of the hearing and the filing of all briefs, the examiner shall make a decision containing findings of fact, conclusions of law and order. The examiner shall file the original decision with the commission and shall cause a copy thereof to be served on each of the parties.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

**WAC 391-45-330 WITHDRAWAL OR MODIFICATION OF EXAMINER DECISION.** On the examiner's own motion or on the motion of any party, the examiner may set aside, modify, change or reverse any findings of fact, conclusions of law or order at any time within twenty days following the issuance thereof, if any mistake is discovered therein or upon grounds of newly discovered evidence which could not with reasonable diligence have been discovered and produced at the hearing: PROVIDED, HOWEVER, That this section shall be inoperative after the filing of a petition for review with the commission.

**READOPTED SECTION** (Readopting Resolution No. 85-01, filed 9/16/85)

**WAC 391-45-350 PETITION FOR REVIEW OF EXAMINER DECISION.** The examiner's findings of fact, conclusions of law and

order shall be subject to review by the commission on its own motion, or at the request of any party made within twenty days following the date of the order issued by the examiner. The original and three copies of the petition for review shall be filed with the commission at its Olympia office and the party filing the petition shall serve a copy on each of the other parties to the proceeding. Such petition for review shall contain, in separate numbered paragraphs, statements of the specific findings, conclusions, orders or rulings on which the party filing the petition seeks review by the commission. A petition for review shall have attached to it any appeal brief or written argument which the party filing the petition for review desires to have considered by the commission. Other parties to the proceeding shall have fourteen days following the date on which they are served with a copy of such petition for review and accompanying brief or written argument to file a responsive brief or written argument. The commission, the executive director or his designee may, for good cause, grant any party an extension of the time for filing of its brief or written argument. If a party presents an issue which requires study of a statute, rule, regulation, or finding of fact, the party should set out the material portions of the text verbatim or include them by facsimile copy in the text or in an appendix to the brief. In the event no timely petition for review is filed, and no action is taken by the commission on its own motion within thirty days following the examiner's final order, the findings of fact, conclusions of law and order of the examiner shall automatically become the findings of fact, conclusions of law and order of the commission and shall have the same force and effect as if issued by the commission.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

**WAC 391-45-370 FILING AND SERVICE OF CROSS-PETITION FOR REVIEW.** Where a petition for review has been timely filed under WAC 391-45-350, any party who has not previously filed a petition for review may, within seven days after the last date on which a petition for review may be filed, file a cross-petition for review. Such cross-petition shall be filed and served in the same manner as a petition for review. Upon the filing of a cross-petition for review, the deadlines for the submission of briefs or written arguments shall be extended by seven days.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

**WAC 391-45-390 COMMISSION ACTION.** On its own motion, or on the filing of a petition for review, the entire record in the proceeding shall be transferred to the commission, and thereafter all motions and arguments shall be directed to the commission. The commission may request the parties to appear before it to make oral arguments as to certain of the issues or all of the issues in the matter. The commission shall, on the basis of the record and any briefs or arguments submitted to it on review, determine the matter.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

**WAC 391-45-410 UNFAIR LABOR PRACTICE REMEDIES.** If an unfair labor practice is found to have been committed, the commission or its examiner shall issue a remedial order. In calculating back pay orders, the following shall apply:

(1) Individuals reinstated to employment with back pay shall have deducted from any amount due an amount equal to any earnings such employee may have received during the period of the violation in substitution for the terminated employment, calculated on a quarterly basis.

(2) Individuals reinstated to employment with back pay shall have deducted from any amount due an amount equal to any unemployment compensation benefits such employee may have received during the period of the violation, and the employer shall provide evidence to the commission that such amount has been repaid to the Washington state department of employment security as a credit to the benefit record of the employee.

(3) Money amounts due shall be subject to interest at the rate which would accrue on a civil judgment of the Washington state courts, from the date of the violation to the date of payment.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

WAC 391-45-430 MOTION FOR TEMPORARY RELIEF. In addition to the remedies available under WAC 391-45-410, any complainant in an unfair labor practice proceeding may file a motion requesting that the commission seek appropriate temporary relief through the superior court, and all such motions shall be processed as provided in this section.

(1) The complainant shall, at the time its complaint is filed or as soon thereafter as facts giving rise to the request for temporary relief become known, provide written notice to the executive director of its intent to make a motion for temporary relief and shall, at the same time, serve a copy of such notice on each of the other parties to the proceedings.

(2) Upon the filing of a notice of intent to make a motion for temporary relief, the executive director shall expedite the processing of the matter under WAC 391-45-110.

(3) After the determination of the executive director that the complaint states a cause of action, any complainant desiring temporary relief may file with the executive director a motion for temporary relief together with affidavits as to the risk of irreparable harm and the adequacy of legal remedies, and shall serve a copy of such motion and affidavits on all other parties to the proceedings. The other parties shall have seven calendar days thereafter to file and serve counter-affidavits.

(4) The executive director shall forward all such motions and affidavits to the commission, which shall determine whether an injunction pendente lite should be sought. In making such determination, the commission shall adhere to the following policy:

"The name and authority of the public employment relations commission shall not be invoked in connection with a request for temporary relief prior to the completion of administrative proceedings under WAC 391-45-010, et seq., unless it appears that one or more of the allegations in the complaint of unfair labor practices is of such a nature that, if sustained, the complainant would have no fair or adequate remedy and the complainant would suffer irreparable harm unless the status quo be preserved pending the completion of administrative proceedings."

(a) If the commission concludes that temporary relief should be sought, the executive director, acting in the name and on behalf of the commission and with the assistance of the attorney general, shall petition the superior court of the county in which the main office of the employer is located or wherein the person who is alleged to be engaging in unfair labor practices resides or transacts business for an injunction pendente lite.

(b) Whenever temporary relief has been procured, the complaint which has been the basis for such temporary relief shall be heard expeditiously and the case shall be given priority over all other cases except cases of like character.

(c) If the commission concludes that temporary relief should not be sought prior to the conclusion of administrative proceedings in the matter, such determination shall not bar renewal of the request for temporary relief following the completion of administrative proceedings in which unfair labor practice violations have been found to exist.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

WAC 391-45-431 SPECIAL PROVISION—PUBLIC EMPLOYEES. WAC 391-45-430 is inapplicable to complaints filed under chapter 41.56 RCW. Provision for judicial relief is made by RCW 41.56.190.

**READOPTED SECTION** (Readopting Order 80-7, filed 9/30/80, effective 11/1/80)

WAC 391-45-550 COLLECTIVE BARGAINING—POLICY. It is the policy of the commission to promote bilateral collective bargaining negotiations between employers and the exclusive representatives of their employees. Such parties are encouraged to engage in free and open exchange of proposals and positions on all matters coming into the dispute between them. The commission deems the determination as to whether a particular subject is mandatory or nonmandatory to be a question of law and fact to be determined by the commission,

and which is not subject to waiver by the parties by their action or inaction. It is the policy of the commission that a party which engages in collective bargaining with respect to any particular issue does not and cannot thereby confer the status of a mandatory subject on a nonmandatory subject.

**READOPTED SECTION** (Readopting Order 81-01, filed 1/6/81)

WAC 391-45-552 SPECIAL PROVISION—EDUCATIONAL EMPLOYEES. The obligation to bargain in good faith imposed upon an employer and the exclusive representative of its employees, respectively, by RCW 41.59.020(2) and 41.59.140 (1)(e) or (2)(c) includes:

(1) The obligation to submit, as to each subject for bargaining advanced by the party, a written statement of the language proposed for incorporation in or deletion from the collective bargaining agreement between the parties, together with a written or oral explanation or justification of such proposals.

(2) The obligation to submit, as to each subject for bargaining advanced by the other party, at least one written response thereto, together with a written or oral explanation of such response: PROVIDED, HOWEVER, That a party which asserts in a written response that a subject for bargaining advanced by the other party is not a mandatory subject for collective bargaining may thereafter refuse to make further proposals as to such subject or subjects for bargaining.

(3) The obligation to receive proposals from the other party as to all subjects for bargaining in dispute between the parties and, until a legal impasse has been reached, to refrain from demanding the removal of any such subject from the bargaining table on the basis that it is not a mandatory subject for collective bargaining.

(4) The obligation to exhaust the mediation and fact finding procedure established pursuant to RCW 41.59.120 before implementing all or any part of a final offer in negotiations, except as provided in RCW 41.59.930.

**WSR 89-23-025**  
**PROPOSED RULES**  
**PUBLIC EMPLOYMENT**  
**RELATIONS COMMISSION**  
[Filed November 7, 1989, 3:46 p.m.]

Original Notice.

Title of Rule: Chapter 391-95 WAC, Union security dispute rules.

Purpose: See below.

Statutory Authority for Adoption: RCW 41.58.050, 28B.52.080, 41.56.090 and 41.59.110.

Statute Being Implemented: See below.

Summary: See below.

Reasons Supporting Proposal: See below.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Marvin L. Schurke, 603 Evergreen Plaza Building, Olympia, 753-3444.

Name of Proponent: Public Employment Relations Commission, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: See below.

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

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

Proposal Changes the Following Existing Rules: See below.

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

**WAC 391-95-001 Scope—Contents—Other rules.**

Purpose: Identifies chapter, makes cross-references to other rules.

Statute: Chapters 28B.52, 41.56, 41.58, 41.59 and 53.18 RCW (hereinafter: "substantive statutes"), generally.

Summary: Refers to other rules, as follows: Chapter 10-08 WAC for conduct of "adjudicative proceedings", generally; chapter 391-08 WAC for general procedural rules; chapter 391-25 WAC for representation cases; chapter 391-35 WAC for unit clarification cases; chapter 391-45 WAC for unfair labor practice cases; chapter 391-55 WAC for impasse resolution cases; and chapter 391-65 WAC for grievance arbitration cases.

Reasons: RCW 34.05.250 permits agencies to adopt rules different from model rules by stating reasons for variance. WAC 10-08-001 is similar.

Explanation: Amendment of existing rule to identify the areas where PERC does things differently than chapter 10-08 WAC. Details of the interface between chapters 391-08 and 10-08 WAC are specified in WAC 391-08-001.

**WAC 391-95-010 Union security—Obligation of exclusive bargaining representative.**

Purpose: Set forth substantive requirements that exclusive bargaining representative must follow to enforce a union security provision.

Statute: RCW 28B.52.045, 41.56.122 and 41.59.100.

Summary: Requires exclusive bargaining representative to notify bargaining unit employees of their union security obligations, including amounts owed and effects of failure to pay.

Reasons: RCW 34.05.220(4) encourages agencies to codify their substantive policies in rules.

Explanation: Readoption of the existing rule is necessary to continue the substantive standards to be followed in union security cases. The existing rule is derived from federal and agency precedent concerning the regulation of union security disputes.

**WAC 391-95-030 Union security—Assertion of right of nonassociation.**

Purpose: Clear framing of issues prior to proceedings before PERC.

Statute: RCW 28B.52.045, 41.56.122 and 41.59.100.

Summary: Requires employee asserting right of non-association to give notice to the exclusive bargaining representative, together with name of nonreligious charity which is to receive alternative payments. Specifies that right of nonassociation must be based on bona fide religious tenets or teachings of a church or other religious body of which the employee belongs.

Reasons: RCW 34.05.220(4) encourages agencies to codify their substantive policies in rules.

Explanation: Readoption of the existing rule is necessary to give effect to the substantive statutes administered by PERC. The APA and model rules are silent on this subject matter.

**WAC 391-95-050 Union security—Response by exclusive bargaining representative.**

Purpose: Clear framing of issues prior to proceedings before PERC.

Statute: RCW 28B.52.045, 41.56.122 and 41.59.100.

Summary: Requires exclusive bargaining representative to respond to claim of right of nonassociation within 60 days of receipt of written notice of the claim, and that initial resolution efforts to be undertaken through contractual means.

Reasons: RCW 34.05.220(4) encourages agencies to codify their substantive policies in rules.

Explanation: Readoption of the existing rule is necessary to give effect to substantive agency policy drawn from federal precedent and agency expertise.

**WAC 391-95-070 Union security—Filing of dispute with commission.**

Purpose: Establish procedures for initiating a union security dispute case with PERC.

Statute: RCW 28B.52.045, 41.56.122 and 41.59.100.

Summary: Exclusive bargaining representative or the employee claiming a right of nonassociation may file a petition for declaratory ruling with PERC in the event that the union security dispute cannot be resolved. The parties may litigate issues concerning the employee's eligibility to assert a right of nonassociation or the identity of the nonreligious charity that is to receive alternative payments.

Reasons: RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-035 only generally states requirements for initiating an adjudicative proceeding.

Explanation: Readoption of the existing rule is necessary to continue substantive agency practice. The existing rule specifies that union security disputes are limited in nature, and is drawn from federal and agency precedent and practice in the area.

**WAC 391-95-090 Union security—Petition form—Number of copies—Filing—Service.**

Purpose: Specifies number of copies and filing of complaints at Olympia office; requires service on other parties.

Statute: RCW 28B.52.045, 41.56.122 and 41.59.100.

Summary: The party initiating a union security case must file an original and three copies with PERC's Olympia office and must serve the other party.

Reasons: RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-035 provides loosely for an "application for an adjudicative proceeding." WAC 10-08-110 would permit filing at "any" office of the agency.

Explanation: Readoption of existing rule to avoid any claim of conflict with model rules. An original and three copies of documents are needed for circulation to the members of the commission in the event of intraagency appeals. Filing at the Olympia office is necessary because PERC's Yakima and Spokane offices are not staffed on a full-time basis (making it difficult to ascertain the time of "filing" for purpose of administering a six-month "statute of limitations") and because all

docketing and initial processing by the executive director are performed at the Olympia office.

**WAC 391-95-110 Union security—Contents of petition.**

**Purpose:** Details information to be included in a petition for ruling on union security obligations.

**Statute:** RCW 28B.52.045, 41.56.122 and 41.59.100.

**Summary:** Requires identifying information for agency docket records and detailed statement of alleged facts for efficient processing by PERC.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-035 provides loosely for an "application for an adjudicative proceeding" to specify the issue to be adjudicated in the proceeding.

**Explanation:** Readoption of existing rule to avoid conflict with model rules at WAC 10-08-035 and to obtain details needed by PERC for the efficient processing of cases.

**WAC 391-95-130 Union security—Escrow of disputed funds.**

**Purpose:** Reduce potential for parallel litigation to preserve job rights of employees involved in union security disputes.

**Statute:** RCW 28B.52.045, 41.56.122 and 41.59.100.

**Summary:** Provides for suspension of action to enforce union security agreement by discharge while disputed funds are held in escrow pending resolution of the proceedings before PERC. Provides that escrowed funds are to draw interest.

**Reasons:** RCW 34.05.220(4) encourages agencies to codify their substantive policies in rules.

**Explanation:** Readoption of the existing rule is necessary to deal with substantive matters not otherwise addressed by the APA or the model rules. The existing rule is drawn from agency practice and precedent.

**WAC 391-95-150 Union security—Initial processing by executive director.**

**Purpose:** Requires review of petitions to determine whether they state a cause of action.

**Statute:** RCW 28B.52.045, 41.56.122, 41.58.050 and 41.59.100.

**Summary:** Assuming all of the facts alleged in the petition to be true and provable, the executive director determines whether, as a matter of law, a right to non-association could be found. If not, the petition is dismissed by written order.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.416 provides for the disposition of cases where the agency concludes that no adjudicative proceeding should be conducted. This rule delegates substantive decision-making authority to the executive director, to conduct what amounts to an automatic "summary judgment" on the contents of the complaint.

**Explanation:** Readoption of existing rule to insure that invalid petitions are dismissed at the earliest opportunity, with minimum investment of state resources, and that legitimate cases are sent to hearing.

**WAC 391-95-170 Union security—Prehearing conference—Notice of hearing.**

**Purpose:** To encourage settlements prior to investing state resources in a formal hearing.

**Statute:** RCW 28B.52.045, 41.56.122 and 41.59.100.

**Summary:** Permits conduct of prehearing conference at discretion of examiner, to deal with both procedural and substantive matters. Permits amendment and withdrawal of notice of hearing.

**Reasons:** RCW 34.05.060 encourages informal settlements. RCW 34.05.431(1) requires agency to adopt rules specifying conditions and manner in which prehearing conferences are to be held. WAC 10-08-130 provides for conduct of prehearing conferences. RCW 34.05.434 sets out the type of information generally required in notices of hearing. WAC 10-08-040 prescribes specific contents of the notice. However, the existing PERC rule contains more detail and is far more specific in its requirements.

**Explanation:** Amendment of existing rule to incorporate concepts of prehearing conference, settlement and amendment or withdrawal of notice of hearing, leaving the actual contents of the notice of hearing to the provisions of the APA and the model rules.

**WAC 391-95-190 Union security—Hearings—Who shall conduct.**

**Purpose:** Defines who may hear the complaints.

**Statute:** RCW 28B.52.045, 41.56.122, 41.58.050 and 41.59.100.

**Summary:** Examiner can be PERC staff member or agency designee; with notice, examiners can be substituted.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. WAC 10-08-050 discusses the use of personnel supplied by the Office of Administrative Hearings, but PERC is exempt from the Office of Administrative Hearings and chapter 34.12 RCW.

**Explanation:** Readoption of existing rule because the "agency head" generally does not generally preside over PERC's adjudicative hearings. The chief administrative law judge does not govern the matters covered by this rule.

**WAC 391-95-230 Hearings—Nature and scope.**

**Purpose:** Explains nature of union security dispute hearings and substantive elements of union security cases.

**Statute:** RCW 28B.52.045, 41.56.122 and 41.59.100.

**Summary:** Specifies that hearings conducted pursuant to this chapter are limited to issues concerning union security disputes. Explains the employee's responsibility in presenting a case supporting a claim for alternative payments to union security.

**Reasons:** RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.220(4) encourages agencies to codify their substantive policies in rules. Chapter 34.05 RCW and

chapter 10-08 WAC are written to apply to "adjudicative proceedings" where the agency itself takes an advocacy role, and so do not adequately describe the "impartial" role of PERC in unfair labor practice hearings. WAC 10-08-190 no longer contains a reference to public hearings.

Explanation: Amendment of existing rule to clearly define the impartial posture of PERC, to permit sequestering of witnesses, to assign the burden of proof, and to identify the substantive standards to be applied.

#### WAC 391-95-250 Examiner decision.

Purpose: Empowers examiner to issue initial findings of fact, conclusions of law and an order.

Statute: RCW 28B.52.045, 41.56.122 and 41.59.100.

Summary: After the close of the hearing, the examiner is to issue findings of fact, conclusions of law and an order.

Reasons: RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.461 regulates form and contents of initial order.

Explanation: Readoption of existing rule to delegate substantive decision-making authority to the examiner for the initial decision. The commission is a reviewing body in union security cases.

#### WAC 391-95-260 Withdrawal or modification of examiner decision.

Purpose: Allows examiner to modify the decision upon discovery of a mistake or new evidence.

Statute: RCW 28B.52.045, 41.56.122 and 41.59.100.

Summary: Within 20 days following the issuance of a decision (i.e., prior to the expiration of the time for filing a petition for intraagency review), the examiner can withdraw or modify the decision if a mistake is discovered, or newly-discovered evidence is claimed.

Reasons: RCW 34.05.220 (1)(a) provides for agencies to adopt rules for processing of cases before the agency. RCW 34.05.461 regulates form and contents of initial order.

Explanation: Readoption of existing rule to delegate substantive decision-making authority to the examiner to continue to act under these limited circumstances. The commission is a reviewing body in unfair labor practice proceedings.

#### WAC 391-95-270 Proceedings before the commission—Petition for review.

Purpose: Allows for intraagency review of an examiner's decision by the commission.

Statute: RCW 28B.52.045, 41.56.122 and 41.59.100.

Summary: Within 20 days following the issuance of an examiner's decision, the parties may petition for intraagency review ("appeal") of the examiner's decision.

Reasons: RCW 34.05.464(1) authorizes agencies to provide, by rule, for intraagency review of initial orders. WAC 10-08-211 specifies a 20-day period for all intraagency appeals, and specifies a 10-day period for filing of appeal briefs.

Explanation: Readoption of existing rule is necessary to the efficient operation of PERC. The procedures and

briefing schedules specified in the model rule are different from those established by PERC after actual experience with the types of issues encountered in labor-management relations.

#### WAC 391-95-280 Filing and service of cross-petition for review.

Purpose: Allows a party to file a cross-petition for review of an examiner's decision.

Statute: RCW 28B.52.045, 41.56.122 and 41.59.100.

Summary: Allows an additional 7 days for the filing of a cross-petition for review.

Reasons: RCW 34.05.464(1) authorizes agencies to provide, by rule, for intraagency review of initial orders. WAC 10-08-211 specifies a 20-day period for all intraagency appeals.

Explanation: Readoption of existing rule is necessary to preserve a procedure that has worked well for PERC and its clientele up to this time. PERC adopted the "cross-petition" procedure to obviate the filing of "strategic" appeals that might otherwise be withheld.

#### WAC 391-95-290 Commission action.

Purpose: Explains commission action in appeals of union security dispute cases.

Statute: RCW 28B.52.045, 41.56.122 and 41.59.100.

Summary: Transfers entire case to the commission when intraagency appeal procedures have been invoked. Permits commission to call for oral argument.

Reasons: RCW 34.05.464(1) authorizes agencies to provide, by rule, for intraagency review of initial orders. WAC 10-08-211 does not deal with oral argument.

Explanation: Readoption of existing rule is necessary to specify agency action on appeals, consistent with RCW 34.05.464(1).

#### WAC 391-95-310 Implementation.

Purpose: Describes implementation of alternative payments in the event that a claim of nonassociation is granted.

Statute: RCW 28B.52.045, 41.56.122 and 41.59.100.

Summary: Explains substantive procedures that the parties are to follow in the event that an employee is allowed to make alternative payments to a nonreligious charity.

Reasons: RCW 34.05.220(4) encourages agencies to codify their substantive policies in rules. The model rules do not refer to this subject matter.

Explanation: Readoption of the existing rule is necessary to continue a substantive policy that is within the agency's scope of operation to determine.

Hearing Location: Second Floor Conference Room, Evergreen Plaza Building, 711 Capitol Way, Olympia, WA, on January 12, 1990, at 2:30 p.m.

Submit Written Comments to: Marvin L. Schurke, by January 10, 1990.

Date of Intended Adoption: January 12, 1990.

November 7, 1989  
Marvin L. Schurke  
Executive Director

AMENDATORY SECTION (Amending Order 80-10, filed 9/30/80, effective 11/1/80)

WAC 391-95-001 SCOPE—CONTENTS—OTHER RULES. This chapter governs proceedings before the public employment relations commission relating to union security disputes arising between employees and employer organizations certified or recognized as their bargaining representative. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 10-08 WAC, which contains rules promulgated by the chief administrative law judge governing the conduct of adjudicative proceedings under chapter 391-45, except:

(a) WAC 10-08-035, which is supplanted by detailed requirements in WAC 391-95-050;

(b) WAC 10-08-050, which relates to procedures of the office of administrative hearings, and so is inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is supplanted by WAC 391-95-270 and 391-95-280; and

(d) WAC 10-08-230, which is supplanted by WAC 391-95-200.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission.

~~((2))~~ (3) Chapter 391-25 WAC, which contains rules relating to proceedings on petitions for investigation of questions concerning representation of employees.

~~((3))~~ (4) Chapter 391-35 WAC, which contains rules relating to proceedings on petitions for clarification of an existing bargaining unit.

~~((4))~~ (5) Chapter 391-45 WAC, which contains rules relating to proceedings on complaints charging unfair labor practices.

~~((5))~~ (6) Chapter 391-55 WAC, which contains rules relating to the resolution of impasses occurring in collective bargaining.

~~((6))~~ (7) Chapter 391-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement.

READOPTED SECTION (Readopting Order 88-10, filed 5/31/88)

WAC 391-95-010 UNION SECURITY—OBLIGATION OF EXCLUSIVE BARGAINING REPRESENTATIVE. An exclusive bargaining representative which desires to enforce a union security provision contained in a collective bargaining agreement negotiated under the provisions of chapter 28B.52, 41.56, or 41.59 RCW shall provide each affected employee with a copy of the collective bargaining agreement containing the union security provision and shall specifically advise each employee of his or her obligation under that agreement, including informing the employee of the amount owed, the method used to compute that amount, when such payments are to be made, and the effects of a failure to pay.

READOPTED SECTION (Readopting Order 88-10, filed 5/31/88)

WAC 391-95-030 UNION SECURITY—ASSERTION OF RIGHT OF NONASSOCIATION. An employee who asserts a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member shall notify the exclusive bargaining representative, in writing, of the claim of a right of nonassociation and shall, at the same time, provide the exclusive bargaining representative with the name(s) and address(es) of one or more nonreligious charitable organizations to which the employee is prepared to make alternative payments in lieu of the payments required by the union security provision.

READOPTED SECTION (Readopting Order 80-10, filed 9/30/80, effective 11/1/80)

WAC 391-95-050 UNION SECURITY—RESPONSE BY EXCLUSIVE BARGAINING REPRESENTATIVE. Within sixty days after it is served with written notice of a claimed right of nonassociation under WAC 391-95-030, the exclusive bargaining representative shall respond to the employee, in writing, both as to the eligibility of the employee to make alternative payments and as to the charitable organization(s) suggested by the employee. If a dispute exists concerning whether the employee is within a class of employees obligated under the terms of the union security provision, all such matters of contractual interpretation shall be resolved under such procedures as may be available for unit clarification or resolution of disputes concerning the interpretation or application of the collective bargaining agreement.

READOPTED SECTION (Readopting Order 80-10, filed 9/30/80, effective 11/1/80)

WAC 391-95-070 UNION SECURITY—FILING OF DISPUTE WITH COMMISSION. In the event of a disagreement between an employee and his or her exclusive bargaining representative as to the eligibility of such employee to make alternative payments or as to the organization which is to receive such payments, either the employee or the exclusive bargaining representative may file with the commission a petition for a declaratory ruling on the union security obligations of the affected employee.

READOPTED SECTION (Readopting Order 80-10, filed 9/30/80, effective 11/1/80)

WAC 391-95-090 UNION SECURITY—PETITION FORM—NUMBER OF COPIES—FILING—SERVICE. Each petition for declaratory ruling on union security obligations shall be prepared in conformance with WAC 391-95-110. The original and three copies of the petition shall be filed with the commission at its Olympia office and the party filing the petition shall serve a copy on the other party to the dispute and on the employer.

READOPTED SECTION (Readopting Order 80-10, filed 9/30/80, effective 11/1/80)

WAC 391-95-110 UNION SECURITY—CONTENTS OF PETITION. Each petition shall be headed "In the matter of the petition of (name of petitioning party) for a declaratory ruling concerning the union security obligations of (name of affected employee) under a collective bargaining agreement between (name of employer) and (name of exclusive bargaining representative)," and shall contain:

(1) The name and address of the employer and the name, address and telephone number of the employer's principal representative for the purposes of collective bargaining.

(2) The name, address and affiliation, if any, of the exclusive representative, and the name, address and telephone number of its principal representative, if any.

(3) The name, address and telephone number of the affected employee and the name, address and telephone number of his or her representative.

(4) Statements, in additional numbered paragraphs, of the matters in dispute.

(5) A copy, attached to the petition as an exhibit, of the union security provision under which the dispute arises.

(6) Any other relevant facts.

(7) The signature(s) and, if any, the title(s) of the representative(s) of the petitioner(s).

READOPTED SECTION (Readopting Order 81-01, filed 1/6/81)

WAC 391-95-130 UNION SECURITY—ESCROW OF DISPUTED FUNDS BY EMPLOYER. Upon being served with a copy of a petition filed under WAC 391-95-070, the employer shall preserve the status quo by withholding and retaining the disputed dues for periods during the pendency of the proceedings before the commission. Said funds shall draw interest at the rate provided by commercial banks for regular passbook savings accounts. While the proceedings remain pending before the commission, the employer shall not honor or otherwise act upon any request for discharge or other action against the affected employee based on the employee's union security obligations. This provision shall be applicable to employees covered by chapter 41.56 RCW only upon the employee submitting to the employer a signed authorization for the deduction.

READOPTED SECTION (Readopting Resolution No. 85-01, filed 9/16/85)

WAC 391-95-150 UNION SECURITY—INITIAL PROCESSING BY EXECUTIVE DIRECTOR. The matter shall be referred to the executive director who shall determine whether the facts as alleged may constitute a basis for assertion of a right of nonassociation within the meaning of the applicable statute. If it is determined that the claim does not, as a matter of law, constitute a basis for assertion of a right of nonassociation, the executive director shall issue and cause to be served on all parties an order of dismissal containing the reasons therefor; otherwise, the executive director shall assign the matter to an examiner and shall notify the parties of such assignment. An order of

dismissal issued pursuant to this section shall be subject to a petition for review as provided in WAC 391-95-270.

**AMENDATORY SECTION** (Amending Resolution No. 85-01, filed 9/16/85)

**WAC 391-95-170 UNION SECURITY—PREHEARING CONFERENCE—NOTICE OF HEARING.** There shall be issued and served on each of the parties to the dispute and on the employer a notice of hearing before an examiner at a time and place fixed therein. Any such notice may be amended or withdrawn prior to the close of the hearing. The examiner has discretion to conduct a prehearing conference to discuss with the parties all contested issues of fact, law, and procedure which may arise in union security cases. The parties are encouraged to reach binding stipulations on all remaining issues during the course of the prehearing conference.

**READOPTED SECTION** (Readopting Resolution No. 85-01, filed 9/16/85)

**WAC 391-95-190 UNION SECURITY—HEARINGS—WHO SHALL CONDUCT.** Hearings may be conducted by the commission, by the executive director, by a member of the agency staff or by any other individual designated by the commission or executive director as an examiner. At any time, an examiner may be substituted for the examiner previously presiding.

**AMENDATORY SECTION** (Amending Order 88-10, filed 5/31/88)

**WAC 391-95-230 HEARINGS—NATURE AND SCOPE.** Hearings shall be public and shall be limited to matters concerning the determination of the eligibility of the employee to make alternative payments and the designation of an organization to receive such alternative payments. During the course of the hearing, the examiner may, upon motion by any party, or upon his or her own motion, sequester witnesses. The employee has the burden to make a factual showing, through testimony of witnesses and/or documentary evidence, of the legitimacy of his or her beliefs, as follows:

(1) In cases where the claim of a right of nonassociation is based on the teachings of a church or religious body, the claimant employee must demonstrate:

- (a) His or her bona fide religious objection to union membership; and
- (b) That the objection is based on a bona fide religious teaching of a church or religious body; and
- (c) That the claimant employee is a member of such church or religious body.

(2) In cases where the claim of a right of nonassociation is based on personally held religious beliefs, the claimant employee must demonstrate:

- (a) His or her bona fide religious objection to union membership; and
- (b) That the religious nature of the objection is genuine and in good faith.

**READOPTED SECTION** (Readopting Resolution No. 85-01, filed 9/16/85)

**WAC 391-95-250 EXAMINER DECISION.** After the close of the hearing and the filing of all briefs, the examiner shall make a decision containing findings of fact, conclusions of law, and order. The examiner shall file the original decision with the commission and shall cause a copy thereof to be served on each of the parties.

**READOPTED SECTION** (Readopting Resolution No. 85-01, filed 9/16/85)

**WAC 391-95-260 WITHDRAWAL OR MODIFICATION OF EXAMINER DECISION.** On the examiner's own motion or on the motion of any party, the examiner may set aside, modify, change, or reverse any findings of fact, conclusions of law or order at any time within twenty days following the issuance thereof, if any mistake is discovered therein or upon grounds of newly discovered evidence which could not with reasonable diligence have been discovered and produced at the hearing: **PROVIDED, HOWEVER,** That this section shall be inoperative after the filing of a petition for review with the commission.

**READOPTED SECTION** (Readopting Resolution No. 85-01, filed 9/16/85)

**WAC 391-95-270 PROCEEDINGS BEFORE THE COMMISSION—PETITION FOR REVIEW.** The final order of the examiner shall be subject to review by the commission on its own motion, or at the request of any party made within twenty days following the date of the order issued by the examiner. The original and three copies of the petition for review shall be filed with the commission at its Olympia office and the party filing the petition shall serve a copy on the other party to the proceeding and on the employer. The petition for review shall identify the actions or rulings claimed to be in error. Any party to the proceeding may, within fourteen days after the initiation of review, file briefs or written arguments for consideration by the commission. The original and three copies of any brief or written argument shall be filed with the commission at its Olympia office and a copy shall be served upon the other party. The commission, the executive director or the designee of the executive director may, for good cause, grant any party an extension of the time for filing of its brief or written argument where a request for additional time is made prior to the deadline previously established. The commission may request the parties to appear before it to make oral argument as to certain of the issues or all of the issues in the matter. If a party presents an issue which requires study of a statute, rule, regulation, or finding of fact, the party should set out the material portions of the text verbatim or include them by facsimile copy in the text or in an appendix to the brief.

**READOPTED SECTION** (Readopting Order 83-07, filed 12/1/83, effective 1/1/84)

**WAC 391-95-280 FILING AND SERVICE OF CROSS-PETITION FOR REVIEW.** Where a petition for review has been timely filed under WAC 391-95-270, any party who has not previously filed a petition for review may, within seven days after the last date on which a petition for review may be filed, file a cross-petition for review. Such cross-petition for review shall be filed and served in the same manner as a petition for review. Upon the filing of a cross-petition for review, the deadline for the submission of briefs or written arguments shall be extended by seven days.

**READOPTED SECTION** (Readopting Order 80-10, filed 9/30/80, effective 11/1/80)

**WAC 391-95-290 COMMISSION ACTION.** The executive director shall transfer the entire record in the proceeding to the commission. The commission shall determine the matter.

**READOPTED SECTION** (Readopting Order 81-01, filed 1/6/81)

**WAC 391-95-310 IMPLEMENTATION.** Where alternative payments in lieu of payments under a union security agreement have been agreed upon by the parties or ordered by the commission, the employer shall release any funds (together with accumulated interest) held in escrow under WAC 391-95-130 to the designated charitable organization and the employee shall thereafter make payments and shall furnish written proof to the exclusive bargaining representative that such payments have been made to the designated charitable organization. Where the employee is found ineligible to make alternative payments, the employer shall release any funds (together with accumulated interest) held in escrow to the exclusive bargaining representative and shall enforce the union security provision according to its terms. The employer and the exclusive bargaining representative shall allow the affected employee a grace period of not less than thirty days following the agreement or final order of the commission to correct any arrearages.

**WSR 89-23-026**

**WITHDRAWAL OF PROPOSED RULES  
DEPARTMENT OF LABOR AND INDUSTRIES**

[Filed November 7, 1989, 4:41 p.m.]

The Department of Labor and Industries is hereby submitting to your office notice of withdrawal of rules pursuant to WAC 1-12-033. The rules being withdrawn

were originally noticed in WSR 89-12-051 and continued in WSR 89-17-083, 89-19-009A and 89-19-068.

Dorette M. Markham  
for Joseph A. Dear  
Director

**WSR 89-23-027**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF NATURAL RESOURCES**  
[Memorandum—November 7, 1989]

NOTICE OF CHANGE OF REGULARLY SCHEDULED  
MEETING

The Board of Natural Resources meeting regularly scheduled for Tuesday, December 5, 1989, has been re-scheduled to be held Tuesday, December 12, 1989, at 9:00 a.m. in House Hearing Room A, John L. O'Brien Building, Olympia, Washington.

**WSR 89-23-028**  
**EMERGENCY RULES**  
**DEPARTMENT OF HEALTH**  
[Order 012—Filed November 8, 1989, 1:13 p.m.]

Date of Adoption: October 31, 1989.

Purpose: Regulation and requirements for infectious disease prevention requirements for emergency medical technicians and first responders.

Citation of Existing Rules Affected by this Order: Amending WAC 248-17-020, 248-17-213 and 248-17-260.

Statutory Authority for Adoption: Chapter 18.73 RCW.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is necessary for an emergency medical technician or first responder either to: (a) Complete an ongoing program of continuing medical education and practical skills evaluation approved by the medical program director and the department, or (b) obtain the required number of hours of continuing medical education annually and pass a final written and practical skills exam at the end of the three-year certification period.

Effective Date of Rule: November 29, 1989, at 12:01 a.m.

October 31, 1989  
Kristine M. Gebbie  
Secretary

AMENDATORY SECTION (Amending Order 2138, filed 8/10/84)

WAC 248-17-020 DEFINITIONS. For the purpose of these regulations, the following words and phrases shall have the following meaning unless the context clearly indicates otherwise.

(1) "Advanced first aid" means a course of instruction recognized by the American Red Cross, Department of Labor and Industries, the U.S. Bureau of Mines, or Washington state fire protection services/fire services training.

(2) "Aid director" means a person who is a director of a service which operates one or more aid vehicles provided by a volunteer organization or governmental agency.

(3) "Aid vehicle" means a vehicle used to carry first aid equipment and individuals trained in first aid or emergency medical procedures.

(4) "Aid vehicle operator" means a person who owns one or more aid vehicles and operates them as a private business.

(5) "Air ambulance" means a fixed or rotary winged aircraft that is currently certified under Federal Aviation Administration as an air taxi; that may be configured to accommodate a minimum of one litter and two medical attendants with sufficient space to provide intensive and life saving patient care without interfering with the performance of the flight crew; that has sufficient medical supplies and equipment to provide necessary medical treatment at the patient's origin and during flight; has radio equipment capable of two way communication ground-to-air, air-to-air, and air-to-ground including communication with physicians responsible for patient management; has been designed to avoid aggravating the patients condition as to cabin comfort, noise levels\* and cabin pressurization\*; has aboard survival equipment in sufficient quantity to accommodate crew and passengers; that has been inspected and licensed by the department as an air ambulance. \*Not applicable to rotary winged aircraft.

~~((2))~~ (6) "Air ambulance service" means a service that is currently certified under Federal Aviation Administration (FAA) rules, 14 CFR Part 135, (Air Taxi Operators and Commercial Operators of Small Aircraft); has been inspected by the department and licensed as an air ambulance service and meets the minimum requirements for personnel and equipment as described elsewhere in this chapter.

~~((3))~~ (7) "Ambulance" means a vehicle designed and used to transport the ill and injured and to provide facilities and equipment to treat patients before and during transportation.

~~((4))~~ "Attending physician" as applies to aeromedical evacuation, means a licensed doctor of medicine or osteopathy who provides direction for management of the patient either by attending the patient enroute, by ground-to-air radio communication or by written orders pertaining to inflight medical care. An attending physician must retain responsibility for the medical care of the patient until final destination is reached.

~~(5) "First aid vehicle" means a vehicle used to carry first aid equipment and individuals trained in first aid or emergency medical procedures.~~

~~(6) "Emergency medical technician (EMT)" means a person who has successfully completed a prescribed course of instruction and who has achieved a demonstrable level of performance and competence to treat victims of severe injury or other emergent conditions.~~

~~(7) "Advanced first aid" means a course of instruction recognized by the American Red Cross, Department of Labor and Industry, the U.S. Bureau of Mines, or Fire Services training program.)~~

~~(8) ("Standard first aid" means such a prescribed course of instruction recognized and offered by the American Red Cross, Department of Labor and Industries, the U.S. Bureau of Mines, or Fire Services training program.~~

~~(9) "Ambulance driver" means that person who drives an ambulance.~~

~~(10) "Ambulance attendant" means that person who has responsibility for the care of patients both before and during transportation.~~

~~((11) "Ambulance operator" means a person who owns one or more ambulances and operates them as a private business.~~

~~(12) "Ambulance director" means a person who is a director of a service which operates one or more ambulances provided by a volunteer organization or governmental agency.~~

~~((13) "First aid vehicle operator" means a person who owns one or more first aid vehicles and operates them as a private business)) (10) "Ambulance driver" means that person who drives an ambulance.~~

(11) "Ambulance operator" means a person who owns one or more ambulances and operates them as a private business.

(12) "Approved emergency medical services (EMS) medical program director" means a doctor of medicine or osteopathy who has been certified by the department under RCW 18.71.205 and WAC 248-15-020.

(13) "Attending physician," as applies to aeromedical evacuation, means a licensed doctor of medicine or osteopathy who provides direction for management of the patient either by attending the patient enroute, by ground-to-air radio communication or by written orders pertaining to inflight medical care. An attending physician shall retain responsibility for the medical care of the patient until final destination is reached.

(14) ("First aid director" means a person who is a director of a service which operates one or more first aid vehicles provided by a volunteer organization or governmental agency)) Committee" means the emergency medical services committee.

(15) "Communications system" means a radio or landline network connected with a dispatch center which makes possible the alerting and coordination of personnel, equipment and facilities.

(16) "Department" means the Washington state department of ((social and)) health ((services)).

(17) "((Shall" means compliance is mandatory.

(18) "Should" means a suggestion or recommendation, but not a requirement.

~~(19) "Committee" means the emergency medical services committee.~~

~~(20) "Approved emergency medical services (EMS) medical program director" means a doctor of medicine or osteopathy who has been certified by the department under RCW 18.71.205 and WAC 248-15-020.~~

~~(21) "Medical control" means physician responsibility for supervision of EMT training programs, the establishment of field protocols, and the recommendation for certification and decertification of EMTs certified under this chapter.~~

~~(22) Medical control as defined above does not include first responders)) Department form" means a form developed by the department or developed by another agency and approved by the department.~~

(18) "Emergency medical technician (EMT)" means a person who:

(a) Successfully completed a prescribed course of instruction;

(b) Achieved a measurable level of performance and competence to treat victims of severe injury or other emergent conditions;

(c) Follows medical program director field protocols; and

(d) Is certified by the department.

(19) "First responder" means a person who:

(a) Successfully completed a department-approved course of instruction;

(b) Follows medical program director field protocols; and

(c) Is certified by the department.

(20) "First responder supervisor" means an individual who is:

(a) Identified by the local EMS agency;

(b) Recommended by the medical program director (MPD); and

(c) Approved by the department for the MPD-delegated responsibility of recommending or not recommending first responders to the department for certification/recertification.

(21) "Medical control" means for:

(a) EMTs, the physician responsibility for supervision of training programs, establishment of field protocols, and recommendations for certification and decertification of EMTs certified under this chapter, and

(b) First responders, a successful completion of a department-approved course curriculum and adherence to medical program director-approved field protocols.

(22) "Shall" means compliance is mandatory.

(23) "Should" means a suggestion or recommendation, but not a requirement.

(24) "Standard first aid" means a prescribed course of instruction recognized and offered by the American Red Cross, Department of Labor and Industries, the U.S. Bureau of Mines, or state fire protection services/fire services training.

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

AMENDATORY SECTION (Amending Order 2138, filed 8/10/84)

WAC 248-17-213 EMERGENCY MEDICAL TECHNICIAN—CERTIFICATION AND RECERTIFICATION. (1) ((Upon successful completion of an EMT course;)) The department shall initially certify ((those eligible graduates who have passed either the state written examination or the NREMT written examination and the state practical examination and who have been recommended for certification by the physician coordinator)) an individual for a period of time not to exceed thirty-six months who successfully completed an EMT course when the individual has:

(a) Passed either the state written examination or the NREMT written examination;

(b) Passed the state practical examination; and

(c) Been recommended for certification by the EMS medical program director.

(2) The ((period of certification shall be for three years)) department shall consider currently certified EMTs eligible for recertification for a period of time not to exceed thirty-six months upon:

(a) Successful completion and documentation of a minimum of thirty hours of medical program director and/or department-approved continuing medical education (CME) during the thirty-six month certification period, including a minimum of six hours every twelve months in the following:

(i) Two hours of CPR and airway management;

(ii) One hour of patient medical extrication;

(iii) One hour of patient assessment; and

(iv) Two additional hours of CME; and

(b) Passing the state written and practical examinations; or

(c) Successful completion of a program of ongoing training and evaluation approved by the EMS medical program director and the department and passing the state written examination.

(3) ((Recertification of currently certified EMTs eligible for such recertification under WAC 248-17-211, shall be accomplished in the following manner:

(a) Completion of a minimum of thirty hours of continuing education during the period of certification consisting of the following mandatory and optional subject matter as indicated and under physician supervision:

(i) Cardiopulmonary resuscitation update of at least one hour per year including both adult and infant manikins using one and two person techniques administered under the supervision of a certified CPR instructor (mandatory);

(ii) Vehicle extrication techniques employing skill knowledge of wrecking tools used in gaining access to victims and use of short and long board extrication. A minimum of one hour per year administered under the supervision of a senior EMT instructor (mandatory);

(iii) Formal inservice training sessions covering basic life support knowledge skills such as bandaging and splinting, emergency child birth, recognition and treatment of shock, cold and heat caused injuries, patient handling and other basic life support skills using physicians, senior EMT instructors, audio-visual aids or other

technical experts. Four hours per year minimum required and verified by a senior EMT instructor (mandatory). Attendance at workshops or seminars approved by the department may satisfy this requirement when authorized by the regional EMS coordinator.

(iv) Emergency ambulance/aid car runs involving the application of emergency care techniques may be used for credit at one hour per twenty-five emergency runs not to exceed five total hours during a period of certification when verified by emergency department staff or official run records and used as formal critique (optional).

Note: EMT dispatchers, employed by central dispatching centers, may substitute dispatches involving emergency, life-threatening responses when instructions on emergency medical care are given by phone/radio to persons attending the victim.

(v) Hospital emergency department, ICU, CCU or OB-delivery room experience may be credited not to exceed two hours per year when verified by hospital or clinic department head (optional).

(vi) Membership in a national EMS organization where such membership includes subscriptions to professional journals and/or newsletters may be used for a maximum of one hour credit per year when proof of membership is verified by a senior EMT instructor (optional).

(vii) Completion of formal courses such as dispatcher training, extrication training, emergency vehicle defensive driving, EMT/defibrillation, inflatable trousers or other EMS-related topics. Five hours total per period of certification. Verified by course instructor (optional).

Note: It is recommended that a minimum of ten hours of continuing education be accomplished annually. Failure to complete thirty hours of continuing education during a period of certification shall result in termination of certification.

(b) Pass the state written and practical examination and being recommended for recertification by the approved EMS medical program director.

Note: Currently certified senior EMT instructors who have fulfilled the provisions of the senior EMT instructor agreement may recertify by passing the written recertification examination and by being recommended by the approved EMS medical program director.)

To meet the requirements of chapter 70.24 RCW, all persons certified under the authority of chapters 18.71 and 18.73 RCW shall:

(a) Complete four hours of training in infectious disease prevention with special emphasis on human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) and Hepatitis B. Training shall be consistent with the curriculum manual Know - HIV/AIDS and HBV Prevention Education for EMS Personnel, June 15, 1989, published by the office on HIV/AIDS including, but not limited to, the following subjects:

(i) Etiology and epidemiology;

(ii) Clinical manifestation and treatment;

(iii) Infection control standards;

(iv) Psychosocial issues, including special populations; and

(v) Legal and ethical issues.

(b) Provide proof of the training required in subsection (4)(a) of this section:

(i) Using forms provided by the department; and

(ii) Retaining forms for three years or more from the date of training.

(c) Complete two hours of continuing medical education in each subsequent certification period including:

(i) Disease prevention;

(ii) Infection control standards; and

(iii) HIV/AIDS and hepatitis.

(4) Certification by the department as an EMT does not warrant future performance of the individuals certified. It will indicate that the cognitive and performance capabilities met the requirements for certification established for the course at the time the testing or evaluation was performed.

AMENDATORY SECTION (Amending Order 2138, filed 8/10/84)

WAC 248-17-260 FIRST RESPONDER((;))—CERTIFICATION AND RECERTIFICATION. (1) The department shall initially certify ((eligible graduates for a period of three years)) an individual for a period of time not to exceed thirty-six months who has successfully completed the department's first responder course when the individual has passed the state written examination and the state practical examination.

(2) ((Recertification of eligible first responders shall be for three years providing that)) The department shall consider currently certified first responders eligible for recertification for a period of time not to exceed thirty-six months upon:

(a) ((The applicants have completed a minimum of fifteen hours of approved continuing education identified in the procedures and guidelines, and)) Successful completion and documentation of a minimum of fifteen hours of department-approved CME during the certification period, including a minimum of five hours every twelve months in the following:

(i) Two hours of CPR and airway management;

(ii) One hour of patient medical extrication;

(iii) One hour of patient assessment; and

(iv) One additional hour of CME during the certification period.

(b) ((The applicant shall successfully complete required)) Passing the state written and practical examinations; or

(c) Successful completion of a program of ongoing training and evaluation approved by the department and passing the state written examination.

(3) To meet the requirements of chapter 70.24 RCW, all persons certified under the authority of chapters 18.71 and 18.73 RCW shall:

(a) Complete four hours of initial training in infectious disease prevention with special emphasis on human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) and Hepatitis B. Training shall be consistent with the curriculum manual Know - HIV/AIDS and HBV Prevention Education for EMS Personnel, June 15, 1989, published by the office on HIV/AIDS including, but not limited to, the following subjects:

(i) Etiology and epidemiology;

(ii) Clinical manifestation and treatment;

(iii) Infection control standards;

(iv) Psychosocial issues, including special populations; and

(v) Legal and ethical issues.

(b) Provide proof of the training required in subsection (4)(a) of this section:

(i) Using forms provided by the department; and

(ii) Retaining forms for three years or more from the date of training.

(c) Complete two hours of continuing medical education in each subsequent certification period including:

(i) Disease prevention;

(ii) Infection control standards; and

(iii) HIV/AIDS and hepatitis.

(4) A currently certified EMT whose duties no longer require EMT level of skill or who is not required to be in attendance to a patient during transport, may request reversion of the EMT certificate to that of first responder. In such case, the request shall be in writing and shall be accompanied by proof of required continuing education and the EMT certification card, which is being relinquished. A first responder certification will then be issued with the expiration date of the relinquished EMT certification.

#### NEW SECTION

WAC 248-17-261 RECERTIFICATION—GENERAL REQUIREMENTS. (1) The department's recertification procedures for EMTs and first responders, dated August 1, 1989, shall outline the program for ongoing training and evaluation, the written and practical examination process, associated forms, and administrative requirements.

(2) The EMS committee, established under RCW 18.73.040, shall review the department's recertification procedures at least once a biennium and provide recommendations if appropriate.

(3) An individual seeking recertification shall:

(a) Complete an ongoing program of training and evaluation and pass the state written recertification examination; or

(b) Pass the state practical and written recertification examinations.

(4) The department shall permit an individual no more than three attempts in a ninety-day period to successfully complete:

(a) Any skill in the ongoing evaluation program; or

(b) The state practical recertification examination; and

(c) The state written recertification examination.

(5) An individual shall not be permitted a total of more than three attempts at passing either the practical examination or the ongoing training and evaluation, or any combination of the two programs.

(6) An individual wishing to change from a practical examination program to ongoing training and evaluation shall do so before the second attempt at the practical examination.

(7) An individual wishing to change from the ongoing training and evaluation program to the practical examination program may do so by taking the practical examination before the end of the certification period.

(8) Each skill in the ongoing training and evaluation program will be evaluated at least once every certification period.

(9) An individual who does not successfully complete the ongoing training and evaluation program, or fails the practical examination program, or fails the written examination within the allowable attempts, or otherwise demonstrates inadequate performance is subject to the provisions of WAC 248-17-220, Revocation, Suspension or Modification of Certificate.

**WSR 89-23-029**  
**EXECUTIVE ORDER**  
**OFFICE OF THE GOVERNOR**  
 [EO 89-09]

CREATING THE INTERAGENCY COMMITTEE OF STATE  
 EMPLOYED WOMEN

WHEREAS, it has been the policy of state government to provide equal opportunities to all employees in state government, and

WHEREAS, women employed in state government have unique and special problems with working conditions and accessing employment opportunities, and

WHEREAS, the Interagency Committee on the Status of Women has provided opportunities for women in state government and has identified the continuing needs of state employed women, and

WHEREAS, I believe that it is good public policy to enhance the opportunities which allow women to fully participate in the work force of state government, and

WHEREAS, I reaffirm my support of the Interagency Committee on the Status of Women and recognize the need for greater representation of women in state government.

NOW, THEREFORE, I, Booth Gardner, Governor of the State of Washington by virtue of the authority vested in me, do hereby reorganize and rename the Interagency Committee on the Status of Women to the Interagency Committee of State Employed Women.

**A. DUTIES**

1. The Committee shall examine and define issues pertaining to the rights and needs of women employed in state government and make recommendations to the Governor and state agencies with respect to desirable changes in program and law especially in the area of education, training, career development, and other conditions of employment.
2. The Committee shall further advise such state government agencies on the development and implementation of comprehensive and coordinated policies, plans and programs focusing on the special problems and needs of women in state government.

3. Each state department and agency shall provide appropriate and reasonable resources to the Committee as needed in order that the Committee may carry out the purposes of this Executive Order.

4. A majority of the Members shall constitute a quorum for the purpose of conducting business.

**B. COMMITTEE MEMBERSHIP**

1. One woman representative from each state agency or institution of higher education employing not less than 25 women. Agencies employing more than 2,000 women shall select one representative for every 2,000 women employed.

2. Persons appointed shall serve two year terms except in the case of a vacancy in which event appointment shall be for the remainder of the unexpired term for which the vacancy occurs.

3. The Committee shall come into existence effective November 7, 1989.

4. Committee Members expenses shall be borne by the employing agency.

5. The Chair of the Committee shall be appointed by the Governor and serve at the Governor's pleasure. Meetings of the Committee shall be at the call of the Chair or a majority of the Members of the Committee.

**C. STAFF**

1. The Governor shall provide support services as deemed necessary.

2. The Committee shall have the authority to receive such gifts, grants and endowments from public or private sources as may be made from time to time or otherwise for the use and benefit or the purposes of the Committee and to expend the same or any income therefrom according to the terms of said gifts, grants or endowments.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the State of Washington to be affixed at Olympia this 6th day of November, A.D., nineteen hundred and eighty-nine.

Booth Gardner

\_\_\_\_\_  
 Governor of Washington

BY THE GOVERNOR:

Ralph Munro

\_\_\_\_\_  
 Secretary of State

**WSR 89-23-030**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(General)**

[Filed November 8, 1989, 2:28 p.m.]

**Original Notice.**

**Title of Rule:** Adult family home license fees, amending WAC 440-44-028.

**Purpose:** To introduce a rule into WAC requiring assessment and collection of fees for an adult family home license.

**Statutory Authority for Adoption:** Chapter 427, Laws of 1989.

**Statute Being Implemented:** Chapter 427, Laws of 1989.

**Summary:** The department is directed to collect a \$50.00 per year license fee for an adult family home license and an additional initial processing fee of \$50.00 for new licenses.

**Reasons Supporting Proposal:** This rule is necessary to implement chapter 427, Laws of 1989 in the WAC section that pertains to fee to be charged.

**Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement:** Lew Maudsley, Aging and Adult Services Administration, 753-1776.

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

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

**Explanation of Rule, its Purpose, and Anticipated Effects:** Same as above.

**Proposal Changes the Following Existing Rules:** See above.

**Small Business Economic Impact Statement:** Adult family home license fees, WAC 440-44-028. The license fee for an adult family home license will increase the expenses of all adult family homes by \$50.00 per year. The cost will be the same whether a licensed provider cares for two to six residents. Providers with fewer residents will pay a higher percentage of their profit to pay the fee. New applicants must pay the \$50.00 initial processing fee in addition to the annual license fee. While this is a one time fee, it will require an applicant to pay \$100.00 for an initial adult family home license. This expenditure will have a greater impact on prospective providers who plan to care for only two residents or the provider who plans to provide services to state assistance residents. These costs cannot be mitigated because each of these fees is required by new legislation (chapter 427, Laws of 1989). To waive the fee, or to make it less than specified in statute, would be illegal.

**Hearing Location:** OB-2 Auditorium, 12th and Franklin, Olympia, Washington, on December 28, 1989, at 10:00 a.m.

**Submit Written Comments to:** Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop OB-33H, Olympia, WA 98504, by December 28, 1989.

**Date of Intended Adoption:** January 16, 1990.

November 8, 1989

Bill Griffith for  
 Leslie F. James, Director  
 Administrative Services

**NEW SECTION**

**WAC 440-44-028 ADULT FAMILY HOME LICENSE FEES.**  
 The department shall charge a license fee of fifty dollars per year for each home. The department shall also charge a fifty dollar processing fee for each home when the home is initially licensed.

**WSR 89-23-031**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Filed November 8, 1989, 3:31 p.m.]

**Original Notice.**

**Title of Rule:** Adult family homes minimum licensing requirements, amending chapter 388-76 WAC.

**Purpose:** Implements chapter 427, Laws of 1989. Also clarifies and corrects language previously in use.

**Statutory Authority for Adoption:** Chapter 427, Laws of 1989.

**Statute Being Implemented:** Chapter 427, Laws of 1989.

**Summary:** Implement requirements covered in the new statute including expanded definition of adult family home, requirement of license fees, annual license and eighteen month inspections, increased fire safety standards and clarifying language of already existent standards.

**Reasons Supporting Proposal:** This rule is necessary to bring chapter 388-76 WAC into compliance with the new adult family home legislation, chapter 427, Laws of 1989.

**Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement:** Lew Maudsley, Aging and Adult Services Administration, 753-1776.

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

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

**Explanation of Rule, its Purpose, and Anticipated Effects:** Same as above.

**Proposal Changes the Following Existing Rules:** See above.

**Small Business Economic Impact Statement:** Subject: Adult family home license fees, chapter 388-76 WAC.

**Introduction:** There are 827 licensed providers of adult family home care in the state of Washington. The licensed homes provide 2,648 beds for vulnerable adults. The legislature has directed the Department of Social and Health Services to license providers for such services using legislation contained in chapter 427, Laws of 1989, and basic requirements included in chapter 388-76 WAC. The Regulatory Fairness Act, chapter 19.85 RCW, requires that rules which have an economic impact on more than 20 percent of all industries or more

than 10 percent of the business of any one industry shall be reviewed and altered to minimize their impact on small businesses. The act requires a small business impact statement assessing the costs of compliance for affected firms. The proposed WAC revision includes several new requirements that will have a financial impact on most adult family home licensed providers. In this report, the costs of meeting these requirements are outlined and compared between small (1-4 residents) and larger firms (5 and 6 residents).

**Potentially Impacted Firms:** All licensed adult family homes will be impacted by the new requirements in chapter 388-76 WAC. Homes taking fewer clients will be impacted to a lesser degree than homes that take four, five or six residents.

(a) A \$50.00 per year license fee and initial \$50.00 processing fee for new license applications. This fee is required by law, chapter 427, Laws of 1989. No license fee or processing fee existed prior to this time. Payment of this fee will be equal for all providers.

(b) Single motion deadlocks shall replace double-action dead bolts by July 1, 1990. Changing locks and door handles would cost about \$100.00 - \$150.00 per door. Most homes have an average of two outside doors that would require this conversion. Only homes with dead bolt locks currently in the home will need to make conversion. Will have six months to make the conversion.

(c) Smoke detectors in all resident bedrooms. At present, smoke detectors must be in close proximity of bedrooms. This rule requires the sponsor to install smoke detectors inside the bedrooms of residents. Costs average from \$10.00 - \$50.00 each. A sponsor who is caring for more residents will be impacted greater than a sponsor who cares for fewer residents.

(d) Requirement that when a sponsor sleeps outside hearing distance of resident bedrooms that a call bell or intercom may be required. An emergency call system was not required in the past and would be an additional expense. Systems cost \$50.00 - \$300.00. This change will affect a sponsor only if their bedroom is outside hearing distance of resident bedrooms. The number of residents cared for will not be the key indicator.

(e) For sponsors who are approved to care for five or six residents, assistance through help from cosponsors, family members or hired staff will be required. Staffing was not required in the past. For sponsors approved for five residents, they will need assistance 40 hours per week during waking hours of residents. Sponsors caring for six would need assistance full time. The cost would vary with pay scales in each location of the state. This requirement will only affect sponsors who take five and six residents.

(f) At any time that there is concern about alcohol or substance abuse by a licensed sponsor the licensor may request an evaluation by a certified alcohol or substance abuse counselor. The cost of this evaluation will be paid by the applicant/sponsor. The cost of such an evaluation varies from \$50.00 - \$80.00. This evaluation cost will only occur when a concern seems to require such a study. Size of the adult family home will not be a key indicator.

(g) Sponsors will be required to have one toilet for every five persons in the home. Commodes or portable toilet are an allowable substitute. Commodes range in price from a standard commode \$120.00 to over \$300.00 for fancier models. This requirement will affect larger businesses but not smaller ones.

(h) Training on HIV/AIDS for sponsors and staff of adult family homes is required by RCW 70.24.310. The department will offer free classes, however, if not convenient some sponsors or providers may take classes offered by other agencies. These classes will vary in cost from \$10.00 to \$50.00 per session. This requirement will affect larger operations to a greater extent because these homes will be more likely to have staff who will need this training. Sponsors will initiate by having staff pay their own costs of training.

(i) Pets in adult family homes will now be required to have rabies vaccinations. Such vaccinations average \$15.00 for each animal. The expense of this requirement will be keyed to the number of pets in the home and not the size of the business.

(j) A fire extinguisher is required on each floor of a home. Extinguishers average in cost of \$20.00 - \$50.00. This cost will be keyed to the size of the home and will most likely be greater for larger operations than for smaller ones.

**Conclusion:** The cost of these changes will vary depending on what sponsors already have in their homes. The costs will be greater for sponsors caring for a larger number of residents. The HIV/AIDS training and license fees are both required by state statute. The other changes noted here are proposed for increased safety to residents.

Hearing Location: OB-2 Auditorium, 12th and Franklin, Olympia, Washington, on December 28, 1989, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop OB-33H, Olympia, Washington 98504, by December 28, 1989.

Date of Intended Adoption: January 16, 1990.

November 8, 1989

Bill Griffith for

Leslie F. James, Director  
Administrative Services

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-010 AUTHORITY. The following rules are adopted ~~((pursuant to))~~ under chapter ~~((74.15 RCW and RCW 74.08.044))~~ 427 Public Laws of 1989.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-020 ADULT FAMILY HOMES. The rules in this chapter apply entirely to licensing adult family homes and replace and supersede any rules on licensing adult family homes ~~((which may be))~~ found in previous editions of chapter ~~((388-73))~~ 388-76 WAC.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-030 DEFINITIONS. Those terms in chapter ~~((74-15 RCW))~~ 427, Public Laws of 1989 shall have the same meaning when used in this chapter except as otherwise provided herein.

(1) "Abuse" means ~~((the injury, sexual use, or sexual mistreatment of an individual resident by any person under circumstances indicating the health, welfare, and safety of the resident is harmed thereby.~~

(a) "Physical abuse" means damaging or potentially damaging non-accidental acts or incidents which may result in bodily injury or death.

(b) "Emotional abuse" means verbal or nonverbal actions constituting harassment.

(2) "Adult family home" means the regular family abode of a person or persons licensed to provide therein full-time family care and supervision for from one to no more than four adults who are in need of personal and special care and who are not related to the person or persons providing care.

(3) "Adult in need of personal and special care" means a person age eighteen or over who, because of developmental disability, age, or physical or mental infirmity, requires some degree of supervision or health care beyond the level of board and room only.

(4) "Ambulatory resident" means a resident physically and mentally capable of walking unaided or is capable of independent mobility with the use of a cane, crutches, a walkerette, a walker, a wheelchair, or artificial limb. It shall mean an individual able to walk or traverse a normal path to safety unaided by another individual. This definition shall not be interpreted to include an individual needing the assistance of another individual in order to get into and out of bed, to transfer to a chair or toilet, or to move from place to place.

(5) "Capacity" means the maximum number of persons permitted to be under care at a given time.

(6) "Developmentally disabled adult" means a person age eighteen or over who has been determined to be developmentally disabled by the department as defined in RCW 71.20.016.

(7) "Family care" means twenty-four-hour protective supervision and care given to an adult in need of personal and special care who has the standing of a member of the family, but not by birth, adoption, or marriage.

(8) "Infirmity" means a disability limiting normal activity but not causing an individual to require total inpatient medical or nursing care. An infirmity may be based on conditions including, but not limited to, physical handicap, mental illness, developmental disability, chemical addiction, or habituation or mental confusion, disability, or disturbance.

(9) "Neglect" means negligent treatment or maltreatment, an act or omission evincing a disregard of consequences of such a magnitude as to constitute a clear and present danger to a resident's health, welfare, and/or safety.

(10) "Other persons regularly on the premises" means relief caregivers, family members, and other relatives and friends of the sponsor who have regular unmonitored access to the residents in care.

(11) "Premises" means the abode, other buildings, and adjoining grounds over which the adult family home sponsor has direct control.

(12) "Relative" or "related" means parent, grandparents, brother, sister, uncle, aunt, and/or first cousin by birth, marriage, or adoption.

(13) "Resident" means an adult in need of personal and special care in an adult family home who is not related to the adult family home sponsor.

(14) "Sponsor or sponsors" means a person or persons licensed to personally provide full-time family care in the person or person's own home.

(15) "To sponsor" means to act as a sponsor)) an act of physical or mental mistreatment or injury, harming or threatening a person through action or inaction by another individual.

(a) "Exploitation" means the illegal or improper use of a vulnerable adult or the adult's resources for another person's profit or advantage.

(b) "Neglect" means a pattern of conduct resulting in deprivation of care necessary to maintain minimum physical and mental health.

(2) "Adult dependent person" means a person eighteen years of age or older found legally incompetent under chapter 11.88 RCW or found disabled to such a degree under this chapter that protection is needed.

(3) "Adult family home" means a regular family abode of a person providing personal care, room, and board to more than one, but not more than four, adults not related by blood or marriage to the person or persons providing the services; except, a maximum of six adults may be permitted by exception to policy if the department determines the home is of adequate size and the home and provider are capable of meeting standards and qualifications as provided for in law and this chapter.

(4) "Adult in need of personal care" means a person eighteen years of age or older who, because of developmental disability or physical or mental disability requires supervision and assistance in daily living activities.

(5) "Ambulatory resident" means a resident physically and mentally capable of walking unaided or capable of independent mobility or

transfer with the use of a cane, crutches, walkerette, walker, wheelchair, artificial limb, or other assistive device. A resident is considered nonambulatory when bedridden, immobile, unable to walk or move without assistance from another person, or unable to independently transfer.

(6) "Applicant" means a person who completes an adult family home license application.

(7) "Bedroom" means a living space set apart by floor-to-ceiling walls on all sides with all openings provided with doors or windows.

(8) "Board" means the availability of three or more daily meals.

(9) "Capacity" means the maximum number of persons permitted under adult family home care at a given time.

(10) "Department" means the department of social and health services.

(11) "Developmentally disabled adult" means a person eighteen years of age or older who the department determines is developmentally disabled.

(12) "Good cause" means the conditions providing for the best interest of the resident.

(13) "Imminent danger" means serious physical harm to or death of a resident occurred or a serious threat to resident life, health, or safety exists.

(14) "Nursing care" means the practice of nursing by a licensed practical nurse (LPN) or registered nurse (RN) as specified under chapter 18.88 or 18.78 RCW.

(15) "Other persons on the premises" means relief caregivers, family members, other relatives and friends of the sponsor with unmonitored access to the residents in care.

(16) "Personal care" means tasks defined under WAC 388-15-820 (4)(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) and additional tasks as defined by the department. These tasks are provided to the resident as needed according to the resident's physical condition.

(17) "Plan of care" means a written description of a resident's needs and capabilities, including who, when, and how often care and services are provided and the anticipated outcomes.

(18) "Premises" means the residence, other buildings, and adjoining grounds.

(19) "Private pay resident" means a resident whose cost of care is paid entirely without the assistance of state funds.

(20) "Provider" is synonymous with "sponsor."

(21) "Relative" or "related" means a person related by birth, marriage, or adoption as follows:

- (a) Parent,
- (b) Grandparent,
- (c) Brother,
- (d) Sister,
- (e) Son,
- (f) Daughter,
- (g) Step parent,
- (h) Step brother,
- (i) Step sister,
- (j) Uncle,
- (k) Aunt, and/or
- (l) First cousin.

(22) "Relief caregiver" means a person designated by the sponsor and approved by the department to care for residents in the sponsor's absence.

(23) "Resident" means any adult person related or unrelated to the sponsor receiving room, board, personal, and/or special care and supervision, as defined by the department, in an adult family home.

(24) "Special care" means health-related care and other services authorized through an exception to policy process. Special care services are provided to persons suffering chronic long-term health conditions including, but not limited to, AIDS, Alzheimer's disease, and traumatic brain injury.

(25) "Sponsor" means a person licensed under this chapter to operate an adult family home. The sponsor shall reside at the adult family home. Exceptions may be authorized by the department for good cause, as defined in the rule.

(26) "State-pay resident" means a resident receiving financial assistance from the state for paying adult family home cost of care.

(27) "Supervision" means a sponsor available to:

(a) Help the client with personal care tasks that cannot be scheduled, for example, toileting, ambulation, transfer, positioning, some medication assistance;

(b) Provide protective supervision to a client who cannot be left alone because of confusion, forgetfulness, or lack of judgment; or

(c) Intervene on a resident's behalf if a crisis arises.

(28) "Supportive assistance" means assistance with caregiving tasks provided to residents and/or home care by co-sponsor, employed staff, or appropriate others at the same time the sponsor is present in the adult care home.

(29) "Vulnerable adult" means a person sixty years of age or older and unable to care for or protect self because of a functional, mental, or physical disability.

#### AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-040 APPLICATION FOR LICENSE (~~INVESTIGATION~~). (1) Persons (~~applying~~) making application for (~~an adult family home~~) a license under this chapter shall do so (~~on forms and comply with procedures prescribed by the~~) upon department-provided forms. The forms shall contain information the department reasonably requires. The application shall be made by and in the name of the person (~~or persons~~) who shall be the adult family home sponsor.

(2) The (~~applicant~~) sponsor shall (~~submit such additional information as the department deems necessary for proper administration of this chapter. The department shall undertake such corollary investigations of applicant sponsors, relief caregivers, and members of sponsors' households as required, including accessing of criminal histories and law enforcement files~~) apply for license renewal no later than ninety days before the expiration date. Submittal of a renewal application and fee before the expiration date shall keep the license in effect until the department takes action. If the renewal application and applicable fee are not submitted before the expiration date, the department shall treat the home as an unlicensed facility. The department shall have the authority to investigate the accuracy of any information included in the application for a license.

(3) The (~~department~~) applicant shall (~~make an on-site inspection of the adult family home and premises of an applicant sponsor prior to disposition of an adult family home application~~) submit additional information the department considers necessary for proper administration of this chapter. The department shall make investigations of the applicant, relief caregivers, and members of applicant's household.

(4) The department shall make a criminal history check of all applicants, relief caregivers, and members of the applicant's household before an initial license is issued or a license is renewed.

(5) The department shall issue licenses provided under this chapter for a period of one year.

(a) The department shall inspect an adult family home at the time of initial licensure.

(b) The department shall inspect licensed homes every eighteen months, subject to available funds.

(c) The department may inspect a licensed home, where a complaint is received, at any time.

(6) A sponsor may accept a state-pay client into the adult family home only if the sponsor is licensed and has an adult family home contract with the department.

(7) If the department finds the home is not in compliance with chapter 427, Public Laws of 1989 and this chapter, the department shall require the home to correct any violations in a time frame specified by the department. If corrections are not made within this time period, the department may take one or more of the following actions:

(a) Refuse to issue a license;

(b) Suspend, revoke, or refuse to renew a license; or

(c) Suspend admissions to the adult family home.

(8) The department shall issue a license to an adult family home if:

(a) The department finds the applicant and the home are in compliance with chapter 427, Public Laws of 1989 and the rules adopted under this chapter;

(b) The applicant has no prior violations of the rules pertaining to adult family home licensing in either the home the applicant is applying for or any other adult family home;

(c) The applicant has no prior violation of any other law regulating residential care facilities within the past five years resulting in revocation or nonrenewal of a license.

(9) The department shall serve upon the applicant a copy of the decision granting or denying an application for a license. An applicant shall have the right to contest denial of the applicant's application for a license. The proceedings shall be governed by the Administrative Procedure Act (chapter 34.05 RCW) and chapter 388-08 WAC by requesting a hearing, in writing, within ten days after receipt of the notice of denial.

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 388-76-045 UNLICENSED FACILITIES. (1) A public agency contractor or employee shall not place, refer, or recommend placement of a person into an adult family home operating without a license.

(2) A public agency contractor or employee knowing or with reason to know an adult family home is operating without a license shall report the adult family home's name and address to the department. The department shall investigate any report filed under this section.

(3) The department shall deny the application of a person operating an adult family home:

(a) Without a license; or

(b) Under a revoked license.

#### AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-050 LICENSING OF STATE EMPLOYEES. Department staff or any member of (~~his or her~~) the state employee's household shall be prohibited from obtaining an adult family home license when involved:

(1) Directly or in an administrative or supervisory capacity in the adult family home licensing process(~~or~~);

(2) In placement of persons in a licensed adult family home(~~:~~); or

(3) In authorizing payment for such persons (~~is prohibited from obtaining an adult family home license~~).

#### AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-060 LIMITATIONS ON LICENSES. The department shall not issue licenses (~~shall not be issued~~) to an applicant for both children and adults in the same family home. The department may make exceptions (~~may be made~~) only if it is clearly evident the care of one category of clients does not interfere with the quality of care to be provided to the other category of clients. In such circumstances, the total number of persons in care in both categories shall not exceed the number permitted by the (~~most stringent~~) licensed capacity (~~limitation~~) of (~~an~~) the adult family home.

#### AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-070 GENERAL QUALIFICATIONS OF SPONSOR (~~, PERSONS ON THE PREMISES~~) AND RELIEF CAREGIVER. (1) (~~An~~) The adult family home sponsor shall (~~be at least~~) meet the following minimum qualifications:

(a) Twenty-one years of age (~~and reside in the adult family home. The sponsor and other persons regularly on the premises shall be persons of good character~~) or older;

(b) Be of good moral and responsible character and reputation;

(c) Literate;

(d) Able to carry out the requirements of this chapter;

(e) Have an approved TB skin test or X-ray;

(f) Have an unexpired first aid/CPR card;

(g) Have a satisfactory criminal history check; and

(h) Have successfully completed appropriate training on the prevention, transmission, and treatment of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS).

(2) The relief caregiver shall meet the following minimum qualifications:

(a) Eighteen years of age or older;

(b) Be of good moral and responsible character and reputation;

(c) Literate;

(d) Have an approved TB skin test or X-ray;

(e) Have an unexpired first aid/CPR card;

(f) Have a satisfactory criminal history check; and

(g) Have successfully completed appropriate training on the prevention, transmission, and treatment of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS).

(3) The sponsor and relief caregiver shall (~~demonstrate he or she and other persons regularly on the premises~~) have the understanding, language skills, physical health, emotional stability, personality, and (~~professional~~) skills (~~suited~~) to meet the physical, mental, emotional, and social needs of (~~persons under care~~) residents.

(4) The sponsor and (~~other persons regularly on the premises~~) relief caregiver shall not have been convicted of abuse and/or any crime

involving physical harm to another person (~~(nor be a perpetrator of substantiated abuse)~~) as specified under chapter 334, Public Laws of 1989.

(5) ~~The sponsor and/or relief caregiver shall not have been found, by a court in a protection proceeding to have abused or financially exploited a vulnerable adult as specified under chapter 74.34 RCW.~~

(6) ~~The sponsor and/or relief caregiver shall specify crimes against persons and crimes relating to financial exploitation where the victim is a vulnerable adult as defined under RCW 43.43.830.~~

(7) ~~The sponsor may employ a relief caregiver on a conditional basis pending completion of the background investigation and HIV/AIDS training provided the department has given prior approval except in an extraordinary situation requiring immediate action when the sponsor shall notify the department within forty-eight hours. The sponsor shall submit to the licenser the properly completed form requesting a criminal history check within seven days after the relief caregiver begins employment in the adult family home.~~

(8) ~~No licensed adult family home sponsor or relief caregiver shall provide skilled nursing care unless licensed and registered under chapter 18.88 or 18.78 RCW.~~

(9) ~~The relief caregiver shall not be a resident requiring care.~~

#### NEW SECTION

WAC 388-76-085 GENERAL STANDARDS. A sponsor shall assure the following standards:

(1) The sponsor shall maintain the adult family home internally and externally in good repair and condition. The home shall have safe and functioning systems for heating, cooling, hot and cold water, electricity, plumbing, garbage disposal, sewage, cooking, laundry, artificial and natural light, ventilation, and any other feature of the home. Steps shall be provided with handrails as determined necessary by the department. Emergency lighting devices, such as flashlights, shall be in working order, available and easily accessible to sponsors, relief caregivers, and residents.

(2) The adult family home shall be maintained in a clean and sanitary manner, including proper food handling and hygiene practices.

(3) The adult family home shall have clean, functioning, safe, adequate household items and furnishings to provide for the needs of residents.

(4) The sponsor shall assure an adult family is located on a well-drained site free from hazardous conditions.

(5) Sponsors shall be able to gain rapid access to any bedroom, shower room, bathroom, or other room occupied by residents in case of emergency.

(6) The sponsor shall provide one operating nonpay telephone or more on the premises accessible to residents and affording privacy. The telephone shall be available for emergency incoming or outgoing use at all times.

#### NEW SECTION

WAC 388-76-087 INSPECTIONS. (1) During inspections of an adult family home, the department shall have access and authority to examine areas and articles in the home used to provide resident care or support, including resident's records, accounts, equipment, and the physical premises. The department also has the authority to interview the sponsor, relief caregiver, residents, guardian and resident advocates of an adult family home.

(2) When conducting an inspection, the department shall prepare a written report summarizing all information obtained during the inspection. If the home is in violation of this chapter, the department shall provide the sponsor a copy of the inspection report at the same time as a notice of violation is served. If the home is not in violation of this chapter, the department shall mail the sponsor a copy of the inspection report within ten days of the home inspection. The department shall make available to the public all department inspection reports during business hours.

(3) The inspection report shall describe any of the sponsor's corrective measures which are completed and necessary to pass a re-inspection and will include a time frame when the corrections shall be completed. If the department finds upon re-inspection of the home the corrective measures are satisfactorily implemented, the department shall cease any actions taken against the home. This section shall not require the department to license or renew the adult family home's license where serious physical harm or death occurred to a resident.

(4) An adult family home shall have readily available for the department's review:

- (a) The adult family home's license to operate; or
- (b) A copy of each yearly inspection report the adult family home received from the department for the past three years.

#### AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-090 LICENSURE—DENIAL, SUSPENSION, OR REVOCATION. (1) Disqualified applicants. Before granting a license and as a condition for continuance of a license, the department shall consider separately and jointly the ability of each applicant to sponsor an adult family home in accordance with the law and this chapter. If (~~any one be deemed disqualified by~~) the department ~~disqualifies an applicant in accordance with this chapter, the ((license may be denied, suspended, revoked, or not renewed))~~ department shall ~~deny, suspend, revoke, or not renew the license.~~

(a) ~~The department shall disqualify any ((individual)) applicant who has engaged in the past year or is engaging in illegal use of drugs or excessive use of alcohol ((shall be disqualified)) as assessed by a certified alcohol or substance abuse counselor. The applicant or sponsor shall pay any costs associated with this assessment.~~

(b) ~~The department shall disqualify any ((individual)) applicant who within seven years of the date of application for a license was:~~

(i) Released from prison(~~,-or~~);

(ii) Convicted of a felony(~~;~~) or any crime involving physical harm to another(~~,-or identified as a perpetrator of substantiated abuse pursuant to chapters 26.44 within seven years of the date of application for the license shall be disqualified~~). This shall be an issue if (~~such~~) the conviction or identification is reasonably related to the competency of the person to exercise responsibilities for home management, supervision, and full-time family care and the department determines, after investigation, that such person has not been sufficiently rehabilitated subsequent to (~~such~~) the conviction or identification to warrant public trust.

(c) (~~Individuals~~) The department shall disqualify applicants who, in this state or elsewhere, have for cause been denied a license or had a license suspended or revoked within five years to operate a hospital, nursing home, boarding home, adult family home, or a facility for the care of:

(i) Children(~~;~~); or

(ii) Developmentally disabled or aged adults(~~,-or a hospital, or a nursing home, or a boarding home, or have had a license to operate such a facility suspended or revoked shall be disqualified. PROVIDED HOWEVER, That when such person demonstrates to the department and affirmatively establishes by clear, cogent, and convincing evidence his or her ability to operate an adult family home under this chapter, the department may waive this provision and license such an individual~~).

(2) (~~An adult family home~~) The department shall deny, suspend, or revoke a license (~~shall be denied, suspended, revoked, or not renewed~~) for failure to comply with the provisions of chapter (~~74.15 RCW;~~) 427, Public Laws of 1989 and rules contained in this chapter or for any of the following reasons:

(a) (~~Obtaining or attempting to obtain a license by fraudulent means or misrepresentation~~) Knowingly or with reason to know made a false statement of material fact:

(i) On the license application or any data attached thereto; or

(ii) In any matter under investigation by the department;

(b) (~~Committing, permitting, aiding, or abetting the commission of any illegal act on the premises~~) Operates an adult family home without a license or under a revoked license;

(c) (~~Committing, permitting, aiding, or abetting assault, abuse, neglect, exploitation, cruelty or indifferent care to residents~~) Willfully prevents or interferes with any inspection or investigation by the department, local fire protection authority, or state fire marshal to inspect the premises;

(d) (~~Failure to provide adequate supervision to residents~~) Commits, permits, aids, or abets the commission of any illegal act on the premises;

(e) (~~Allowing persons unqualified by training, experience, or temperament to care for residents~~) Commits, permits, aids, or abets assault, abuse, neglect, exploitation, or cruelty;

(f) (~~Misappropriation of the property of~~) Fails to provide adequate resident(~~s~~) supervision;

(g) (~~Failure or inability to exercise fiscal responsibility and accountability in respect to operation of the adult family home~~) Allows unqualified persons to care for residents;

(h) Displays an inability to care for residents consistent with WAC 388-76-465, Resident Rights;

(i) Misappropriates resident property;  
 (j) ~~((Refusal)) Refuses to ((admit)) permit authorized department representatives ((of the department, local fire protection authority, or state fire marshal to inspect the premises; and~~

~~((Refusal to permit authorized representatives of the department))~~  
 to:

(i) ~~Have access to the records relating to the ((operation of the)) adult family home operation; or ((to permit authorized representatives to))~~

(ii) Interview residents.

(k) Exceeds the licensed adult family home capacity.

(3) The department has the authority to immediately suspend a license if the department finds conditions at the adult family home constitute an imminent danger to residents. The department shall issue a stop placement order and assist with relocation of residents.

(4) If the department denies, suspends, revokes, or fails to renew a license or issue a stop placement order, the department decision becomes final ten days after the same is served upon the applicant or license unless a hearing is requested in writing. The proceedings shall be governed by the Administrative Procedure Act (chapter 34.05 RCW) and chapter 388-08 WAC.

**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.

#### AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-100 LICENSE FEES. ~~((At the time of the application for or renewal of a license;))~~ The ((licensee)) sponsor shall ((pay such)) submit the license fee ((as may have been established by the department under RCW 43.20A.055)) with the application. The license fee shall be set at fifty dollars per year for each home. A fifty dollar processing fee shall also be charged each adult family home when the home is initially licensed.

#### READOPTED SECTION (Readopting Order 2319, filed 12/18/85)

WAC 388-76-110 DISCRIMINATION PROHIBITED. The sponsor shall comply with federal and state statutory and regulatory requirements regarding nondiscrimination.

#### AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-130 PERSONS SUBJECT TO LICENSING. ~~((Persons are subject to licensing who provide or intend to provide twenty-four-hour family care in their own home for adults))~~ A person providing full-time care in the person's own home for an unrelated adult in need of room, board, supervision, personal, and/or special care ((who are not their relatives in the following numbers)) shall be subject to licensing requirements of this chapter when the total resident census includes:

- (1) ~~((One through four developmentally disabled adults; or~~
- ~~((2)) One ((through four)) or more state ((assistance recipients)) pay residents; or~~
- ~~((3)) ((2)) ((Three through four persons not developmentally disabled or recipients of state assistance))~~ Two or more private pay residents.

#### AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-140 PERSONS NOT SUBJECT TO LICENSING. ~~((In addition to those persons exempt from the licensing requirements as provided in chapter 74.15 RCW;))~~ The department shall exempt the following person((s are not required to be licensed)) from licensing requirements according to this chapter:

- (1) ~~((Persons))~~ A person caring for an adult in need of personal ((and special)) care in that adult's own home whether related or not; and
- (2) ~~((Persons))~~ A person providing ((family)) care in ((their)) the person's own home for one ((or two nondevelopmentally disabled)) unrelated adult((s not related to them)) and for whom the department has not authorized care (chapter 74.15 RCW; RCW 18.20.020; RCW 74.08.044).

#### NEW SECTION

WAC 388-76-155 EXCEPTIONS. (1) The department may grant an exception from all requirements in chapter 388-76 WAC excluding requirements listed in subsection (2) of this section. The department shall grant an exception only upon justification given to ensure an exception does not jeopardize the resident's health and safety.

(2) The department shall not grant an exception from requirements relating to:

- (a) Inspections;
- (b) Resident rights;
- (c) Access to the adult family home or records;
- (d) Resident's file and records;
- (e) License fees;
- (f) Chapter 334, Public Laws of 1989; or
- (g) Any section required by chapter 427 P.L. of 1989 (V).

(3) The department shall not grant an exception related to fire safety requirements without approval of the appropriate local fire inspector.

(4) The department shall grant exceptions, in writing, and review the exceptions at the time of license renewal, if not earlier. An exception to one home or sponsor does not constitute a precedent for any other home or sponsor.

#### AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-160 CAPACITY. (1) ~~((An adult family home))~~ The department shall ((be licensed)) license an adult family home for no more than four adults. There shall be no more than four adults related or unrelated to the sponsor requiring full-time care on the premises at one time unless an exception is approved according to WAC 388-76-155.

(2) Sponsors approved to care for five or six residents shall assure they have supportive assistance from a co-sponsor or employed staff. Employed staff shall fulfill the same minimum qualifications as relief caregivers. Supportive assistance shall be provided in the following ratios:

- (a) When caring for five residents, supportive assistance shall be available at least forty hours per week during the normal hours residents are awake;
- (b) When caring for six residents, supportive assistance shall be available to residents eighty hours or more per week during the hours the residents are normally awake.

(3) Relatives residing in an adult family home requiring the sponsor's personal and/or special care and supervision services shall be counted as a resident when determining the licensed capacity of the home.

(4) ~~((No licensed adult family home))~~ Sponsors may provide care for ((more than)) a maximum of two persons suffering mental or physical handicaps of such severity as to require nursing care((, and then only)) if the sponsor is qualified by training and/or experience to provide proper care and the person's treatment is under ((the)) a physician's supervision ((of a physician)).

(5) No sponsor shall provide care for more than one nonambulatory resident unless the sponsor has regular full-time assistance.

(6) The total number of persons in the home shall not exceed five for each toilet. A portable toilet or commode may be counted in the number of toilets available.

(7) When a sponsor provides respite and/or day care, in addition to adult family home care, the total number of persons in care shall not exceed the licensed capacity for that home.

(8) Sponsors shall accept only residents for whom the sponsors meet the resident needs and assure resident safety in the sponsors' care. No sponsor shall admit for care a person who is a danger to themselves or to others.

#### AMENDATORY SECTION (Amending Order 2761, filed 2/13/89)

WAC 388-76-170 SPONSORS' OUTSIDE EMPLOYMENT. ~~((If))~~ When both sponsors in a two-sponsor home or the single sponsor in a one-sponsor home are employed outside the home, the department ((must)) shall give written approval for placement ((there)) in that adult family home. Approval ((with)) shall be based on justification that the sponsor ((will be)) is able to provide adequate ((twenty-four-hour)) full-time care to the residents.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-180 SPONSOR ABSENCE FROM HOME. ((#)) The sponsor (~~or sponsors~~) shall have a written department-approved plan for (~~provision of~~) providing resident care (~~for residents~~) during any absence of the sponsor from the home. This rule does not apply to the sponsor's short absences for shopping, errands, or other appointments.

~~((2) The sponsor or sponsors shall not place residents in another home temporarily or otherwise without the approval of the department and guardian or responsible relative of the person under care (RCW 74.15.030).))~~

NEW SECTION

WAC 388-76-185 PLACEMENT OF RESIDENTS OUTSIDE HOME. (1) The sponsor shall not temporarily place state pay residents in another home without the approval of the:

- (a) Department and resident; or
- (b) Resident's guardian or responsible relative.

(2) When an emergency such as fire or flood necessitates a temporary move, the sponsor shall notify the department no later than the first working day following the move.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-190 EFFECT OF LOCAL ORDINANCES. (1) (~~Licenses are issued or denied on the basis of applicant's compliance with the department's minimum licensing requirements. The enforcement of local ordinances such as zoning regulations and~~) Each adult family home shall meet applicable local licensing, building, and housing codes and state and local fire safety regulations. The applicant shall be responsible for checking with local authorities to ensure all local (~~building~~) codes (~~is the responsibility of appropriate local officials (RCW 74.15.030)~~) are met.

(2) An adult family home shall be considered a residential use of property for zoning purposes. Adult family homes shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single family dwellings (chapter 9 Public Laws of 1989, I, Ex.S).

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-200 FIRE SAFETY. (1) Every room used by persons under care (~~, unless provided with two separate doors or one door leading directly to the outside,~~) shall have a fully-opening window (~~opening freely and~~) of sufficient size and free of obstructions (~~so as to be readily available~~) for emergency escape or rescue unless the room has:

- (a) Two separate doors; or
- (b) One door leading directly to the outside.

(2) Every occupied area shall have access to (~~at least~~) one exit or more not passing through rooms or spaces subject to being locked or blocked from the opposite side.

(3) No space shall be (~~used for residential purposes~~) accessible only by ladder, folding stairs, or a trap door.

(4) Every bathroom door lock shall (~~be designed to permit the opening of the locked door~~) open from the outside in an emergency.

(5) Every closet door (~~latch~~) shall (~~be such that the door can be opened~~) open from the inside.

(6) No stove or heater shall be (~~so~~) located (~~as to~~) where the stove or heater blocks escape (~~in case of malfunctioning and ensuing fire~~).

(7) Flammable(~~;~~) or combustible(~~, or poisonous~~) material shall be stored away from exits and in areas not accessible to persons under care.

(8) Open flame devices, cooking appliances, and other similar products (~~capable of igniting clothing~~) shall (~~not~~) be (~~left unattended or~~) used in (~~such~~) a safe manner (~~which could result in accidental ignition of clothing~~).

(9) Portable oil, gas, kerosene, and electric space heaters (~~are~~) shall be prohibited, except in case of a power outage when the portable space heater is the only heat available.

(10) An adult family home shall have (~~in effect and available to all relief caretakers~~) a posted, written plan (~~for the protection of all persons~~) for evacuation to safe areas in the event of fire (~~and for their evacuation to areas of refuge when necessary~~). All (~~persons in~~

~~care~~) residents and relief caregivers shall be instructed in emergency evacuation procedures. Fire drills shall be conducted (~~during the first week of each new admission and at bimonthly intervals thereafter to test equipment and practice procedure~~) at least every two months. The sponsor shall maintain a log of dates and times of fire drills (~~shall be maintained by the sponsor~~). At the time of fire evacuation drills, the sponsor shall verify:

- (a) Fire extinguishers are fully charged; and
- (b) Smoke detectors are in proper working order.

(11) There shall be readily available an approved, operating 2A-rated or larger fire extinguisher in proper operating condition on each floor of the adult family home. (~~Except for facilities licensed prior to June 3, 1983, an approved five pound or larger all purpose A.B.C. fire extinguisher will be acceptable.~~) ((~~t~~)) Where local fire authorities require installation of a different type or size of fire extinguisher, the requirement of the local authority shall prevail.((~~y~~))

(12) An approved automatic smoke detector, in working order, shall be located in proximity to the area (~~or areas~~) where (~~persons under care~~) residents sleep. (~~At a minimum,~~) In addition, a smoke detector shall be located in each resident's bedroom and there (~~with~~) shall be one smoke detector in working order on each floor of a multilevel home. For violations in maintaining battery-operated smoke detectors, the department may require hard wiring of the smoke detector into the home electrical system.

(13) (~~Smoke detectors and fire extinguishers shall be continuously maintained in proper working order~~) If the sponsor's bedroom is not within hearing distance of resident bedrooms, the department may require a call bell or intercom system.

(14) (~~If questions arise concerning fire danger, the local fire protection authority shall be consulted and its recommendations followed.~~

(~~+~~5)) An adult family home located in a rural area where there is no public fire district shall (~~affiliate with whatever~~) ensure fire (~~safety organization~~) protection is available to the adult family home.

(15) Beginning July 1, 1990, adult family homes with dead bolt locks on exterior doors shall have single motion door locks. Sliding doors are not considered exterior doors for purposes of this section.

(16) Sponsors shall not house nonambulatory residents above or below the ground level of the home.

(17) The sponsor shall notify the department of any fire on the premises within twenty-four hours.

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

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-220 CORPORAL PUNISHMENT AND PHYSICAL RESTRAINTS. Corporal punishment and physical restraints are prohibited.

(1) Physical contact in order to punish or discipline a resident is prohibited. Prohibited conduct includes, but is not limited to:

- (a) Striking with the hand;
- (b) Striking with an object;
- (c) Biting;
- (d) Kicking;
- (e) Shoving;
- (f) Choking;
- (g) Pulling of hair, and
- (h) Tripping.

(2) Physical restraint of a resident is prohibited.

(a) Prohibited physical restraints shall include, but are not limited to:

- (i) Sleeper holds;
  - (ii) Arm twisting;
  - (iii) Hair holds;
  - (iv) Using chemicals not included in the plan of care.
- (b) Prohibited mechanical restraints shall include, but are not limited to:
- (i) Hand coverings used to restrict motion;
  - (ii) Belt restraints;
  - (iii) Chest restraints;
  - (iv) Gerichair.

(c) The department shall prohibit any form of mechanical restraints except when there is a written order by a physician for a specific time period provided the order's written directions are followed.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-240 RESIDENT'S RECORDS AND INFORMATION. (1) The sponsor shall maintain records and information concerning each (person in care shall be maintained) resident in ((such) a manner ((as to preserve)) preserving the resident's confidentiality. Records ((giving the following information on each person under care shall be maintained at the licensed adult family home)) shall be accessible to the department and other authorized persons. If records are computerized, there shall be complete directions for access and use available to relief caregivers. Sponsors shall retain a resident's record for three years following the resident's discharge or death. Sponsors shall maintain records documenting the following information for residents:

((+)) (a) ((Identifying information, including name, birthdate, and dates of admission, absences, and discharge)) Upon admission, a current written medical history;

(b) Upon admission, an inventory of personal belongings recorded, dated, and signed by the resident or the resident's guardian and the sponsor;

(c) Identifying information for:

(i) Private-pay residents including name, birthdate, dates of admission, and discharge;

(ii) State-pay residents including name, birthdate, Social Security Number, dates of admission, absences, and discharge.

(d) Names, addresses, and telephone numbers of next-of-kin or other persons to be contacted in case of emergency.

(2) ((Names, addresses, and telephone numbers of next-of-kin or other persons to be contacted in case of emergency)) The sponsor shall provide a space accessible to all residents and visitors for posting the following telephone numbers:

(a) Long-term care ombudsman;

(b) Local adult protective services office;

(c) Adult family home licensuror; and

(d) Placement worker.

(3) ((Health assessment at time of placement and subsequent revisions)) The plan of care describing care and services shall be provided for the resident based on resident needs assessment.

(4) ((Written consent (or court order) for providing medical care and emergency surgery, except as such care is otherwise authorized by law:

(5) Daily care plan including treatments, medications, observations, examinations, and physician's orders:

(6) Upon admission, an inventory of personal belongings. Inventory changes will be recorded and dated with a copy to resident and guardian or responsible relative, if any.

(7) Names, addresses, and telephone numbers of persons taking a person under care temporarily out of the adult family home.

(8) A summary upon discharge by the person responsible for the total plan of care, instructions given to the person providing continuing care, and a record of any referrals directed toward continuity of care.

(9) Appropriate information if the adult has died including the time and date of death, apparent cause of death, appropriate notification of the physician and relevant others (including the coroner if necessary), and the disposition of the body and personal effects)) In the event of the resident's death, while in the care of the adult family home, the sponsor shall record appropriate information including:

(a) Time and date of death;

(b) Circumstances of death;

(c) Time of appropriate notification of the physician and relevant others, including the coroner, as required by law; and

(d) Disposition of the body and personal effects.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-250 REPORTING OF ILLNESS, DEATH, INJURY, EPIDEMIC, OR ADULT ABUSE. (1) The sponsor shall report to the ((persons)) indicated person the following events((-):

((+)) (a) ((To the department)) For private-pay residents, notify next-of-kin, ((and)) interested friend, or relative identified in the care plan of any serious injury, trauma, or death of a person under care ((as soon as possible but no later than twenty-four hours after occurrence)) by the next working day, if not earlier;

(b) For state-pay residents, notify the department, next-of-kin, interested friend, or relative identified in the care plan of any serious injury, trauma, or death of a person under care by the next working day, if not earlier;

((+)) (c) ((Fo)) Notify the local public health officer of any occurrence of food poisoning or communicable disease as required by the state board of health((-); and

((+)) (d) ((Fo)) Notify the department of any evidence of abuse or neglect immediately by phone or in person, with a written follow-up report within five days.

(2) The sponsor shall maintain a log of injuries and accidents involving residents.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-260 REPORTING CHANGE((S)) IN CIRCUMSTANCES. Adult family home sponsors shall report to the department changes in circumstances ((which might constitute grounds for reclassification of the home as to category of license, continued eligibility for license, or major changes in the license)) including, but not limited to, the following:

(1) Changes in sponsor's address ((or)), location ((and phone)), or telephone number ((license is valid only for address indicated on the license));

(2) Changes in the maximum number ((and range)) or level of care of persons ((licensee)) the sponsor wishes to serve ((as compared to specifications in the license));

(3) The ((death, retirement;)) illness or incapacity of ((a licensee. (A license is valid only for the person named on the license.)) the sponsor;

(4) The marriage or divorce of a sponsor or other change in household composition ((and relief caregiver affecting eligibility for license or number of persons that may be served));

(5) ((Occurrence of a fire on licensed premises within twenty-four hours.)) Change in relief caregiver;

(6) ((Major)) Structural changes or significant damage to premises from any causes((- and plans for major remodeling)); and

(7) Sponsors extended vacation or periods of absence from the adult family home.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-280 SPONSOR-PROVIDED TRANSPORTATION FOR RESIDENTS. ((When a sponsor provides transportation for residents:))

(1) The sponsor shall assure the vehicle ((shall be)) is in a safe operating condition. The driver shall have a current driver's license.

(2) The sponsor or other driver shall carry auto insurance including adequate liability and medical coverage.

(3) Seat belts or other appropriate safety devices shall be provided for and used by all passengers. The number of passengers shall not exceed the vehicle's seating capacity. Buses approved by the state patrol shall not ((be required to be equipped with)) require seat belt((s)) equipment.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-290 CLOTHING. Sponsors ((are responsible to)) shall provide or arrange for the care, washing, repair, or purchase of resident's clothing ((for the persons under care)). Clothing shall be clean, neat, seasonable, and of ((such)) a quality and design ((as to foster)) fostering self-respect.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-300 PERSONAL HYGIENE. Sponsors ((are responsible to)) shall provide or ((arrange for)) assure each resident has individual items needed for good grooming and personal hygiene ((for persons under care)).

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-310 TRAINING. (1) Sponsors ((are responsible for keeping themselves)) shall keep informed of ((the)) policies and ((the)) rules contained in chapter 427, Public Laws of 1989 and this chapter. ((Completion of approved training for sponsors shall be required prior to)) Before licensure ((in the absence of documentation assuring the sponsor is qualified to provide care)), the department shall coordinate the completion of the required sponsor training.

(2) In addition, sponsors shall:

(a) Verify or arrange for appropriate education and training for themselves, relief caregivers, persons in the household, and employees

on the prevention, transmission, and treatment of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) consistent with RCW 70.24.310; and

(b) Use infection control standards and educational material consistent with the approved curriculum manual Know - HIV/AIDS Prevention Education for Health Care Facility Employees, May 31, 1989, published by the office on HIV/AIDS.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-340 WATER SAFETY. (1) ~~((Residents))~~ Sponsors shall not ~~((be permitted))~~ permit residents to use swimming or other pools ~~((or))~~, hot tubs, saunas, or spas ~~((, etc.))~~ on the premises without supervision.

(2) Swimming ~~((and other))~~ pools, hot tubs, spas, or saunas shall not be ~~((inaccessible))~~ accessible to ~~((persons))~~ residents in care ~~((when not in use))~~ without supervision.

~~((3))~~ Hot tubs, spas, etc., shall be inaccessible when not in use.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-350 FIREARMS. Sponsors shall keep any firearms ~~((if any, shall be kept))~~ in locked storage accessible only to authorized persons.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-360 STORAGE. (1) ~~((Suitable space))~~ Sponsors shall ~~((be provided and used))~~ provide adequate space for ~~((the))~~ residents' storage of clothing and a reasonable amount of personal possessions ~~((of residents and for supplies, records and files, and bedding used in adult family home management))~~.

(2) Sponsors shall store cleaning supplies, toxic substances, poisons, aerosols, and items bearing warning labels ~~((shall be stored so as to be inaccessible to persons with limited mental capacity))~~ in a place not accessible to residents except under supervision.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-370 BEDROOMS. (1) Sponsors shall not use hallways, kitchens, living rooms, dining rooms, and unfinished basements ~~((shall not be used))~~ as resident bedrooms. Every resident bedroom shall be an outside room permitting entrance of natural light.

(2) ~~((Windows designated for escape and/or ventilation shall open and close freely.))~~ Window screens ~~((must))~~ shall be:

(a) Of such design that escape is not hindered; and ~~((are))~~

(b) Adequate to prevent entrance of flies and other insects.

(3) Separate sleeping quarters shall be ~~((furnished))~~ available for each sex.

(4) Single occupancy bedrooms shall provide eighty square feet or more of floor space.

(5) Multiple occupancy bedrooms shall provide ~~((not less than))~~ seventy square feet ~~((per occupant))~~ or more of floor ~~((area))~~ space per occupant exclusive of closets. There shall be ~~((not less than))~~ thirty-six inches or more laterally between beds. ~~((Single occupancy bedrooms shall provide at least eighty square feet of floor space.))~~ There shall be no more than two residents to a bedroom.

~~((5))~~ (6) ~~((For))~~ Sponsors shall provide each resident ~~((there shall be))~~ a bed ~~((at least))~~ thirty-six inches or more wide with:

(a) A clean, firm mattress ~~((pillow.))~~ with waterproof cover for use when needed or requested by the resident;

(b) Clean sheets ~~((;))~~;

(c) Adequate blankets ~~((;))~~;

(d) Clean pillow cases; and ~~((pillowcases. Pillows shall be))~~

(e) Clean pillows:

(i) Covered with waterproof material; or ~~((be))~~

(ii) Of a washable type. ~~((Waterproof mattress covers shall be provided for incontinent persons.))~~

~~((6))~~ (7) The upper bunk of doubledeck beds ~~((are))~~ shall be prohibited for resident use ~~((by residents))~~.

~~((7))~~ (8) ~~((Bedding shall be clean.))~~ Sheets and pillowcases shall be laundered weekly.

~~((8))~~ (9) Residents may not share a bedroom with persons under eighteen years of age unless approved by the department.

~~((9))~~ (10) Residents ~~((may))~~ shall not share a bedroom with the sponsor or any member of the sponsor's family.

~~((10))~~ (11) Only rooms having unrestricted, direct access to hallways, corridors, living rooms, day rooms, or common use areas shall be used as bedrooms.

~~((11))~~ Only ambulatory residents and/or residents able to negotiate the adult family home fire escape system from other than ground floor level shall be assigned to other than ground floor level bedrooms.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-380 KITCHEN FACILITIES. Adult family homes shall have kitchen facilities ~~((for the))~~ providing proper storage, preparation, and food service ~~((of food))~~.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-390 LAUNDRY. The adult family home sponsor shall ~~((store soiled linen and clean linen separately. Unless laundry is sent out, or bedding and/or clothing are provided and laundered by responsible relatives or interested others, the adult family home shall))~~ have ~~((adequate))~~ operational laundry and drying equipment unless other suitable arrangements are made.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-400 TOILETS, LAVATORIES, AND BATHING FACILITIES. (1) ~~((There shall be at least one indoor flush-type toilet, one bathing facility, and one lavatory with hot and cold or tempered running water not to exceed one hundred twenty degrees Fahrenheit.))~~ An adult family home shall provide each toilet and bathing facility with one or more:

(a) Indoor flush toilet;

(b) Bathing facility; and

(c) Lavatory with hot and cold running water.

(2) ~~((Toilet and bathing facilities shall provide for privacy for persons of the opposite sex.))~~ An adult family home shall provide a hot water temperature not to exceed one hundred twenty degrees Fahrenheit for all residents under care utilizing hot water at tub, shower, and lavatory facilities.

(3) ~~((There shall be a lavatory in each room containing a toilet or in an adjacent common-use area.))~~ An adult family home shall provide toilet and bathing facilities with privacy.

(4) ~~((All bathing facilities shall have a conveniently located grab bar unless other safety measures, such as nonskid pads, are approved by the department.))~~ An adult family home bathroom shall contain a lavatory in:

(a) The same room; or

(b) An adjacent common-use area.

(5) ~~((Soap and individual towels or disposable towels or other hand-drying devices shall be easily accessible.))~~ A department-approved resident bathing facility shall have securely fastened, conveniently located grab bars or other safety measures.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-410 LIGHTING. Sponsors shall assure all areas ~~((shall be))~~ in use are appropriately lighted by natural or artificial means ~~((when in use))~~. Light fixtures shall be located to provide for the comfort and safety of the persons under care. ~~((Lighting intensities shall be at least fifteen foot candles for all rooms and areas used for care, except for food service areas, which shall be thirty foot candles.))~~

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-420 PEST CONTROL. The ~~((premises))~~ sponsor shall ~~((be))~~ assure the premises are kept free from rodents, flies, cockroaches, and other insects.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-430 SEWAGE AND LIQUID WASTES. The sponsor shall assure sewage and liquid wastes ~~((shall be))~~ are discharged into a public sewer system or into an independent sewage system approved by the local health authority or department. Discharge of sewage or liquid wastes directly on the ground, into bodies of water, or directly into ground water ~~((is))~~ shall be prohibited.

NEW SECTION

WAC 388-76-435 PETS. (1) The sponsor shall assure that sanitation for household pets and other domestic animals is adequate to prevent health hazards.

(2) The sponsor shall assure pets residing on the premises have up-to-date rabies vaccinations.

(3) The sponsor shall assure pets not confined in enclosures are under control and shall not present a danger to residents or guests.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-440 WATER SUPPLY. The applicant/sponsor shall have a private water supply ((must be)) approved by the local health authority ((or department)). Nonpotable water on the premises shall be labeled to avoid use.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-450 TEMPERATURE. Temperature within the adult family home shall be maintained at ((not less than)):

(1) Sixty-eight degrees Fahrenheit or more during waking hours(;;); and ((at not less than))

(2) Sixty degrees Fahrenheit or more during sleeping hours. ((Use of portable space heaters is prohibited:))

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-460 VENTILATION. The ((facility)) adult family home shall be ventilated to adequately assure health and comfort of the ((persons under care)) residents.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-465 RESIDENT RIGHTS(~~(=SERVICES TO BE PROVIDED)). ((†) Insofar as a general or specific nuisance or a danger to the individuals or others is not created,)) All resident rights, house policies, and admission agreements are subject to department review and approval. Each resident shall have((, in addition to any rights not specifically withheld by law;)) the following rights:~~

~~((a) To be informed or to have an agent, designated by the resident, informed of his or her rights and the policies of the adult family home at the time of admission. A written copy of rights and policies shall be provided to each resident or designated agent;~~

~~(b)) (1) The sponsor shall make a written list of resident rights;~~

~~(2) To receive a written copy of resident's rights or to have a copy of such rights provided to the guardian or agent designated by the resident; Sponsors shall retain a signed copy for each resident.~~

~~(3) To be treated in a manner ((that respects his or her)) respecting the resident's individual identity ((and human)), dignity, and ((fosters constructive)) self-esteem(;;);~~

~~((c)) (4) To be notified thirty days in advance if ((he or she)) the resident requires transfer for ((medical or nursing care or for his or her)) the resident's welfare or ((that)) the welfare of other residents, ((except as prohibited by Titles XVIII, XIX or XX of the Social Security Act;)) unless an emergency condition requires immediate transfer((, or there is failure to comply with written policy of the adult family home or to ensure orderly transfer or discharge. The notice of transfer or discharge and discharge planning shall be documented in the resident's record:));~~

~~((d)) (5) To open communications including the right to:~~

~~(a) Associate and communicate privately with persons of ((his or her)) the resident's choice; ((to))~~

~~(b) Send and receive uncensored correspondence ((through the mail)); ((to))~~

~~(c) Have reasonable access to a telephone both to make and to receive personal calls; and~~

~~(d) Receive visitors in the adult family home and to be assured privacy for visits with relatives and guests, provided the visits do not infringe upon other resident or sponsor rights.~~

~~((e)) (6) To manage personal financial affairs unless ((such person has been adjudicated to be)) the resident is declared incompetent in a court proceeding ((directed to that particular issue or pursuant to law)). If the sponsor maintains resident funds, the sponsor shall provide the resident or designated agent with a complete accounting of funds. Sponsors shall not commingle resident funds with sponsor funds;~~

~~((f)) (7) To retain and use personal ((clothing and)) possessions unless ((to do)) doing so ((would)) infringes upon the rights of other residents(;;);~~

~~((g)) (8) To refuse to perform services for the ((facility unless these services are included in a plan of care.~~

~~(h) To be assured privacy for visits with relatives or guests:)) sponsor;~~

~~((h)) (9) To ((voice grievances and)) complain about or recommend changes in policies and services ((to)) of the home to the sponsor~~

and/or to outside representatives ((of his or her choice)) free from ((restraint, interference, coercion, discrimination, or)) reprisal(;;);

~~((j) To be informed of phone numbers and addresses of the licensing agency or appropriate advocacy group or groups;~~

~~((k)) (10) To ((meet with and)) participate in ((activities of)) social, religious, and community ((groups at his or her discretion;~~

~~(l) To be free from physical, chemical, and psychological restraints unless authorized by law;~~

~~(m) To be free from exploitation, assault, abuse, and neglect:)) activities of the resident's choice;~~

~~((n)) (11) To have information contained in resident health records kept confidential ((with access only to authorized personnel and the department:));~~

~~((o)) (12) To be given timely notice of changes in ((admission or retention policy)) policies and ((procedure.~~

~~(2) Each resident shall have at least one comfortable pillow and adequate, clean bedding. Clean sheets, a pillow case, towels and washcloths shall be provided as needed and at least each week;~~

~~(3) A resident shall be regularly observed for changes in physical, mental, and emotional functioning. When observations reveal the resident has need for services unavailable in the adult family home, the sponsor or designee shall arrange for the transfer of the resident;~~

~~(4) Care services shall be conducted so as to attain or maintain each resident's highest degree of functioning possible and compatible with individual safety and welfare. The following services shall be provided when a resident requires such services:~~

~~(a) General health supervision, which means provision of the following services in accordance with a resident's particular needs including:~~

~~(i) To encourage a resident to self-administer medically prescribed drugs and treatment;~~

~~(ii) To encourage a resident to follow any medically prescribed modified diet, rest, or activity regimen;~~

~~(iii) To encourage and assist a resident to keep appointments for health care services, e.g., physicians, dentists, home health care services or clinics;~~

~~(iv) Encourage and assist a resident to see his or her health care practitioner if the resident manifests signs and symptoms of an illness or abnormality for which medical diagnosis and treatment seem indicated;~~

~~(b) Reminding and/or guidance, supervision, or assistance to a resident in:~~

~~(i) Personal hygienic care, dressing, grooming, and other activities;~~

~~(ii) Maintenance of functional aids or equipment, such as glasses, hearing aids, canes, crutches, walker, or wheelchair;~~

~~(iii) Maintenance of clothing and other personal effects;~~

~~(iv) Maintenance of personal living quarters in a manner conducive to safety and comfort;~~

~~(c) Encouraging, guiding, or assisting a resident to participate in social, recreational, diversional, vocational, church, or other activities within the family home and the community in accordance with his or her interests, tolerance, and abilities;~~

~~(5) Whenever a resident is believed to be ill or injured, the health care practitioner or other individual designated by the resident shall be notified immediately)) procedures; and~~

~~(13) To receive the services outlined in the plan of care.~~

NEW SECTION

WAC 388-76-475 PLAN OF CARE. (1) The department shall develop the plan of care for state-pay residents. The sponsor shall follow the plan of care in providing services to the state-pay resident.

(2) The sponsor shall develop the plan of care in consultation with the resident and resident's family, if appropriate, for private pay residents. The plan of care includes, but is not limited to:

(a) Identification of resident's needs related to personal and special care and supervision;

(b) Description of how the plan of care needs shall be met;

(c) Identification of the person providing the services and when the services are provided;

(d) Expected outcome description; and

(e) Updates entered when the client's condition changes.

AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-480 FIRST AID. ~~((†)) An adult family home sponsor shall ((have)) provide current ((basic first-aid training and cardiopulmonary resuscitation training. Verification of completion dates shall be maintained by the adult family home sponsor.~~

~~(2))~~, readily available first-aid supplies (~~(, as needed to conform with first-aid policies and procedures;))~~ and a first-aid manual (~~(shall be readily available:~~

~~(3) There shall be written medical emergency policies and procedures readily available in the adult family home).~~

#### AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-490 ~~MEDICATION~~ ~~(S CONTROLLED BY THE SPONSOR)~~ SERVICES. (1) All medications shall be kept ~~(in an orderly fashion)~~ in locked storage or otherwise made inaccessible to other residents and unauthorized persons ~~(and shall be refrigerated when so required).~~

~~(2) (External medications shall be stored separately (separate compartments) from internal medications.~~

~~(3)) All medication(s must) shall be stored in the medication's original containers with the legible, original label.~~

~~((+)) (3) (Medications) Sponsors shall (be disbursed) assist the resident to self medicate only on the written consent of the (competent) resident or other person having authority (by court order) to approve medical care.~~

~~(4) Unless a licensed health professional, the sponsor shall only assist the resident to self medicate by:~~

~~(a) Reminding the resident when it is time to take a medication;~~

~~(b) Handing the resident the medication container; and~~

~~(c) Opening the resident's medication container.~~

~~(5) (Only the sponsor or responsible designee shall deliver, disburse, or have access to medications except for self-administered medications as provided for in WAC 388-76-500.~~

~~(6) Prescription and nonprescription medications shall be disbursed only as specified on the prescription label or as otherwise authorized by a physician or other person legally authorized to prescribe medication.~~

~~"As needed" medications shall be approved by a physician or registered nurse prior to disbursement.~~

~~(7)) A record shall be kept of all physician-prescribed medications ((disbursed)) the resident takes.~~

~~((+)) (6) Unused or expired medications shall be ((properly)) disposed of properly.~~

~~(7) A resident may self-administer medications, including injections. Medications, including injections, shall also be allowed to be given by:~~

~~(a) The resident's relative;~~

~~(b) A licensed practical nurse (LPN) or registered nurse (RN); or~~

~~(c) A physician.~~

#### AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-520 INFECTION CONTROL, COMMUNICABLE DISEASE. (1) Persons with a communicable disease in an infectious stage shall not provide care or supervision in an adult family home.

~~(2) Appropriate infection control measures shall be instituted when the resident or any household member has, or is suspected of having, a communicable disease.~~

~~(3) Each sponsor, relief caregiver, and other adult person(s) residing in the adult family home having regular contact with residents shall have a tuberculin skin test((, by the Mantoux method, upon employment or licensing unless medically contraindicated)).~~

~~(a) Persons whose TB skin test is positive (ten millimeters or more induration) shall have a chest x-ray within ninety days following the skin test. Proof of follow-up treatment shall be required when there is a positive chest x-ray.~~

~~(b) Routine periodic retesting or x-ray ((biennial or otherwise)) after the entry testing is not required.~~

~~(c) An entry test shall not be required of persons whose TB skin test has been documented as negative (less than ten millimeters) ((within the last two years)) nor shall routine periodic retesting or x-ray ((biennial or otherwise)) be required ((of such persons)).~~

~~((2) ((3))) (4) A record of skin test ((results)), x-ray(s) results, or exemptions to such ((with)) shall be kept in the adult family home.~~

#### AMENDATORY SECTION (Amending Order 2319, filed 12/18/85)

WAC 388-76-530 FOOD SERVICES. (1) ~~((Food served by each adult family home)) Sponsors shall ((be planned to meet)) serve food meeting the needs of residents, taking into consideration the ((residents')) resident's:~~

~~(a) Age((s));~~

~~(b) Developmental ((levels, individual preferences, individual metabolic differences;)) and physical capabilities;~~

~~(c) Caloric need;~~

~~(d) Cultural background((s)); and~~

~~(e) Any ((handicapping)) physical condition making food intake difficult.~~

~~To promote a ((socializing)) social environment ((during meal-times)), residents and sponsors shall be encouraged to sit ((with the sponsor and eat from the same menu unless special diet and resident preference precludes it)) together at meal times. The same foods shall be available to the resident and the sponsor unless a special diet is prescribed.~~

~~(2) The use of raw milk is prohibited.~~

~~(3) Sponsors shall serve nutrient concentrates, supplements, and modified diets ((therapeutic and allergy diets) shall be served) only on the written approval of ((a health care practitioner. The sponsor shall obtain from) the ((resident, responsible relative, or)) the resident's physician ((a written list of any foods the resident cannot have. The list, with the resident's name, must be on file and the food not served to the resident)).~~

~~(4) ((Food shall be served in accordance with the 1980 recommended dietary allowances of the Food and Nutrition Board, National Research Council, adjusted for age, sex, physical abilities, and activity of each person.~~

~~(5)) Sponsors shall provide a minimum of three meals in each twenty-four-hour period ((shall be provided. Deviation may be made from this minimum when a written request has been made to and approved in writing by the department)). The time interval between the evening meal and breakfast shall be ((not more than)) fourteen hours or less. Sponsors shall make snacks reasonably available between residents' meals.~~

~~((6) Residents may participate in food preparation provided food preparation is a part of a department-approved plan. Incompetent persons shall be supervised when in the kitchen:))~~

#### WSR 89-23-032

##### RULES COORDINATOR

##### ENVIRONMENTAL HEARINGS OFFICE

[Filed November 9, 1989, 9:04 a.m.]

Pursuant to RCW 34.05.310(3), the Environmental Hearings Office designates William A. Harrison, Administrative Appeals Judge, as its rules coordinator.

#### WSR 89-23-033

##### NOTICE OF PUBLIC MEETINGS

##### SOUTH PUGET SOUND

##### COMMUNITY COLLEGE

[Memorandum—November 6, 1989]

There is a change in the date of the regular December meeting of the Community College District Twenty-Four board of trustees. The December 7, 3:00 p.m. meeting has now been scheduled for December 5, 3:00 p.m. in the South Puget Sound Community College Boardroom.

#### WSR 89-23-034

##### NOTICE OF PUBLIC MEETINGS

##### THE EVERGREEN STATE COLLEGE

[Memorandum—November 7, 1989]

Following are the meetings scheduled by the board of trustees for 1990. At this point, all meetings will be held

at 1:30 p.m. in the Library Building on The Evergreen State College campus in Room 3112.

Wednesday, January 10, 1990  
 Wednesday, February 14, 1990  
 Wednesday, March 14, 1990  
 Wednesday, April 11, 1990  
 Wednesday, May 9, 1990  
 Wednesday, June 13, 1990  
 Wednesday, July 25, 1990  
 Wednesday, August 8, 1990  
 Wednesday, September 12, 1990  
 Wednesday, October 10, 1990  
 Wednesday, November 14, 1990  
 Wednesday, December 5, 1990

**WSR 89-23-035**

**NOTICE OF PUBLIC MEETINGS  
 WALLA WALLA COMMUNITY COLLEGE**  
 [Memorandum—November 6, 1989]

Schedule of Meetings for Walla Walla Community College Board of Trustees

1990

Wednesday, January 3, 1990  
 Wednesday, February 7, 1990  
 Wednesday, March 7, 1990  
 Wednesday, April 11, 1990 in Clarkston  
 Wednesday, May 2, 1990  
 Monday, June 4, 1990  
 Wednesday, June 27, 1990  
 Wednesday, August 1, 1990 (optional)  
 Wednesday, September 5, 1990  
 Wednesday, October 3, 1990  
 Wednesday, November 7, 1990  
 Wednesday, December 5, 1990

**WSR 89-23-036**

**RULES COORDINATOR  
 PUBLIC DISCLOSURE COMMISSION**  
 [Filed November 9, 1989, 3:23 p.m.]

Karen Copeland is the rules coordinator for the Public Disclosure Commission.

**WSR 89-23-037**

**NOTICE OF PUBLIC MEETINGS  
 BOARD FOR VOCATIONAL EDUCATION**  
 [Memorandum—November 8, 1989]

The Washington State Board for Vocational Education's work study session, previously scheduled for November 13, is hereby canceled.

The regular board meeting, scheduled for November 14, 1989, will still be held as scheduled: 9:00 a.m., Business

Advisory Council Room, Resource Center for the Handicapped, 20150 45th Avenue Northeast, Seattle, Washington.

**WSR 89-23-038**

**EMERGENCY RULES  
 DEPARTMENT OF FISHERIES**

[Order 89-137—Filed November 9, 1989, 3:56 p.m.]

Date of Adoption: November 8, 1989.

Purpose: Commercial fishing regulations.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 220-44-05000Y.

Statutory Authority for Adoption: RCW 75.08.080.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The PFMC quota of Pacific ocean perch has been attained in Marine Fish Catch Areas 60A and 61. Any further harvest would be detrimental to the resource. Other areas remain open to harvest available stocks.

Effective Date of Rule: November 13, 1989, at 12:01 a.m.

November 8, 1989  
 Judith Merchant  
 Deputy Director  
 for Joseph R. Blum  
 Director

**NEW SECTION**

**WAC 220-44-05000Z COASTAL BOTTOMFISH CATCH LIMITS.** Notwithstanding the provisions of WAC 220-44-050, effective 12:01 A.M. November 13, 1989, until further notice it is unlawful to possess, transport through the waters of the state, or land in any Washington State port bottomfish taken for commercial purposes from Coastal Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A, 59B, 60A, 61, 62, or 63 in excess of the amounts or less than the minimum sizes shown below for the species indicated:

(1) *Widow Rockfish (Sebastes entomelas)* – 10,000 pounds per vessel trip per calendar week, defined as Wednesday through the following Tuesday. Except that a fisherman having made a 1989 declaration of intent may make one landing of not more than 20,000 pounds biweekly, defined as Wednesday through the second Tuesday following. It is unlawful for any vessel to make more than one landing in excess of 3,000 pounds of widow rockfish per calendar week.

(a) *Beginning 12:01 AM October 11, 1989, Widow Rockfish (Sebastes entomelas)* – 3,000 pounds per vessel trip. No limit on the number of trips per week.

(2) *Shortbelly rockfish (Sebastes jordani)* – no maximum poundage per vessel trip; no minimum size.

(3) Pacific ocean perch (*Sebastes alutus*) – Marine Fish Catch Reporting Areas 60A and 61 are closed to the taking or possession of Pacific ocean perch. Harvest of Pacific ocean perch in Marine Fish Catch Reporting Areas 58B, 59A, and 59B are subject to the following: No restrictions on landing up to 1,000 pounds per vessel trip. Landings above 1,000 pounds allowed only if Pacific Ocean perch represent 20 per cent or less of total weight of fish on board. Under no circumstances may a vessel land more than 2,000 pounds of Pacific Ocean perch in any one vessel trip.

(4) All other species of rockfish includes all rockfish except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*Sebastes entomelas*), shortbelly rockfish (*Sebastes jordani*) and idiot rockfish (*Sebastes* spp.) – 25,000 pounds of all other species of rockfish combined per vessel trip per calendar week, defined as Wednesday through the following Tuesday, of which no more than 3,000 pounds or 20 percent may be yellowtail rockfish (*Sebastes flavidus*) except that a fisherman having made a 1989 declaration of intent, may make either one landing of no more than 50,000 pounds of all other species of rockfish combined per vessel trip biweekly, defined as Wednesday through the second Tuesday following of which no more than 6,000 pounds, or 20 percent may be yellowtail rockfish or two landings of not more than 12,500 pounds of all other species of rockfish in any one calendar week of which no more than 1,500 pounds or 20 percent may be yellowtail rockfish. It is unlawful for any vessel to make other than one landing in excess of 3,000 pounds of other rockfish species in any calendar week, if no declaration to land other species of rockfish twice weekly has been made.

(5) Sablefish

(a) Trawl Vessels – No trip limit. No restrictions on landings up to 1,000 pounds per vessel trip. Landings above 1,000 pounds allowed only if sablefish represent 25 percent or less of total combined round weight of sablefish, dover sole, arrowtooth flounder, and thornyhead rockfish on board. To convert from round weight to dressed weight multiply the dressed weight by 1.75. Minimum size 22 inches in length, unless dressed in which case minimum size 15.5 inches in length from the anterior insertion of the first dorsal fin to the tip of the tail. Trawl vessels are allowed an incidental catch less than the minimum size of 1,000 pounds or 25 percent of the total combined round weight of the deep water complex on board but not to exceed 5,000 pounds per trip.

(b) Non-Trawl Vessels – Limit 2000 pounds per vessel trip or 20 percent of all legal fish on board whichever is less. The 20 percent limit does not apply to sablefish landings of less than 100 pounds. There is no size limit on sablefish caught with fixed gear.

(6) 1989 Declarations of Intent – All previous 1989 declaration forms remain in effect. If no declaration has been made, to make other than one vessel trip per week and land in excess of the minimum amounts as provided for in this section, a new declaration form must be completed as provided for in this subsection. The 1989 declaration of intent to make other than one vessel trip per week must be mailed or delivered to the Department of Fisheries, 115 General Administration Building

Olympia, Wa., 98504, and must be received prior to the beginning of such fishing. The declaration of intent must contain the name and address of the fishermen, the name and registration number of the vessel, the date on which such fishing will commence and must be signed and dated by the fisherman. The fisherman may return to the one vessel trip per calendar week fishing by filing a declaration of intent to stop fishing other than once weekly with the department in the above manner. The declaration to stop such fishing and begin one vessel trip per calendar week fishing must be received prior to the beginning of the week in which the one vessel trip per calendar week fishing will resume. The date of first landing will determine the beginning of biweekly periodicity. Biweekly periodicity will restart after a landing that occurs more than four calendar weeks after the immediate prior landing. A calendar week is defined as Wednesday through the following Tuesday.

(7) It is unlawful during unloading of the catch and prior to its being weighed or leaving the unloading facility to intermix with any other species a species or category of bottomfish having a vessel trip limit.

(8) For purposes of this section, a vessel trip is defined as having occurred upon the initiation of transfer of catch from the fishing vessel, and all fish aboard the vessel are considered part of the vessel trip limit at the initiation of transfer of catch.

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

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-44-05000Y COASTAL BOTTOMFISH CATCH LIMITS. (89-119)

### WSR 89-23-039

#### EMERGENCY RULES

#### DEPARTMENT OF FISHERIES

[Order 89-138—Filed November 9, 1989, 3:58 p.m.]

Date of Adoption: November 9, 1989.

Purpose: Commercial fishing regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-523.

Statutory Authority for Adoption: RCW 75.08.080.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The openings in Area 7 and 7A provide opportunity to harvest the non-Indian share of the United States share of United States and Canadian origin chum salmon. The opening in Area 7B provides opportunity to harvest non-Indian allocation of

Nooksack-Samish origin chum, and is necessary to reduce wastage. The in-season area restriction in Area 7B is necessary to maintain an orderly fishery. Openings in Area 8A provide opportunity to harvest the non-Indian allocation of Stillaguamish-Snohomish origin chum. The exclusion zone in Area 8A has been modified to provide greater opportunity to harvest Stillaguamish origin chum salmon. All other Puget Sound areas are closed to prevent overharvest of local salmon stocks.

Effective Date of Rule: November 12, 1989, at 12:01 a.m.

November 9, 1989  
Judith Merchant  
Deputy Director  
for Joseph R. Blum  
Director

### NEW SECTION

**WAC 220-47-524 PUGET SOUND ALL-CITIZEN COMMERCIAL SALMON FISHERY.** Notwithstanding the provisions of Chapter 220-47 WAC, effective 12:01 AM Sunday November 12th, until further notice, it is unlawful to take, fish for, or possess salmon or Atlantic salmon for commercial purposes taken from the following Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the following open periods and restrictions:

- \* Areas 7 and 7A - Gill nets using 6-inch minimum mesh may fish from 3 PM to 9 AM nightly, Monday, Tuesday, and Wednesday nights, November 13, 14, and 15. Purse seines and reef nets may fish from 5 AM to 8 PM daily, Tuesday, Wednesday, and Thursday, November 14, 15, and 16.
- \* Area 7B - Gill nets using 6-inch minimum mesh may fish from 3 PM to 9 AM nightly, Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday nights, November 12, 13, 14, 15, 16, 17, and 18. Purse seines may fish from 5 AM to 8 PM daily, Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, and Sunday, November 13, 14, 15, 16, 17, 18, and 19. This opening excludes those waters north and east of a line projected from the light at the Port of Bellingham North Terminal to the light at the end of Squalicum Creek waterway.
- \* Area 8A - Gill nets using 6-inch minimum mesh may fish from 3 PM to 9 AM nightly, Monday and Tuesday nights, November 13, and 14. Purse seines using the 5-inch strip may fish from 5 AM to 8 PM daily, Tuesday, and Wednesday, November 14 and 15. This opening excludes those waters of Area 8A north of a line extended true west from Kayak Point to the landfall on Camano Island.
- \* Areas 4B, 5, 6, 6A, 6B, 6C, 6D, 7C, 7D, 7E, 8, 8D, 9, 9A, 10, 10A, 10C, 10D, 10E, 10F, 10G, 11, 11A, 12, 12A, 12B, 12C, 12D, 13, 13A, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, and 13K and all freshwater areas - Closed.

### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 AM Sunday, November 12:

**WAC 220-47-523 PUGET SOUND ALL-CITIZEN COMMERCIAL SALMON FISHERY (89-135)**

### **WSR 89-23-040**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF FISHERIES**

[Order 89-139—Filed November 9, 1989, 4:00 p.m.]

Date of Adoption: November 9, 1989.

Purpose: Commercial fishing regulations.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-33-01000K.

Statutory Authority for Adoption: RCW 75.08.080.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The late coho run in the Columbia River is later than usual and harvestable numbers of fish are still available. A three day extension will provide the commercial fishery with access to these fish. This regulation is adopted in accordance with the recommendation of the November 9, 1989, meeting of the Columbia River Compact.

Effective Date of Rule: November 10, 1989, at 6:00 p.m.

November 9, 1989  
Judith Merchant  
Deputy Director  
for Joseph R. Blum  
Director

### NEW SECTION

**WAC 220-33-01000L COLUMBIA RIVER GILL NET SEASONS BELOW BONNEVILLE.** Notwithstanding the provisions of WAC's 220-33-005, 220-33-010, 220-33-020 and 220-33-030, effective 6 PM November 10, 1989 it is unlawful for a person to take or possess salmon, shad, and sturgeon taken for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D and 1E except as provided for in the following section:

- (1) Open to the taking of salmon, sturgeon, and shad.
    - (a) Time: 6 PM November 12 to 6 PM November 15
    - (b) Area: SMCRA 1A, 1B, 1C, 1D, and 1E
    - (c) Sanctuaries closed to fishing: Grays Bay, Cowlitz, Washougal, Elokomin-A, Kalama-A, Lewis-A
- Mesh: No special mesh restrictions

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 6 PM November 10, 1989:

WAC 220-33-01000K COLUMBIA RIVER GILL NET SEASONS BELOW BONNEVILLE. (89-121)

**WSR 89-23-041**  
**RULES COORDINATOR**  
**DEPARTMENT OF REVENUE**  
 [Filed November 9, 1989, 4:32 p.m.]

The Department of Revenue has designated Les Jaster, Room 405, 711 Capitol Way South, Olympia, Washington, as the rules coordinator for the agency. This appointment shall become effective on November 9, 1989, and remain effective until further notice. This appointment has been made with the approval of Steve Frisch, Acting Director of Revenue.

**WSR 89-23-042**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**  
 [Filed November 13, 1989, 8:05 a.m.]

Original Notice.

Title of Rule: Repealing WAC 308-128B-060, Inactive escrow officer license.

Purpose: Implements RCW 18.44.310.

Statutory Authority for Adoption: RCW 18.44.320.

Statute Being Implemented: RCW 18.44.310, as amended by section 1, chapter 51, Laws of 1989.

Summary: Deletion of the time period for which an escrow officer's license may be inactive.

Reasons Supporting Proposal: To implement the statute.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Syd Beckett, Program Administrator, Department of Licensing, Division of Professional Licensing Services, Real Estate, Escrow, & Appraisals, P.O. Box 9012, Olympia, Washington 98504, (206) 586-4681 COMM, 321-4681 SCAN.

Name of Proponent: Director, Department of Licensing, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The repeal of WAC 308-128B-060 deletes the time limit for which an escrow officer's license can be inactive. This reflects the deletion of the requirement in RCW 18.44.310.

Proposal Changes the Following Existing Rules: As described above.

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

Hearing Location: Highways-Licenses Building, 4th Floor-Executive Conference Room, Olympia, Washington 98504, on December 15, 1989, at 9:00 a.m.

Submit Written Comments to: Director, Department of Licensing c/o Syd Beckett, see address above, by December 10, 1989.

Date of Intended Adoption: December 15, 1989.

November 3, 1989  
 Sydney Beckett  
 Program Administrator

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 308-128B-060 INACTIVE ESCROW OFFICER LICENSE

**WSR 89-23-043**  
**RULES COORDINATOR**  
**GAMBLING COMMISSION**  
 [Filed November 13, 1989, 9:46 a.m.]

Sharon Mary Tolton has been appointed rules coordinator for the Washington State Gambling Commission. The office is located at 4511 Woodview Drive S.E., Lacey, WA 98504-8121, phone 438-7636.

**WSR 89-23-044**  
**PERMANENT RULES**  
**DEPARTMENT OF LABOR AND INDUSTRIES**  
 [Filed November 13, 1989, 10:37 a.m.]

Date of Adoption: November 10, 1989.

Purpose: To implement the family leave legislation, chapter 11, Laws of 1989 1st ex. sess.

Statutory Authority for Adoption: Chapter 11, Laws of 1989 1st ex. sess.

Pursuant to notice filed as WSR 89-18-090 on September 6, 1989.

Changes Other than Editing from Proposed to Adopted Version: Family Leave Rule; November 10, 1989.

The definition of employee is revised to include persons who are unemployed but on "stand-by" status for time periods of two weeks or less. This allows employees temporarily laid-off to qualify for family leave benefits.

Limitations on family leave for key personnel or the highest paid ten percent of an employer's employees shall take effect thirty days after the employee is notified. Notice to the highest paid ten percent is good for up to one year and may be changed no more than once in any twelve month period. This change ensures adequate notification to employees who may be denied family leave benefits.

The requirement that an entire workspace be moved sixty miles as a condition under which an employee need not be reinstated is amended; reinstatement need not occur if the employee's workplace is moved. This change is intended to better reflect the statutory intent establishing conditions under which an employee returning from leave need not be reinstated.

Effective Date of Rule: Thirty-one days after filing.  
 November 10, 1989  
 Joseph A. Dear  
 Director

Chapter 296-134 WAC  
 FAMILY LEAVE

WAC

- 296-134-001 Declaration of purpose.
- 296-134-010 Definitions.
- 296-134-030 Entitlement to leave.
- 296-134-040 Notice.
- 296-134-050 Medical confirmation.
- 296-134-060 Leave from same employer.
- 296-134-070 Returning to employment.
- 296-134-090 Penalties.

NEW SECTION

WAC 296-134-001 DECLARATION OF PURPOSE. It is in the public interest that employers provide reasonable leave upon the birth or adoption of a child or to allow for the care of a child under eighteen years old with a terminal health condition. This chapter serves to implement chapter 11, Laws of 1989 1st ex. sess., establishing a minimum standard for employee leave in furtherance of family stability and economic security.

These rules are not comprehensive and should be implemented in conjunction with the statutory requirements of chapter 49.78 RCW.

NEW SECTION

WAC 296-134-010 DEFINITIONS. For the purposes of this chapter:

- (1) "Chapter" means this chapter of the Washington Administrative Code or chapter 11, Laws of 1989 1st ex. sess.
- (2) "Department" means the department of labor and industries.
- (3) "Employee" means a person, other than an independent contractor, employed by an employer on a continuous basis for the previous fifty-two weeks for at least an average of thirty-five hours a week. In computing the average number of hours worked, hours over fifty hours a week shall not be included.

A person is employed on a continuous basis despite a temporary interruption in the performance of the person's job duties if (a) the interruption is caused by the employee taking authorized leave; (b) the interruption is caused by the employer's temporary cessation of all or most operations and the employees do not qualify for unemployment compensation benefits due to a continuing employment relationship, e.g., school employees; or (c) the employee qualified for unemployment compensation benefits as a "stand-by" worker as defined in WAC 192-12-150 for time periods of two weeks or less.

(4) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state, and any unit of local government, which (a) employed a daily average on one hundred or more employees during the last calendar

quarter at the place where the employee requesting leave reports for work, or (b) employed a daily average of one hundred or more employees within a twenty mile radius of the place where the employee requesting leave reports for work, the employer maintains a central hiring location and customarily transfers employees among workplaces.

Any employer that has demonstrated the ability to transfer employees between workplaces within the twenty mile radius for the purpose of covering a temporary labor shortage or a permanent or temporary reassignment is considered to be an employer that customarily transfers employees.

A "central hiring location" is an office of the employer or its agent where two or more of the following functions are performed for two or more workplaces:

- (i) Employment applications are accepted or screened;
- (ii) Preemployment or employment interviews are conducted;
- (iii) Hiring decisions are made.

"Employer" also includes the state, state institutions, and state agencies.

(5) "Infraction" means a violation of chapter 11, Laws of 1989 1st ex. sess. or this chapter, as found by the department.

(6) "Workweek" means a fixed and regularly recurring period of one hundred sixty-eight hours or seven consecutive twenty-four hour periods. It may begin on any day of the week and any hour of the day, and need not coincide with a calendar week.

NEW SECTION

WAC 296-134-030 ENTITLEMENT TO LEAVE. (1) Subject to restrictions within the statute and these rules, an employee is entitled to twelve workweeks of family leave during any twenty-four month period. Use of family leave shall not preclude an employee from using other leave to which the employee is entitled during that period according to the terms of the appropriate collective bargaining agreement or employer leave policy.

(2) Employers may limit or deny family leave to designated key personnel or the highest paid ten percent of the employer's employees in the state.

(a) Designated key personnel may not exceed ten percent of the employer's employees in the state. Key personnel shall be designated based upon criteria determined by the employer which may not include the employee's age or gender or other criteria for the purpose of evading the requirements of this chapter. Any designation of key personnel shall take effect thirty days after the employee is notified.

(b) If the employer chooses to limit or deny family leave to the highest paid ten percent of the employer's employees within the state, the employer shall within forty-five days after a determination notify the employees who fall within the highest paid ten percent. In calculating the highest paid ten percent of the employer's employees within the state, the employer shall include total wages, salary, or bonuses paid. An employer may not limit or deny family leave to the highest paid ten

percent of the employer's employees until thirty days after the employees are notified. The notice shall be good for up to one year regardless of changes in compensation and may be changed no more than once in any twelve-month period.

#### NEW SECTION

**WAC 296-134-040 NOTICE.** (1) An employee planning to take family leave to care for a newborn or newly adopted child shall provide the employer with written notice at least thirty days in advance of the anticipated date of delivery or adoption, stating the dates during which the employee intends to take family leave. This notice is not intended to substitute for notice to take maternity disability leave which an employer may require.

(2) Failure of an employee to provide written notice of the intention to take family leave for any authorized reason shall allow an employer to increase or reduce the leave requested by up to three weeks.

#### NEW SECTION

**WAC 296-134-050 MEDICAL CONFIRMATION.** An employer seeking confirmation by an employee's health care provider regarding the date of a child's birth, the date on which incapacity or disability commenced or will probably commence and its probable duration, or the fact that a child has a terminal health condition, shall notify the employee within seven calendar days or five working days of receipt of the employee's notice of leave except where the employer requires medical confirmation as part of the initial leave request. If disputes arise regarding premature birth, incapacitation of the mother, maternity disability, or the terminal condition of a child, the opinions of additional health care providers shall be obtained within fourteen calendar days or ten working days of the employer's receipt of the opinion of the employee's health care provider except where the employee is unable to schedule an appointment or otherwise fails to cooperate or where the employee's doctor is responsible for the delay.

#### NEW SECTION

**WAC 296-134-060 LEAVE FROM SAME EMPLOYER.** When both parents of a child are employed by the same employer, the employer may limit the family leave to a total of twelve workweeks during a twenty-four month period. For purposes of this section, an "employer" is the same entity as that defined in WAC 296-134-010(4) for determining the scope of this chapter. Each state agency or institution shall be considered a separate employer.

#### NEW SECTION

**WAC 296-134-070 RETURNING TO EMPLOYMENT.** (1) Subject to the exceptions in subsections (2) and (3) of this section, an employee who exercises any right to family leave under this chapter shall be entitled, upon return from leave or during any reduced leave

schedule, to the same position, with the same pay, benefits, hours and shift, as held when the leave commenced, or to a position with equivalent benefits and pay at a workplace within twenty miles of the employee's workplace when leave commenced. Upon a written request of the employee, the employer shall provide a written explanation to the employee if the employee is not allowed to return to the same position.

(2) If the employer's circumstances have changed so that the employee cannot be reinstated to the same position or to a position with equivalent pay and benefits, an employee returning from family leave shall be reinstated in any position which is vacant and for which the employee meets the minimum qualifications. The filling of a position held by an employee on family leave does not by itself constitute changed circumstances.

(3) Reinstatement of an employee returning from family leave need not occur as provided under subsection (1) or (2) of this section if:

(a) The specific job is eliminated by a bona fide restructuring, or a reduction-in-force resulting from lack of funds or lack of work;

(b) The employee's workplace is completely shut down at the time for at least thirty days;

(c) The employer moves the workplace of the employee to a location at least sixty miles from the location of the workplace with leave commenced;

(d) An employee on family leave takes a position with another employer outside the home; or

(e) The employee fails to provide the required notice of intent to take family leave or fails to return on the established ending date of leave.

#### NEW SECTION

**WAC 296-134-090 PENALTIES.** (1) The department may fine an employer up to two hundred dollars for the first infraction of this chapter or its enabling legislation.

(2) An employer that commits three or more infractions within a two-year period shall be considered an employer that continues to violate the statute, subject to a fine of up to one thousand dollars for each infraction. An infraction that affects more than one employee and that an employer refuses to correct within a reasonable time after notification by the department, such as the employer's refusal to display in a conspicuous place a poster informing employees of their rights under this chapter, shall also constitute a continuing violation, subject to a fine of up to one thousand dollars for each day the infraction continues.

**WSR 89-23-045**

**PROPOSED RULES**

**WALLA WALLA COMMUNITY COLLEGE**

[Filed November 13, 1989, 10:44 a.m.]

Original Notice.

Title of Rule: Constitution and bylaws of the associated student body of Walla Walla Community College.

Purpose: To decodify the associated student body constitution and bylaws.

Statutory Authority for Adoption: Chapter 1-21 WAC, RCW 28B.50.140 and chapters 34.05 and 34.08 RCW.

Summary: The need for codification of the associated student body constitution no longer exists. Walla Walla Community College is the only remaining college in the state system whose governing rules are in WAC.

Reasons Supporting Proposal: Needed changes to the constitution can more easily and quickly be made.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kathy Small, Walla Walla Community College, (509) 527-4300.

Name of Proponent: Walla Walla Community College, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Decodification of the associated student body constitution and bylaws will allow the students more expediency when making additions, amendments or repealing sections as needed.

Proposal does not change existing rules.

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

Hearing Location: Walla Walla Community College Board Room, 500 Tausick Way, Walla Walla, WA 99362, on January 3, 1990, at 1:00 p.m.

Submit Written Comments to: Kathy Small, Dean of Students, by December 14, 1989.

Date of Intended Adoption: January 3, 1990.

November 2, 1989  
Steven L. VanAusdle  
President

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132T-104 Constitution and Bylaws of the Associated Students of Walla Walla Community College.

Reviser's note: The repealer appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to section is probably intended to be to chapter.

### WSR 89-23-046 PROPOSED RULES UTILITIES AND TRANSPORTATION COMMISSION

[Filed November 13, 1989, 1:12 p.m.]

#### Original Notice.

Title of Rule: WAC 480-12-165, 480-12-180, 480-12-195, 480-30-097, 480-30-100, 480-40-065, 480-40-100, 480-70-325 and 480-70-335, relating to out-of-service criteria for motor carriers, garbage and refuse collection companies, auto transportation companies, and passenger charter bus operators. The proposed amendatory sections are shown below as Appendix A, Docket No. TV-2285. Written and/or oral submissions

may also contain data, views, and arguments concerning the effect of the proposed amendatory sections on economic values, pursuant to chapter 43.21H RCW.

Statutory Authority for Adoption: RCW 80.01.040, 81.68.030, 81.70.140 and 81.80.290.

Statute Being Implemented: RCW 81.77.030(2), 81.80.130, 81.80.140, 81.68.030 and 81.70.010.

Summary: Adopts North American Uniform Out-of-Service Criteria to equipment and drivers of motor common and contract carriers operating under chapter 81.80 RCW, auto transportation (bus) companies operating under chapter 81.68 RCW, charter party carriers operating under chapter 81.70 RCW, and garbage and refuse collection companies (waste disposal companies) operating under chapter 81.77 RCW.

Reasons Supporting Proposal: These rules make uniform all equipment and driver criteria for all types of common carriers operating over the highways of this state. Provides for inspection and out-of-service designation of equipment not meeting safety standards. Provides for disqualification of drivers operating in violation of safety criteria.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Paul Curl, Secretary, and transportation staff, 1300 South Evergreen Park Drive S.W., Olympia, WA, (206) 753-6451.

Name of Proponent: Washington Utilities and Transportation Commission, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: There are no comments or recommendations being submitted inasmuch as the proposal is pursuant to legislative authorization as reflected in RCW 80.01.040.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The purpose of this proposal, as indicated, is to provide some uniformity in safety evaluations of virtually all common and contract carriers transporting persons or property for compensation. It provides for flagging defective equipment out of service, pending repair, and provides for disqualification of offending drivers. It is expected that this rule will have a salubrious effect on highway safety, at least to the extent that proper equipment and driving contribute to that objective.

Proposal Changes the Following Existing Rules: Incorporates current safety standards, for all regulated transportation companies, including specific reference to the movement of hazardous materials.

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

Common and contract carriers are now required to operate safe equipment. This rule adds no regulatory burden to those in compliance with existing rules.

Hearing Location: Commission Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA, on December 27, 1989, at 9:00 a.m.

Submit Written Comments to: Paul Curl, Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA, by December 18, 1989.

Date of Intended Adoption: December 27, 1989.

November 6, 1989

Paul Curl  
Secretary

APPENDIX "A"

AMENDATORY SECTION (Amending Order R-166, Cause No. TV-1487, filed 6/10/81)

WAC 480-12-165 EQUIPMENT—INSPECTION—ORDERED FOR REPAIRS. (1) All motor vehicles operated under chapter 81.80 RCW shall be maintained in a safe and sanitary condition. They shall at all times be subject to inspection by the commission and its duly authorized representatives who shall have power to order out of service any vehicle meeting the standards set forth in this rule, or is not being operated in compliance with state laws in regard to equipment or method.

(2) Equipment standards ((=Out of service criteria:

(a) Steering mechanism:

(i) Turning — The steering wheels are incapable of being turned from full right to full left because of interference by parts of the steering mechanism, or by other damaged or dislocated parts of the vehicle. Power steering mechanism in this test is permitted.

(ii) Steering wheel play — If total movement of more than 30 degrees is required at the steering wheel rim before the front wheels move when the wheels are initially in the straight-ahead position:

(iii) Steering column — Any absence or looseness of bolts or positioning parts resulting in motion of the steering column from its normal position:

(iv) Steering gear attachment — Any absence or looseness of bolts or other parts resulting in motion of the steering gear at the point of attachment to the vehicle's frame:

(v) Ball and socket joints — Any looseness at any ball and socket joint in the steering linkage in excess of three-eighths inch measured in alignment with the shank or neck of the ball:

(vi) Front wheel play — The play about either a horizontal or vertical axis of either front wheel exceeds one-half inch measured at the tread surface of the tire:

(b) Brake systems:

(i) Stopping — The vehicle or combination fails, in two trials, to stop from a speed of twenty miles per hour in a distance of sixty feet from a point at which the brake controls are first moved for the purpose of applying brakes when tested on a smooth, dry, level surface free from loose materials. (Such tests may be made only when they will clearly not interfere with or endanger other traffic, and then only if adequate police protection is utilized to assure the safety of the other traffic on the roadway.)

(ii) Missing or inoperative brakes — Brakes missing, not operating, or the shoes not touching the drum on any wheel required to have operative brakes. (Three axle trucks or truck tractors having on the front wheels brakes which have been rendered inoperative, shall not be placed "out of service" because the front wheel brakes are inoperative. However, this finding should be cited on safety equipment compliance form as a violation of Section 393.48.)

(iii) Pedal reserve — On hydraulic, mechanical or power-assisted brake systems, the service brake pedal first meets firm resistance at a point closer to the floor board or other fixed obstruction to the pedal travel than twenty percent of the total pedal travel from released position when measured in a straight line:

(iv) Brake linings and pads — Any brake lining or pad which has:

(A) Rivets or bolts loose or missing:

(B) Lining friction surface contaminated with oil, grease, or brake fluid in such a manner as to change its frictional characteristics:

(v) Drums and discs — Any drum or disc which:

(A) Is contaminated with oil, grease, or brake fluid in such a manner as to change the frictional characteristics of the friction face:

(B) Has any crack visible on the exterior of any brake drum extending more than three-fourths the width of the drum, except when the drum is properly banded to prevent the crack from expanding to any degree upon the application of brakes or otherwise. (Bands so used must be free of cracks.)

(vi) Brake internal components — Any internal mechanical parts misaligned, broken, or missing:

(vii) Hydraulic brake systems and external components — An hydraulic brake system which:

(A) Has leaks in the master cylinder:

(B) Has hydraulic hoses worn, chafed, cut or cracked through the outer casing and through one ply of fabric:

(C) Has hydraulic hoses, tubes, or connections leaking, restricted, crimped, cracked, or broken:

(D) The hydraulic service brake pedal, while applied with uniform foot pressure, continues to move forward and downward:

(E) Lacks an operative warning signal as required by Section 393.51(b). (Check exemptions in Section 393.51(g).)

(F) Has any visually observed leaking hydraulic fluid anywhere in the brake system:

(G) Has connecting lines or tubes not properly attached or supported to prevent damage by vibration or abrasion by contact with the frame, axle, other lines, or any other part of the vehicle and damage as set forth in (vii)(B) or (C) is present:

(viii) Vacuum systems — Any vacuum system which:

(A) Has evidence of leakage in the system:

(B) Has a vacuum hose worn, chafed, cut, or cracked through the outer casing and through one ply of fabric:

(C) Has a hose tube or connection leaking, restricted, crimped, cracked, or broken:

(D) Has a collapsed vacuum hose when vacuum is applied:

(E) Has connecting lines or tubes not properly attached or supported to prevent damage by vibration or abrasion by contact with the frame, axle, other lines, or any other part of the vehicle and damage as set forth in (viii)(B) or (C) is present:

(F) Lacks an operative low-vacuum warning device as required in Section 393.51(d). (Check exemptions in Section 393.51(g).)

(G) In vacuum-assisted systems and the system at atmospheric pressure (no vacuum), the service brake pedal does not move slightly as the engine is started while pressure is maintained on the brake pedal:

(H) With all vacuum brakes fully applied, with the trailer brake connections open (if a trailer is connected) and the engine operated long enough to reach constant vacuum, and the trailer brake connections disconnected from the towing vehicle, the trailer brake application cannot be maintained for at least five minutes:

(I) Fails to have an operative second independent means for applying brakes on towed vehicles equipped with vacuum brakes, as required in Section 393.43(c):

(J) Has any vacuum reservoir not securely attached to the motor vehicle:

(ix) Air-mechanical brake systems — Any air-mechanical brake system which:

(A) Has an air hose worn, chafed, cut or cracked through the outer casing and through one ply of fabric, except the outer casing of steel braided hose:

(B) Has an air hose, tube, or connection leaking, restricted, crimped, or broken:

(C) Has connecting line or tubes not properly attached or supported to prevent damage by vibration or abrasion by contact with the frame, axle, other lines or other part of the vehicle and damage as set forth in (ix)(A) or (B) is present:

(D) Has a brake chamber, foot valve, or any other valve in the system or stop-light switch with a clearly audible leak:

(E) Has an air reservoir not securely attached to the motor vehicle:

(F) Has a belt-driven compressor subject to intermittent operation due to looseness of belts or defective pulley condition, or any looseness of mounting bolts on any compressor:

(G) Has an air pressure drop of more than 3 psi in 1 minute for single-unit vehicle, and 4 psi in 1 minute for vehicle combinations, with engine running at idling speed and the service brake applied:

(H) With control (service) and supply (emergency) lines disconnected, the towed vehicle brakes fail to remain in the applied position for at least 5 minutes:

(I) Lacks an operative low-air warning device as required in Section 393.51(c). (Check exemptions in Section 393.51(g).)

(J) On an air-mechanical braked power unit, towing a trailer with air-mechanical brakes, the power unit is: (I) Not equipped with automatic and manual means for activation, (II) found to be inoperative, or (III) malfunctioning to the extent that towing unit air supply is vented to atmosphere when either of the means are used:

(K) The brakes on air-mechanical braked towed vehicles do not apply automatically when the power unit air pressure is reduced to some point between 45 and 20 psi:

(x) Electric brake systems — Any electric brake system that:

Has loose or dirty terminal connections, or broken, frayed, or unsupported wires:

Has brakes that do not apply and remain applied for at least five minutes when the breakaway safety switch is activated:

(xi) Parking brake system — Any parking brake system that:

(A) Has any mechanical part of the parking brake missing, broken, or disconnected:

(B) Is not capable under any load condition of holding the vehicle or combination of vehicles on the grade on which it is tested:

(C) The application mechanism, when fully applied, will not hold in the applied position without manual effort:

(D) Uses fluid pressure, air pressure, or electric energy to hold it in the applied position:

(c) Lighting devices and reflectors:

During the period of one-half-hour after sunset to one-half-hour before sunrise:

(i) Headlamps — The single vehicle or towing vehicle does not have at least one operative headlamp on one side and at least one other operative road lighting device on the other, or all required front clearance lamps installed and operative:

(ii) Lamps on rear:

(A) Buses, trucks, and towed vehicles, including driveaway-towaway operations, eighty inches or more in width. There are not at least two operative red lamps, other than stop lamps, on the rear of the rearmost vehicle visible from a distance of five hundred feet:

(B) Truck tractors as single vehicles, and all other vehicles and combination of vehicles less than eighty inches in width. There is not at least one operative red lamp, other than a stop lamp, on the rear of the rearmost vehicle visible from a distance of five hundred feet:

(iii) Lamps on projecting loads — There are not at least two operative red lamps on the rear of loads projecting four or more feet beyond the vehicle body:

(iv) None of the turn signals on a vehicle or combination of vehicles are operative, regardless of light conditions:

(v) At least one operative stop lamp on the rear of a single unit vehicle or the rearmost vehicle of a combination of vehicles, at any time the vehicle or combination is being operated, regardless of light conditions:

(d) Tires:

(i) Tread depth — Any tire on:

(A) Front wheels worn so that less than 2/32-inch tread remains when measured in any two adjacent major tread grooves at three equally spaced intervals around the circumference of the tire:

(B) Any wheel other than a front wheel that has a tire worn so that less than 1/64-inch tread remains when measured in any two adjacent major tread grooves at three equally spaced intervals around the circumference of the tire:

(ii) Any tire that:

(A) Has any visually observed bump, bulge, or knot apparently related to tread or sidewall separation:

(B) Has any tread separation from the carcass:

(H) Exposing fabric in excess of four square inches:

(H) Exposing buffed or prepared carcass surface in excess of four square inches:

(HH) Extending across three-fourths of the width of the tread:

(C) Has cuts — Any tire, cut through three or more layers of textile plies, and the cut being four inches or more long at the third layer:

(D) Is flat — Any tire, on any wheel, flat or having an audible leak:

(E) Contacts mate — Any dual tire so mounted or inflated that it comes in contact with its mate:

(F) Is marked "Not for highway use" or otherwise marked and having like meaning:

(G) Any steering axle tire with any textile ply showing in the tread area or worn through one ply in the side wall:

(e) Wheel and rims:

(i) Rims and rings which are mismatched, bent, sprung, or cracked: (Not to be confused with rims purposely split or cut at manufacture.)

(ii) Disc wheels with elongated bolt holes or cracks between hand holes or stud holes, or both:

(iii) Cast wheels (spoke type) that are cracked:

(iv) Two or more of the wheel bolts, nuts, or clamps are loose, broken, missing, or mismatched:

(v) Any disc, spoke type wheel, or rim with welded repair:

(f) Exhaust systems:

(i) Exhaust systems not securely fastened. (Some exhaust systems have mounting brackets that are intended to allow movement to counteract thermal expansion. Such vehicles shall not be written up as in violation of the regulations, unless the bolts or other method of attaching the mounting brackets are loose.)

(ii) Exhaust systems determined to be leading at a point forward of or directly below the driver compartment of any truck or truck tractor, or forward of or below the passenger compartment of any bus of closed body of any truck used for transporting migratory workers. (For purposes of this item, a vehicle body is not considered to be closed if it uses a canvas tarpaulin or flexible material to exclude weather at the top, sides, or ends.)

Note: The criteria in (f)(i) and (ii) are not to be construed to exclude vehicles equipped with exhaust systems intentionally designed to exhaust to the front end of the vehicle. However, such vehicles should be written up on safety equipment compliance form as being in violation of Section 393.83 of the safety regulations:

Note: Carbon or other types of residue are found in flexible pipe and joints in exhaust systems. The carbon and other materials will work through the flexible pipe and joints. Therefore, actual leakage of exhaust gases must be occurring at the locations specified above before writing up the vehicle on safety equipment compliance form. This can be determined by placing a piece of paper on your hand near the suspected leak point to detect escaping gases:

(g) Fuel systems:

(i) Any fuel system with visible leaks at any point in the fuel system:

(ii) Any fuel tank filler cap missing, poorly fitted or with a defective gasket:

(iii) Any fuel tank not securely attached to the motor vehicle. (Some fuel tanks use springs or rubber bushing to permit movement.)

(h) Coupling devices:

(i) Any tow-bar or adjustable fifth wheel assembly with one-fourth or more of the locking pins missing:

(ii) Any adjustable fifth wheel locking mechanism that does not remain in the locked position without manual effort:

(iii) Any leakage in adjustable fifth wheel locking mechanisms dependent on fluid energy or air pressure:

(iv) Fifth wheel and tow-bar play:

(A) Play lengthwise of the vehicle exceeding one inch between the upper and lower fifth wheel halves:

(B) Where provision is made for adjustment of a fifth wheel lower half or tow-bar, relative to the vehicle frame, there is more than one inch of play lengthwise of the vehicle in any adjustment when locked or latched in position:

(v) Fifth wheel mounting. Fifth wheel mountings including bolts, nuts, welds, and brackets, but not including adjustable features, which are loose, worn, or broken so as to permit one-fourth inch or more observable relative motion between the fifth wheel mounting and the frame of the vehicle:

(vi) Fifth wheel and tow-bar cracks or breaks. Any cracks or breaks in the tow-bar or fifth wheel except:

(A) Cracks in the ramps or horns of fifth wheels:

(B) Casting shrinkage cracks in the ribs of the body of cast fifth wheels:

(i) Suspension:

(i) Axle positioning parts. Any torque arms, U-bolts, spring hangers, or other axle positioning parts cracked, broken, loose, or missing so as to permit displacement of an axle from its normal position:

(ii) Spring assembly:

(A) One-fourth or more of the leaves in any leaf spring assembly broken or missing, or the main leaf depended upon for positioning the axle is broken:

(B) One or more leaves shifted from normal position that could permit coming in contact with a tire, rim, brake drum, or frame:

(C) Air suspensions, leaking:

(iii) Torsion bar assembly or torque arm. Any part of the torsion arm assembly or torque arm or any part used for attaching the same to the vehicle frame or axle, cracked, broken, or missing:

(iv) Frame members. Any cracked, loose, or broken frame member (permitting shifting of the body onto moving parts or collapse of the frame):

(v) Any suspension system defect or any condition of loading that permits the body or frame to come in contact with a tire or any part of the wheel assemblies:

(vi) Adjustable axle assemblies — any:

(A) Adjustable axle assembly with one-fourth or more of the locking pins missing:

(B) Adjustable axle assembly with more than one inch of play lengthwise along the vehicle in any such adjustment when locked or latched in position:

(j) Safe loading:

~~(i) Any lading within any passenger-carrying space which interferes with the ready exit of passengers from the vehicle.~~

~~(ii) Any lading within the driver's compartment which obscures his view ahead or to the right or left sides or to the rear.~~

~~(iii) Protection against shifting cargo.~~

~~(A) Any vehicle without front-end structures, or equivalent devices as required by Section 393.106.~~

~~(B) Vehicles and loading condition such that any part of the load can fall on the roadway.~~

~~(k) Engine.~~

~~The engine cannot be started without external assistance within five minutes.~~

~~(l) Power train.~~

~~Engine cannot be started with the transmission in neutral because of a defective or improperly adjusted clutch. (Transmission cannot be shifted from neutral after engine is started.)~~

~~(m) Mirrors.~~

~~Any power unit with only one mirror on the driver's side that is cracked, pitted, or clouded to the extent that rear vision is obscured.~~

~~(n) Windshield wipers.~~

~~Any power unit that has inoperative wiper or parts of blades or arms are missing or are severely damaged on the driver's side.~~

~~(o) Vehicles—Hazardous materials.~~

~~(i) Loss or leakage of any cargo classed as a hazardous material, when visible on the outside of the vehicle.~~

~~(ii) Loaded cargo tanks or portable tanks having loose dome covers or other openings not securely closed.~~

~~(iii) Vehicles transporting hazardous materials in such quantity to require placards and no placards are installed on sides, rear and front.~~

~~(iv) Vehicles transporting hazardous materials in such quantity to require placards having bare electrical wiring or evidence of burning or short circuiting.~~

~~(3) References in subsection (2) of this rule to Sections 393.43, 393.48, 393.51, 393.83, and 396.106 shall refer to those sections contained in the Code of Federal Regulations, part 393, as adopted by the commission in WAC 480-12-180(1), or hereafter amended by the commission in that section. References in subsection (2) of this rule to "psi" shall refer to pounds per square inch.~~

~~(4) Duty authorized commission personnel shall order any piece of equipment in need of repairs to be properly repaired, and this equipment shall not be used in further service until a certificate of correction is forwarded to the commission. A certificate of correction form will be furnished by the commission. Additional forms may be obtained from any office of the commission. The purpose of this section is to identify critical vehicle inspection items and provide criteria for placing a vehicle(s) in an out-of-service or restricted service category subsequent to a safety inspection. The criteria for out-of-service condition and restricted service condition are those defined in the "North American Uniform Out-Of-Service Criteria," in effect on February 15, 1989. Copies of this document are available from the commission upon request.~~

~~(a) Out-of-service condition. When any vehicle(s) is in out-of-service condition, no motor carrier shall require nor shall any person operate such motor vehicle declared and marked "out-of-service" until all required repairs have been satisfactorily completed.~~

~~(b) Restricted service condition. Any motor vehicle(s) discovered to be in a restricted service condition, while being operated on the highway, may be placed out-of-service at the inspection site or allowed to continue in operation to a repair facility at a distance not to exceed twenty-five miles, at the discretion of the inspector.~~

#### AMENDATORY SECTION (Amending Order R-295, Cause No. TV-2225, filed 2/23/89)

WAC 480-12-180 EQUIPMENT—DRIVERS—SAFETY. In addition to other laws and regulations of this state, all motor vehicles operating under chapter 81.80 RCW shall comply with the following:

(1) Adoption of United States Department of Transportation motor carrier safety regulations. The rules and regulations governing motor carrier safety prescribed by the United States Department of Transportation in Title 49, Code of Federal Regulations, part 392, excluding section 392.2 and paragraph (c) of section 392.1; part 393, excluding paragraph (b) of section 393.1; part 396, except that with respect to section 396.11 no driver vehicle inspection report need be filed if no defects are found, and excluding paragraph (b) of section 396.1; part 397, excluding section 397.21 and paragraph (c) of section 397.1; as well as and including all appendices and amendments thereto in effect

on October 1, 1988, are adopted and prescribed by the commission to be observed by all common, contract, and registered carriers operating under chapter 81.80 RCW.

(2) Whenever the designations "director, bureau of motor carrier safety," "director, regional motor carrier safety office," "regional highway administrator," and "federal highway administration" are used in the respective parts of Title 49, Code of Federal Regulations, as described in subsection (1) of this section, such designations for the purpose of this rule shall mean the "Washington utilities and transportation commission."

(3) Safety chains or other load fastening devices. Any motor truck, truck tractor, trailer, semitrailer, or any combination thereof, transporting logs upon a public highway where binder devices are required, shall have the load thereon securely fastened and protected as follows:

(a) Placement and number of wrappers required on log trucks using stakes.

(i) In the hauling of one log loads, one wrapper chain or cable shall be required and it shall be secured to the rear bunk and the log shall be properly blocked or secured in a manner which will prevent it from rolling or shifting. An additional wrapper, secured to the front bunk, is optional.

(ii) In the hauling of two log loads, not less than two wrapper chains or cables shall be used to secure the load. The logs shall be properly blocked to prevent them from rolling or shifting.

(iii) On loads consisting of three or four logs not over forty-four feet in length, the load shall be secured by not less than two properly spaced wrapper chains or cables. Ends of short logs not secured by such wrappers shall be secured with extra wrappers. If any log is over forty-four feet in length, the load shall be secured by not less than three properly spaced wrappers.

(iv) Loads consisting of five or more logs, when the logs are all seventeen feet or less in length, shall be secured by not less than two properly spaced wrappers. Loads consisting of five or more logs, when any log is over seventeen feet in length, shall be secured by not less than three properly spaced wrappers.

(b) Placement and number of wrappers required on log trucks using chock blocks.

(i) In the hauling of one log load, one wrapper chain or cable shall be required and secured to the rear bunk and the log shall be properly blocked in a manner to prevent it from rolling or shifting.

(ii) One additional wrapper chain or cable shall be required on log trucks using chock blocks over and above the requirements in subparagraphs (a)(iii) and (iv) of this subsection.

(c) Placement and number of wrappers required on crosswise loaded trucks, trailers, etc. In the case of short logs loaded crosswise, the following method of securing the load shall be used if the truck trailer is not provided with solid ends of a height sufficient to prevent any log in the load from rolling off: Not less than two chock blocks shall be used at each open end of the vehicle and the load shall be held with at least two wrapper chains or cables. The wrappers shall be firmly attached to the end of the truck or trailer. Rigid standards or stakes may be used in lieu of chock blocks but each such standard or stake shall be either rigidly connected to the bed of the truck or trailer or shall be placed in a tight fitting socket at least twelve inches in depth. Other means furnishing equivalent security may be acceptable.

(d) Wrapper placement. When two wrappers are required, they shall be applied within six feet of the front and rear bunks. When more than two wrappers are required, the front and back binder shall be applied within six feet of the front and rear bunks.

(e) Short logs. To properly secure short logs, binders shall be placed near the end, not less than twelve inches from the end of the log.

(f) Log on top or in outside saddle. No log loaded on top or in outside saddles of a load shall be transported unless secured by not less than two wrapper chains or cables, one of which shall be placed near each end of such log.

(g) Fasten in place. All wrappers and binders shall be fastened in place prior to tightening to prevent the displacement of logs on the top of the load.

(h) Surround load. All wrapper chains or cables, except in the case of one log loads, shall entirely surround the load. This does not apply to gut-wrappers.

(i) Gut-wrappers. Gut-wrappers, when used, shall be adjusted so as to be tightened by, but not carry the weight of the logs above them.

(j) Wrappers and binders to be placed before leaving immediate loading area. Wrappers and binders shall be placed and tightened around the completed load before the truck leaves the immediate loading area.

(k) Construction of wrappers and binders. Wrapper chains or cables, binders, fasteners, or attachments thereof, used for any purpose as required by these standards, shall have a minimum breaking strength of not less than fifteen thousand pounds and shall be rigged so that it can be safely released.

(l) Bundle straps or banding. For the purposes of this standard, applied bundle straps or banding are not acceptable as wrappers and binders.

(m) Loose ends secured. All loose ends of wrapper chains or cables shall be securely fastened so as to prevent their swinging free in a manner that will create a hazard.

(n) Trucks in sorting yards. Trucks and trailers used around sorting yards, etc., which travel at slow speeds, will not be required to use wrappers providing all logs are contained by and lie below the height of the stakes and there are no persons on the ground exposed to such traffic.

(o) Binder hook design. Binders for securing wrappers on logging trucks shall be fitted with hooks of proper size and design for the wrapper chain being used.

(p) Defective wrappers. Wrappers shall be removed from service when any of the following conditions exist:

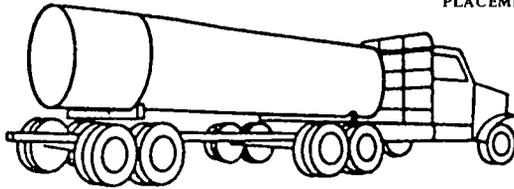
- (i) Excessively worn links on chains;
- (ii) Deformed or stretched chain links;
- (iii) Cracked chain links;
- (iv) Frayed, stranded, knotted, or otherwise defective wire rope.

(q) Binder extensions. Pipe extension handles (swedes) for tightening or securing binders shall be limited to not longer than thirty-six inches. Care shall be taken that a sufficient amount of the pipe extends over the binder handle.

(r) Defective binders. Defective binders shall be immediately removed from service.

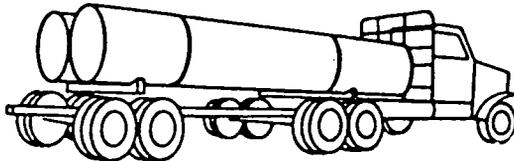
Note: See the following Diagrams I and II for illustrations of placement and number of load fastening devices.

PLACEMENT AND NUMBER OF WRAPPERS



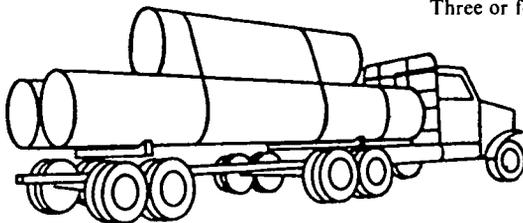
One log load

One wrapper required which shall be secured to the rear bunk. Log shall be blocked or secured in a manner to prevent it from rolling or shifting. A second wrapper secured to the front bunk is optional.



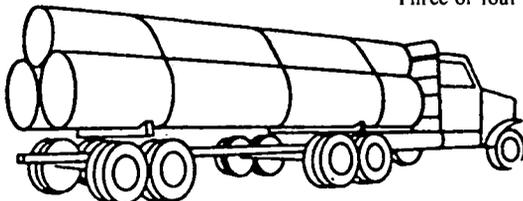
Two log load

A minimum of two wrappers required. Logs shall be blocked to prevent them from rolling or shifting.



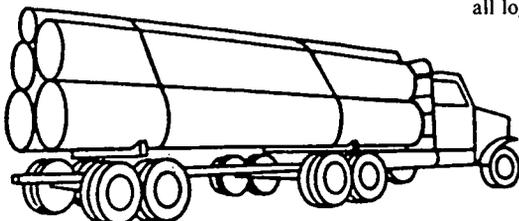
Three or four log load forty-four feet or less

A minimum of two wrappers required.



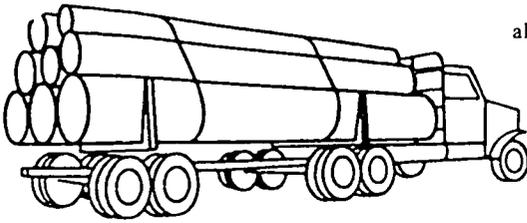
Three or four log loads more than forty-four feet

A minimum of three wrappers required.



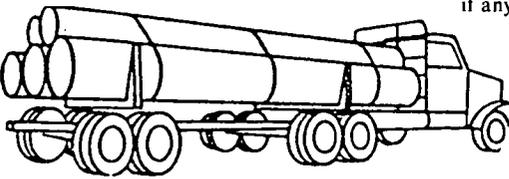
Five or six log load  
all logs seventeen feet or less

A minimum of two wrappers required.



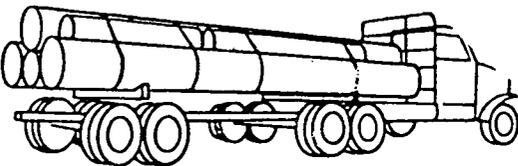
Seven or more log load  
all logs seventeen feet or less

A minimum of two wrappers required.



Five or more log load  
if any logs are more than seventeen feet

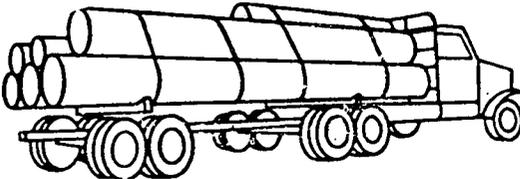
A minimum of three wrappers required.



Outside logs or top logs

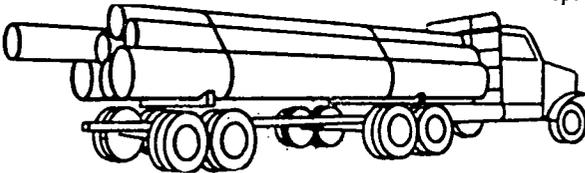
All outside or top logs shall be secured by a binder near but not within 12 inches of each end.

A wrapper shall be near each bunk



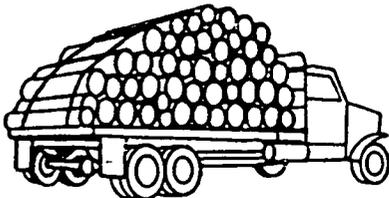
Each load shall be secured by having a wrapper within 6 feet of each bunk except on one log loads.

Proper support for logs



Not more than approximately one-third the weight of any log shall extend beyond the end of the logs or bunk supporting it.

Short logs loaded crosswise



A minimum of two wrappers are required and two chocks or stakes shall be used on the open end of the truck.

Note: All loads of logs on logging trucks equipped with chock blocks instead of stakes, shall have at least one additional wrapper over and above the requirements for trucks equipped with stakes, excepting on one and two log loads and trucks with short logs loaded crosswise.

(4) Approved load fastening devices. The following binder devices are hereby approved for purposes of transporting logs as referred to in subsection (3) of this section, provided that they meet a breaking strength of at least fifteen thousand pounds:

- (a) Three-eighths inch high-test steel chain;
- (b) One-half inch diameter steel cable; and
- (c) Steel strapping not less than two inches by fifty one-thousandths inches in dimension.

(5) Anti-spray devices. Every vehicle shall be equipped with a device adequate to effectively reduce the wheel spray or splash of water

from the roadway to the rear thereof. All such devices shall be as wide as the tires behind which they are mounted and extend downward at least to the center of the axle.

(6) Qualifications of drivers. Adoption of United States Department of Transportation motor carrier safety regulations. The rules and regulations governing qualifications of drivers prescribed by the United States Department of Transportation in Title 49, Code of Federal Regulations, part 383, part 391, excluding paragraphs (a) and (b) of section 391.2, section 391.49, section 391.69, subparagraph (2) of paragraph 391.71(a), and subparagraph (4) of paragraph 391.71(b); as well as and including all appendices and amendments thereto in effect on October 1, 1988, are adopted and prescribed by the commission to be observed by all common, contract, and registered carriers operating under chapter 81.80 RCW except:

(a) The minimum age requirement for drivers prescribed in subparagraph (1) of paragraph 391.11(b) shall be eighteen years of age.

(b) With respect to the limited exemption prescribed in section 391.61, the time period identified therein shall be the period of time prior to October 20, 1979.

(c) With respect to the limited exemptions prescribed in sections 391.65 and 391.71, the time periods identified in these sections shall have as a starting date October 20, 1979.

(d) Sections 391.21, 391.23, 391.25, 391.27, 391.31, 391.33, 391.35, and 391.37 shall not apply to a single vehicle owner driver when operating under its own permit.

(e) Section 391.49 shall not apply when a driver has obtained from the department of licensing the proper drivers license endorsement and restrictions (if any) for the operation of the motor vehicle the person is driving.

(7) Out-of-service criteria. All drivers operating motor vehicles under chapter 81.80 RCW shall do so in compliance with the safety rules and regulations defined therein. Duly authorized personnel of the commission shall have the power to order out-of-service any driver found to be operating in violation of those rules and regulations. The criteria for conditions under which a driver may be ordered out-of-service are those defined in the "North American Uniform Out-Of-Service Criteria," in effect on February 15, 1989. Copies of this document are available from the commission upon request.

(8) Whenever the designation "director, bureau of motor carrier safety" is used in the respective parts of Title 49, Code of Federal Regulations, as described in subsection (6) of this section, such designation for the purpose of this rule shall mean the "Washington utilities and transportation commission," located in Olympia, Washington.

~~((#))~~ (9) Whenever the term "lightweight vehicle" is used in this section or is used in rules adopted herein by reference, such term shall mean a motor vehicle that:

(a) Was manufactured on or after January 1, 1972, and has a manufacturer's gross vehicle weight rating of ten thousand pounds or less, in the case of a single vehicle, or a manufacturer's gross combination weight rating of ten thousand pounds or less, in the case of an articulated vehicle; or

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

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

#### AMENDATORY SECTION (Amending Order R-295, Cause No. TV-2225, filed 2/23/89)

WAC 480-12-195 HAZARDOUS MATERIALS REGULATIONS. (1) The rules and regulations governing hazardous materials prescribed by the United States Department of Transportation in Title 49, Code of Federal Regulations, Parts 170-189, as well as and including all appendices and amendments thereto, in effect on October 1, 1988, are adopted and prescribed by the commission to define hazardous materials for motor vehicle transportation purposes, and to state the precautions that must be observed in storage, packaging, loading, and unloading such materials, and in maintaining, placarding, marking, and certifying motor vehicles and equipment used in transporting such materials, and in the maintenance of shipping papers prepared in conjunction with transporting such materials. The rules and regulations adopted and prescribed by this rule shall be observed by all common, contract, and registered carriers operating in this state.

(2) In addition to any accident reporting requirement now or hereafter prescribed by the commission, every common, contract, and registered carrier operating in this state who reports to the United States Department of Transportation any incidents occurring in this state involving hazardous materials, shall send a copy of any such report to the commission.

#### (3) Out-of-service criteria.

(a) All motor vehicles operated under chapter 81.80 RCW shall be operated in compliance with the rules and regulations governing the transportation of hazardous materials. They shall at all times be subject to inspection by the commission and its duly authorized representatives who shall have power to order out-of-service any vehicle meeting the standards set forth in this section, or is not being operated in compliance with laws in regard to equipment or method.

(b) Standards. The purpose of this section is to identify critical hazardous materials inspection items and provide criteria for placing a

vehicle(s) in an out-of-service or restricted service category subsequent to an inspection. The criteria for out-of-service condition or restricted service condition are those defined in the "North American Uniform Out-Of-Service Criteria," in effect on February 15, 1989. Copies of this document are available from the commission upon request.

(i) Out-of-service condition. No motor carrier shall require nor shall any person operate a motor vehicle(s) when an out-of-service condition is found to exist. The vehicle shall not be allowed to continue in operation until the unsafe condition is corrected and the shipment thereon complies with applicable laws, rules, and regulations: PROHIBITED. That if safety may be jeopardized by an out-of-service action at the inspection site, the vehicle(s) may be escorted to a safer location.

(ii) Restricted service condition. Vehicles with restricted service conditions shall be placed out-of-service at the inspection site, or at the discretion of the inspector may be allowed to continue in operation to the nearest appropriate repair or correction facility.

#### NEW SECTION

WAC 480-30-097 EQUIPMENT—INSPECTION—ORDERED FOR REPAIRS. (1) All motor vehicles operated under chapter 81.68 RCW shall be maintained in a safe and sanitary condition. They shall at all times be subject to inspection by the commission and its duly authorized representatives who shall have power to order out-of-service any vehicle meeting the standards set forth in this section, or is not being operated in compliance with state laws in regard to equipment or method.

(2) Equipment standards. The purpose of this section is to identify critical vehicle inspection items and provide criteria for placing a vehicle(s) in an out-of-service or restricted service category subsequent to a safety inspection. The criteria for out-of-service condition and restricted service condition are those defined in the "North American Uniform Out-Of-Service Criteria," in effect on February 15, 1989. Copies of this document are available from the commission upon request.

(a) Out-of-service condition. When any vehicle(s) is in out-of-service condition, no motor carrier shall require nor shall any person operate such motor vehicle declared and marked "out-of-service" until all required repairs have been satisfactorily completed.

(b) Restricted service condition. Any motor vehicle(s) discovered to be in a restricted service condition, while being operated on the highway, may be placed out-of-service at the inspection site or allowed to continue in operation to a repair facility at a distance not to exceed twenty-five miles, at the discretion of the inspector.

#### AMENDATORY SECTION (Amending Order R-295, Cause No. TV-2225, filed 2/23/89)

WAC 480-30-100 OPERATION OF MOTOR VEHICLES. (1) All motor vehicles shall be operated in accordance with the requirements of existing state laws and no driver or operator thereof shall operate the same in any other than a careful and prudent manner, nor at any greater speed than is reasonable or proper, having due regard to the traffic and use of the highway by others, or so as to endanger the life and limb of any person.

(2) Qualifications of drivers. Adoption of United States Department of Transportation motor carrier safety regulations. The rules and regulations governing qualifications of drivers prescribed by the United States Department of Transportation in Title 49, Code of Federal Regulations, part 383, part 391, excluding paragraphs (a) and (b) of section 391.2, section 391.69, subparagraph (2) of paragraph 391.71(a), and subparagraph (4) of paragraph 391.71(b); as well as and including all appendices and amendments thereto, in effect on October 1, 1988, are adopted and prescribed by the commission to be observed by all auto transportation companies or excursion service companies operating under chapter 81.68 RCW except:

(a) The minimum age requirement for drivers prescribed in subparagraph (1) of paragraph 391.11(b) shall be eighteen years of age.

(b) With respect to the limited exemption prescribed in section 391.61, the time period identified therein shall be the period of time prior to the effective date of this rule.

(c) With respect to the limited exemptions prescribed in sections 391.65 and 391.71, the time periods identified in these sections shall have as a starting date the effective date of this rule.

(3) No driver or operator of a motor vehicle carrying passengers shall smoke any cigar, cigarette, tobacco or other substance in such vehicle during the time he is driving the vehicle.

(4) No driver or operator of a motor vehicle shall create any disturbance or unnecessary noise to attract persons to the vehicle.

(5) The rules and regulations relating to drivers' logs and drivers' hours of service adopted by the United States Department of Transportation in Title 49, Code of Federal Regulations, part 395, as well as and including all appendices and amendments thereto in effect on October 1, 1988, are adopted and prescribed by the commission to be observed by all auto transportation companies or excursion service companies operating under chapter 81.68 RCW.

(6) No driver or operator of any motor vehicle used in the transportation of passengers shall refuse to carry any person offering himself or herself at a regular stopping place for carriage and who tenders the regular fare to any stopping place on the route of said motor vehicle, or between the termini thereof, if allowed to carry passengers to such point under the certificate for such route: PROVIDED, HOWEVER, That the driver or operator of such motor vehicle may refuse transportation to any person who is in an intoxicated condition or conducting himself in a boisterous or disorderly manner or is using profane language, who is suffering from a contagious disease, or whose condition is such as to be obnoxious to passengers on such motor vehicle. A driver is responsible for the comfort, safety and peace of mind of his passengers to the extent that he should be constantly on the alert for and immediately correct any act of misconduct on the part of occupants of the vehicle.

(7) No auto transportation company or excursion service company operating any motor vehicle used in the transportation of persons, shall permit smoking on said vehicle either by passengers or other persons while present in said motor vehicle.

Auto transportation companies and excursion service companies shall place suitable signs in buses, of sufficient size and number to adequately inform passengers that smoking is not permitted in the motor vehicle.

(8) No motor vehicle used in the transportation of persons shall carry more persons than one hundred fifty percent of its rated carrying capacity but no paying passenger shall be required to stand for a distance in excess of twenty miles. The commission may amend, rescind or grant exceptions to this rule in the event of emergency.

(9) The front seat of all passenger carrying vehicles, if connected with the driver's seat, shall be considered as an emergency seat and no passenger will be allowed to occupy the same unless all of the other seats of such vehicle are fully occupied. In no case shall more than one passenger be allowed to occupy the front seat of any motor vehicle unless such seat is forty-eight or more inches in width in the clear. No passenger shall be allowed to sit in the front seat to the left of the driver.

(10) No motor vehicle used for the transportation of passengers shall carry or transport any baggage, trunk, crate or other load which shall extend beyond the running board of said motor vehicle on the left side.

(11) Except when specially authorized by the commission, no motor vehicle used in the transportation of passengers shall be operated or driven with any trailer or other vehicle attached thereto; except in case a vehicle becomes disabled while on a trip and is unable to be operated by its own power, such disabled vehicle may be towed without passengers to the nearest point where repair facilities are available. No right-hand drive vehicle shall be used except by special authorization of the commission and then only when equipped as directed by it.

(12) Accidents occurring in this state arising from or in connection with the operations of any auto transportation company or excursion service company operating under chapter 81.68 RCW resulting in an injury to any person, or the death of any person shall be reported by such carrier to the commission as soon as possible, but in no event later than twelve hours after the occurrence of the accident. The occurrence of such accidents shall be reported to the commission by telephone at the following numbers: 1-800-562-6150; or if the call is made from out of the state: 1-206-586-1119. Copies of written reports of all accidents, including those described in this section, shall be maintained in the main office of the carrier subject to inspection by the commission.

(13) Auto transportation companies or excursion service companies transporting passengers shall maintain such comfort stations in a clean and sanitary condition along its line or route, and shall make such regular stops thereat as shall be necessary to care properly for the comfort of its patrons.

(14) Out-of-service criteria. All drivers operating motor vehicles under chapter 81.68 RCW shall do so in compliance with the safety rules and regulations defined therein. Duly authorized personnel of the commission shall have the power to order out-of-service any driver found to be operating in violation of those rules and regulations. The criteria for conditions under which a driver may be ordered out-of-service are those defined in the "North American Uniform Out-Of-Service Criteria," in effect on February 15, 1989. Copies of this document are available from the commission upon request.

(15) Whenever the designations "director, bureau of motor carrier safety," "director, regional motor carrier safety office," "regional highway administrator," and "federal highway administration" are used in the respective parts of Title 49, Code of Federal Regulations, as described in subsections (2) and (5) of this section, such designations for the purpose of this rule shall mean the "Washington utilities and transportation commission."

#### NEW SECTION

WAC 480-40-065 EQUIPMENT—INSPECTION—ORDERED FOR REPAIRS. (1) All motor vehicles operated under chapter 81.70 RCW shall be maintained in a safe and sanitary condition. They shall at all times be subject to inspection by the commission and its duly authorized representatives who shall have power to order out-of-service any vehicle meeting the standards set forth in this section, or is not being operated in compliance with state laws in regard to equipment or method.

(2) Equipment standards. The purpose of this section is to identify critical vehicle inspection items and provide criteria for placing a vehicle(s) in an out-of-service or restricted service category subsequent to a safety inspection. The criteria for out-of-service condition and restricted service condition are those defined in the "North American Uniform Out-Of-Service Criteria," in effect on February 15, 1989. Copies of this document are available from the commission upon request.

(a) Out-of-service condition. When any vehicle(s) is in out-of-service condition, no motor carrier shall require nor shall any person operate such motor vehicle declared and marked "out-of-service" until all required repairs have been satisfactorily completed.

(b) Restricted service condition. Any motor vehicle(s) discovered to be in a restricted service condition, while being operated on the highway, may be placed out-of-service at the inspection site or allowed to continue in operation to a repair facility at a distance not to exceed twenty-five miles, at the discretion of the inspector.

#### NEW SECTION

WAC 480-40-100 OUT-OF-SERVICE CRITERIA. All drivers operating motor vehicles under chapter 81.70 RCW shall do so in compliance with the safety rules and regulations defined therein. Duly authorized personnel of the commission shall have the power to order out-of-service any driver found to be operating in violation of those rules and regulations. The criteria for conditions under which a driver may be ordered out-of-service are those defined in the "North American Uniform Out-Of-Service Criteria," in effect on February 15, 1989. Copies of this document are available from the commission upon request.

#### NEW SECTION

WAC 480-70-325 EQUIPMENT—INSPECTION—ORDERED FOR REPAIRS. (1) All motor vehicles operated under chapter 81.77 RCW shall be maintained in a safe and sanitary condition. They shall at all times be subject to inspection by the commission and its duly authorized representatives who shall have power to order out-of-service any vehicle meeting the standards set forth in this section, or is not being operated in compliance with state laws in regard to equipment or method.

(2) Equipment standards. The purpose of this section is to identify critical vehicle inspection items and provide criteria for placing a vehicle(s) in an out-of-service or restricted service category subsequent to a safety inspection. The criteria for out-of-service condition and restricted service condition are those defined in the "North American Uniform Out-Of-Service Criteria," in effect on February 15, 1989. Copies of this document are available from the commission upon request.

(a) Out-of-service condition. When any vehicle(s) is in out-of-service condition, no motor carrier shall require nor shall any person operate such motor vehicle declared and marked "out-of-service" until all required repairs have been satisfactorily completed.

(b) Restricted service condition. Any motor vehicle(s) discovered to be in a restricted service condition, while being operated on the highway, may be placed out-of-service at the inspection site or allowed to continue in operation to a repair facility at a distance not to exceed twenty-five miles, at the discretion of the inspector.

NEW SECTION

WAC 480-70-335 OUT-OF-SERVICE CRITERIA. All drivers operating motor vehicles under chapter 81.77 RCW shall do so in compliance with the safety rules and regulations defined therein. Duty authorized personnel of the commission shall have the power to order out-of-service any driver found to be operating in violation of those rules and regulations. The criteria for conditions under which a driver may be ordered out-of-service are those defined in the "North American Uniform Out-Of-Service Criteria," in effect on February 15, 1989. Copies of this document are available from the commission upon request.

*w/ abper 90-04-055*

**WSR 89-23-047  
PROPOSED RULES  
UTILITIES AND TRANSPORTATION  
COMMISSION**

[Filed November 13, 1989, 1:15 p.m.]

**Original Notice.**

Title of Rule: WAC 480-120-081 relating to disconnection of telephone utility service. The proposed amendatory section is shown below as Appendix A, Docket No. U-89-3212-R. Written and/or oral submissions may also contain data, views, and arguments concerning the effect of the proposed amendatory section on economic values, pursuant to chapter 43.21H RCW.

Statutory Authority for Adoption: RCW 80.01.040.  
Statute Being Implemented: RCW 80.36.090.

Summary: Telephone service in exchanges in which there is no business office or agency at which a customer may make payment may not be discontinued for five business days from the date of notification that payment has been mailed. If service has been discontinued, it is to be restored upon representation that payment has been mailed.

Reasons Supporting Proposal: Some telecommunications companies have closed local business offices or payment agencies. Customers have either been disconnected while payment was enroute to distant centers, or have been required to drive up to 60 miles in order to make payment so their telephone service will not be interrupted. This rule is intended to prevent that kind of burden on ratepayers. Telecommunications companies are required by law to provide reasonable service, including buildings and facilities for the convenience of customers. Delay in disconnection where no such facilities are available should not produce additional cost. Reconnection is done in the central office, so no hardship or measurable cost increment to telecommunications companies can be anticipated.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Paul Curl, Secretary, and commission staff, 1300 South Evergreen Park Drive S.W., Olympia, WA, (206) 753-6451.

Name of Proponent: Washington Utilities and Transportation Commission, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: There are no comments or recommendations being submitted inasmuch as the proposal is pursuant to legislative authorization as reflected in RCW 80.01.040.

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

Explanation of Rule, its Purpose, and Anticipated Effects: A short explanation and purpose of the proposal are set forth in Summary above. Redundancy would not appear to be productive. As to anticipated effect of the rule, it is expected that it will produce either restoration of payment agencies or drop facilities within local exchanges, or avoid interruption of telephone service to persons whose payment is in transit.

Proposal Changes the Following Existing Rules: It modifies existing rules on discontinuation of telephone service to provide that in exchanges in which there is no business office or agency at which a customer may make payment may not be discontinued for five business days from the date of notification that payment has been mailed. If service has been discontinued, it is to be restored upon representation that payment has been mailed.

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

Hearing Location: Commission Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA, on December 27, 1989, at 9:00 a.m.

Submit Written Comments to: Paul Curl, Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA, by December 18, 1989.

Date of Intended Adoption: December 27, 1989.

November 6, 1989  
Paul Curl  
Secretary

APPENDIX "A"

AMENDATORY SECTION (Amending Order R-233, Cause No. U-85-35, filed 8/23/85)

WAC 480-120-081 DISCONTINUANCE OF SERVICE. (1) By subscriber - a subscriber shall be required to give notice to the utility of his intention to discontinue service.

(2) By utility - service may be discontinued by the utility for any of the following reasons:

(a) For the nonpayment of bills. The utility shall require that bills for service be paid within a specified time after issuance. The minimum specified time shall be fifteen days. Upon the expiration of said specified time without payment, the bill may be considered delinquent.

(b) For tampering with the utility's property.

(c) In case of vacation of the premises by subscriber.

(d) For nonpayment of any proper charges including deposit, as provided in the tariff of the utility. Nonpayment of charges billed by the utility on behalf of information providers shall not be grounds for discontinuance of service in whole or in part.

(e) For violation of rules, service agreements, or filed tariff(s).

(f) For use of subscriber equipment which adversely affects the utility's service to its other subscribers.

(g) For fraudulent obtaining or use of service. Whenever a fraudulent obtaining or use of the service is detected the utility may discontinue service without notice: PROVIDED, HOWEVER, That if the subscriber shall make immediate payment for such estimated amount

of service as had been fraudulently taken and all costs resulting from such fraudulent use, the utility shall continue such service, subject to any applicable deposit requirements. If a second offense as to fraudulent obtaining or use is detected the utility may refuse to reestablish service, subject to appeal to the commission. The burden of proof of such fraudulent obtaining or use will be upon the utility in case of an appeal to the commission. This rule shall not be interpreted as relieving the subscriber or other person of civil or criminal responsibility.

(h) For unlawful use of service or use of service for unlawful purposes.

(3) A subscriber's service shall be treated as continuing through a change in location from one premises to another within the same service area if a request for service at the new premises is made prior to disconnection of service at the old premises and service is not subject to termination for cause. A subscriber shall be entitled to the same type of service at the new premises unless precluded by the tariff of the company.

(4) Except in case of danger to life or property, fraudulent use, impairment of service, or violation of law, no utility shall discontinue service unless the following conditions are met:

(a) Before effecting disconnection of service, a utility shall make a good faith, bona fide effort to reach the subscriber in person or by telephone to advise the subscriber of the pending disconnection and the reasons therefor. Where telephone contact is elected, at least two attempts to reach the subscriber by telephone during reasonable hours shall be made. If a business or message telephone is provided by the subscriber, the utility shall endeavor by that means to reach the subscriber if unable to make contact through the subscriber's home telephone. A log or record of the attempts shall be maintained by the utility showing the telephone number called and the time of call. Telephone or personal contact shall not be a substitute for written notice of disconnection as specified below. Telephone or personal contact need not be attempted when (i) the company has had cause in any two previous billing periods during a consecutive twelve month period to attempt such contact; and (ii) the company has notified the subscriber in writing that such telephone or personal contact will not be attempted in the future before effecting disconnection of services.

(b) Each utility shall provide, subsequent to a subscriber's account becoming delinquent, written notice of disconnection served on the subscriber either by mail or, at its option, by personal delivery of the notice to the subscriber's address. If a mailed notice is elected, service shall not be disconnected prior to the eighth business day following mailing of the notice. If personal delivery is elected, disconnection shall not be permitted prior to 5 p.m. of the first business day following delivery. Delivered notice shall be deemed effective if handed to a person of apparent competence in the residence or, if a business account, a person employed at the place of business of the subscriber. If no person is available to receive notice, notice shall be deemed served if attached to the primary door of the residence unit or business office at which service is provided. If service is not discontinued within ten working days of the first day on which disconnection may be effected, unless other mutually acceptable arrangements have been made, that disconnection notice shall become void and a new notice shall be required before the service can be discontinued.

All notices of delinquency or pending disconnection shall detail procedures pertinent to the situation and provide notice of means by which the subscriber can make contact with the utility to resolve any differences.

(c) Except in case of danger to life or property, no disconnection shall be accomplished on Saturdays, Sundays, legal holidays, or on any other day on which the utility cannot reestablish service on the same or following day.

(d) When a utility employee is dispatched to disconnect service, that person shall be required to accept payment of a delinquent account at the service address if tendered in cash, but shall not be required to dispense change for cash tendered in excess of the amount due and owing. Any excess payment shall be credited to the subscriber's account. When disconnection is not effected due to such payment the utility shall be permitted to assess a reasonable fee as provided for in the tariff of the utility for the disconnection visit to the service address. Notice of the amount of such fee, if any, shall be provided within the notice of disconnection.

(e) Where the utility has reasonable grounds to believe service is to other than the subscriber of record, the utility shall undertake reasonable efforts to inform occupants of the service address of the impending disconnection. Upon request of one or more service users, where service is to other than the subscriber of record, a minimum period of

five business days shall be allowed to permit the service users to arrange for continued service.

(f) Where service is provided to a hospital, medical clinic with resident patients, or nursing home, notice of pending disconnection shall be provided to the secretary, Washington state department of social and health services, as well as to the subscriber. Upon request from the secretary or his designee, a delay in disconnection of no less than five business days from the date of notice shall be allowed so that the department may take whatever steps are necessary in its view to protect the interests of patients resident therein who are responsibilities of the department.

(g) Service may not be totally disconnected while a subscriber is pursuing any remedy or appeal provided for by these rules, provided any amounts not in dispute are paid when due. The subscriber shall be so informed by the utility upon referral of a complaint to a utility supervisor or the commission.

(h) Where a subscriber's toll charges substantially exceed the amount of any deposit or customary utilization, and where it appears the subscriber will incur excessive, uncollectible toll charges while an appeal is being pursued, the utility may, upon authorization from the commission, disconnect service. A subscriber whose service is so eligible for disconnection may maintain service pending resolution of any dispute upon payment of outstanding toll charges subject to refund if the dispute is resolved in the subscriber's favor.

(i) If a notice of disconnection has been issued to a customer served by an exchange in which there is no business office or agency at which payment can be made, and the customer notifies the utility that payment has been mailed, disconnection shall be postponed for five business days from the date of notification to allow for delivery and posting of payment. If service has been discontinued and the customer represents to the utility that payment has been mailed, service shall immediately be reinstated for five business days pending receipt and posting of payment. If payment is not received within the time limits set herein, service may be discontinued without further notice, and tariff reconnection charges may be billed.

(5) Payment of any delinquent amount to a designated payment agency of the utility shall constitute payment to the utility, if the subscriber informs the utility of such payment and the utility verifies such payment.

(6) Service shall be restored when the causes of discontinuance have been removed and when payment or satisfactory arrangements for payment of all proper charges due from the applicant, including any proper deposit, has been made as provided for in the tariff of the utility; or as the commission may order pending resolution of any bona fide dispute between the utility and the subscriber or applicant over the propriety of disconnection.

(7) A utility may make a charge for restoring service when service has been discontinued for nonpayment of bills. The amount of such charge is to be specified in the utility's tariff.

When service is discontinued for nonpayment of a bill it may be either completely or partially disconnected. Partial disconnection means telephone service will be restricted to either incoming or outgoing service. In case of a partial disconnection, the subscriber shall be notified of the restricted usage. Upon any complete disconnection of telephone service to a subscriber, charges for service will be discontinued as of the date of the disconnection.

## WSR 89-23-048

### PERMANENT RULES

### UTILITIES AND TRANSPORTATION COMMISSION

[Order R-311, Docket No. U-89-2864-R—Filed November 13, 1989, 1:20 p.m.]

In the matter of amending WAC 480-120-031 relating to methods of reporting by telecommunications companies.

This action is taken pursuant to Notice No. WSR 89-15-050 filed with the code reviser on July 19, 1989. The rule change hereinafter adopted shall take effect pursuant to RCW 34.05.380(2).

This rule-making proceeding is brought on pursuant to RCW 80.01.040 and is intended administratively to implement these statutes.

This rule-making proceeding is in compliance 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).

Pursuant to Notice No. WSR 89-15-050 the above matter was scheduled for consideration at 9:00 a.m., Wednesday, August 23, 1989, and was set over to October 4, 1989, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, Washington, before Chairman Sharon L. Nelson and Commissioners Richard D. Casad and A.J. Pardini.

Under the terms of said notice, interested persons were afforded the opportunity to submit data, views, or arguments to the commission in writing prior to August 18, 1989, and orally at 9:00 a.m., Wednesday, August 23, 1989, in the Commission's Hearing Room above noted. At the August 23, 1989, meeting the commission considered the rule change proposal. Written comments were received from the Washington Independent Telephone Association, United Telephone Company of the Northwest, Contel of the Northwest, Inc., GTE Northwest, Inc., Pacific Telecom, Inc., and US West Communications. Oral comments were presented by Robert Snyder on behalf of Whidbey Telephone Company and Western Wahkiakum Telephone Company; by Edward Shaw on behalf of US West; Richard Finnigan on behalf of the Washington Independent Telephone Association; Glenn Randolph-Harris for United Telephone Company; Gail Long for Telephone Utilities of Washington; and Dean Randal for GTE Northwest. Having considered the written and oral comments, the commission set the matter over to October 4, 1989, for the purpose of redrafting the rule proposal in light of the comments received. The proposal as revised was considered at the October 4, 1989, meeting. Written comments in support of the proposal were submitted by the Washington Independent Telephone Association, and oral comments to the same effect were presented by Richard Finnigan on behalf of the WITA.

The rule change affects no economic values.

In reviewing the entire record herein, it has been determined that WAC 480-120-031 should be amended to read as set forth in Appendix A shown below and by this reference made a part hereof. WAC 480-120-031 as amended will change classifications of telecommunications companies from a revenue standard to access lines. The rule requires periodic reporting of various jurisdictional/ nonjurisdictional activities and services, quarterly for Class A companies, and semiannually for those having 10,000 or fewer access lines and also provides for periodic review of cost separations analyses.

ORDER

WHEREFORE, IT IS ORDERED That WAC 480-120-031 as set forth in Appendix A, be amended as a rule of the Washington Utilities and Transportation Commission to take effect pursuant to RCW 34.05.380(2).

IT IS FURTHER ORDERED That the order and the annexed rule, after first being recorded in the order register of the Washington Utilities and Transportation Commission, shall be forwarded to the code reviser for filing pursuant to chapter 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this 8th day of November, 1989.

Washington Utilities and Transportation Commission  
 Sharon L. Nelson, Chairman  
 Richard D. Casad, Commissioner

APPENDIX "A"

AMENDATORY SECTION (Amending Order R-278, Cause No. U-87-1144-R, filed 11/30/87)

WAC 480-120-031 ACCOUNTING. (1) Except as provided in this rule, the Uniform System of Accounts (USOA) for Class A and Class B Telephone Companies published by the Federal Communications Commission (FCC) and designated as Part 32, is hereby prescribed for book and recording purposes for telecommunications companies in the state of Washington.

(2) Telecommunications companies operating within this state shall be classed by ~~((revenue))~~ access lines as follows:

Class	<del>((Annual Gross Operating Revenue))</del> <u>Number of Access Lines</u>
A	<del>((Equal to or Exceeding \$25,000,000))</del> <u>In Excess of 10,000</u>
B	Less than <del>(((\$25,000,000))</del> <u>10,000</u>

Upon ~~((notice to the commission in writing filed not later than December 15, 1987 all carriers must state their intention to implement the FCC Part 32 Uniform System of Accounts as either a Class A or Class B carrier, and seek commission approval for such classification. After November 1, 1987, upon notice to the commission, and if authorized))~~ authorization by the commission, a company presently classified by the commission as a Class B company but desiring more detailed accounting may adopt the accounts prescribed for ~~((a higher classification))~~ Class A companies. ~~((Upon such notification;))~~ Class B companies ~~((in the lower classification))~~ authorized to adopt the accounts prescribed for Class A companies shall be required to comply with the more detailed accounting ~~((and reporting))~~ specified for ~~((the higher classification))~~ Class A companies. Any election to the contrary notwithstanding, the commission reserves the right to require any company to comply

with the accounting requirements applicable to ~~((the higher classification))~~ Class A companies.

(3) Jurisdictional differences. For Account 7910—Income effect of jurisdictional ratemaking differences—Net; Account 1500—Other jurisdictional assets—Net; Account 4370—Other jurisdictional liabilities and deferred credits—Net, and in a subaccount of Account 4550—Retained earnings, the exchange telecommunications companies operating in this state shall keep subsidiary accounts and records reflecting in separate accounts, subaccounts, and subsidiary records, the Washington intrastate differences in amounts arising from the departure of this commission for booking and/or ratemaking purposes from FCC prescribed accounting. Separate subaccounts shall be kept for each difference. Examples include, but are not limited to, separate accounting for the booking of an allowance for funds used during construction (AFUDC) for short-term construction work in progress (Account 2003, formerly subdivision (1) of Account 100.2); flow-through accounting of tax timing differences to the extent permitted by tax regulations (unless specific exceptions to the flow-through requirement have been granted or required by the commission); elimination of excess profits for affiliated transactions; or such other company specific ratemaking or accounting treatment ordered by the commission in any case involving the rates of a specific company, or in other accounting directives issued by the commission.

(a) All local exchange telecommunications companies shall account as of January 1, 1988, for any embedded jurisdictional ratemaking differences by incorporating any previous jurisdictional differences side-records accounts, and any other accounting directives made by the commission, into the appropriate jurisdictional differences account.

(b) All companies shall expense currently any costs associated with the implementation of Part 32.

~~(c) ((During the period beginning January 1, 1988, and concluding December 31, 1988, each telecommunications company required to file monthly or quarterly reports shall file its periodic reports showing, at a minimum, total revenues, expenses, taxes, net operating income and rate base. To the extent possible, prior periods should be restated for purposes of data continuity. After December 31, 1988 normal reporting requirements will resume.~~

~~(d))~~ All companies shall keep subsidiary records as may be necessary to report readily the source of Washington intrastate local exchange network services revenues by residential and business class of service.

~~((e))~~ (d) All telecommunication companies subject to this rule shall keep subsidiary accounts in Account 5084—State access revenue, showing separately the following: Intrastate revenues from end users (subscriber line charges)((;)); special access revenues~~((, and))~~; interLATA and intraLATA switched access revenues, ~~((which shall be))~~ identified as ~~((either traffic sensitive, non-traffic sensitive,))~~ revenue derived from the carrier common line and Universal Service Fund rate elements, and revenue derived from all other switched access rate

elements; independent company settlements~~((, or))~~; and other access revenues.

~~((f))~~ (e) Any company filing with the FCC reports in compliance with the requirements of Part 32, Paragraph 32.25 of Subpart B, Unusual Items and Continuing Liabilities, relating to extraordinary items, prior period adjustments, or contingent liabilities shall file a copy of such report concurrently with this commission.

~~((g))~~ (f) As to a leased asset which is or has been used in the provision of utility service, unless an alternate accounting treatment has been specifically approved by the commission, any company which capitalizes leases in accordance with FASB-13 shall capitalize such leases at the lower of their original cost or the present value of the minimum lease payments. For purposes of this section "original cost" is defined as the net book value of the leased property to the lessor at the inception of the lease. If all efforts by a company to obtain original cost information fail, and the original cost can not be reasonably estimated, then the companies will file a request with the commission seeking approval to record the asset at the lower of the fair market value of the asset or the present value of the minimum lease payments.

When the asset in question has never been used in the provision of utility service, any company which capitalizes leases in accordance with FASB-13 shall capitalize such leases at the lower of their fair market value or the present value of the minimum lease payments.

~~((h))~~ (g) Unless specific exceptions are granted, or required, all companies shall keep records for ratemaking and/or booking purposes which flow-through tax benefits to the extent permitted by federal tax regulations. Any jurisdictional ratemaking differences, created by this rule, shall be reflected in accounts provided in Part 32 for jurisdictional differences, more specifically Accounts 1500, 4370, and 7910. See sections 3~~((f))~~ (h) and 3~~((m))~~ (l) for further exceptions to this rule.

~~((i))~~ (h) As to compensated absences and sick pay, if payment of nonvesting accumulated sick pay benefits depends on the future illness of an employee, companies shall not accrue a liability for such an expense for purposes of portraying results of operations until such sick pay is actually paid. In addition, if a company accrues expenses for compensated absences before such expenses are actually deductible for federal income tax purposes, then an exception to the flow-through accounting requirement in section 3~~((h))~~ (g) is required. In such a case, a normalized tax accounting treatment will be required.

~~((j))~~ (i) No depreciation expense will be allowed for ratemaking purposes on amounts included in Account 2002—Property held for future telecommunications use. If a company records depreciation on amounts in this account, it shall record the jurisdictional difference in a separate subaccount of the designated jurisdictional differences account.

~~((k))~~ (j) Any property which has been used in the provision of utility service, when acquired from a non~~((=))~~ affiliate shall be recorded at its net book value at the time of the transfer. If the company wishes to record the acquisition at its acquisition cost rather than its net book

value, it shall first seek approval for such accounting, providing such detail as the commission may require. If there is a jurisdictional difference in recording the cost of an acquisition, any such difference shall be recorded in a separate subaccount of the designated jurisdictional differences accounts. Any other property acquired from a nonaffiliate shall be recorded at its acquisition cost.

~~((t))~~ (k) Amounts booked to Account 2005—Telecommunications plant adjustment, shall be treated as non~~((=))~~operating investment, and shall not be included in any rate base account without the expressed permission of the commission. Unless an alternate treatment has been authorized by the commission, any amortization taken on amounts in Account 2005 will be treated as though charged to Account 7360—Other nonoperating income, or other nonoperating accounts as required.

~~((m))~~ (l) If a company is allowed to convert to a GAAP accounting treatment of an item, or allowed other accounting changes which call for the accrual of expenses before such expenses are deductible for federal income tax purposes, an exception to the flow-through accounting requirement in section 3~~((h))~~ (g) is required. In such event, a normalized tax accounting treatment will be required.

(4) The annual report form promulgated by the Federal Communications Commission is hereby adopted for purposes of annually reporting to this commission by ~~((a))~~ those Class A telecommunications companies classified by the FCC in CC Docket No. 86-182 as Class A Tier I telecommunications companies. The annual report forms for all other Class A and Class B telecommunications companies shall be published by the commission. The annual report shall be filed with the commission as soon after the close of each calendar year as possible but in no event later than May 1 of the succeeding year. Those telecommunications companies having multistate operations shall report both total company and Washington results in their annual report. Companies may also be required to include certain supplemental information in the annual report, such as the status of all jurisdictional differences accounts and subaccounts for the period. This supplemental information will be described in the mailing of the annual reports, or in other sections of this rule (see sections (7) and (9)).

(5) The total company results of operations reported by each telecommunications company in its annual report shall agree with the results of operations shown on its books and records.

(6) All telecommunications companies having multistate operations shall maintain records in such detail that the costs of property located and business done in this state in accordance with state geographic boundaries can be readily ascertained.

(7) All telecommunications companies having multistate operations shall report to this commission at least once each year, as a supplement to its annual report, such allocations between states as are requested by the commission from time to time for each utility. Any allocations required in developing results of operations for the state of Washington separately shall be accomplished on a basis acceptable to the commission. In these

supplemental reports, adjustments will be made to incorporate Washington intrastate amounts in the jurisdictional differences accounts.

(8)(a) If a company prepares an annual separations cost study and furnishes a copy thereof to the National Exchange Carrier Association, Inc., (NECA), that company shall, upon request by the commission, make available for commission review at a company-designated location in Thurston County a copy of the same study material as has been so furnished to NECA. Such copy shall be made available for such commission review within ten days after the later of:

(i) The date of the company's receipt of the commission's request therefor; or

(ii) The date on which NECA's copy of the study is furnished to NECA.

(b) If a company prepares an annual separations cost study and furnishes a copy thereof to the Federal Communications Commission (FCC), that company shall, upon request by the commission, make available for commission review at a company designated location in Thurston County a copy of the same study material as has been so furnished to the FCC. Such copy shall be made available for such commission review within ten days after the later of:

(i) The date of the company's receipt of the commission's request therefor; or

(ii) The date on which FCC's copy of the study is furnished to the FCC.

(9) Each telecommunications company shall file with the commission periodic results of operations statements showing total Washington per books, restating adjustments to per books, total Washington per books restated, and Washington restated intrastate results of operations.

Class A companies shall file periodic results of operations statements quarterly. Each quarterly statement shall show monthly and twelve months ended data for each month of the quarter reported. Class B companies shall show semiannual and twelve months ended results. For Class A companies, periodic results of operations statements shall be due ninety days after the close of the period being reported. Class B companies shall file the June 30 ended and December 31 ended semiannual results of operations statements on October 1 and May 1 of each year, respectively.

The periodic results of operations statements shall be on a "commission basis" and restated for out-of-period items, nonoperating, nonrecurring, extraordinary items, or any other item that materially distorts test period earnings or expenses. By use of notes, an explanation of the restating adjustments shall accompany the results of operations statement.

"Commission basis" means that the rate base includes those standard rate base components that have been historically accepted by the commission for ratemaking. "Commission basis" does not include new theories or approaches which have not been previously addressed and resolved by the commission.

The telecommunications companies shall use the allocation factors from their most recent separations cost study to develop the Washington intrastate results of operations.

(10) This rule shall not supersede any reporting requirements specified in a commission order, nor shall it be construed to limit the commission's ability to request additional information on a company specific basis as is deemed necessary.

(11) The annual budget of expenditures form for budgetary reporting (~~((by ah))~~) for telecommunications companies (~~((having \$25,000 or more in annual revenue))~~) will be published by this commission in accordance with chapter 480-140 WAC.

~~((+))~~ (12) The requirements of this section shall not apply to telecommunications companies classified by the commission as competitive, and subject to WAC 480-120-033.

~~((+))~~ (13) There shall be no departure from the foregoing except as specifically authorized by the commission.

**WSR 89-23-049**

**PERMANENT RULES**

**UTILITIES AND TRANSPORTATION**

**COMMISSION**

[Order R-312, Docket No. TL-2294—Filed November 13, 1989, 1:24 p.m.]

In the matter of adopting chapter 480-35 WAC relating to regulation of limousine charter party carriers.

This action is taken pursuant to Notice No. WSR 89-20-049 filed with the code reviser on October 3, 1989. The rule change hereinafter adopted shall take effect pursuant to RCW 34.05.380(2).

This rule-making proceeding is brought on pursuant to RCW 80.01.040 and section 8, chapter 283, Laws of 1989, and is intended administratively to implement these statutes.

This rule-making proceeding is in compliance 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).

Pursuant to Notice No. WSR 89-20-049 the above matter was scheduled for consideration at 9:00 a.m., Wednesday, November 8, 1989, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, Washington, before Chairman Sharon L. Nelson and Commissioner Richard D. Casad.

Under the terms of said notice, interested persons were afforded the opportunity to submit data, views, or arguments to the commission in writing prior to October 30, 1989, and orally at 9:00 a.m., Wednesday, November 8, 1989, in the Commission's Hearing Room above noted. At the November 8, 1989, meeting the commission considered the rule change proposal. No written and oral comments were received.

The rule change affects no economic values.

In reviewing the entire record herein, it has been determined that chapter 480-35 WAC should be adopted to read as set forth in Appendix A shown below and by

this reference made a part hereof. Chapter 480-35 WAC as adopted will regulate limousine service operators regarding certificate approval and safety and insurance requirements.

**ORDER**

WHEREFORE, IT IS ORDERED That chapter 480-35 WAC as set forth in Appendix A, be adopted as rules of the Washington Utilities and Transportation Commission to take effect pursuant to RCW 34.05.380(2).

IT IS FURTHER ORDERED That the order and the annexed rule, after first being recorded in the order register of the Washington Utilities and Transportation Commission, shall be forwarded to the code reviser for filing pursuant to chapter 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this 8th day of November, 1989.

Washington Utilities and Transportation Commission  
Sharon L. Nelson, Chairman  
Richard D. Casad, Commissioner

**APPENDIX "A"**

**Chapter 480-35 WAC  
LIMOUSINE CHARTER PARTY CARRIERS**

**WAC**

- 480-35-010 Definitions.
- 480-35-020 Licenses.
- 480-35-030 Certificates.
- 480-35-040 Applications.
- 480-35-050 Liability and property damage insurance.
- 480-35-060 Self-insurance.
- 480-35-070 Equipment of motor vehicles.
- 480-35-080 Operation of motor vehicles.
- 480-35-090 Equipment—Safety.
- 480-35-100 Registered carriers.
- 480-35-110 Registration of interstate authority.
- 480-35-120 Identification decals.

**NEW SECTION**

WAC 480-35-010 DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Commission" means the Washington utilities and transportation commission.

(2) "Person or persons" means an individual, a corporation, association, joint stock association, or partnership, or their lessees, trustees, or receivers.

(3) "Public highway" includes every public street, road, or highway in this state.

(4) "Motor vehicle" means every self-propelled vehicle, commonly referred to as a limousine, with seating capacity for four to sixteen persons, excluding the driver.

(5) Subject to the exclusions of subsection (7) of this section, "limousine charter party carrier of passengers" means every person engaged in the transportation of a person or group of persons, who, under a single contract, acquires the use of a limousine to travel to a specified destination or for a particular itinerary, either agreed

upon in advance or modified by the person or group of persons after having left the place of origin.

(6) "Chauffeur" means any person with a valid Washington state driver's license authorized by the Washington utilities and transportation commission to drive a limousine under this chapter.

(7) The provisions of this chapter do not apply to:

(a) Persons or their lessees, receivers, or trustees insofar as they own, control, operate, or manage taxicabs when operated as such;

(b) Private passenger vehicles carrying passengers on a noncommercial enterprise basis;

(c) Charter party carriers of passengers under chapter 81.70 RCW.

**NEW SECTION**

WAC 480-35-020 LICENSES. No motor vehicle shall be operated upon the public highways of this state by any commercial limousine operator until the owner or person lawfully in control thereof shall have complied with the laws of this state pertaining to motor vehicle licenses and the rules and regulations of the commission governing the operation of motor vehicles upon the public highways.

**NEW SECTION**

WAC 480-35-030 CERTIFICATES. (1) No person may engage in the business of a limousine charter party carrier of persons over any public highway without first having obtained a certificate or registration from the commission to do so.

(2) A certificate shall be issued to any qualified applicant authorizing, in whole or in part, the operations covered by the application if it is found that the applicant is fit, willing, and able to perform properly the service and conform to the provisions of the laws governing commercial limousine operators and the rules and regulations of the commission.

(3) Before a certificate is issued, the commission shall require the applicant to meet certain safety requirements and show proof of minimum financial responsibility as set forth in this chapter.

(4) No certificate will be issued to persons operating under a trade name, unless a certificate of said trade name is filed in accordance with the provisions of chapter 19.80 RCW, and a certified copy thereof filed with the commission.

(5) Certificates must be kept on file at the main office of the owner except when directed to be transmitted to the commission, and shall be subject at all times to inspection by the authorized representatives of the commission.

(6) Any certificate to operate a motor vehicle for the transportation of persons for compensation obtained upon any application by any false affidavit or representation shall be subject to revocation and cancellation by the commission.

(a) No certificate nor any right thereunder may be leased, assigned, or otherwise transferred or encumbered

unless authorized by the commission. Requests for such authority shall be on forms to be furnished by the commission, giving all information therein requested, sworn to before a notary and accompanied by a filing fee named in WAC 480-35-040.

(b) No certificate or right to conduct any of the service therein authorized shall be leased, assigned, or otherwise transferred except in its entirety unless the portion thereof not to be leased, assigned, or otherwise transferred is to be immediately cancelled.

(7) The commission may cancel, revoke, or suspend any certificate or registration issued under this chapter on any of the following grounds:

(a) The violation of any of the provisions of chapter 283, Laws of 1989;

(b) The violation of an order, decision, rule, regulation, or requirement established by the commission pursuant to the law governing limousine charter party carriers;

(c) Failure of a limousine charter party carrier of passengers to pay a fee imposed on the carrier within the time required by law;

(d) Failure of a limousine charter party carrier to maintain required insurance coverage in full force and effect; or

(e) Failure of the certificate holder to operate and perform reasonable service.

(8) After the cancellation or revocation of a certificate or registration or during the period of its suspension, it is unlawful for a limousine charter party carrier of passengers to conduct any operations as such a carrier.

(9) Whenever an order is entered by the commission cancelling or revoking a previous order granting a certificate or cancelling or revoking a certificate already issued, and subsequently an application is made, such application shall be filed in the manner required as for the original.

**NEW SECTION**

WAC 480-35-040 APPLICATIONS. (1) All applications for certificates or registration shall be on forms to be furnished by the commission, giving all information therein requested, sworn to before a notary and accompanied by a filing fee named in subsection (2) of this section.

(2) Miscellaneous fees:

Original application for certificate .....	\$150.00
Application for extension of certificate .....	150.00
Application to sell, lease, mortgage, or transfer a certificate .....	150.00
Application for issuance of duplicate certificate	5.00
Application for registration .....	25.00

(3) All applications for the issuance of a duplicate certificate must be accompanied by affidavit of the holder thereof setting forth that the original certificate has been lost or destroyed.

(4) Remittances shall be made by money order, bank draft, or check made payable to the Washington utilities and transportation commission.

**NEW SECTION**

**WAC 480-35-050 LIABILITY AND PROPERTY DAMAGE INSURANCE.** (1) Within ten days after the date of the order granting an application for certificate, and before such certificate shall issue, the applicant shall file with the commission evidence of liability and property damage insurance having been written by a company authorized to write such insurance in the state of Washington covering each motor vehicle used or to be used by such applicant in the following sums:

	Effective 9/1/89	Effective 1/1/91
(a) Minimum amount for bodily injuries to one person	\$100,000	\$100,000
(b) Minimum amount for bodily injuries to all persons injured in any one accident	\$600,000	\$1,000,000
(c) Minimum amount for loss or damage in any one accident to property of others	\$ 50,000	\$ 50,000

Failure to file and keep such insurance in full force and effect shall be cause for dismissal of an application or cancellation of a certificate.

(2) Evidence of insurance shall be submitted on a "Form E" uniform motor carrier bodily injury and property damage liability certificate of insurance.

(3) All liability and property damage insurance policies issued to limousine charter party carriers of passengers shall carry a "uniform motor carrier bodily injury and property damage liability endorsement."

**NEW SECTION**

**WAC 480-35-060 SELF-INSURANCE.** (1) Every limousine charter party carrier of passengers which qualifies as a self-insurer under the provisions as set forth in section 10, chapter 283, Laws of 1989, may upon proper application to the commission be exempt from all provisions relative to liability and property damage insurance under the rules and regulations as herein set forth: PROVIDED, HOWEVER, That with said application shall be filed a certified copy of the order of the Interstate Commerce Commission showing that the said applicant has qualified under the Interstate Commerce Act as a self-insurer; and a further certification that said company was at the time of the application to the Washington utilities and transportation commission operating under the said self-insuring authority; and that the same is now in full force and effect.

(2) Every limousine charter party carrier qualified and acting under the self-insurer provisions of section 10, chapter 283, Laws of 1989, who may thereafter have all rights as self-insurer cancelled by the Interstate

Commerce Commission, shall coincidentally upon the effective date of the order cancelling such right, file with the Washington utilities and transportation commission the proper liability and property damage insurance or surety bond as provided for in WAC 480-35-050(1).

**NEW SECTION**

**WAC 480-35-070 EQUIPMENT OF MOTOR VEHICLES.** (1) Motor vehicles shall be equipped in accordance with existing state laws, and the rules and regulations of the commission.

(2) All motor vehicles shall be maintained in a safe and sanitary condition and shall at all times be subject to inspection by the commission's duly authorized representatives.

**NEW SECTION**

**WAC 480-35-080 OPERATION OF MOTOR VEHICLES.** (1) All motor vehicles shall be operated in accordance with the requirements of existing state laws and no chauffeur or operator thereof shall operate the same in any other than a careful and prudent manner, nor at any greater speed than is reasonable or proper, having due regard to the traffic and use of the highway by others, or so as to endanger the life and limb of any person.

(2) Qualifications of chauffeurs—adoption of United States Department of Transportation motor carrier safety regulations. The rules and regulations governing qualifications of drivers prescribed by the United States Department of Transportation in Title 49, Code of Federal Regulations, Part 383, Part 391, excluding paragraphs (a) and (b) of section 391.2, section 391.69, subparagraph (2) of paragraph 391.71(a), and subparagraph (4) of paragraph 391.71(b); as well as and including all appendices and amendments thereto, in effect on January 1, 1989, are adopted and prescribed by the commission to be observed by all limousine charter party carriers of passengers operating under chapter 283, Laws of 1989, except:

(a) With respect to the limited exemption prescribed in section 391.61, the time period identified therein shall be the period of time prior to the effective date of this rule.

(b) With respect to the limited exemptions prescribed in sections 391.65 and 391.71, the time periods identified in these sections shall have as a starting date the effective date of this rule.

(3) The rules and regulations relating to drivers' logs and drivers' hours of service adopted by the United States Department of Transportation in Title 49, code of Federal Regulations, Part 395, as well as and including all appendices and amendments thereto in effect on January 1, 1989, are adopted and prescribed by the commission to be observed by all limousine charter party carriers of passengers operating under chapter 283, Laws of 1989.

(4) Accidents occurring in this state arising from or in connection with the operations of any limousine charter party carrier of passengers operating under chapter 283, Laws of 1989, resulting in an injury to any person, or

the death of any person shall be reported by such carrier to the commission as soon as possible, but in no event later than twelve hours after the occurrence of the accident. The occurrence of such accidents shall be reported to the commission by telephone at the following numbers: 1-800-562-6150; or if the call is made from out of the state: 1-206-586-1119. Copies of written reports of all accidents, including those described in this subsection, shall be maintained in the main office of the carrier subject to inspection by the commission.

(5) Whenever the designations "director, office of motor carrier safety," "director, regional motor carrier safety office," "regional highway administrator," and "federal highway administration" are used in the respective parts of Title 49, Code of Federal Regulations, as described in subsections (2) and (3) of this section, such designations for the purpose of this rule shall mean the "Washington utilities and transportation commission."

#### NEW SECTION

**WAC 480-35-090 EQUIPMENT—SAFETY.** In addition to other laws and regulations of this state, all motor vehicles operating under chapter 283, Laws of 1989, shall comply with the following:

(1) Adoption of United States Department of Transportation motor carrier safety regulations. The rules and regulations governing motor carrier safety prescribed by the United States Department of Transportation in Title 49, Code of Federal Regulations, Part 390.17, Part 392, excluding paragraph (c) of section 392.1; Part 393, excluding paragraph (b) of section 393.1, and sections 393.13, 393.14, 393.15, 393.16, 393.76, 393.100, 393.102, 393.104, 393.106; Part 396, except that with respect to section 396.11 no driver vehicle inspection report need be filed if no defects are found, and excluding paragraph (b) of section 396.1; Part 397, excluding section 397.21 and paragraph (c) of section 397.1; as well as and including all appendices and amendments thereto, in effect on January 1, 1989, are adopted and prescribed by the commission to be observed by all limousine charter party carriers of passengers operating under chapter 283, Laws of 1989.

(2) Whenever the designations "director, office of motor carrier safety," "director, regional motor carrier safety office," "regional highway administrator," and "federal highway administration" are used in the respective parts of Title 49, Code of Federal Regulations, as described in subsection (1) of this section, such designations for the purpose of this rule shall mean the "Washington utilities and transportation commission."

#### NEW SECTION

**WAC 480-35-100 REGISTERED CARRIERS.**  
(1) Carriers engaged exclusively in interstate or foreign commerce are declared to be registered carriers. Those operating under authority issued by the Interstate Commerce Commission shall have their registration number prefixed by "L". Registered carriers need only comply with such rules and regulations as specifically refer to

them or to equipment operated exclusively in interstate commerce across or between points in the state and points outside of the state.

(2) By reference, the Washington utilities and transportation commission hereby adopts the rules promulgated by the National Association of Regulatory Utility Commissioners and adopted by the Interstate Commerce Commission under P.L. 89-170 and codified as Part 1023 of Title 49, Code of Federal Regulations.

(3) Registered carriers shall meet insurance requirements by filing with the Washington utilities and transportation commission a certificate of insurance or complying with the requirements of WAC 480-35-060.

#### NEW SECTION

**WAC 480-35-110 REGISTRATION OF INTERSTATE AUTHORITY.** (1) It shall be unlawful for any limousine charter party carrier of passengers to perform a transportation service for compensation upon the public highways of this state without first having secured appropriate authority from the Interstate Commerce Commission, if such authority is required, and without first having registered such authority, if any, with the commission.

(2) Such registration shall be granted upon application, without hearing, upon payment of the appropriate filing fee. Applications to register ICC operating authority with the commission shall be accompanied by the fee of twenty-five dollars for limousine charter party carriers of passengers who have not previously filed currently effective applications for such registration.

#### NEW SECTION

**WAC 480-35-120 IDENTIFICATION DECALS.**  
(1) For the purpose of identification and information of the public, all motor vehicles, including substitute or emergency vehicles, while being operated under certificate, shall have displayed on the vertical surface of the left side of the rear bumper, in the proximity of the license plate, a reflectorized decal to be issued by the Washington utilities and transportation commission. In the event a certificate is revoked or cancelled or the equipment sold, the carrier shall immediately remove the decal from its vehicle or vehicles.

(2) An application for a sufficient number of decals shall be filed with the commission, accompanied by the necessary decal and regulatory fee. New decals shall be issued each year and the cost of the decal shall be three dollars.

(3) The annual regulatory fee shall be established by general order of the commission before November 1 of any year when circumstances so require, but the fee shall not exceed the cost of supervising and regulating such carrier.

(4) The annual decal and regulatory fee shall be collected from each limousine charter party carrier holding a certificate as well as each carrier registered with the commission and such fee shall be due and payable on or before December 31 of each year, to cover the ensuing year beginning February 1.

**WSR 89-23-050**  
**RULES COORDINATOR**  
**THE EVERGREEN STATE COLLEGE**  
 [Filed November 13, 1989, 1:34 p.m.]

Please note a change in name for the rules coordinator for The Evergreen State College. Rita Brackenbush's name has changed to Rita Sevcik. Her location continues to be Room 3109 of the Library Building.

**WSR 89-23-051**  
**NOTICE OF PUBLIC MEETINGS**  
**PUBLIC WORKS BOARD**  
 [Memorandum—November 13, 1989]

**PUBLIC WORKS BOARD MEETING DATES FOR 1990**

DATE/TIME	EVENT	LOCATION
January 9 9:00 a.m.	Regular meeting	Seattle
February 1 8:30 a.m.	Regular meeting	Sea-Tac
March 6 8:30 a.m.	Regular meeting	Sea-Tac
April 3 9:30 a.m.	Regular meeting and tour	Pullman
August 7 8:30 a.m.	Regular meeting	Sea-Tac
September 4 8:30 a.m.	Regular meeting	Sea-Tac
September 18 9:30 a.m.	Regular meeting and tour	Hoquiam
November 6 8:30 a.m.	Regular meeting	Sea-Tac

The above dates were formally adopted by the Public Works Board at a regular meeting on November 7, 1989.

**WSR 89-23-052**  
**NOTICE OF PUBLIC MEETINGS**  
**EASTERN WASHINGTON UNIVERSITY**  
 [Memorandum—November 13, 1989]

EWU Board of Trustees  
 SPECIAL MEETING  
 7:30 a.m., EWU Spokane Center, Room 222  
 November 13, 1989

**WSR 89-23-053**  
**PROPOSED RULES**  
**THE EVERGREEN STATE COLLEGE**  
 [Filed November 14, 1989, 8:30 a.m.]

Original Notice.

Title of Rule: Adopting new WAC 174-400-010 Loss of eligibility—Student athletic participation.

Purpose: Implements chapter 34.05 RCW, the Administrative Procedure Act.

Statutory Authority for Adoption: Chapter 34.05 RCW.

Statute Being Implemented: Chapter 34.05 RCW.

Summary: New policy to implement statute and new APA requirements.

Reasons Supporting Proposal: Promulgates new policy.

Name of Agency Personnel Responsible for Drafting: Mike Grant, Attorney General, Highways-Licenses Building, 586-2689; Implementation and Enforcement: Ron Cheatham, College Recreation Center 210, 866-6000/6530.

Name of Proponent: The Evergreen State College, public.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Promulgate new policy.

Proposal does not change existing rules.

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

Hearing Location: The Evergreen State College Board of Trustees Room, Library Building Room 3112, Olympia, Washington 98505, on January 10, 1990 at 1:45 p.m.

Submit Written Comments to: Rita Sevcik, Room 3109 Library Building, The Evergreen State College, by January 2, 1989.

Date of Intended Adoption: January 10, 1989.

November 9, 1989

Rita Sevcik

Rules Coordinator

Chapter 174-400 WAC  
**LOSS OF ELIGIBILITY—STUDENT ATHLETIC PARTICIPATION**

WAC  
 174-400-010 Immediate suspension.

NEW SECTION

WAC 174-400-010 IMMEDIATE SUSPENSION. Student athletes found to have violated chapter 69.41 RCW (Legend drugs—Prescription drugs) shall, upon conviction, be immediately suspended from participation in school-sponsored athletic events by the director of athletics. The period of loss of eligibility to participate will be determined by the director of athletics at the conclusion of a brief adjudicative hearing, to be commenced within twenty days of the suspension.

**WSR 89-23-054**  
**NOTICE OF PUBLIC MEETINGS**  
**PRODUCTIVITY BOARD**  
 [Memorandum—November 9, 1989]

Starting in 1990, the Productivity Board will meet monthly on the first Friday of the month from 9:00 a.m. to 11:00 a.m. in the Secretary of State's Office (prior meetings were held on the first Thursday of the month). Governor Booth Gardner and Secretary of State Ralph Munro are co-chairmen.

The meeting dates in 1990 are:

January 5	July 6
February 2	August 3
March 2	September 7
April 6	October 5
May 4	November 2
June 1	December 7

**WSR 89-23-055**  
**RULES OF COURT**  
**STATE SUPREME COURT**  
 [November 2, 1989]

IN THE MATTER OF THE ADOPTION OF AMENDMENTS TO RPC TERMINOLOGY, RPC 7.5; NEW APR 13, AMENDMENTS TO RAP 18.7, CR 11, CR 71, CrR 8.4, RALJ 11.6, CRLJ 11, CRLJ 71, CrRLJ 8.4, NEW 16 (former CJC Canon 3(A)(7)); RLD TITLE 13 AND RPC 1.14; RAP 2.2, 4.2, 4.3, 5.3, 5.5, 7.2, 8.1, 8.2, 8.3, 8.4, 9.1, 9.2, 9.5, 9.6, 9.12, 10.2, 10.4, 10.5, 12.4, 12.5, 13.4, 13.5, 13.6, 13.7, 14.3, 16.10, 16.16, 17.3, 17.4, 17.5, 18.1, 18.3, 18.6, 18.9, 18.14, 18.23, FORM 17; NEW CR 39.1, 56, 62; RALJ 1.2, 2.1, 7.1, 7.2; APR 3(b)(1) NO. 25700-A-444

**ORDER**

The Washington State Bar Association having recommended the adoption of the amendments to RPC Terminology, RPC 7.5; RAP 18.7; CR 11, CR 71; CrR 8.4; RALJ 11.6; CRLJ 11, CRLJ 71; CrRLJ 8.4; RLD Title 13; RPC 1.14; RAP 2.2, 4.2, 4.3, 5.3, 5.5, 7.2, 8.1, 8.2, 8.3, 8.4, 9.1, 9.2, 9.5, 9.6, 9.12, 10.2, 10.4, 10.5, 12.4, 12.5, 13.4, 13.5, 13.6, 13.7, 14.3, 16.10, 16.16, 17.3, 17.4, 17.5, 18.1, 18.3, 18.6, 18.9, 18.14, 18.23, Form 17; New CR 39.1, 56, 62; RALJ 1.2, 2.1, 7.1, 7.2, 10.2; APR 3(b)(1) and New APR 13; and the Ethics Advisory Committee and the Bench Bar Press Committee having recommended the adoption of New GR 16 (former CJC Canon 3(A)(7)), and the Court having approved the proposed amendments for publication;

Now, therefore, it is hereby

**ORDERED:**

(a) That pursuant to the provisions of GR 9(f) the proposed amendments as attached hereto are to be published for comment in the January 3, 1990, Proposed Rules of Court.

(b) The purpose statement as required by GR 9(d), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court, Temple of Justice, Olympia, Washington 98504, no later than April 30, 1990.

DATED at Olympia, Washington this 2nd November, 1989.

Keith M. Callow

CHIEF JUSTICE

**WSR 89-23-056**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**  
 [Filed November 14, 1989, 10:41 a.m.]

Continuance of WSR 89-20-076.  
 Title of Rule: WAC 458-61-230 Bankruptcy.  
 Purpose: To remove real estate excise tax exemption for bankruptcy liquidation sales.  
 Other Identifying Information: WAC 458-61-230.  
 Statutory Authority for Adoption: RCW 82.45.120 and 82.45.150.  
 Summary: To remove real estate excise tax exemption for bankruptcy liquidation sales.

Reasons Supporting Proposal: The intended date of adoption has been extended because additional information has come to the department's knowledge which requires more study.

Name of Agency Personnel Responsible for Drafting: Mark Pree, 711 Capitol Way, #400, Olympia, (206) 586-4399; Implementation: Edward Faker, 711 Capitol Way, #400, Olympia, (206) 753-5579; and Enforcement: Department of Revenue.

Name of Proponent: Department of Revenue, governmental.

Submit Written Comments to: Mark Pree, Administrative Law Judge, Department of Revenue, Interpretation and Appeals, 415 General Administration Building, AX-02, Olympia, WA 98504, by November 30, 1989.

Date of Intended Adoption: December 7, 1989.

November 14, 1989  
 Edward L. Faker  
 Assistant Director

**WSR 89-23-057**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Health)  
 (Public Assistance)  
 [Filed November 14, 1989, 1:20 p.m.]

Continuance of WSR 89-22-075.  
 Title of Rule: Adjudicative proceedings, see below.  
 Purpose: To conform program rules on adjudicative proceeding to the new Administrative Procedure Act, chapter 34.05 RCW, and other recent statutory changes.  
 Other Identifying Information: This proposal was adopted as emergency rules effective November 1, 1989.  
 Statutory Authority for Adoption: See below; see also RCW 34.05.220 (1)(a).  
 Statute Being Implemented: Chapter 34.05 RCW, primarily sections in the 400 series.  
 Summary: This proposal conforms adjudicative proceeding to the new Administrative Procedure Act, chapter 34.05 RCW, and recent statutory changes.

Reasons Supporting Proposal: To comply with statutory law and to achieve greater procedural uniformity in adjudicative proceedings in programs the department administers. See below.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David L. Henry, Office of Appeals, OB-43, Olympia 98504, (206) 753-3898.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: Same as above. See also below.

Proposal Changes the Following Existing Rules: The Administrative Procedure Act, chapter 34.05 RCW, at section 250 requires the Chief Administrative Law Judge, Office of Administrative Hearings, to adopt model rules of procedure under the act. RCW 34.05.220 (1)(a) permits an agency to adopt its own rules. An agency must adopt as much of the model rules as is reasonable and state the reasons for any variation in the order of rule adoption. Variations from the model rules are described below.

Washington Administrative Code (WAC)	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	Statutory authority (RCW or Session Law Chapter)	Additional reasons for proposal and variations from Model Rules
248-14-070		Amend		18.51.070	Required by section 95, chapter 175, Laws of 1989.
388-76-095		Amend	NEW	74.08.044	Same
388-96-904		Amend		74.09.120	Required by section 159, chapter 175, Laws of 1989.

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

Date of Intended Adoption: January 29, 1990.

November 13, 1989

Leslie F. James, Director  
Administrative Services

**WSR 89-23-058**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Health)**  
**(Public Assistance)**

[Filed November 14, 1989, 1:23 p.m.]

Continuance of WSR 89-22-076.

Title of Rule: Adjudicative proceedings, see below.

Purpose: To conform program rules on adjudicative proceeding to the new Administrative Procedure Act, chapter 34.05 RCW, and other recent statutory changes.

Other Identifying Information: This proposal was adopted as emergency rules effective November 1, 1989.

Statutory Authority for Adoption: See below; see also RCW 34.05.220 (1)(a).

Statute Being Implemented: Chapter 34.05 RCW, primarily sections in the 400 series.

Summary: This proposal conforms adjudicative proceeding to the new Administrative Procedure Act, chapter 34.05 RCW, and recent statutory changes.

Reasons Supporting Proposal: To comply with statutory law and to achieve greater procedural uniformity in adjudicative proceedings in programs the department administers. See below.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David L. Henry, Office of Appeals, OB-43, Olympia 98504, (206) 753-3898.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: Same as above. See also below.

Proposal Changes the Following Existing Rules: The Administrative Procedure Act, chapter 34.05 RCW, at

section 250 requires the Chief Administrative Law Judge, Office of Administrative Hearings, to adopt model rules of procedure under the act. RCW 34.05.220 (1)(a) permits an agency to adopt its own rules. An agency must adopt as much of the model rules as is reasonable and state the reasons for any variation in the order of rule adoption. Variations from the model rules are described below.

<u>Washington Administrative Code (WAC)</u>	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	<u>Statutory authority (RCW or Session Law Chapter)</u>	<u>Additional reasons for proposal and variations from Model Rules</u>
248-554-030		Amend		70.123.030	Required by section 95, chapter 175, Laws of 1989.
388-70-590		Amend		74.13.109	Housekeeping. See also RCW 74.13.127 as amended by section 148, chapter 175, Laws of 1989.
388-73-036		Amend		74.15.030	Required by section 95, chapter 175, Laws of 1989.

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

Date of Intended Adoption: January 29, 1990.

November 13, 1989  
 Leslie F. James, Director  
 Administrative Services

**WSR 89-23-059**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Institutions)**

[Filed November 14, 1989, 1:26 p.m.]

Continuance of WSR 89-22-077.

Title of Rule: Adjudicative proceedings, see below.

Purpose: To conform program rules on adjudicative proceeding to the new Administrative Procedure Act, chapter 34.05 RCW, and other recent statutory changes.

Other Identifying Information: This proposal was adopted as emergency rules effective November 1, 1989.

Statutory Authority for Adoption: See below; see also RCW 34.05.220 (1)(a).

Statute Being Implemented: Chapter 34.05 RCW, primarily sections in the 400 series.

Summary: This proposal conforms adjudicative proceeding to the new Administrative Procedure Act, chapter 34.05 RCW, and recent statutory changes.

Reasons Supporting Proposal: To comply with statutory law and to achieve greater procedural uniformity in adjudicative proceedings in programs the department administers. See below.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David L. Henry, Office of Appeals, OB-43, Olympia 98504, (206) 753-3898.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: Same as above. See also below.

Proposal Changes the Following Existing Rules: The Administrative Procedure Act, chapter 34.05 RCW, at section 250 requires the Chief Administrative Law Judge, Office of Administrative Hearings, to adopt model rules of procedure under the act. RCW 34.05.220

(1)(a) permits an agency to adopt its own rules. An agency must adopt as much of the model rules as is reasonable and state the reasons for any variation in the order of rule adoption. Variations from the model rules are described below.

Washington Administrative Code (WAC)	New	Amend	Repeal	Statutory authority (RCW or Session Law Chapter)	Additional reasons for proposal and variations from Model Rules
275-19-050		Amend		70.96A.090 as amended by sec. 19, ch 270, Laws of 1989.	<ol style="list-style-type: none"> <li>1. Notice of application procedures are required by section 95, chapter 175, Laws of 1989.</li> <li>2. Other differences are to continue to have these proceedings be based on the facts existing at the time the department acted against the applicant/license holder as opposed to a <i>de novo</i> proceeding.</li> </ol>

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

Date of Intended Adoption: January 29, 1990.

November 13, 1989  
 Leslie F. James, Director  
 Administrative Services

**WSR 89-23-060**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Institutions)**

[Filed November 14, 1989, 1:28 p.m.]

Continuance of WSR 89-22-078.

Title of Rule: Adjudicative proceedings, see below.

Purpose: To conform program rules on adjudicative proceeding to the new Administrative Procedure Act, chapter 34.05 RCW, and other recent statutory changes.

Other Identifying Information: This proposal was adopted as emergency rules effective November 1, 1989.

Statutory Authority for Adoption: See below; see also RCW 34.05.220 (1)(a).

Statute Being Implemented: Chapter 34.05 RCW, primarily sections in the 400 series.

Summary: This proposal conforms adjudicative proceeding to the new Administrative Procedure Act, chapter 34.05 RCW, and recent statutory changes.

Reasons Supporting Proposal: To comply with statutory law and to achieve greater procedural uniformity in adjudicative proceedings in programs the department administers. See below.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David L. Henry, Office of Appeals, OB-43, Olympia 98504, (206) 753-3898.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: Same as above. See also below.

Proposal Changes the Following Existing Rules: The Administrative Procedure Act, chapter 34.05 RCW, at section 250 requires the Chief Administrative Law Judge, Office of Administrative Hearings, to adopt model rules of procedure under the act. RCW 34.05.220 (1)(a) permits an agency to adopt its own rules. An agency must adopt as much of the model rules as is reasonable and state the reasons for any variation in the order of rule adoption. Variations from the model rules are described below.

Washington Administrative Code (WAC)	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	Statutory Authority (RCW or Law Chapter)	Reasons for Proposal Session and any variation from Model Rules
275-26-022		Amend		71.12.030	1. Subsections (1) through (4): Encouraged by RCW 34.05.060 2. Subsection (5): Required by section 95, chapter 175, Laws of 1989.
275-27-500		Amend		Same	Required by RCW 71A.10.050 as amended by section 138, chapter 175, Laws of 1989.
275-36-310		Amend		Same	1. Subsections (1) through (3): Encouraged by RCW 34.05.060. 2. Subsection (4): Required by section 95, chapter 175, Laws of 1989.
Washington Administrative Code (WAC)	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	Statutory authority (RCW or Session Law Chapter)	Additional reasons for proposal and variations from Model Rules
275-38-960		Amend		Same	The procedures are modeled after WAC 388-96-904 as both rules involves reimbursement for medical and other services rendered to department clients by similar kinds of facilities.
275-20-080		Amend		43.208.420	The contents of the application are specified and, to achieve greater uniformity among programs, are modeled after section 95, chapter 175, Laws of 1989.

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

Date of Intended Adoption: January 29, 1990.

November 13, 1989

Leslie F. James, Director  
Administrative Services

**WSR 89-23-061**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Institutions)**

[Filed November 14, 1989, 1:30 p.m.]

Continuance of WSR 89-22-079.

Title of Rule: Adjudicative proceedings, see below.

Purpose: To conform program rules on adjudicative proceeding to the new Administrative Procedure Act, chapter 34.05 RCW, and other recent statutory changes.

Other Identifying Information: This proposal was adopted as emergency rules effective November 1, 1989.

Statutory Authority for Adoption: See below; see also RCW 34.05.220 (1)(a).

Statute Being Implemented: Chapter 34.05 RCW, primarily sections in the 400 series.

Summary: This proposal conforms adjudicative proceeding to the new Administrative Procedure Act, chapter 34.05 RCW, and recent statutory changes.

Reasons Supporting Proposal: To comply with statutory law and to achieve greater procedural uniformity in adjudicative proceedings in programs the department administers. See below.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David L. Henry, Office of Appeals, OB-43, Olympia 98504, (206) 753-3898.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: Same as above. See also below.

Proposal Changes the Following Existing Rules: The Administrative Procedure Act, chapter 34.05 RCW, at section 250 requires the Chief Administrative Law Judge, Office of Administrative Hearings, to adopt model rules of procedure under the act. RCW 34.05.220 (1)(a) permits an agency to adopt its own rules. An agency must adopt as much of the model rules as is reasonable and state the reasons for any variation in the order of rule adoption. Any variations from the model rules are described below.

<u>Washington Administrative Code (WAC)</u>	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	<u>Statutory authority (RCW or Session Law Chapter)</u>	<u>Additional reasons for proposal and variations from Model Rules</u>
275-56-095	New	Amend		71.21.035 (see (5)(c) of section 3, ch 205, Laws of 1989).	Required by section 95, chapter 175, Laws of 1989.
275-16-055		Amend		43.208.335	The contents of the application are specified and, to greater achieve uniformity among programs, are modeled after section 95, chapter 175, Laws of 1989.

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

Date of Intended Adoption: January 29, 1990.

November 13, 1989  
 Leslie F. James, Director  
 Administrative Services

**WSR 89-23-062**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Filed November 14, 1989, 1:32 p.m.]

Continuance of WSR 89-22-080.

Title of Rule: Adjudicative proceedings, see below.

Purpose: To conform program rules on adjudicative proceeding to the new Administrative Procedure Act, chapter 34.05 RCW, and other recent statutory changes.

Other Identifying Information: This proposal was adopted as emergency rules effective November 1, 1989.

Statutory Authority for Adoption: RCW 34.05.220 (1)(a).

Statute Being Implemented: Chapter 34.05 RCW, primarily sections in the 400 series.

Summary: This proposal conforms adjudicative proceeding to the new Administrative Procedure Act, chapter 34.05 RCW, and recent statutory changes.

Reasons Supporting Proposal: To comply with statutory law and to achieve greater procedural uniformity in

adjudicative proceedings in programs the department administers. See below.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David L. Henry, Office of Appeals, OB-43, Olympia 98504, (206) 753-3898.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: Same as above. See also below.

Proposal Changes the Following Existing Rules: The Administrative Procedure Act, chapter 34.05 RCW, at section 250 requires the Chief Administrative Law Judge, Office of Administrative Hearings, to adopt model rules of procedure under the act. His [These] model rules are codified under chapter 10-08 WAC. RCW 34.05.220 (1)(a) permits an agency to adopt its own rules. An agency must adopt as much of the model rules as is reasonable and state the reasons for any variation in the order of rule adoption. Variations from the model rules are described below.

CHAPTERS 10-08 AND 388-08 WAC

388-08  
section;  
new, amend, 10-08  
repeal section

comparison of the two chapters and reasons for variations

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410 <sup>§10</sup>  
New 001

Application of chapter 388-08 WAC

The DSHS section differs from the model section because the purpose of each chapter is different. Chapter 10-08 WAC is a model for all agencies while chapter 388-08 applies only to DSHS programs. The DSHS section also gives the presiding and reviewing officers' addresses so the public will know where to file documents.

413  
Amend 035

Application for an Adjudicative Proceeding

The Model Rule requires an application to be written. The DSHS benefit rule explicitly permits an oral application. The Model Rule does not state who can file and where to file an application. The department rule does.

425 New	040(3), 050(2), 190, 200, and none	Administrative Law-Judge -- Authority -- Application of Law -- Assignment
425(1)(a)	none	The Secretary intends that adjudicative proceedings be <u>de novo</u> . This rule makes that explicit.
425(1) (b)-(j)	200(1)-(9)	These nine subsections of the DSHS rule are the same as Model Rule 200(1) through (9).
425(1)(k)	190	This subsection comes from Model Rule 190 as limited by APA section 449(5).
425(1)(l)	200(10)	Model Rule 200(10) empowers the presiding officer to take any action "necessary and authorized by statute or rule." The department rule at subsection (1)(l) deletes "statute" so as to limit the presiding officer's authority to that conferred by rule. This is not intended to preclude the presiding officer from taking action based on statute, but to condition his or her use of non- department rules in accordance with subsection (2) of this rule.
425(1)(m)	see 040(3)	Subsection (1)(m) is intended to broaden the scope of Model Rule 040(3) as envisioned by APA section 050 and to explicitly state the presiding officer's authority to permit a waiver. Situations arise in department hearings where presiding officers must routinely rule on whether a person has waived a right; an example is whether a person who appears <u>pro se</u> at the hearing has knowingly waived the right to representation.
425(2)	none	The APA at section 449(1) states that agency rules are to be used in the conduct of the proceeding but it and the Model Rules are silent on the order of precedence for the source of law to be used in deciding the issue. This rule covers that gap.
425(3),(4)	050(2)	These sections are the same as Model Rule 050(2) reworded for ease of reading and understanding.
425(5)	none	APA section 425(6) states that the APA petition for disqualification provision is in addition to the RCW 34.12.050 motion of prejudice. The procedure for the APA petition differs from an RCW 34.12.040 motion. The Model Rules do not make the differences clear. The variation in the department rule is to clarify the differences.

428 New	none	Representation  Comments on the draft rules indicated some people did not understand APA section 428 dealing with representation. The department's rule covers the topic in clear everyday English to avoid any misunderstanding.
431 New	130	Prehearing Conference  The Model Rule is reworded and renumbered to make reading and understanding easier.
434 New	040	Notice of Hearing  Subsections 1 and 2 of the Model Rule are reworded to make reading and understanding easier. The Model Rule's restating APA provisions is not included in the department's rule.  Subsection 3 of the Model Rule permitting waiver of defects in the notice of hearing is not carried into the department rule because RCW 34.05.050 covers waivers well. The presiding officer's authority to permit a waiver is in department rule section 425(1)(m).
437 New	110	Filing and Service of Papers  The Model Rule is reworded to make reading and understanding easier. Subsection 4 of the Model Rule stating filing of papers on the agency is complete upon receipt at any office of the agency is changed to require receipt of all papers except for an application at the office responsible for the adjudicative proceeding.
440 New	none	Vacating an Order of Dismissal for Reason of Default or Withdrawal.  There is no Model Rule dealing with vacating an application that had been dismissed. The APA provides that the time to file a motion to vacate a default dismissal is seven days unless a longer period is set by agency rule. This department rule sets a 14 day period after service of the order to file a motion to vacate a dismissal based on a default or a withdrawal and it contains the procedures.
446 New	120	Subpoenas  The department rule follows the Model Rule.

449 New	170;180	Teleconference Hearing
449(1),(2)	180	APA section 449(3) permits a hearing to be conducted by electronic means. Model Rule section 180 treats this subject. The department's section 449(1) contains three differences from the Model Rule. First, the department rule contains the agency's concurrence to conducting most hearings by electronic means so that agreement in each case is not necessary. Second, the department rule imposes the conditions on telephone hearings for some programs receiving federal funds that the federal agencies require for their funding. Third, the APA conditions conducting a hearing by electronic means to it being "technically and economically feasible" for the participants to see the proceeding and the department's rule uses this standard instead of the Model Rule's limitation of only "technically feasible".
none	170	APA section 449(4) deals with how oral proceedings are preserved. This is treated in Model Rule 170. The department did not adopt the Model Rule because it adds nothing to the APA requirement.
452 New	140;160(1)	Rules of Evidence  The first five subsections of the department rule are the same as Model Rule section 140 with rewording for easier reading and understanding. The sixth subsection differs from Model Rule 140(6) by permitting withdrawal of a stipulation or admission during the proceedings instead of cutting off the right at "closure of the hearing." The cause for a party's seeking to withdraw could occur after closure and the department prefers to give the party in such a situation the opportunity to seek relief. Model Rule 160(1), requiring testimony to be under oath or affirmation, is contained in APA section 452(3). The Model Rule adds nothing to the APA provision so is not adopted in the department's rules.
461 New	210	Contents of Orders  The department rule adopts only those parts of Model Rule section 210 that are not restatements of the requirements imposed by APA section 461.
464 New	211	Petition for Review -- Response to Petition -- Disqualification of a Review Judge  Department rule section 464 loosely follows Model Rule section 211. Differences are:

Subsection 1 is the department's rule providing that

initial orders in specified classes of cases become final without further department action when no petition for review is filed. Legal authority for this provision is APA section 464(1).

- . Subsections 2 and 3 on who may petition and the contents of the petition are the same as Model Rule 211(1) and (3).
- . Subsection 4 of the department rule sets a fourteen day time limit for filing a petition and that it can be extended or waived by a reviewing officer. These are changes from the Model Rule which sets a 20 day petition filing period or different place and time as stated in the initial order. This was rejected as (a) too rigid a time frame and (b) too long, or if the presiding officer sets a different time/place, too uncertain to assure that adjudicative orders will be made within reasonable time limits.
- . Subsection 5 requires the petition to be in writing and specifies where it is to be filed. Permitting filing in another place stated in the initial order as allowed in the Model Rules was rejected as too uncertain to assure that adjudicative orders will be made in a reasonable time.

Unlike Model Rule 211(2), copies are not required to be served on other parties and representatives. See comments immediately below.

- . Subsection 6 of the department rule has no counterpart in the Model Rules. It states the agency will give the nonpetitioning party notice that a petition for administrative review was filed. This is to assure that the party is aware of the petition and apprized of the right to respond. The section is necessary because some petitioners, especially pro se clients, fail to serve the other party. The department's curing the error is preferable to dismissing the petition on the procedural defect.
- . Subsection (7) is the same as Model Rule 211 subsection (4) except the period to file a response to a petition is seven (instead of ten) days from the department's mailing the notice acknowledging receipt of the petition (instead of the date the petitioner served the petition) and the reviewing officer can extend the period.

- Subsection 8 covers disqualification of a reviewing officer. The Model Rules are silent. The department rule contains the procedures necessary to implement the right.

470 New	215	Reconsideration	The department rule is the same as the Model Rule except it states the office for filing a petition for reconsideration of a review decision.
515 New	045	Notice to Limited-English-Speaking Parties	Department section 515 is the same as Model Rule 045 with slight wording changes for clarity.
525 New	150;160(2)	Interpreters	Department subsection 525(1) through (11) are the same as Model Rule 150(1) through (11). Subsection 525(12) is the same as Model Rule 160(2). Subsections 525(13) through (18) are the same as Model Rule 150(12) through (17).
535 New	none	Group Hearing	This section has no counterpart in the Model Rules. The department has consolidated applications for adjudicative proceedings filed by different people when each appeared to raise the same question of law. The rule contains safeguards in that any person in a group hearing may request to withdraw from the group in favor of an individual hearing and each member of the group is entitled to representation of his or her choice.
545 New	090	Continuance	Department section 545 is the same as Model Rule section 080 with slight rewording for clarity.
555 New	none	Separate Hearing Regarding Disclosure of Investigative and Intelligence Files.	This section has no counterpart in the Model Rules. It is needed because some programs have appeals involving allegations of client fraud investigated by the Office of Special Investigations.
565 New	080	Computation of Time	Section 565 is the same as Model Rule section 090.

575 New	none	Judicial Review of Final Adjudicative Order
		<p>Judicial review of agency action is dealt with in Part V of the APA. The provisions on initiating judicial review of a final adjudicative order are scattered and difficult for some to follow. Also, nonagency staff comments on draft rules recommended that the rules specify which department office (other than the Secretary's office) was a proper one for delivering a petition for judicial rule under APA section 542(4). This rule responds to the above concerns.</p>
none	230(1)	Informal Settlement
		<p>The APA section 060 encourages agencies to offer informal settlement procedures that may make more elaborate proceedings unnecessary. The APA section permits an agency to establish informal settlement procedures by rule. The Model Rule would establish a single procedure for all informal settlements. The department is not adopting the Model Rule for two reasons. First, the department has created many informal settlement processes and they are tailored to best meet the needs of the kinds of disputes that arise in a particular program. The Model Rule's uniform procedure does not recognize this need for various procedures. Second, while some of the department's informal settlement procedures are in rules, not all are. The department prefers to be able to use nonrule material for some informal settlements.</p>
none	230(2)	Adjudicative Proceeding Settlement
		<p>Model Rule 230(2) deals with settlements in adjudicative proceedings. These settlements are, under the Model Rule, concluded by stipulation of the parties, withdrawal of the application, or withdrawal of the aggrieving agency action. The Model Rule then requires the stipulation to be signed by the parties or recited on the record and for the presiding officer to enter an appropriate order. The procedure for stipulations under this Model Rule provision appears to differ from a stipulation obtained at a prehearing conference. See Model Rules 130(1)(c), (3) and 170. The content of the settlement order appears to differ from that specified for initial orders in Model Rule 210.</p> <p>The department has not proposed to adopt Model Rule 230(2) to avoid these possible conflicts and because its proposed sections 425(1); 431(1)(c), (2), and (3); 440; 452(6); 461; and 464 cover the topic adequately and consistently.</p>

388-08 sections: 00201, 00401, 006, 00601,010,405, 406, 409, 416, 435, 540, 550, 560, 580, and 590 are each repealed.	not applicable	These sections conflict with the APA and/or are covered by it and other department adjudicative procedure rules and/or create nonuniform procedures.
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## CHAPTERS 10-08 AND 388-09 WAC

388-09 <u>sections</u>	10-08 <u>section</u>	<u>comparison of the two chapters and reasons for variation</u>
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388-09 sections 010, 020, 030, and 040 are each repealed	not applicable	These sections conflict with the APA and/or are covered by it and other department adjudicative procedure rules and/or create nonuniform procedures. Also, some were required until June 30, 1989 but not thereafter when RCW 74.15.130 was amended by section 149, chapter 175, Laws of 1989.
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## CHAPTERS 10-08 AND 388-320 WAC

388-320 <u>section</u>	10-08 <u>section</u>	<u>comparison of the two chapters and reasons for variations</u>
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340 New	not applicable	Delegation of Authority by Secretary. This nonadjudicative proceeding rule is being transferred from chapter 388-08 to chapter 388-320 WAC.
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350 New	250	Declaratory Orders - Forms, Content, and Filing  The department rule is the same as the Model Rule.
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360 New	251	Declaratory Orders - Procedural Rights of Persons in Relation to Petition
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370 New	252	Declaratory Orders - Disposition of Petition  The department rule is the same as the Model Rule.
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400 New	250	Petition for Rule Making - Form, Content, and Filing  The department rule is the same as the Model Rule.
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410 New	261	Petition for Rule Making - Consideration and Disposition  The department rule is the same as the Model Rule.
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500 New	not applicable	Updating Mailing Lists  This nonadjudicative proceeding rule is being transferred from chapter 388-08 to chapter 388-320 WAC.
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No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Date of Intended Adoption: January 29, 1990.

November 13, 1989  
 Leslie F. James, Director  
 Administrative Services

**WSR 89-23-063**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Filed November 14, 1989, 1:35 p.m.]

Continuance of WSR 89-22-081.

Title of Rule: Adjudicative proceedings, see below.

Purpose: To conform program rules on adjudicative proceeding to the new Administrative Procedure Act, chapter 34.05 RCW, and other recent statutory changes.

Other Identifying Information: This proposal was adopted as emergency rules effective November 1, 1989.

Statutory Authority for Adoption: See below; see also RCW 34.05.220 (1)(a).

Statute Being Implemented: Chapter 34.05 RCW, primarily sections in the 400 series.

Summary: This proposal conforms adjudicative proceeding to the new Administrative Procedure Act, chapter 34.05 RCW, and recent statutory changes.

Reasons Supporting Proposal: To comply with statutory law and to achieve greater procedural uniformity in adjudicative proceedings in programs the department administers. See below.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David L. Henry, Office of Appeals, OB-43, Olympia 98504, (206) 753-3898.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: Same as above. See also below.

Proposal Changes the Following Existing Rules: The Administrative Procedure Act, chapter 34.05 RCW, at section 250 requires the Chief Administrative Law Judge, Office of Administrative Hearings, to adopt model rules of procedure under the act. RCW 34.05.220 (1)(a) permits an agency to adopt its own rules. An agency must adopt as much of the model rules as is reasonable and state the reasons for any variation in the order of rule adoption. Variations from the model rules are described below.

Washington Administrative Code (WAC)	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	Statutory authority (RCW or Session Law Chapter)	Additional reasons for proposal and variations from Model Rules
388-11-100		Amend		74.08.090	1. The scope of the rule is broadened to include objection to a notice and finding of parental responsibility. See chapter 55, Laws of 1989. 2. Housekeeping. See RCW 34.05.461(1)(c) and RCW 74.20A.055 as amended by section 152, chapter 175, Laws of 1989.
388-11-105			Repeal	Same	The section is being repealed because it conflicts with RCW 34.05.464(5). See also RCW 74.20A.055 as amended by section 152, chapter 175, Laws of 1989.

<u>Washington Administrative Code (WAC)</u>	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	<u>Statutory authority (RCW or Session Law Chapter)</u>	<u>Additional reasons for proposal and variations from Model Rules</u>
388-11-180		Amend		Same	Housekeeping
388-11-185			Repeal	Same	This section would limit discovery to the devices stated in it by operation of RCW 34.05.446(2), (3). General DSHS adjudicative proceeding rules do not contain such limits (see WAC 388-08-464). Thus, repeal of this rule broadens discovery rights in this program and makes them the same as those in chapter 388-08 WAC.
388-13-050		Amend		Same	Housekeeping. See RCW 74.20A.270 as amended by sections 156 and 157, chapter 175, Laws of 1989.
388-13-080		Amend		Same	Same
388-13-070		Amend		Same	Same
388-13-080			Repeal	Same	Same as WAC 388-11-105 (see above).
388-13-110		Amend		Same	Pursuant to RCW 34.05.440(3) the department has adopted 14 days as the general time to file a motion to vacate a dismissal of the proceedings for reason of default. The general period is contained in WAC 388-08-440. This rule in chapter 388-11 is being repealed to make WAC 388-08-440 apply to this program in the interest of achieving greater procedural uniformity among programs.
388-13-120		Amend		Same	Housekeeping and to achieve greater procedural uniformity among department programs.
<u>Washington Administrative Code (WAC)</u>	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	<u>Statutory authority (RCW or Session Law Chapter)</u>	<u>Additional reasons for proposal and variations from Model Rules</u>
388-14-260		Amend		Same	Same
388-14-270		Amend		Same	Housekeeping
388-14-385		Amend		Same	Same
388-14-390		Amend		Same	Housekeeping and to achieve greater procedural uniformity among department programs.
388-14-415		Amend		Same	1. Required by section 16, chapter 360, Laws of 1989. 2. Housekeeping

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

Date of Intended Adoption: January 29, 1990.

November 13, 1989

Leslie F. James, Director  
Administrative Services

**WSR 89-23-064**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Filed November 14, 1989, 1:37 p.m.]

Continuance of WSR 89-22-082.

Title of Rule: Adjudicative proceedings, see below.

Purpose: To conform program rules on adjudicative proceeding to the new Administrative Procedure Act, chapter 34.05 RCW, and other recent statutory changes.

Other Identifying Information: This proposal was adopted as emergency rules effective November 1, 1989.

Statutory Authority for Adoption: See below; see also RCW 34.05.220 (1)(a).

Statute Being Implemented: Chapter 34.05 RCW, primarily sections in the 400 series.

Summary: This proposal conforms adjudicative proceeding to the new Administrative Procedure Act, chapter 34.05 RCW, and recent statutory changes.

Reasons Supporting Proposal: To comply with statutory law and to achieve greater procedural uniformity in adjudicative proceedings in programs the department administrators. See below.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David L. Henry, Office of Appeals, OB-43, Olympia 98504, (206) 753-3898.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: Same as above. See also below.

Proposal Changes the Following Existing Rules: The Administrative Procedure Act, chapter 34.05 RCW, at section 250 requires the Chief Administrative Law Judge, Office of Administrative Hearings, to adopt model rules of procedure under the act. RCW 34.05.220 (1)(a) permits an agency to adopt its own rules. An

agency must adopt as much of the model rules as is reasonable and state the reasons for any variation in the order of rule adoption. Variations from the model rules are described below.

Washington Administrative Code (WAC)	<u>New</u>	<u>Amend</u>	<u>Repeal</u>	Statutory authority (RCW or Session Law Chapter)	Additional reasons for proposal and variations from Model Rules
388-17-100		Amend		74.38.030	Housekeeping.
388-17-500		Amend		Same	The contents of the application are specified and, to achieve greater procedural uniformity, are modeled after section 95, chapter 175, Laws of 1989.
388-17-510		Amend		Same	Same

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

Date of Intended Adoption: January 29, 1990.

November 13, 1989  
 Leslie F. James, Director  
 Administrative Services

Purpose: The 1989-90 Lake Washington wild steelhead run size is estimated to be 2,093 fish. Of the 2,093, it is predicted that 1,157 will be taken by sea lions and 94 will be taken by the Suquamish and Muckleshoot tribes in their gillnet fisheries. Thus, 842 wild steelhead are expected to reach the spawning grounds which is 53 percent of the escapement goal of 1,600 fish. Since the escapement goal will not be met, wild steelhead release regulations must be promulgated.

Statutory Authority for Adoption: RCW 77.12.040.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The department has determined wild steelhead escapement goal will not be met on the Lake Washington system and wild steelhead release regulations must be promulgated to minimize the harvest of wild steelhead. This emergency regulation is necessary to implement the regulations during a crucial time in the steelhead run. Steelhead begin entering the Lake Washington system during early December.

Effective Date of Rule: Immediately.

November 14, 1989  
 Curt Smitch, Director  
 for John McGlenn  
 Chairman, Wildlife Commission

**WSR 89-23-065**

**NOTICE OF PUBLIC MEETINGS  
 EASTERN WASHINGTON UNIVERSITY  
 [Memorandum—November 14, 1989]**

**Board of Trustees Proposed Meeting Schedule 1990**

Friday	January 26	9:00 a.m.	EWU Spokane Center
Friday	February 23	9:00 a.m.	Louise Anderson Hall
Friday	March 23	9:00 a.m.	EWU Spokane Center
Friday	April 27	9:00 a.m.	Louise Anderson Hall
Friday	May 25	9:00 a.m.	EWU Spokane Center
Friday	June 22	9:00 a.m.	Louise Anderson Hall
Friday	July 27	9:00 a.m.	EWU Spokane Center
Friday	September 28	9:00 a.m.	Louise Anderson Hall
Friday	October 26	9:00 a.m.	EWU Spokane Center
Friday	December 7	9:00 a.m.	Louise Anderson Hall

Standard schedule provides for meetings on the fourth Friday of each month. Some variations have been made to accommodate holiday and academic schedules.

**WSR 89-23-066**

**EMERGENCY RULES  
 DEPARTMENT OF WILDLIFE  
 (Wildlife Commission)**

[Order 408—Filed November 14, 1989, 3:46 p.m.]

Date of Adoption: November 14, 1989.

**NEW SECTION**

**WAC 232-28-61728 REGULATION CHANGE FOR SPORT FISHING ON THE CEDAR AND SAMMAMISH RIVER SYSTEMS, AND IN LAKES WASHINGTON AND SAMMAMISH, SALMON BAY, AND LAKE WASHINGTON SHIP CANAL (ALSO KNOWN AS LAKE UNION SHIP CANAL). Notwithstanding the provisions of WAC 232-28-617, on the Cedar and Sammamish River systems, and in Lakes Washington and Sammamish, Salmon Bay, and Lake Washington Ship Canal (also known as Lake Union ship**

Canal), only steelhead with missing adipose or ventral fins may be possessed (there must be a healed scar in the location of the missing fin) as follows:

Effective 12:01 a.m. December 1, 1989 to 11:59 p.m. February 28, 1990, Cedar and Sammamish River Systems, Salmon Bay, Lake Washington, Lake Sammamish, and Lake Washington Ship Canal (also known as the Lake Union Ship Canal).

Also, notwithstanding the provisions of WAC 232-28-617, the following waters are closed to the taking of steelhead:

Effective 12:01 a.m. March 1, 1990 to 11:59 p.m. March 31, 1990, Cedar and Sammamish River Systems, and Salmon Bay (only that portion as follows—from the east end of the north wing wall of the Chittenden Locks to a line approximately 175 feet seaward of, and parallel to the railroad bridge, and which runs through the wooden tower structure near the south shore).

Also, notwithstanding the provisions of WAC 232-28-617 and WAC 232-28-618, the following waters are closed to the taking of steelhead:

Effective 12:01 a.m. March 1, 1990 to 11:59 p.m. May 31, 1990, Lake Washington, Lake Sammamish, Salmon Bay (only that portion as follows—all waters from the Chittenden Locks (in Ballard) upstream (east) to the Fremont Bridge), and Lake Washington Ship Canal (also known as the Lake Union Ship Canal).

All other provisions of WAC 232-28-617 and WAC 232-28-618 relating to the above waters remain in effect.

### WSR 89-23-067

#### PERMANENT RULES

#### DEPARTMENT OF HEALTH

#### (Board of Osteopathic Medicine and Surgery)

[Order 018—Filed November 15, 1989, 1:32 p.m.]

Date of Adoption: November 3, 1989.

Purpose: To eliminate the five year practice requirement for prescriptive privileges for osteopathic physician's assistants to prescribe legend and Schedule III-V controlled substances.

Citation of Existing Rules Affected by this Order: Amending WAC 308-138A-025.

Statutory Authority for Adoption: RCW 18.57A.020, 18.57.005 and 18.130.050.

Pursuant to notice filed as WSR 89-19-054 on September 20, 1989.

Effective Date of Rule: Thirty-one days after filing.

November 3, 1989

Joseph T. Palermo, D.O.  
Chair

#### AMENDATORY SECTION (Amending Order PM 723, filed 4/15/88)

WAC 308-138A-025 OSTEOPATHIC PHYSICIAN'S ASSISTANT PRESCRIPTIONS. An osteopathic physician's assistant may issue written or oral prescriptions as provided herein when approved by the board and assigned by the supervising physician.

(1) Except for schedule two controlled substances as listed under federal and state controlled substances acts, a physician's assistant may issue prescriptions for a patient who is under the care of the physician responsible for the supervision of the physician's assistant.

(a) Written prescriptions shall be written on the blank of the supervising physician and shall include the name, address and telephone number of the physician and physician assistant. The prescription shall also bear the name and address of the patient and the date on which the prescription was written.

(b) The physician's assistant shall sign such a prescription by signing his or her own name followed by the letters "P.A." and the physician assistant's registration number ((of)) or physician assistant drug enforcement administration registration number.

(c) Prescriptions for legend drugs and schedule three through five controlled substances must each be approved or signed by the supervising physician prior to administration, dispensing or release of the medication to the patient, except as provided in subsection (6) of this section.

(2) A physician's assistant extended privileges by a hospital, nursing home or other health care institution may, if permissible under the bylaws, rules and regulations of the institution, write medical orders, except those for schedule two controlled substances, for inpatients under the care of the physician responsible for his or her supervision.

(3) To be authorized to issue prescriptions for schedule three through five controlled substances, a physician's assistant must be registered with the board of pharmacy and the drug enforcement administration.

(4) The registration of a physician's assistant who issues a prescription in violation of these provisions shall be subject to revocation or suspension.

(5) Physician's assistants may not dispense prescription drugs to exceed treatment for ~~((48))~~ forty-eight hours, except as provided in subsection (7) of this section. The medication so dispensed must comply with the state law prescription labeling requirements.

(6) Authority to issue prescriptions for legend drugs and schedule three through five controlled substances without the prior approval or signature of the supervising physician may be granted by the board to an osteopathic physician's assistant who has:

(a) Provided a statement signed by the supervising physician that he or she assumes full responsibility and that he or she will review the physician assistant's prescription writing practice on an ongoing basis;

(b) ~~((Passed))~~ A current certification from the National Commission on Certification of Physician Assistants' ((certification examination));

(c) ~~((Had five years experience in primary health care, including the use of prescription drugs;~~

~~(d) Presented evidence to the board verifying his or her prescriptive writing experience and ability;~~

~~(e))~~ Demonstrated the necessity in the practice for authority to be granted permitting a physician assistant to issue prescriptions without prior approval or signature of the supervising physician.

(7) A physician assistant authorized to issue prescriptions under subsection (6) of this section may dispense medications the physician assistant has prescribed from office supplies. The physician assistant shall comply with the state laws concerning prescription labeling requirements.

**WSR 89-23-068**  
**EMERGENCY RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed November 15, 1989, 1:36 p.m.]

Date of Adoption: November 15, 1989.

Purpose: Allow certification of transition to organic producers, amend fee schedule, set standards for decertification and allow for more flexibility in inspection procedures.

Citation of Existing Rules Affected by this Order: Amending chapter 16-156 WAC.

Statutory Authority for Adoption: Chapter 15.86 RCW.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Temporary adoption of rules until permanent rules can be adopted.

Effective Date of Rule: Immediately.

November 15, 1989

Michael Schwisow

Deputy Director

for C. Alan Pettibone

Director

*Chapter 16-156 WAC*  
**ORGANIC PRODUCER AND TRANSITION TO**  
**ORGANIC PRODUCER CERTIFICATION**

**AMENDATORY SECTION** (Amending Order 1968, filed 3/8/88)

WAC 16-156-001 **APPLICATION.** Organic food producers who wish certification under this chapter must submit an application and pay prescribed fees to the department on an annual basis. This application must include a sworn statement that they have over the past year, and will continue throughout the year for which the application is made, fully comply with the statute and rules for production of organic food.

Transition to organic food producers who wish certification under this chapter must also submit an application and pay prescribed fees to the department on an annual basis. This application must include a sworn statement that they have since last harvest and will continue throughout the year for which application is made, fully comply with the statute and rules for production of organic food.

Each application shall be accompanied by a completed grower information form which will remain on file at the department of agriculture office.

**AMENDATORY SECTION** (Amending Order 1968, filed 3/8/88)

WAC 16-156-005 **STANDARDS FOR CERTIFICATION.** Standards for organic producer and transition to organic producer certification shall be as set forth in RCW 15.86.030 and WAC 16-154-010 and 16-154-020.

**AMENDATORY SECTION** (Amending Order 1968, filed 3/8/88)

WAC 16-156-010 **SAMPLING.** (~~(At least one)~~) A sample representative of a crop grown by ((each)) organic producers and transition to organic producers under the organic food certification program ((shall)) may be tested for pesticide residues ((by the state chemist annually)) whenever the director deems it necessary for certification. These samples shall be collected by the department of agriculture in a representative manner at the producer's farm.

It shall be the producer's responsibility to arrange for and bear the costs for any additional testing which is deemed necessary by the director for certification.

**AMENDATORY SECTION** (Amending Order 1968, filed 3/8/88)

WAC 16-156-020 **INSPECTION.** The department of agriculture shall make at least one announced visit and ~~((one))~~ any unannounced visit deemed necessary to each organic producer and transition to organic producer under the organic food certification program each year for the purpose of inspection for compliance with the standards for certification which are chapter 15.86 RCW (Organic food products) and chapter 16-154 WAC (Rules pertaining to sale of organic foods).

This inspection may entail survey of required records, examination of crops and fields, and any other information deemed necessary to the requirements of this chapter.

It shall be the producer's responsibility to arrange for and bear the costs for any additional inspections which are deemed necessary by the director for certification.

**AMENDATORY SECTION** (Amending Order 1968, filed 3/8/88)

WAC 16-156-030 **CERTIFICATION.** Washington state department of agriculture certification of organic food producers and transition to organic producers means that any analysis of the representative samples taken by the department of agriculture showed no illegal pesticide usage and inspection of the producer by the department of agriculture showed no illegal practices being followed.

Organic food producers who apply under this program will be able to use the words, "produced under Washington state department of agriculture organic food certification program" in their labeling as long as their

practices comply with this chapter and chapters 15.86 RCW and 16-154 WAC.

Food produced under this organic food certification program may be identified by the use of the attached logo. This logo shall only be used for food produced under the Washington state department of agriculture organic food certification program.

Transition to organic producers who apply under this program will be able to use the words "produced under Washington department of agriculture transition to organic food certification program" in their labeling as long as their practices comply with this chapter and chapter 15.86 RCW and chapter 16-154 WAC.

Food produced under this transition to organic food certification program may be identified by use of the attached logo. This logo shall only be used for food produced under the Washington state department of agriculture's transition to organic program.

In no event shall food be sold as Washington certified organic or Washington certified transition to organic prior to an on-site inspection being made by the department of agriculture and grower information form being on file with the department of agriculture.

The logos to identify organic food and transition to organic food produced under this certification programs shall not be changed except for increases or decreases in size, as appropriate.

**NEW SECTION**

WAC 16-156-035 **DECERTIFICATION.** Whenever the director finds that a producer who has been certified under this program has:

(1) Violated the standards for certification which are set forth in RCW 15.86.030 and WAC 16-154-010 and 16-154-020;

(2) Has filed an application for certification which is false or misleading in any particular;

(3) Has violated any of the provisions of this chapter; or

(4) Has failed to provide records as required by WAC 16-154-020;

The director may issue an order revoking that producer's certification under this program or he may issue an order directing the producer to take other appropriate action to correct the violation. If appropriate action is taken, the producer will be returned to its previous status under the program.

Any producer who has received notice that its certification may be revoked under this section may apply for a hearing under the Washington Administrative Procedure Act, chapter 34.05 RCW. Such application must be in writing, addressed to the director of the Washington department of agriculture and be received in the Olympia administrative offices not later than twenty days from the date of the notice of the opportunity to apply for a hearing.

**AMENDATORY SECTION** (Amending Order 1968, filed 3/8/88)

WAC 16-156-040 **CERTIFIED PRODUCER NUMBER.** Organic food producers and transition to

organic food producers who make application to the certification program shall be assigned a grower identification number by the department of agriculture. All sales from the producer to the first handler shall include the grower number on the invoice and/or other sales document.

**AMENDATORY SECTION** (Amending Order 1968, filed 3/8/88)

WAC 16-156-050 **APPLICATION FOR CERTIFICATION.** Organic food producers and transition to organic producers who wish to apply for the producer inspection program must apply to the department by ((April 1, 1988, and thereafter by)) January 15 of each year. The application and fees shall be forwarded to the department on forms furnished by the department.

Applications made after the set deadline ((shall)) may be processed as the department can schedule the initial inspections, provided that the producer may still conduct business as provided in RCW 15.86.050.

**AMENDATORY SECTION** (Amending Order 1968, filed 3/8/88)

WAC 16-156-060 **FEE SCHEDULE.** (1) The cost per application shall be based on a sliding scale of gross dollar volume. The fee shall accompany the application.

Information on gross dollar volume shall not be disclosed to unauthorized persons.

<del>((Gross Dollar Volume</del>	<del>Fee</del>
<del>\$ 0 - \$ 10,000</del>	<del>\$150.00</del>
<del>\$ 10,000 - \$ 25,000</del>	<del>\$185.00</del>
<del>\$ 25,000 - \$ 50,000</del>	<del>\$350.00</del>
<del>\$ 50,000 - \$ 100,000</del>	<del>\$525.00</del>
<del>\$100,000 and Over</del>	<del>\$600.00))</del>
Gross Income	Annual Fee
\$ 0 - \$ 12,000	\$ 150
\$ 12,000 - \$ 15,000	\$ 185
\$ 15,000 - \$ 20,000	\$ 200
\$ 20,000 - \$ 25,000	\$ 275
\$ 25,000 - \$ 35,000	\$ 350
\$ 35,000 - \$ 50,000	\$ 500
\$ 50,000 - \$ 65,000	\$ 600
\$ 65,000 - \$ 80,000	\$ 750
\$ 80,000 - \$100,000	\$ 900
\$ 100,000 - \$150,000	\$ 1,000
\$ 150,000 - \$200,000	\$ 1,200
\$ 200,000 - \$280,000	\$ 1,400
\$ 280,000 - \$375,000	\$ 1,500
\$ 375,000 - \$500,000	\$ 2,000
\$ 500,000 and up	\$ 2,500

(2) Additional inspections (in addition to two inspections provided for), if required for certification by the director, shall be at \$20/hr. + ((2¢)) .24¢/mile from the inspector's assigned duty station.

(3) Additional samples (in addition to one sample provided for), if required for certification by the director, shall cost an additional lab fee of one hundred ten dollars. If an additional visit must be arranged, it shall

be at \$20/hr. + ((2+)) .24¢/mile from the inspector's assigned station.



**WSR 89-23-069**  
**NOTICE OF PUBLIC MEETINGS**  
**BUILDING CODE COUNCIL**  
 [Memorandum—November 15, 1989]

1989 Meeting Schedule

January 20	9:00 a.m.	Sea-Tac
February 10	9:00 a.m.	Lacey
March 10	9:00 a.m.	Sea-Tac
April 14	9:00 a.m.	Sea-Tac

May 12	9:00 a.m.	Sea-Tac
June 9	9:00 a.m.	Sea-Tac
July 14	9:00 a.m.	Sea-Tac
August 11	9:00 a.m.	Sea-Tac
September 21 & 22	Meeting Cancelled	
October 12	9:00 a.m.	Sea-Tac
October 13	9:00 a.m.	Spokane
November 9	9:00 a.m.	Sea-Tac
December 15	9:00 a.m.	Sea-Tac

Council committee meetings may be held as part of the regular council meeting.

**WSR 89-23-070**  
**PERMANENT RULES**  
**DEPARTMENT OF PERSONNEL**  
**(Personnel Board)**  
 [Filed November 15, 1989, 1:46 p.m.]

Date of Adoption: November 9, 1989.  
 Purpose: This rule sets guidelines for the agencies as to how and when to evaluate performance of their employees.  
 Citation of Existing Rules Affected by this Order: Amending WAC 356-30-300 Performance evaluation—Requirements—Monitoring.  
 Statutory Authority for Adoption: RCW 41.06.040 and 41.06.150.  
 Pursuant to notice filed as WSR 89-20-037 on October 2, 1989.  
 Effective Date of Rule: January 1, 1990.  
 November 13, 1989  
 Dee W. Henderson  
 Secretary

**AMENDATORY SECTION** (Amending Order 267, filed 1/2/87)

WAC 356-30-300 PERFORMANCE EVALUATION—REQUIREMENTS—MONITORING. (1) Agencies shall evaluate the performance of their employees during their probationary or trial service periods and at least once a year thereafter.  
 (2) The annual evaluation will be conducted during the sixty-day period following the employee's anniversary date, except an agency can establish, on a consistent basis, a due date which better accommodates the agency's particular needs. The evaluation will cover the period ending with the established due date.  
 (3) Agencies will utilize the standardized employee performance evaluation procedures and forms prescribed by the director of personnel((-supplement)). The procedures shall include provisions whereby individual agencies may, with the approval of the director of personnel, supplement the process with special performance factors peculiar to the specific organizational needs.  
 (4) Each supervisor's annual evaluation shall include an assessment of his or her efforts toward achieving the objectives of the agency's affirmative action program.  
 (5) The procedures and forms shall:

(a) Be designed to aid in communications between supervisors and subordinates and clarify duties and expectations.

(b) Be designed to inform employees of their performance strengths and weaknesses.

(c) Be based on performance toward the goals and objectives of the agency and its subunits.

(d) Include provisions for the counseling and the development of employees.

(6) Each employee whose work is judged unsatisfactory shall be notified in writing of the areas in which the work is considered deficient. Unless the deficiency is extreme, the employee shall be given an opportunity to demonstrate improvement.

(7) Allowing probationary employees to gain permanent status or trial service employees to gain permanent status in the class to which they have been promoted without completion of an evaluation may be regarded as neglect of duty, incompetence or insubordination on the part of the supervisor and may be cause for disciplinary action.

#### WSR 89-23-071

#### NOTICE OF PUBLIC MEETINGS EDMONDS COMMUNITY COLLEGE

[Memorandum—November 15, 1989]

Wednesday, November 15, 1989

Lynnwood Hall, Room 424

The facilities for this meeting are free of mobility barriers and interpreters for deaf individuals and brailled or taped information for blind individuals will be provided upon request when adequate notice is given.

#### WSR 89-23-072

#### EMERGENCY RULES

#### DEPARTMENT OF FISHERIES

[Order 89-140—Filed November 15, 1989, 4:58 p.m.]

Date of Adoption: November 15, 1989.

Purpose: Commercial fishing regulations.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-47-524.

Statutory Authority for Adoption: RCW 75.08.080.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The openings in Areas 7 and 7A provide opportunity to harvest the non-Indian share of the United States share of United States and Canadian origin chum salmon. The opening in Area 7B provides opportunity to harvest non-Indian allocation of Nooksack-Samish origin chum, and is necessary to reduce wastage. The in-season area restriction in Area 7B

is necessary to maintain an orderly fishery. Openings in Area 8A provide opportunity to harvest the non-Indian allocation of Stillaguamish-Snohomish origin chum. The exclusion zone in Area 8A has been modified to provide greater opportunity to harvest Stillaguamish origin chum salmon. Openings in Areas 12 and 12B provide opportunity to harvest the non-Indian allocation of Hood Canal origin chum stocks. The restriction in Area 12B is necessary to reduce interactions between commercial and sport fisheries, and prevent overharvest of local 12B/12C salmon stocks. All other Puget Sound areas are closed to prevent overharvest of local salmon stocks.

Effective Date of Rule: Immediately.

November 15, 1989

Joseph R. Blum

Director

#### NEW SECTION

**WAC 220-47-525 PUGET SOUND ALL-CITIZEN COMMERCIAL SALMON FISHERY.** Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately, until further notice, it is unlawful to take, fish for, or possess salmon or Atlantic salmon for commercial purposes taken from the following Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the following open periods and restrictions:

- \* Areas 7 and 7A – Gill nets using 6-inch minimum mesh may fish from 3 PM to 9 AM nightly, Wednesday and Thursday nights, November 15 and 16. Purse seines and reef nets may fish from 5 AM to 8 PM daily, Wednesday, Thursday, and Friday, November 15, 16, and 17.
- \* Area 7B – Gill nets using 6-inch minimum mesh may fish from 3 PM to 9 AM nightly, Wednesday, Thursday, Friday, and Saturday nights, November 15, 16, 17, and 18. Purse seines may fish from 5 AM to 8 PM daily, Wednesday, Thursday, Friday, Saturday, and Sunday, November 15, 16, 17, 18, and 19. This opening excludes those waters north and east of a line projected from the light at the Port of Bellingham North Terminal to the light at the end of Squalicum Creek waterway.
- \* Area 8A – Purse seines using the 5-inch strip may fish from 5 AM to 8 PM Wednesday, November 15. This opening excludes those waters of Area 8A north of a line extended true west from Kayak Point to the landfall on Camano Island.
- \* Areas 12 and 12B – Gill nets using 6-inch minimum mesh may fish from 3 PM Thursday November 16 to 9 AM Friday November 17, and purse seines using the 5-inch strip may fish from 5 AM to 4 PM Friday November 17. This opening excludes those waters of Area 12B south of a line projected from Hood Point to Quatsap Point.
- \* Areas 4B, 5, 6, 6A, 6B, 6C, 6D, 7C, 7D, 7E, 8, 8D, 9, 9A, 10, 10A, 10C, 10D, 10E, 10F, 10G,

11, 11A, 12A, 12C, 12D, 13, 13A, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, and 13K and all freshwater areas – Closed.

### REPEALER

The following section of the Washington Administrative Code is repealed effective immediately:

WAC 220-47-524 PUGET SOUND ALL-CITIZEN COMMERCIAL SALMON FISHERY (89-138)

### WSR 89-23-073

#### PERMANENT RULES

#### DEPARTMENT OF AGRICULTURE

[Order 2020—Filed November 16, 1989, 11:44 a.m.]

Date of Adoption: November 16, 1989.

Purpose: To correct typographical errors and strengthen rules for the production of limited generation certified seed potatoes.

Citation of Existing Rules Affected by this Order: Amending chapter 16-324 WAC.

Statutory Authority for Adoption: Chapters 34.05 and 15.14 RCW.

Pursuant to notice filed as WSR 89-19-064 on September 20, 1989.

Effective Date of Rule: Thirty days after filing.

November 16, 1989

Michael Schwisow

Deputy Director

for C. Alan Pettibone

Director

### AMENDATORY SECTION (Amending Order 1951, filed 9/11/87)

WAC 16-324-360 DEFINITIONS. The definitions set forth in this section shall apply throughout this chapter, unless the context otherwise requires:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department of agriculture or his duly appointed representative. (Inspector)

(3) "Potatoes" mean Irish potatoes that have been produced outside of or within the state of Washington and are being handled for seed purposes, propagation, or reproduction within the state of Washington.

(4) "Disease tested" means tested for potato viruses, PVA, PVM, PVS, PVX, PVY, leafroll, spindle tuber viroid, Erwinia carotovora carotovora, Erwinia carotovora atroseptica and Corynebacterium sependonicum.

(5) "Nematode" means a disease (infestation) of plant parasitic nematodes of potatoes including but not limited to (~~Ditylenchus, Pratylenchus, and~~) the genera Meloidogyne ((genera)).

(6) "Micropropagated" means potato stock propagated using aseptic laboratory techniques and culture media to promote plant tissue growth.

(7) "In vitro" means in an artificial environment outside the living organism.

(8) "Prenuclear" means micropropagated plants in vitro or tubers in vitro. Also included are micropropagated plants or microtubers produced in a greenhouse.

(9) "Nuclear stock" means plantlets, microtubers, minitubers, or seed potatoes produced from pre-nuclear stock.

(10) "Microtubers" means tubers produced in vitro by a micropropagated plant or plantlet.

(11) "Minitubers" means tubers produced under controlled greenhouse conditions.

(12) "Tuber unit" means a method of planting whereby cut seed pieces from one tuber are dropped consecutively in a row.

(13) "Hill unit" means a method of planting whereby all tubers from one plant are dropped consecutively in a row.

(14) "Family unit" means a method of planting whereby pre-nuclear stock made up of various family lines are mass planted in recognizably separate plots limited to the size and number of plants per plot.

(15) "Cull" means any lot of potatoes rejected for certification for any reason. Seed lots failing to meet the minimum requirements of Washington state's rules and standards for certification shall be considered as culls.

(16) "Trace" means a barely perceivable indication of plant disease that amounts to less than ((0.00)) 0.001 percent.

(17) "Rogue" means a method of removing undesired plant specimens from a lot whereby all plant parts including vines, tubers, and seed piece are completely removed from a field. Proper roguing for plant disease shall also include removing all plants and their parts immediately adjacent to the diseased suspect plant.

### AMENDATORY SECTION (Amending Order 1951, filed 9/11/87)

WAC 16-324-380 CERTIFIED SEED POTATO STOCK—FEES. (1) Potato certification fees shall be twenty-seven dollars per acre.

Applications shall be accompanied by fifty percent of the total charge due and payable on or before June 15 of each year. Applications may be adjusted ten percent on or before July 15.

(2) Final payment of above fee is due and payable November 1 of each year: PROVIDED, That

(a) Fees for five acres or less must be paid in full at the time of application.

(b) Fee for two acres or less is forty dollars minimum to be paid in full at time of application.

(c) No fees may be charged, up to five acres, for regularly enrolled high school 4-H or FFA projects.

(3) Refunds of the application fee may be made only if the withdrawal form is received by the department prior to the first field inspection.

(4) Lots rejected ~~((on or before October 1 shall not be subject to final fees))~~ before the second inspection shall not be subject to the final one-half payment fee.

Certification fees shall not be refunded after two field inspections have been completed.

(5) Failure to pay fees when due shall result in removing the applicant from this program.

(6) No application for any grower owing the Washington state department of agriculture for previous fees may be considered.

AMENDATORY SECTION (Amending Order 1587, filed 11/21/78)

WAC 16-324-410 WINTER TEST. (1) Purpose. The purpose of the winter test is to visually detect virus and viruslike plant symptoms in samples of the lot submitted by the grower.

(2) Details for submitting samples for winter testing will be available from ~~((division of plant industry personnel))~~ the department.

(3) "Foundation" may be stamped on the department's official certified tags when a lot has passed the required field standards and winter test tolerances for foundation seed.

(4) Lots represented in winter tests which do not meet the certification requirements of the winter test will not be eligible for current year certification.

(5) In the event of serious malfunction of the winter test facility, foundation and certified eligibility may be based on field readings.

AMENDATORY SECTION (Amending Order 1897, filed 7/17/86)

WAC 16-324-445 CERTIFIED SEED POTATO—GRADING INSPECTION—DISEASES AND GRADES. Grading inspections shall be made by the department on a surveillance basis. Shipping point inspection shall be made available upon request by the grower. The quality of the grading of potatoes is the full responsibility of the grower. United States standards for potatoes shall be the official guide for applying and interpreting all definitions and terms used in this chapter in the Washington certified seed grades.

AMENDATORY SECTION (Amending Order 1951, filed 9/11/87)

WAC 16-324-600 LIMITED GENERATION (L.G.) CERTIFIED SEED POTATO PRODUCTION. (1) The limited generation (L.G.) program is offered as an alternative to the current program for certification of seed potatoes. This L.G. program is not intended to supersede or replace existing rules and standards for certified seed potato production. Limited generation certified seed potato production shall comply with current standards, where applicable, in addition to the following rules. The purpose of the program is to provide certification for additional kinds of propagative stock now being produced by tissue culture and/or stem cutting techniques.

(2) Eligibility – to be accepted for certification, seed stocks shall be derived from seed stocks that have been disease tested, certified by an official seed certifying agency and continued identity maintained in an approved manner.

(a) To be eligible for recertification, a seed stock shall meet or exceed minimum requirements for field inspection, latent virus testing and winter testing as prescribed in WAC 16-324-630 and 16-324-640.

(b) Applications for all lots planted for certification shall be accompanied by an eligible tag or inspection certificate in addition to winter test results and a signed grower affidavit.

(c) A limited generation seed lot which fails to meet the minimum requirements as prescribed in WAC 16-324-630 and 16-324-640 shall be classified as "certified class," and must meet minimum requirements as stated in WAC 16-324-400 and 16-324-420 to be eligible for current season certification.

AMENDATORY SECTION (Amending Order 1951, filed 9/11/87)

WAC 16-324-605 LIMITED GENERATION CERTIFIED SEED POTATO—REQUIREMENTS FOR PRODUCTION AND ELIGIBILITY OF PRENUCLEAR STOCK. Requirements for production and eligibility of pre-nuclear seed potato stock are as follows:

(1) Basic requirements for plant material increase:

(a) All micropropagation facilities shall be approved by the department.

(b) All material shall be documented as to source of variety and shall be a variety approved by the department.

(c) All tests required shall be conducted by a third party laboratory approved by the department.

(d) Entry level material shall be isolated from all other material and limited to fifty in vitro propagules per line selection. All plant material to be mass micropropagated shall be disease tested.

(2) Testing requirements for mother plants. Yearly testing of one hundred percent of the mother plants for the following pathogens shall be required as follows:

(a) *Corynebacterium sepedonicum* by gram stain and immunofluorescent antibody stain and Richardsons Media. The eggplant bioassay may be substituted for Richardsons Media.

(b) *Erwinia* species by crystal violet pectate.

(c) Potato viruses – X, Y, S, M, A, and leafroll by ELISA, radioimmuno assay and nonspecific viral assay by electron microscopy or dsRNA hybridization.

(d) Potato spindle tuber viroid by cDNA, dot hybridization or gel electrophoresis.

(e) All plant material to be mass propagated shall test negative for the pathogens listed above.

(3) Sampling requirements for mass propagated plants or tubers.

(a) Samples shall be taken prior to kill down or shipping plantlets. A minimum of one percent (no less than twenty samples) of the plants or tuber population shall be disease tested in the manner described for testing requirements for mother plants. No more than five plants or tubers shall be bulked per sample.

(b) Prenuclear class stock shall have a zero tolerance for all pathogens listed above.

(4) Private micropropagation labs shall make samples of propagation material available to the department for further testing when requested.

(5) Propagators shall select tubers or mother plants that are true-to-type. Such material shall be derived from more than a single tuber; ten to twenty tubers shall be selected to maximize the genetic base of each line and



Factor	NUCLEAR		GEN. I		GEN. II		GEN. III		GEN. IV	
	1st	2nd	1st	2nd	1st	2nd	1st	2nd	1st	2nd
Total visible virus	0.00	0.00	0.10	0.00	0.20	0.10	2.00	1.00	2.00	1.00
PVX	0.00		0.50		1.00		3.00		4.00	

(1) Two or more visual inspections shall be made of each lot by the department. Fields shall be considered ready for inspection at all times.

(2) Leaf samples shall be submitted in late August for virus determination to an independent testing laboratory approved by the department. All classes entered for certification shall be PVX tested. The cost of foliage sample testing shall be borne by the applicant.

(a) The minimum number of plants per lot to be sampled for latent virus determination shall be one hundred; nuclear stock ten percent of the total number of plants per lot; Generation I two percent of the total number of plants per lot; Generation II fifty leaves per acre; Generation III and IV twenty leaves per acre. No more than ten plants shall be bulked per sample. The department may require additional testing when deemed necessary.

(b) Samples shall be labeled as to row and location within the row.

(c) If a positive test results on a virus sample, a retest of every plant after roguing infected area is acceptable.

(d) Any plant rogued and suspected of being contaminated with virus, *Erwinia carotavora* or *Corynebacterium sepedonicum* shall be submitted for testing.

(e) Bacterial ring rot found in a seed lot of a seed operation shall be cause for removing the lot from certification. A third or additional inspections shall be required on remaining seed lots. All other seed lots associated with or planted after the rejected lot shall not be eligible for recertification.

(3) A limited generation growers list shall be published annually after final field inspection showing the results, including bacterial ring rot.

(4) ~~((All seed sources entered for certification shall be represented in a Washington seed lot source trial.))~~ At the option of the grower, seed sources shall be represented in a seed lot source trial. The presence of bacterial ring rot in the sample shall be cause for rejection of seed lots planted from the same seed source by the grower submitting the sample.

AMENDATORY SECTION (Amending Order 1951, filed 9/11/87)

WAC 16-324-660 LIMITED GENERATION CERTIFIED SEED POTATO—SANITATION. Requirements for sanitation in the limited generation certified seed program are as follows:

(1) Chemicals used in the sanitation of equipment shall be those recommended by the Pacific Northwest Plant Disease Control Handbook. Vector control shall be maintained throughout the growing season as prescribed by the Pacific Northwest Plant Disease Control Handbook.

(2) Seed stocks in a limited generation program shall be planted and harvested prior to handling any other seed stock. The highest generation shall be handled prior to lower classes within the program. All equipment used in the cutting, planting, digging, storage, and sorting process shall be sanitized between lots and varieties. When cutting nuclear stock, gloves and knives shall be sanitized between each tuber cut.

(3) Precautions shall be taken when roguing, irrigating, or cultivating to prevent the spread of potato pathogens. Only sanitized footwear shall be allowed in the field.

(4) To produce nuclear, Generation I and Generation II stock, a grower shall have successfully produced certified seed potatoes the previous two years with no bacterial ring rot disease during this period. Exceptions to this subsection are possible on approval by the department.

(5) Only department approved containers shall be used during the digging, storage, and packing process. Approved containers shall be new sacks or bags. Wood containers shall be painted with no bare wood exposed.

(6) Appropriate procedures for sanitizing shall include steam cleaning or use of a pressure washer to eliminate all dirt and dry matter, ~~((followed by steam cleaning,))~~ followed by application of an approved chemical to kill bacteria.

AMENDATORY SECTION (Amending Order 1951, filed 9/11/87)

WAC 16-324-670 LIMITED GENERATION CERTIFIED SEED POTATO—TAGS. All lots shipped outside of the immediate area of production shall be tagged and accompanied by shipping permit. ~~((Permits and tags shall only be issued for Generation II, III, or IV seed stocks.))~~

(1) In addition to meeting the requirements of WAC 16-324-430(3), tags shall identify seed class and percent of PVX.

(2) Two colors of tags shall be available for use in limited generation seed potatoes. The color of tag designates grade only.

(a) Blue tags shall meet or exceed minimum requirements of United States Standards for U.S. No. 1 Seed Potatoes.

(b) Yellow tags shall indicate a contract grade between buyer and seller and shall meet or exceed minimum requirements of WAC 16-324-490.

(c) Tags shall not be issued for culls.

AMENDATORY SECTION (Amending Order 1951, filed 9/11/87)

WAC 16-324-680 LIMITED GENERATION CERTIFIED SEED POTATO—STORAGE. In addition to meeting the requirements in WAC 16-324-430 (1)(a) and (b), all tubers harvested from unit plantings shall be numbered and stored as an identifiable unit for the next year's planting ~~((of pre-nuclear stock))~~.

**WSR 89-23-074**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF**  
**TRADE AND ECONOMIC DEVELOPMENT**  
**(Economic Development Finance Authority)**  
 [Memorandum—November 14, 1989]

The Washington Economic Development Finance Authority, created by chapter 279, Laws of 1989, will hold its first meeting on December 8, 1989, from 9:30 a.m. to 4:00 p.m. in the boardroom of the Seattle Chamber of Commerce at 1200 One Union Square, Sixth and University Street, Seattle, Washington. A mid-day adjournment for lunch will be arranged.

**WSR 89-23-075**  
**NOTICE OF PUBLIC MEETINGS**  
**JOINT CENTER FOR HIGHER EDUCATION**  
 [Memorandum—November 13, 1989]

At a regular meeting of the Joint Center for Higher Education in Spokane held November 8, 1989, the Center Administrative Board established the second Wednesday of selected months as its regular meeting date during 1990. Each meeting is to commence at 9:30 a.m. on scheduled dates. Meetings will be held at various institutions of higher education throughout the Spokane community. The scheduled dates are reflected below.

**NOTICE OF MEETINGS**  
 Joint Center for Higher Education Board

The Joint Center for Higher Education in Spokane will hold regular meetings at 9:30 a.m. on the second Wednesday of specified months during 1990. The meetings will be held at various institutions of higher education throughout the Spokane community. Notice of meeting locations will be sent out six days prior to each regular meeting.

February 14, 1990  
 March 14, 1990  
 April 11, 1990  
 May 9, 1990  
 June 13, 1990  
 September 12, 1990  
 November 14, 1990

**WSR 89-23-076**  
**RULES COORDINATOR**  
**DEPARTMENT OF PERSONNEL**  
 [Filed November 17, 1989, 9:42 a.m.]

On November 9, 1989, the State Personnel Board designated Ms. Lori Parker as the rules coordinator for the Department of Personnel.

Ms. Parker's office and mailing address is:

Department of Personnel  
 Rules Coordinator  
 Lori Parker, Operations Division  
 521 Capitol Way South, Mailstop FE-11  
 Olympia, WA 98507

**WSR 89-23-077**  
**NOTICE OF PUBLIC MEETINGS**  
**LIQUOR CONTROL BOARD**  
 [Memorandum—November 15, 1989]

The Liquor Control Board will conduct regular meetings of the board on Tuesday and Wednesday of each week, except on holidays, beginning at 9:30 a.m. or as soon thereafter as a quorum is assembled at its offices on the Fifth Floor, Capital Plaza Building, 1025 East Union Avenue, Olympia, Washington. The board intends to utilize those meetings scheduled for Tuesday to conduct staff meetings and work sessions. Petitions, public testimony and adoption of resolutions will be conducted at the Wednesday meetings.

This schedule changes that provided to you earlier this year wherein the Liquor Control Board indicated it would meet Monday through Friday and that those meetings would be open except wherein determined except under RCW 42.30.140 or 42.30.110.

**WSR 89-23-078**  
**PERMANENT RULES**  
**BOARD OF PHARMACY**  
 [Filed November 17, 1989, 11:02 a.m.]

Date of Adoption: October 26, 1989.  
 Purpose: To enable the board to contact pharmacists regarding pharmacy practice matters.

Citation of Existing Rules Affected by this Order:  
 Amending WAC 360-12-110.

Statutory Authority for Adoption: RCW 18.64.005.  
 Pursuant to notice filed as WSR 89-19-057 on September 20, 1989.

Changes Other than Editing from Proposed to Adopted Version: The home address change must be made within thirty days. The practice location notice requirement was deleted.

Effective Date of Rule: Thirty-one days after filing.  
 October 26, 1989  
 Donald Hobbs  
 Vice-chairman

**AMENDATORY SECTION** (Amending Order 151, Resolution No. 9/79, filed 9/6/79)

WAC 360-12-110 LICENSED PHARMACISTS CHANGE OF ((HOME)) ADDRESS. All licensed pharmacists shall notify the state board of pharmacy of any change of ((home)) mailing address within thirty days of the change. The board may rely upon the last

mailing address of record for purposes of service or delivery of any official board documents, including the service of adjudicative proceeding documents.

**WSR 89-23-079**

**PROPOSED RULES**

**PARKS AND RECREATION COMMISSION**

[Filed November 17, 1989, 1:38 p.m.]

**Original Notice.**

**Title of Rule:** Limited income senior citizen disability and veteran disability passes.

**Purpose:** Allows certain categories of campers reduced campsite or moorage fees and free admission to state parks.

**Statutory Authority for Adoption:** RCW 43.51.040 and 43.51.060.

**Statute Being Implemented:** RCW 43.51.055.

**Summary:** Establishes a life long pass, rather than yearly passes, for senior citizens that meet the residency requirement and have limited incomes. Passholders may enter state parks for free and are entitled to a fifty percent reduction in any campsite or moorage fee.

**Reasons Supporting Proposal:** Life long passes were established by the 1989 legislature, SSB 5151, chapter 135.

**Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement:** Dennis Smith, 7150 Cleanwater Lane, Olympia, WA 98504, 753-5766.

**Name of Proponent:** Parks and Recreation Commission, governmental.

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

**Explanation of Rule, its Purpose, and Anticipated Effects:** This rule is intended to make senior citizen passes valid so long as the senior citizen meets the residency requirements. An application for renewing the pass is no longer required. A senior citizen park pass holder must surrender the pass to a commission employee, upon request, when the employee has reason to believe the holder does not meet statutory eligibility requirements.

**Proposal does not change existing rules.**

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

**Hearing Location:** Ramada Inn, Spokane International Airport, Spokane, Washington 99219, on January 26, 1990, at 9:00 a.m.

**Submit Written Comments to:** Dennis Smith, Washington State Parks, 7150 Cleanwater Lane, Olympia, WA, by January 20, 1990.

**Date of Intended Adoption:** January 26, 1990.

November 17, 1989

Nina Carter

Executive Assistant

by either a copy of a federal income tax return filed for the previous calendar year, or a senior citizen property tax exemption pursuant to RCW 84.36.381, or a notarized affidavit of income on a form provided by the commission, receive ((an annual)) a limited income senior citizen pass at no charge, which entitles the holder and the holder's camping unit to free admission to any state park administered facility and to a fifty percent reduction in any campsite fees or moorage fees levied by the commission. Limited income senior citizen passes shall remain valid so long as the pass holder meets eligibility requirements.

((b)) ((Applications for limited income senior citizen passes shall be accepted only after November 30 for the following year.)) Proof submitted to the commission for the return of a senior citizen pass surrendered upon request to a commission employee who has reason to believe the user does not meet the eligibility criteria shall be the same as listed in subsections (1) and (5) of this section for original pass issuance.

(2) Persons who are permanently disabled, legally blind, or profoundly deaf, meet the eligibility requirements of RCW 43.51.055, and have been residents of Washington state for at least one year shall, upon application to the commission, receive a five year disability pass at no charge and other disabled persons who meet the eligibility requirements of RCW 43.51.055 and have been residents of Washington state for at least one year shall, upon application to the commission, receive a one year disability pass which entitles the holder and the holder's camping unit to free admission to any state park administered facility and to a fifty percent reduction in any campsite fees or moorage fees levied by the commission.

(3) Persons who are veterans, meet the eligibility requirements of RCW 43.51.055, and have been residents of Washington state for at least one year shall, upon application to the commission, receive a lifetime veteran disability pass at no charge which entitles the holder and the holder's camping unit to free admission to any state park administered facility and to free use of any state park campsite or moorage facility.

(4) Applications for limited income senior citizen, disability, and veteran disability passes shall be made on forms prescribed by the commission.

(5) Verification of age shall be by original or copy of a birth certificate, notarized affidavit of age, witnessed statement of age, baptismal certificate, or driver's license. Verification of residency shall be by original or copy of a Washington state driver's license, voter's registration card, or senior citizen property tax exemption.

((6)) For pass holders who travel by car or recreational vehicle a camping unit shall include the pass holder and up to seven guests of the holder who travel with the holder and use one campsite or portion of a designated group camping or emergency area. One additional vehicle without built-in sleeping accommodations may be part of the camping unit of a holder at one campsite or portion of a designated group camping or emergency area when in the judgment of a ranger the constructed facilities so warrant and the total number of guests of the holder do not exceed seven.

((7)) ((7)) For pass holders who travel by a mode of transportation other than car or recreational vehicle a camping unit shall include the pass holder and up to five guests who travel with the holder and use one campsite or portion of a designated group camping or emergency area.

((8)) ((8)) If the conditions of a pass holder change during the time period when a pass is valid such that a pass holder no longer meets the eligibility requirements of RCW 43.51.055 and WAC 352-32-251, then a pass holder shall return a pass to the commission.

**WSR 89-23-080**

**PERMANENT RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

**(Public Assistance)**

[Order 2898—Filed November 17, 1989, 2:41 p.m.]

**Date of Adoption:** November 17, 1989.

**Purpose:** To incorporate community property law rules into the availability of income and resources for the institutionalized spouse. To clarify allocation of income

**AMENDATORY SECTION (Amending Order 106, filed 9/19/88)**

**WAC 352-32-251 LIMITED INCOME SENIOR CITIZEN, DISABILITY, AND VETERAN DISABILITY PASSES. (1)(a)** Persons who are senior citizens, meet the eligibility requirements of RCW 43.51.055, and have been residents of Washington state for at least one year shall, upon application to the commission accompanied

for the institutionalized spouse. The time limit to transfer resources to the name of the community spouse is changed from ninety days to three months. Adds when the department shall consider the community spouses resources.

Citation of Existing Rules Affected by this Order: Amending WAC 388-95-335, 388-95-337 and 388-95-360.

Statutory Authority for Adoption: RCW 74.08.090.

Pursuant to notice filed as WSR 89-20-073 on October 4, 1989.

Changes Other than Editing from Proposed to Adopted Version: Changes in content from the proposed rule and the adopted version are as follows:

The following was added:

WAC 388-95-335 (4)(b) " . . . , plus recurring medical costs is above the private rate of the facility; and"

WAC 388-95-335 (4)(c) " . . . , plus recurring medical costs, to be under the private rate of the facility."

The time a community spouse has to change the name on transferred resources is changed from three months to before the first regularly scheduled eligibility review after the initial eligibility determination is completed.

WAC 388-95-360 has no changes from the proposed rule.

The principal reasons for adopting the changes are as follows: WAC 388-95-335 was changed to further clarify the income available to the institutionalized person. For the benefit of clients, WAC 388-95-337 (5)(c) expands the time a community spouse has to change the name on transferred resources.

Effective Date of Rule: Thirty-one days after filing.

November 17, 1989

Leslie F. James, Director  
Administrative Services

#### AMENDATORY SECTION (Amending Order 2864, filed 9/1/89, effective 10/2/89)

WAC 388-95-335 AVAILABILITY OF INCOME. (1) Income is defined under WAC 388-92-005 for a supplemental security income (SSI)-related applicant or recipient and under WAC 388-22-030 for an aid to families with dependent children (AFDC)-related applicant or recipient.

(2) The methodology and standards for determining and evaluating income is defined under WAC 388-95-320 and 388-95-340.

(3) After September 30, 1989, the department shall consider the following income, less veteran's aid and attendance allowance, available to an institutionalized ~~((individual))~~ person when determining income eligibility unless the criteria in subsection (4) of this section is met:

(a) Income the institutionalized spouse receives in the institutionalized spouse's name;

(b) Income paid on behalf of the institutionalized spouse, but received in the name of the institutionalized spouse's representative;

(c) One-half of the income the community and ~~((institutional))~~ institutionalized spouses receive in both names; and

(d) Income in a trust as provided by the trust.

(4) After September 30, 1989, the department shall consider the following income as available to an institutionalized person when:

(a) Both spouses are institutionalized; or

(b) The income in subsection (3) of this section, plus recurring medical costs is above the private rate of the facility; and

(c) The use of the income, in this subdivision, less veteran's aid and attendance allowance shall cause the institutionalized person's income, plus recurring medical costs, to be under the private rate of the facility. The department shall:

(i) Use community property law in determining ownership of income for purposes of Medicaid eligibility;

(ii) Presume all income received after marriage by either husband or wife or both to be community income;

(iii) Divide the total of the community income, received by the husband and the wife, by two with one-half of the total assigned to each person as their income; and

(iv) Consider if the community income received in the name of the nonapplicant spouse exceeds the community income received in the name of the applicant spouse, the applicant's interest in that excess is unavailable to the applicant.

(5) The department shall consider income the community spouse receives in the community spouse's name as not available to the institutionalized spouse.

~~((5))~~ (6) An agreement between spouses transferring or assigning rights to future income from one spouse to the other is invalid in determining eligibility for medical assistance or the limited casualty program for the medically needy.

~~((6))~~ (7) The department recognizes income produced by transferred or assigned resources as the separate income of the transferee.

~~((7))~~ (8) If an institutionalized spouse establishes the unavailability of income by a preponderance of evidence through a fair hearing (~~((the unavailability of income))~~), subsection (3)~~((a) and (b))~~ of this section shall not apply.

#### AMENDATORY SECTION (Amending Order 2864, filed 9/9/89 [9/1/89], effective 10/2/89)

WAC 388-95-337 AVAILABILITY OF RESOURCES.

(1) Resources are defined under WAC 388-92-005 for the SSI-related applicant or recipient and under WAC 388-22-030 for an AFDC-related applicant or recipient.

(2) The methodology and standards for determining and evaluating resources are under WAC 388-95-340, 388-95-380, and 388-95-390. Transfers of resources are evaluated under WAC 388-95-395.

(3) The department shall ~~((determine resources of the institutionalized spouse, as defined under WAC 388-95-395, available to the community spouse, as defined under WAC 388-95-395, at the time of))~~ follow Washington state community property principles in determining the ownership of resources:

(a) ((Application for Medicaid institutional care, or))  
For persons whose most recent period of  
institutionalization:

- (i) Began before October 1, 1989; and
- (ii) Remains continuously institutionalized.

(b) ((Institutionalization of a Medicaid recipient))  
For purposes of Medicaid eligibility, the department  
shall presume all resources are:

(i) Community resources if jointly held in the names  
of both the husband and wife, or in the name of the ap-  
plicant/recipient only;

(ii) The separate property of the nonapplicant spouse  
if:

(A) Held in the separate name of the nonapplicant  
spouse; or

(B) Transferred between spouses as described under  
WAC 388-92-043(4).

(c) The department shall divide by two, the total val-  
ue of the community resources the husband and wife  
own and assign one-half of the total value to each  
spouse.

(4) A person is no longer continuously institutional-  
ized if, for thirty consecutive days, the person:

- (a) Is absent from an institution; and/or
- (b) Does not receive COPES/CAP waived services.

(5) The department shall use the following criteria for  
the purpose(s) of determining Medicaid eligibility(;;)  
of a person, whose most recent continuous period of in-  
stitutionalization starts on or after October 1, 1989:

(a) The department shall exclude resources in WAC  
388-95-380 with the exception of subsection (3) of this  
section. One automobile per couple is totally excluded  
without regard to use;

(b) The department shall consider available to the  
community spouse, resources in the names of either the  
community spouse and/or the institutionalized spouse,  
except resources exceeding the greater of:

((~~a~~)) (i) Sixty thousand dollars;

((~~b~~)) (ii) An amount established by a fair hearing  
under chapter 388-08 WAC if the community spouse's  
resource allowance is inadequate to provide a minimum  
monthly maintenance needs allowance; or

((~~c~~)) (iii) An amount ordered transferred to the  
community spouse by the court.

((~~5~~)) (c) The resources ((in subsection (4) of this  
section)) available to the community spouse shall be in  
the name of the community spouse or transferred to the  
community spouse or to another for sole benefit of the  
community spouse ((within ninety days)) before the first  
regularly scheduled eligibility review after the initial eli-  
gibility determination is completed((-);) and

((~~6~~)) (d) The department shall consider resources  
greater than such resources in subsection ((~~4~~)) (5)(b)  
of this section available to the institutional spouse.

(6) The department shall consider resources of the  
community spouse:

(a) Unavailable to the institutionalized spouse during  
a continuous period of institutionalization; or

(b) When the institutionalized spouse acquires re-  
sources in excess of the one-person resource maximum,  
if the most recent period of institutionalization began  
after September 30, 1989.

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

**AMENDATORY SECTION** (Amending Order 2864,  
filed 9/1/89, effective 10/2/89)

WAC 388-95-360 ALLOCATION OF IN-  
COME—INSTITUTIONALIZED RECIPIENT. (1)  
In reducing payment to the institution, the department  
shall consider the institutionalized recipient's income  
under WAC 388-95-335 (3)(a), (b), (c), and (d).

(2) The department shall deduct the following  
amounts, in the following order, from the institutional-  
ized recipient's total income, including amounts excluded  
in determining eligibility:

(a) Specified personal needs allowance;

(b) An amount an AFDC or FIP-related client in a  
medical facility receives as a cash assistance payment  
sufficient to bring the client's income up to the personal  
needs allowance;

(c) The current personal needs allowance plus wages  
the supplemental security income-related client receives  
for work approved by the department as part of a train-  
ing or rehabilitative program designed to prepare the in-  
dividual for a less-restrictive placement when the total  
wages received plus the personal needs allowance do not  
exceed the one-person medically needy income level:

(i) No deductions are allowed for expenses of employ-  
ment; and

(ii) The excess wages shall apply to the cost of  
care(;) when the total wages received plus the initial  
personal needs allowance exceeds the one-person medi-  
cally needy income level.

(d) An amount for the community spouse equal to the  
standard maintenance need of one thousand dollars less  
the separate income of the community spouse. The de-  
partment shall increase the standard need maintenance  
amount ((shall be increased)) by:

(i) Shelter expenses exceeding two hundred forty-five  
dollars. The department shall calculate actual expenses  
for the community spouse's principal residence for:

(A) Rent(;;);

(B) Mortgage(;;);

(C) Taxes(;) and insurance(;;);

(D) Any maintenance charge for a condominium or  
cooperative(;;); and

(E) A food stamp standard allowance for utilities  
provided the utilities are not included in ((another ex-  
pense)) the maintenance charges for a condominium or  
cooperative; and

(ii) The total of the standard maintenance need  
amount and the shelter expenses shall not exceed one  
thousand five hundred dollars, unless:

(A) A court enters an order against the institutional-  
ized client for the community spouse support in excess of  
this amount; or

(B) A hearings officer determines a greater amount is  
needed because of exceptional circumstances resulting in  
extreme financial duress.

(e) A family member's maintenance needs of one-  
third of the amount eight hundred fifteen dollars exceeds  
the family member's income for each:

(i) Dependent or minor child(;;);

(ii) Dependent parent((;)); or  
(iii) Dependent sibling of the ((institutional)) institu-  
tionalized or community spouse ((living)) residing with  
the community spouse;

(f) Amounts for incurred medical expenses not subject  
to third-party payment including, but not limited to:

(i) Health insurance premiums, co-insurance, or de-  
ductible charges; and

(ii) Necessary medical care recognized under state  
law, but not covered under Medicaid.

(g) Maintenance of the home of a single person:

(i) Up to one hundred eighty dollars per month; and

(ii) Limited to ((not more than)) a six-month period;  
and

(iii) A physician has certified the individual is likely to  
return to the home within that period; and

(iv) Social service staff shall document initial need for  
the income exemption and review the ((individual)) per-  
son's circumstances after ninety days. ((Also see chapter  
388-28-WAC.))

((2)) (3) The department shall not deduct specified  
personal needs allowance, community spouse, needy de-  
pendent maintenance needs, or home maintenance needs  
from a veteran's aid and attendance allowance.

(4) The recipient shall use the ((remaining)) in-  
come((- after allocations specified)) remaining after al-  
locations specified in subsection ((1)) (2) of this sec-  
tion, toward payment of the recipient's cost of care at  
the department rate.

((3)) (5)(a) Effective July 1, 1988, SSI-related cli-  
ents shall continue to receive total payment under 1611  
(b)(1) of the Social Security Act (SSA) for the first  
three full calendar months of institutionalization in a  
public or Medicaid-approved medical institution or fa-  
ility if the:

(i) ((The)) Stay in the institution or facility is not ex-  
pected to exceed three months; and

(ii) ((The)) SSI-related clients plan to return to their  
former living arrangements.

(b) The department shall not consider ((this)) the SSI  
payment when computing the participation amount.

**WSR 89-23-081**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Order 2899—Filed November 17, 1989, 2:45 p.m.]

Date of Adoption: November 17, 1989.

Purpose: To incorporate into WAC the rules on broker-  
age/contractor transportation. Reword WAC for  
easier readability.

Citation of Existing Rules Affected by this Order:  
Amending WAC 388-86-085 and 388-87-035.

Statutory Authority for Adoption: RCW 74.08.090.

Pursuant to notice filed as WSR 89-20-072 on Octo-  
ber 4, 1989.

Changes Other than Editing from Proposed to Adopt-  
ed Version: In WAC 388-86-085(2):

In subsection (2)(c), the verbs have been changed to  
show a singular subject.

In subsection (2)(d)(i), the word "medical" is added  
before "community" for clarification. The terms "medi-  
cal care" are changed to "medical services" for consis-  
tency of terminology.

In WAC 388-86-085(b), the word "systems" was  
added to the statement "in areas with gas voucher" for  
clarification.

Effective Date of Rule: Thirty-one days after filing.

November 17, 1989

Leslie F. James, Director  
Administrative Services

**AMENDATORY SECTION** (Amending Order 2702,  
filed 9/30/88)

WAC 388-86-085 **TRANSPORTATION (OTH-**  
**ER THAN AMBULANCE)**. (1) The department shall  
assure the availability of necessary transportation for a  
recipient((s));

(a) To and from medical ((care)) services;

(b) Covered under the recipient's medical assistance  
program ((in accordance with the following guide-  
lines:)); and

(c) Suitable to the recipient's medical need.

((1)) (2) The department shall ((not provide)) au-  
thorize payment for such transportation ((outside));

(a) When other means of transportation are not avail-  
able or appropriate to the recipient's need;

(b) At the least costly alternative mode of transporta-  
tion suitable to the recipient's medical condition;

(c) When the department, broker, or contractor gives  
prior authorization for the transportation or gives retro-  
authorization within seventy-two hours for transporta-  
during hours when the department, broker, or con-  
tractor is not available; and

(d) When transportation is given to and from covered  
services:

(i) Within the local medical community unless neces-  
sary medical ((care is)) services are not available local-  
ly((- Transportation)); or

(ii) Outside of the local medical community ((shall be  
to a reasonable and least costly location where)) to the  
closest provider((- are)) able and willing to provide the  
necessary and covered medical ((care;)) services.

((2)) (3) The department shall:

(a) Contract to provide such transportation ((as a  
medical service or)) as an administrative service in  
((designated)) counties under broker or contractor  
agreements.

(i) Brokers or contractors shall certify transportation  
providers for medical services in accordance with rules  
established by the division of medical assistance; and

(ii) The department shall require the brokers and  
contractors to operate the services in accordance with all  
federal, state, and local ordinances, statutes, and  
regulations.

(b) Provide transportation as a medical service in  
unbrokered or noncontracted counties.

((3)) (4) The department, broker, or contractor  
shall ((provide or arrange)) pay for transportation only  
((through designated contractors/brokers in counties/

~~areas where transportation is provided as an administrative service; and~~

~~(4) When the department provides transportation as a medical service, the following guidelines shall apply:~~

~~(a) Reimbursement for recipient transportation shall only be made:~~

~~(i) When other sources of transportation are not available, accessible, or suitable to the medical needs of the recipient; and~~

~~(ii) Only for the least expensive mode of transportation available that is suitable to the recipient's medical need:~~

~~(b) Only authorize cabulance transportation when the medical necessity is clearly demonstrated and the physical condition of the recipient is such that any less specialized means of transportation is inadvisable;~~

~~(c) The) for the recipient unless the recipient has an identified need for an attendant or escort.~~

~~(5) When the department determines no other appropriate transportation resource is available to the recipient, the department may:~~

~~(a) Authorize public transit when a transit authority is present in the community and when the recipient is capable of using this level of service;~~

~~(b) Reimburse the recipient for mileage in a private vehicle or issue a gas voucher, in areas with gas voucher systems:~~

~~(i) When prior authorized; and~~

~~(ii) If distance traveled is more than forty miles to and from covered medical services in a given week.~~

~~(c) Reimburse volunteers providing recipient transportation:~~

~~(i) When prior authorized; and~~

~~(ii) From volunteer point of origin, and back to volunteer's point of origin.~~

~~(6) When transportation in subsection (5) of this section is either not available or not accessible by the recipient, and the transportation is medically necessary, the department shall authorize transportation by:~~

~~(a) Nonprofit organizations (~~when personal transportation, volunteer transportation, and/or transit services are not available or not accessible by the recipient, and transportation is medically necessary. The department shall authorize the use of~~) using specialized equipment, such as wheelchair lifts(~~by nonprofit organizations~~) when the medical necessity is clearly demonstrated and the physical condition of the recipient is such that any less specialized means of transportation is inadvisable;~~

~~((d) The department shall reimburse recipients or volunteers at rates established by the department for transportation to and from medically necessary and covered services by private automobile owned by recipient under the following conditions:~~

~~(i) Recipient's own automobile must be the least expensive available means suitable to the recipient's medical need; and~~

~~(ii) Presume other transportation available if the location of medical services is not more than twenty miles from the recipient's home or if public transportation is available.~~

~~(e)) (b) ((Authorize)) Cabulance vehicle when medical necessity is clearly demonstrated and the physical~~

condition of the recipient is such that any less specialized means of transportation is inadvisable; and

~~(c) Taxi transportation when medically necessary and other less expensive modes of transportation are not available or not appropriate to meet the recipient's needs((:)).~~

~~((f)) (7) The department shall authorize interstate and intrastate transportation (e.g., bus, train, air((; etc.))) when:~~

~~((i)) (a) Transportation is medically necessary; and~~

~~((ii)) (b) Necessary medical treatment is not available locally; and~~

~~((iii)) (c) The physical condition of the recipient is such that the use of any other method of transportation is inadvisable.~~

~~((g) The department shall certify providers in accordance with rules established by the division of medical assistance and shall operate their services in accordance with all federal, state, and local ordinances, statutes, and regulations.)~~

AMENDATORY SECTION (Amending Order 2600, filed 3/2/88)

WAC 388-87-035 PAYMENT—TRANSPORTATION (OTHER THAN AMBULANCE). (1) ((Payment)) The department shall pay for ((recipient)) transportation ((shall be made for individuals eligible in accordance with)) services under WAC 388-86-085 for eligible recipients.

(2) ((When)) The department shall reimburse for recipient transportation ((is)) when provided as ((a medical)) an administrative service ((the following shall apply:)) according to the contracts between the department and the contractors/brokers.

(3) The department shall pay for transportation as a medical service when:

(a) Provided in a nonbrokered designated area;

(b) Payment ((shall be)) is made on the basis of usual and customary charges or the rates established by the department, whichever is lower. Except that, payment for recipient transportation provided by nonprofit organizations shall be made on the basis of the operating costs incurred in providing that transportation but shall not exceed the rates established by the department((:));

((b)) (c) Billing is submitted under the methods of reimbursement and required billing procedures for recipient transportation services ((shall be)) published ((as necessary)) by the division of medical assistance((:));

((c)) (d) Providers of recipient transportation services ((must)) shall show medical justification on the billing document for the type of transportation utilized as well as the need for medical care.

((d)) (4) Cabulances, taxi, public transportation, nonprofit vehicles, and commercial transportation shall be operated and equipped in accordance with ((minimum requirements established by the division of medical assistance and other)) applicable federal, state, and local statutes, ordinances ((and))<sub>2</sub> regulations, and rules established by the division of medical assistance.

((e) Taxi and bus transportation services shall be operated and equipped in accordance with state and local statutes, ordinances and regulations.

~~(f) Vehicles utilized by nonprofit organizations seeking reimbursement for transportation services provided recipients shall be operated and equipped in accordance with minimum requirements established by the division of medical assistance and other applicable statutes, ordinances, and regulations:~~

~~(g) Commercial air transportation services shall be licensed, operated, and equipped in accordance with applicable federal, state, and local statutes, ordinances, and regulations:~~

~~(3) Payment for recipient transportation when provided as an administrative service shall be made according to the contracts between the department and the contractor:))~~

**WSR 89-23-082**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Order 2900—Filed November 17, 1989, 2:47 p.m.]

Date of Adoption: November 17, 1989.

Purpose: The purpose of this rule change is to amend the criteria used for referring individuals for an administrative disqualification hearing.

Citation of Existing Rules Affected by this Order:  
Amending WAC 388-49-660.

Statutory Authority for Adoption: RCW 74.04.510.

Pursuant to notice filed as WSR 89-20-070 on October 4, 1989.

Effective Date of Rule: January 1, 1990.

November 17, 1989  
Leslie F. James, Director  
Administrative Services

AMENDATORY SECTION (Amending Order 2804, filed 6/1/89)

WAC 388-49-660 INTENTIONAL PROGRAM VIOLATIONS—ADMINISTRATIVE DISQUALIFICATION HEARINGS. Administrative disqualification hearings are governed by chapter 388-08 WAC and ~~((WAC 388-49-660))~~ this section. If a provision in ~~((WAC 388-49-660))~~ this section conflicts with a provision in chapter 388-08 WAC, the provision in ~~((WAC 388-49-660))~~ this section controls.

(1) The department shall refer an individual who has no prior intentional program violation but who is suspected of committing an intentional program violation for an administrative disqualification hearing when:

(a) The overissuance caused by the suspected intentional program violation is two hundred ~~((and))~~ fifty dollars or more; ~~((or))~~ and

~~(b) ((The sum of the overissuance caused by the suspected intentional program violation and all inadvertent household error overissuances that occurred in the two years immediately preceding the date of discovery of the suspected intentional program violation is two hundred and fifty dollars or more; and~~

~~(c))~~ At the time of referral, the individual resides:

(i) In Washington state; or

(ii) Outside Washington but within one hour's reasonable drive to a community services office; and

~~((d))~~ (c) The department determines that administrative proceedings will not jeopardize criminal prosecution.

(2) The department shall refer an individual who has committed one or more intentional program violations and who is suspected of committing another intentional program violation when:

(a) The act of suspected intentional program violation occurred:

(i) After the department mailed the administrative decision disqualifying the individual for the most recent intentional program violation; or

(ii) After entry of the order in criminal proceedings that caused the individual to be disqualified for the most recent intentional program violation; and

(b) At the time of referral, the individual resides:

(i) In Washington state; or

(ii) Outside Washington but within one hour's reasonable drive to a community services office; and

(c) The department determines that administrative proceedings will not jeopardize criminal prosecution.

(3) The department shall:

(a) Give ~~((at least))~~ thirty days or more advance notice of the hearing date to the person ~~((or persons))~~ alleged to have committed an intentional program violation as defined in WAC 388-49-020, and

(b) Obtain proof of receipt of the notice.

(4) The notice of hearing shall comply with WAC 10-08-040 and contain the following information:

(a) The allegations;

(b) A summary of the department's evidence;

(c) A statement of how and where interested parties may examine the evidence ~~((can be examined))~~;

(d) A statement that if the person or a representative fails without good cause to appear at the hearing, the administrative law judge and the review judge will make a decision ~~((will be made))~~ based solely on the evidence and argument the department presents; and

(e) A statement that the person has ten days from the date of the scheduled hearing to file a request with the administrative law judge:

(i) Showing good cause for failure to appear, and

(ii) Seeking a new hearing; and

(f) A statement that if a telephone hearing is scheduled, the person may request an in-person hearing by filing a request with the administrative law judge ~~((at least))~~ one week or more prior to the date of the hearing.

(5) The person or a representative shall have the right to one continuance of up to thirty days provided a request is filed ~~((at least))~~ ten days or more prior to the hearing date.

(6) The department shall conduct the hearing without the person or a representative if either person fails to appear at the hearing without good cause.

(a) The administrative law judge and the review judge shall base the decision ~~((shall be based))~~ solely on the evidence and argument the department presents.

(b) The person has ten days from the date of the scheduled hearing to file a request with the administrative law judge:

- (i) Showing good cause for failure to appear, and
- (ii) Requesting the hearing be reinstated.

(7) The administrative law judge shall grant a request to change a scheduled telephone hearing to an in-person hearing if the person or representative:

(a) Files the request ~~((at least))~~ one week or more before the date the hearing is scheduled, or

(b) Files the request one week or less before the date the hearing is scheduled if the person shows good cause for having the hearing conducted in person.

(8) The administrative law judge shall advise the person or representative they may refuse to answer questions during the hearing.

(9) The department shall bear the burden of proof for demonstrating intentional program violation with clear and convincing evidence.

(10) The department shall follow the decision-rendering in WAC 388-08-406.

(11) The department shall make a final decision and notify the household member of the decision within ninety days of the date the individual receives the notice of hearing.

(12) The department may combine an overissuance fair hearing and an administrative disqualification hearing into a single hearing when the facts alleged for each arise out of the same or related circumstances. When combined:

(a) The hearing procedures and time frames shall be those applicable to an administrative disqualification hearing,

(b) The household loses its right to a subsequent fair hearing on the overissuance, and

(c) The department shall give prior notice to:

(i) The person ~~((or persons))~~ alleged to have committed the intentional program violation, and

(ii) The person ~~((or persons))~~ alleged to be liable for the overissuance.

**WSR 89-23-083**

**PERMANENT RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Public Assistance)**

[Order 2901—Filed November 17, 1989, 2:53 p.m.]

Date of Adoption: November 17, 1989.

Purpose: To authorize the department to increase food stamp program net and gross income limits, standard and shelter deductions, and standard utility allowance.

Citation of Existing Rules Affected by this Order: Amending WAC 388-49-500, 388-49-505 and 388-49-510.

Statutory Authority for Adoption: RCW 74.04.510.

Pursuant to notice filed as WSR 89-20-052 on October 3, 1989.

Effective Date of Rule: Thirty-one days after filing.

November 17, 1989

Leslie F. James, Director  
Administrative Services

**AMENDATORY SECTION** (Amending Order 2726, filed 11/18/88)

**WAC 388-49-500 INCOME—DEDUCTIONS.**

(1) The department shall allow the following deductions when computing net income:

(a) A standard deduction of one hundred ~~((six))~~ twelve dollars per household per month~~((:))~~;

(b) An earned income deduction of twenty percent of gross earned income except as provided in WAC 388-49-640(8) ~~((concerning intentional program violation overpayments:))~~;

(c) A dependent care deduction of the actual amount incurred not to exceed one hundred sixty dollars per dependent when ~~((the))~~ care is necessary for a household member to:

(i) Seek, accept, or continue employment; or

(ii) Attend training or education preparatory to employment.

(d) A deduction for nonreimbursable monthly medical expenses over thirty-five dollars incurred by ~~((a))~~ an elderly or disabled household member ~~((who is elderly or disabled:))~~;

(e) Shelter costs in excess of fifty percent of the household's income after deducting the standard, earned income, medical, and dependent care deductions. The shelter deduction shall not exceed one hundred seventy-seven dollars~~((:))~~;

(f) An excess shelter deduction for the monthly amount exceeding fifty percent of the household's monthly income after all applicable deductions for households containing an elderly or disabled person.

(2) Shelter costs may include:

(a) Costs for a home not occupied because of employment, training away from the home, illness, or abandonment caused by casualty loss or natural disaster shall be allowed if the:

(i) ~~((The))~~ Household intends to return to the home;

(ii) ~~((The))~~ Current occupants, if any, are not claiming shelter costs for food stamp purposes; and

(iii) ~~((The))~~ Home is not being leased or rented during the household's absence.

(b) Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster~~((:))~~;

(c) The standard utility allowance when a household incurs any separate utility charges for heating or cooling costs. A household may incur a separate utility charge when ~~((it))~~ the household:

(i) Has not yet received a billing for utilities; or

(ii) Is billed monthly by the landlord for actual usage as determined through individual metering; or

(iii) Shares residence and utility costs with other persons, in which case the deduction is for the household's prorated share of the standard allowance.

(d) Actual utility costs rather than the standard utility allowance if the household is:

(i) Not entitled to the standard utility allowance, or

(ii) Requesting use of actual utility bills. A monthly telephone standard shall be allowed for households incurring telephone expenses if the household is not entitled to claim the standard utility allowance.

(3) A household may switch between actual utility costs and the standard utility allowance:

- (a) At each recertification, and
- (b) One additional time during each twelve-month period following the initial certification action.

(4) The department shall verify:

(a) Continuing shelter costs, if allowing the costs could potentially result in a deduction. Verify on a one-time basis unless the household has:

- (i) Moved, or
- (ii) Reported an increase in costs affecting the amount of the deduction or the information is questionable.

(b) Utility expenses:

(i) If the household is entitled to the standard utility allowance. Verify on a one-time basis unless the household has moved, changed its utilities, or the information is questionable; or

(ii) On a one-time basis if the household (~~wishes to~~) claims actual utility expenses at initial certification, recertification, or on a monthly basis for households subject to monthly reporting.

(c) Dependent care costs including changes, except in prospective budgeting(-);

(d) Medical expenses and the reimbursement amounts resulting in a deduction:

(i) At recertification, if the amount has changed more than twenty-five dollars; and

(ii) On a monthly basis for a household subject to monthly reporting.

(5) If medical reimbursement cannot be verified, the department shall certify the household without allowing the deduction, except in prospective budgeting.

AMENDATORY SECTION (Amending Order 2726, filed 11/18/88)

WAC 388-49-505 UTILITY ALLOWANCES.

(1) The department shall:

(a) Establish an annualized standard utility allowance for use in calculating shelter costs;

(b) Obtain FNS approval of the methodology used to establish the standard utility allowance;

(c) Establish a separate annualized telephone allowance;

(d) Obtain FNS approval of the methodology used to establish the telephone allowance.

(2) Effective October 1, 1988, the annual standard utility allowances by household size are:

Persons in Household	Annualized Utility Standards
1	((+19)) 120
2	((+27)) 129
3	((+34)) 136
4	((+43)) 145
5	((+51)) 153
6	((+56)) 158

Persons in Household	Annualized Utility Standards
7	((+62)) 164
8	((+69)) 171
9	((+77)) 180
10 or more	((+86)) 188

(3) Effective March 1, 1988, the monthly telephone standard is sixteen dollars.

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

AMENDATORY SECTION (Amending Order 2726, filed 11/18/88)

WAC 388-49-510 INCOME ELIGIBILITY STANDARDS. (1) Categorically eligible households, as described in WAC 388-49-180, are not subject to the provisions of this section.

(2) The department shall determine eligibility on the basis of gross income and net food stamp income except for households containing an elderly or disabled member as provided in subsection (3) of this section.

(3) The department shall determine eligibility on the basis of net food stamp income for households containing an elderly or disabled member.

(4) The gross and net monthly maximum income standards as established by the department of agriculture are as follows:

Gross Monthly Income Standard

<u>Household Size</u>	<u>Maximum Standard</u>
1	\$ ((626)) 648
2	((838)) 869
3	((+050)) 1,090
4	((+263)) 1,311
5	((+475)) 1,532
6	((+687)) 1,753
7	((+900)) 1,974
8	((2,112)) 2,195
9	((2,325)) 2,416
10	((2,538)) 2,637
Each additional person	+((213)) 221

Net Monthly Income Standard

<u>Household Size</u>	<u>Maximum Standard</u>
1	\$ ((481)) 499
2	((645)) 669
3	((808)) 839
4	((971)) 1,009
5	((1,135)) 1,179
6	((1,298)) 1,349
7	((1,461)) 1,519
8	((1,625)) 1,689
9	((1,789)) 1,859
10	((1,953)) 2,029
Each additional person	+((+64)) 170

WSR 89-23-084  
 PERMANENT RULES  
 DEPARTMENT OF  
 SOCIAL AND HEALTH SERVICES  
 (Public Assistance)

[Order 2902—Filed November 17, 1989, 2:59 p.m.]

Date of Adoption: November 17, 1989.

Purpose: To implement mandatory assessments for the qualifying parent in an employable, two-parent FIP household.

Citation of Existing Rules Affected by this Order: Amending WAC 388-77-255.

Statutory Authority for Adoption: Chapter 74.21 RCW.

Pursuant to notice filed as WSR 89-20-071 on October 4, 1989.

Effective Date of Rule: Thirty-one days after filing.  
 November 17, 1989  
 Leslie F. James, Director  
 Administrative Services

AMENDATORY SECTION (Amending Order 2630, filed 6/1/88)

WAC 388-77-255 FIP—EMPLOYMENT AND TRAINING REQUIREMENTS. (1) Unless a FIP enrollee is exempted in subsection (2) of this section, the department shall:

(a) Require the qualifying parent in a two-parent household, where neither is incapacitated, to participate in the employment and training portion of the FIP assessment. The department shall not consider failure of a nonexempt qualifying parent to participate in the assessment as a basis for reduction, denial, or termination of benefits; and

(b) Ask all other FIP enrollees to voluntarily participate in the assessment.

(2) The department shall ((ask all FIP enrollees to voluntarily cooperate in)) exempt from the assessment ((activities with the following exceptions)) an enrollee who is:

((1)) (a) ((An enrollee who is)) On ((FIP)) assistance for the first time and until ((he or she has been)) the enrollee is on ((FIP)) assistance for six months;

((2)) (b) ((A person under sixteen)) Fifteen years of age or under or sixty-five years of age or older;

((3)) (c) ((A person)) Sixteen years of age or ((over who is in)) older and attending high school;

((4)) (d) ((A person who is)) Incapacitated, temporarily ill, or ((is)) needed at home to care for an impaired person; ((and)) or

((5)) (e) ((A person who is)) In the third trimester of pregnancy.

WSR 89-23-085  
 PERMANENT RULES  
 DEPARTMENT OF  
 SOCIAL AND HEALTH SERVICES  
 (Public Assistance)

[Order 2903—Filed November 17, 1989, 3:04 p.m.]

Date of Adoption: November 17, 1989.

Purpose: Allow repayment of underpayments to former recipients as well as current recipients.

Citation of Existing Rules Affected by this Order: Amending WAC 388-33-595.

Statutory Authority for Adoption: RCW 74.04.050.

Pursuant to notice filed as WSR 89-20-069 on October 4, 1989.

Effective Date of Rule: Thirty-one days after filing.  
 November 17, 1989  
 Leslie F. James, Director  
 Administrative Services

AMENDATORY SECTION (Amending Order 1994, filed 8/5/83)

WAC 388-33-595 ONE-TIME GRANT—AUTHORIZATION—DISBURSEMENT. (1) See WAC 388-22-030 for definition of "one-time grant."

(2) ~~((A one-time grant may be authorized and disbursed in the amount necessary subject to the following rules:~~

(a) ~~A one-time grant shall be authorized for a recipient of continuing assistance only.~~

(b) ~~A one-time grant authorization is a single payment procedure. It expires when the warrant is mailed. It does not change the amount of the continuing (regular) grant currently authorized.~~

(c) ~~The department shall authorize a one-time grant ((shall be authorized when)) for:~~

((1)) (a) ~~An additional requirement ((recognized by department standards will be needed:)) allowed under WAC 388-29-150, 388-29-160, 388-29-180, 388-29-200, 388-29-210, 388-29-220, 388-29-230, 388-29-260, and 388-29-270;~~

((2)) (b) ~~Income or assistance budgeted by the department as available to, but not received by, the assistance unit ((or family is not received:));~~

((3)) (c) ~~Supplemental assistance ((is needed)) a recipient needs from the date ((a)) the recipient leaves an institution to the ((receipt of)) date the recipient receives the regular, adjusting, or reinstated grant((-);~~

((4)) (d) ~~((The fair hearing decision or the court decision on an appeal requires)) Initiating, reinstating, or increasing a grant((-) as required by a fair hearing or court decision;~~

((5)) (e) ~~A recipient ((is)) or former recipient to be compensated for an underpayment((-);~~

((6)) (f) ~~((Any one-time grant is)) An exception to the rule approved by the ((state office)) department under chapter 388-20 WAC ((for reasons other than those listed in this section:));~~

((7)) (g) ~~((A canceled warrant is to be reissued and the)) A recipient who cannot wait for ((payment)) the department to reissue a cancelled warrant by adjusting grant((-);~~

~~((viii)) (h) A change in the basic requirements ((resulting)) which results in an increase in the regular grant ((occurs.));~~

~~((ix)) (i) Assistance ((is being continued)) which requires a partial month payment in compliance with the ten-day advance notice rules on reduction, suspension, or termination of a grant(, and a partial month payment is required.); and~~

~~((x)) (j) An individual who is added to the assistance unit. ((The one-time grant shall be for the period from the date of eligibility to the date the grant is adjusted.))~~

~~((d)) (3) Except as provided in subsection ((2)(c)(iv) and (v)) (2)(d) and (e) of this section, a retroactive one-time grant shall not cover a period of more than sixty days before the date of authorization(:~~

~~(e) The effective date of a one-time grant shall be the date the circumstances change, subject to the limitations and conditions stated in this section)).~~

**WSR 89-23-086**

**EMERGENCY RULES**

**DEPARTMENT OF FISHERIES**

[Order 89-141—Filed November 17, 1989, 4:37 p.m.]

Date of Adoption: November 17, 1989.

Purpose: Commercial fishing regulations.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-47-525.

Statutory Authority for Adoption: RCW 75.08.080.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The openings in Areas 7 and 7A provide opportunity to harvest the non-Indian share of the United States share of United States and Canadian origin chum salmon, and is necessary to reduce wastage. The opening in Area 7B provides opportunity to harvest non-Indian allocation of Nooksack-Samish origin chum, and is necessary to reduce wastage. The in-season area restriction in Area 7B is necessary to maintain an orderly fishery. Openings in Area 8A provide opportunity to harvest the non-Indian allocation of Stillaguamish-Snohomish origin chum. The exclusion zone in Area 8A has been modified to provide greater opportunity to harvest Stillaguamish origin chum salmon. All other Puget Sound areas are closed to prevent overharvest of local salmon stocks.

Effective Date of Rule: Immediately.

November 17, 1989  
Joseph R. Blum  
Director

NEW SECTION

WAC 220-47-526 PUGET SOUND ALL-CITIZEN COMMERCIAL SALMON FISHERY. Notwithstanding the provisions of Chapter 220-47 WAC, effective 8 PM Friday, November 17, until further notice, it is unlawful to take, fish for, or possess salmon or Atlantic salmon for commercial purposes taken from the following Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the following open periods and restrictions:

- \* Areas 7 and 7A – Gill nets using 6-inch minimum mesh, purse seines and reef nets may fish continuously from 8 PM Friday, November 17 to 5 PM Saturday, November 25.
- \* Area 7B – Gill nets using 6-inch minimum mesh may fish from 3 PM to 9 AM nightly, Friday and Saturday nights, November 17 and 18. Purse seines may fish from 5 AM to 8 PM Friday and Saturday, November 17 and 18, and from 5 AM to 12 noon Sunday, November 19. Gill nets using 6-inch minimum mesh and purse seines may fish continuously from 12 noon Sunday, November 19 to 5 PM Saturday, November 25. This opening excludes those waters north and east of a line projected from the light at the Port of Bellingham North Terminal to the light at the end of Squalicum Creek waterway.
- \* Area 8A – Purse seines using the 5-inch strip may fish from 5 AM to 8 PM Monday, November 20, and gill nets using 6-inch minimum mesh may fish from 3 PM Monday, November 20 to 9 AM Tuesday, November 21. This opening excludes those waters of Area 8A north of a line extended true west from Kayak Point to the landfall on Camano Island.
- \* Areas 4B, 5, 6, 6A, 6B, 6C, 6D, 7C, 7D, 7E, 8, 8D, 9, 9A, 10, 10A, 10C, 10D, 10E, 10F, 10G, 11, 11A, 12, 12A, 12B, 12C, 12D, 13, 13A, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, and 13K and all freshwater areas – Closed.

REPEALER

The following section of the Washington Administrative Code is repealed effective 8 PM Friday, November 17:

WAC 220-47-525 PUGET SOUND ALL-CITIZEN COMMERCIAL SALMON FISHERY (89-140)

**WSR 89-23-087**

**NOTICE OF PUBLIC MEETINGS  
LOWER COLUMBIA COLLEGE**

[Memorandum—November 16, 1989]

On November 15, 1989, the Community College District 13 board of trustees approved the following meeting dates. All regular meetings are scheduled to begin at 5:00 p.m., on the third Wednesday of each month.

January 17, 1990  
 February 21, 1990  
 March 21, 1990  
 April 18, 1990  
 May 16, 1990  
 June 20, 1990  
 July 18, 1990  
 August 15, 1990  
 September 19, 1990  
 October 17, 1990  
 November 21, 1990  
 December 19, 1990

**WSR 89-23-088**  
**NOTICE OF PUBLIC MEETINGS**  
**PIERCE COLLEGE**  
 [Memorandum—November 14, 1989]

The board of trustees of Community College District Number Eleven, Pierce College, adopted the following meeting schedule for 1990 at their November 8, 1989, regular meeting.

The board of trustees of Community College District Number Eleven will hold their regular meetings on the second Wednesday of each month. These meetings will be open to the public and advertised accordingly (RCW 42.30.075).

**1990 REGULAR MEETING SCHEDULE**

MONTH	DATE	TIME	LOCATION
January	10	12:30 p.m.	Pierce College Board Room (325-H)
February	14	12:30 p.m.	Pierce College at Puyallup (Room 101)
March	14	12:30 p.m.	Pierce College Board Room (325-H)
April	11	12:30 p.m.	Pierce College at Fort Lewis
May	9	12:30 p.m.	Pierce College Board Room (325-H)
June	13	12:30 p.m.	Pierce College Board Room (325-H)
July	11	12:30 p.m.	Pierce College Board Room (325-H)
(No meeting is scheduled for August.)			
September	12	12:30 p.m.	Pierce College Board Room (325-H)
October	10	12:30 p.m.	Pierce College Board Room (325-H)
November	14	12:30 p.m.	Pierce College Board Room (325-H)
December	12	12:30 p.m.	Pierce College Board Room (325-H)

**PLEASE NOTE:** Special meetings may be called for at any time by the chair or a majority vote of the board. All special meetings will be publicly advertised at least 24 hours prior to being convened, and are open to the public.

**WSR 89-23-089**  
**NOTICE OF PUBLIC MEETINGS**  
**EDMONDS COMMUNITY COLLEGE**  
 [Memorandum—November 17, 1989]

The board of trustees of Edmonds Community College has adopted the following schedule for their 1990 meetings.

**1990 Board of Trustees Meeting Schedule**

January 18, 1990	Thursday	4:30 p.m.
February 15, 1990	Thursday	4:30 p.m.
March 15, 1990	Thursday	4:30 p.m.
April 19, 1990	Thursday	4:30 p.m.
May 17, 1990	Thursday	4:30 p.m.
June 14, 1990	Thursday	4:30 p.m.
July 19, 1990	Thursday	4:30 p.m.
August 16, 1990	Thursday	4:30 p.m.
September 20, 1990	Thursday	4:30 p.m.
October 18, 1990	Thursday	4:30 p.m.
November 15, 1990	Thursday	4:30 p.m.
December 20, 1990	Thursday	4:30 p.m.

**WSR 89-23-090**  
**PROPOSED RULES**  
**BOARD OF PILOTAGE COMMISSIONERS**  
 [Filed November 20, 1989, 3:15 p.m.]

Original Notice.

Title of Rule: Physical requirements.

Purpose: To incorporate more definitive physical standards into regulation.

Statutory Authority for Adoption: RCW 88.16.090(6).

Statute Being Implemented: RCW 88.16.090(6).

Summary: The proposed additions to the regulation provide a more definitive framework for both the board and examining physician in making the determination of one's physical ability to carry out the duties of a state licensed vessel pilot.

Reasons Supporting Proposal: Will help insure that all candidates/pilots are fully capable of carrying out the duties of a pilot.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Board of Pilotage Commissioners, Pier 52, 576-7818, 464-7818.

Name of Proponent: Board of Pilotage Commissioners, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rule is intended to provide a more definitive framework to both the board and examining physician when a candidate/pilot undergoes the initial physical exam or the annual physical exam required for relicensure.

Proposal Changes the Following Existing Rules: The process is similar, the proposed changes augment the present physical standards.

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

Hearing Location: Conference Room, Pier 52, Colman Dock, Seattle, Washington, on January 11, 1990, at 9:00 a.m.

Submit Written Comments to: Captain Don Schwartzman, by January 2, 1990.

Date of Intended Adoption: Approximately March 1, 1990.

November 16, 1989  
Majorie T. Smitch  
Assistant Attorney General

**AMENDATORY SECTION** (Amending Order 88-5, Resolution No. 88-5, filed 4/14/88)

WAC 296-116-120 **PHYSICAL REQUIREMENTS.** (1) In order to determine the physical fitness of persons to serve as licensed pilots under the provisions of the pilotage act, all licensed pilots and applicants shall be required to pass a general physical examination annually within forty-five days prior to the date their annual state pilot license fee is due. As part of this examination pilots and applicants shall have completed on a form provided by the board a detailed report of physical examination. This form shall be prepared by the examining physician and shall be submitted to the board along with a letter (~~stating whether and under what conditions the pilot or applicant is capable of providing pilotage services. The completion of the form and the letter to the board satisfies the minimum health standards of RCW 88-16-090(6))~~ making recommendations as to the ability of the pilot or applicant to safely perform the pilotage duties based on the job description for a Washington state licensed marine pilot and the standards set forth below. The examining physician should review the standards set forth below and review the job description for a Washington state licensed marine pilot on file in the board office before making a determination as to the medical fitness of the applicant. A medical/occupational history form will be completed and signed by the initial applicant for review of the medical examiner prior to the initial examination. The detailed report of physical examination is a confidential record and will not be available for public inspection. Such examination shall be obtained at the expense of the licensed pilots or applicant(s) from a physician or physicians designated in advance by the board. The secretary of the board shall give each pilot or applicant reasonable written notice of the date when any such physical examination becomes due and shall specify the name of the physicians then approved by the board to conduct such physical examination.

(2) ~~(The physical examination required of all pilots and applicants shall demonstrate that he is in all respects physically fit to perform his duties as a pilot. The examination shall assure that one's abilities as a pilot will not be impaired by eyesight, hearing or other bodily function and shall include examination of the pilot's or applicant's eyes (including tests for color blindness, depth perception, night vision, disease, field of vision and reflexes), ears, heart, blood pressure, blood components, pulse, speech capabilities, history of diseases (including diabetes, cancer, arthritis, arrhythmia, asthma, bronchitis, emphysema, ulcers, alcoholism and other illnesses) and any other type of information which the physician feels is relevant.~~

~~(3) In the case of renewal of license as pilot, should the pilot be temporarily physically incapacitated at the time his license is due to be renewed, the commission shall not revoke such license until a further physical examination to be given at the expiration of three months. This procedure shall be carried on until it is evident that the pilot is permanently incapacitated; provided further, that no pilot shall be carried on the inactive list for longer than one year if disabled. Any pilot who is physically incapacitated shall not serve as a pilot during such period of incapacitation.)~~ Based upon the recommendations of the examining physician and review by the board, the board will make the determination as to the applicant or pilot's fitness to perform the duties of pilot. This determination will be made within ninety days of each annual physical examination.

(3) The purpose of the history and physical examination is to detect the presence of physical, mental, or organic defects of such character and extent as to affect an individual's ability to operate a vessel safely. The examination will be made carefully and at least as complete as indicated by the attached form. History of certain defects may be cause for rejection of the initial applicant or indicate the need for making certain laboratory tests or a further and more stringent examination. Defects may be recorded which do not, because of their character or

degree, indicate that certification of physical fitness should be denied. However, these defects should be discussed with the applicant or pilot who should be advised to take the necessary steps to ensure correction, particularly of those which, if neglected, might lead to a condition likely to affect the ability to perform the duties of a pilot.

(4) The board has determined which physical conditions are permanently disqualifying for initial applicants as well as which conditions are permanently disqualifying for renewal of license. Certain conditions are not necessarily disqualifying, for renewal of licensure only, when, based on the knowledge and experience of the examining physician, these conditions can be managed medically and without threat to the pilot's ability to perform the duties of a pilot. An individual may be disqualified when, in the opinion of the examining physician, there is reasonable probability that a condition can occur suddenly and without warning which would render the applicant incapable of promptly responding, both mentally and physically to emergency situations. When certain conditions exist the medical examiner may recommend either:

(a) A permanent disqualification; or  
(b) A temporary disqualification until which time the condition is either corrected or medically managed.

(5) Initial applicants will be required to take a test indicating they are free of illegal substance abuse. Testing will be for the presence of Cocaine, Opiates, Marijuana (THC), Amphetamines and PCP (phen-cyclidine). Testing will be in accordance with the Department of Transportation (Coast Guard) guidelines outlined in the Federal Register 46 CFR 4, 5, and 16. Urine specimens are to be analyzed by a laboratory that meets DHHS regulations set forth by the National Institute of Drug Abuse (NIDA).

Chain of custody forms and instructions for collection and transport to a NIDA approved laboratory can be obtained from:

Laboratory of Pathology  
Nordstrom Medical Tower  
P.O. Box 14950  
Seattle, WA 98114-0950  
(206) 386-2872

(6) The conditions in these standards are listed according to the International Classification of Diseases (ICD). Some categories may not apply to the standards set forth and therefore may be absent in some listings. However, all categories should be taken into consideration by the examining physician.

- (a) Infectious and parasitic diseases.
- (b) Neoplasms.
- (c) Endocrine, nutritional, metabolic, and immunity disorders.
- (d) Diseases of the blood and blood forming organs.
- (e) Mental disorders.
- (f) Diseases of the nervous system and sense organs.
- (g) Diseases of the respiratory system.
- (h) Diseases of the digestive system.
- (i) Diseases of the genitourinary system.
- (j) Complications of pregnancy, childbirth, and the puerperium.
- (k) Diseases of the skin and subcutaneous tissues.
- (l) Diseases of the musculoskeletal system and connective tissues.
- (m) Congenital anomalies.
- (n) Certain conditions originating in the perinatal period.
- (o) Symptoms, signs, and other ill defined conditions.
- (p) Injury and poisonings.

(7) The guidelines for recommended visual standards are based on the necessity of a pilot to be able to safely perform the duties of a pilot, including functioning under all emergency conditions aboard the vessel. Consideration must be given to the pilot's previously demonstrated ability to perform his or her pilotage duties.

(a) The visual acuity of an applicant shall be at least 20/100 in both eyes uncorrected and correctable to at least 20/20 in one eye and 20/40 in the other as determined by Snellen test or its equivalent.

(b) Normal fields of vision shall be at least eighty-five degrees peripherally.

(c) The applicant should have normal color vision per pseudo isochromatic plates, Ishihara or Keystone test. If applicant fails this test, the Farnsworth Lantern test or its equivalent may be used to determine the applicant's ability to distinguish primary colors.

(d) Loss of vision in one eye may not be disqualifying if one eye passes the test required for the better eye of the applicant with binocular vision and the applicant has had sufficient time to develop and demonstrate adequate judgment of distances.

(e) The absence of night visual acuity is absolutely disqualifying.

(f) Early diagnosis of cataracts is not disqualifying as long as the above requirements are met. The first indication of cataract development is the loss of visual acuity in the presence of glare. Therefore, the applicant must pass the Brightness Acuity Test (BAT) performed by the examining physician or an ophthalmologist.

(g) Applicants who wear corrective lenses and meet the qualifications in (a) of this subsection are medically fit to carry out pilotage duties only while wearing their corrective lenses and if they have with them, while on duty, a spare pair of correcting lenses that provide at least the same visual acuity.

(8) Baseline audiograms shall be performed on all entry level applicants. All licensed pilots will be tested annually, with the first audiogram considered baseline. Each ear will be tested separately using properly calibrated equipment which meets ANSI (American National Standards Institute) standards criteria for background noise in audiometric rooms. Testing should not be performed unless the applicant has been free of work noise or intense noise for a period of at least fourteen hours prior to testing. Should the applicant have a current condition which can cause a temporary hearing loss, such as cold, the applicant should be rescheduled for testing in two weeks, or until such condition is resolved. Testing will be performed by a licensed audiologist, otolaryngologist, physician with sufficient training in conducting and interpreting audiograms, or a technician who is currently certified by the Council for Accreditation in Occupational Hearing Conservation (CAOHC).

(a) A baseline audiogram is required on all initial applicants. The first audiogram performed on a currently licensed pilot shall be considered the baseline audiogram.

(b) Applicants having hearing threshold levels that do not exceed 35 dB at frequencies of 500, 1000, 2000, 3000 Hz in either ear are considered to have normal hearing for communication purposes.

(c) Annual audiograms will be performed thereafter for the purposes of comparison to baseline. A significant threshold shift is defined as a change averaging more than 10dB from baseline in the frequencies of 500, 1000, 2000, and 3000 Hz and requires further evaluation by a physician, otolaryngologist, or audiologist and preventive action taken on the part of the pilot.

(d) Mechanical acoustical devices (hearing aids) are not disqualifying but should not be worn in areas of high background noise levels in order to prevent further deterioration of his/her hearing.

(e) An applicant must minimally be able to hear an average conversational voice in a quiet room while standing with his/her back turned at a distance of eight feet.

(9) Below is a list of conditions which are absolutely disqualifying for initial licensure as a maritime pilot. The list of causes for disqualification is not all inclusive or intended to be complete, but represents the types of conditions that would interfere with the safe performance of pilotage duties. This guide is not intended to replace the physician's professional judgment. Rather, it calls for the physician and the board to closely examine whether the applicant can safely perform the tasks outlined in the job description of a Washington state licensed marine pilot. The examining physician should also be aware that a second opinion concerning the diagnosis may be sought in cases of unfavorable determinations. A condition should only be considered disqualifying while such condition persists. Following corrective medical action the applicant should be encouraged to apply for reentry.

#### Absolute Exclusions For Initial Licensure

1. Infectious and Parasitic Diseases – Any communicable disease in its communicable or carrier stage.

2. Neoplasms – Malignant diseases of all kinds in any location.

3. Endocrine, Nutritional, Metabolic, and Immunity Disorders – Diabetes requiring insulin or hypoglycemic drugs; cirrhosis of the liver; alcohol abuse (unless abstinence for two years).

4. Diseases of the Blood and Blood Forming Organs – Hemophilia; acute or chronic significant anemias.

5. Mental Disorders – Severe personality disorders; use of illegal drugs; dementia of Alzheimer's type, senility, psychosis.

6. Diseases of the Nervous System and Sense Organs – Epilepsy or any convulsive disorder resulting in an altered state of consciousness, regardless of control; disturbance of balance; multiple sclerosis; Meniere's syndrome.

7. Diseases of the Circulatory System – Multiple myocardial infarctions or cardiac class II or IV (NYHA); hypotension with syncopal episodes; varicose veins if associated with edema, skin ulceration or residual scars. Recurrent thromboembolic conditions.

8. Diseases of the Respiratory System – Active pulmonary tuberculosis Class IV respiratory impairment; permanent tracheostomy.

9. Diseases of the Genitourinary System – Chronic renal failure; permanent ureterostomy.

10. Complications of Pregnancy, Childbirth, and the Puerperium – Pregnancy is not in itself disqualifying, if, in the opinion of the examining physician and the applicant's obstetrician determine that the pilotage duties can be safely carried out without risk to the mother or fetus and without risk to the safety of the vessel, crew, and property.

11. Diseases of the Skin and Subcutaneous Tissues – There are no absolute exclusion listed for diseases of the skin unless, in the opinion of the examining physician, a condition exists that would interfere with the performance of pilotage duties.

12. Diseases of the Musculoskeletal System and Connective Tissues – Lupus erythematosus, disseminated; amputation of any portion of a limb, resection of a joint, artificial joint or absence of the toes which would preclude the ability to run, walk, balance oneself, grasp and climb ladder rungs; chronic low back pain that is disabling to the degree of interfering with job requirements.

13. Congenital Anomalies – Any existing condition that, in the opinion of the examining physician, would interfere with the safe performance of pilotage duties.

14. Symptoms, Signs, and Other Ill Defined Conditions – Serious degree of stuttering or speech impediment sufficient to interfere with communication; alcoholism; drug addiction, other than tobacco or caffeine.

15. Injury or Poisonings – May be temporarily disqualifying until condition resolved without disabling sequelae.

(10) Below is a list of conditions which are absolutely disqualifying for relicensure as a maritime pilot. The list of causes for disqualification is not all inclusive or intended to be complete, but represent the types of conditions that would interfere with the safe performance of pilotage duties. This guide is not intended to replace the physician's professional judgment. Rather, it calls for the physician and the board to closely examine whether the applicant can continue to safely perform the tasks outlined in the job description of a Washington state licensed marine pilot.

#### Absolute Exclusions for Relicensure

1. Neoplasms – Malignancies with metastases.

2. Endocrine, Nutritional, Metabolic, and Immunity Disorders – Cirrhosis of the liver with hepatic failure.

3. Diseases of the Blood and Blood Forming Organs – Hemophilia; acute leukemia.

4. Mental Disorders – Severe personality disorders; senility; dementia of Alzheimer's type psychosis.

5. Diseases of the Nervous System and Sense Organs – Disturbance of balance, permanent and untreatable Meniere's syndrome.

6. Diseases of the Circulatory System – Multiple myocardial infarctions or cardiac class III or IV (NYHA); hypotension with syncopal episodes; varicose veins if associated with edema, skin ulceration or residual scars. Recurrent thromboembolic conditions.

7. Diseases of the Respiratory System – Active pulmonary tuberculosis; Class IV respiratory impairment.

8. Diseases of the Genitourinary System – Chronic renal failure; permanent ureterostomy.

9. Complications of Pregnancy, Childbirth, and Puerperium – Pregnancy is not in itself disqualifying, if, in the opinion of the examining physician and the applicant's obstetrician determine that the pilotage duties can be safely carried out without risk to the mother or fetus and without risk to the safety of the vessel, crew and property.

10. Diseases of the Skin and Subcutaneous Tissues – There are no absolute exclusion for diseases of the skin unless, in the opinion of the examining physician, a condition exists that would interfere with the performance of pilotage duties.

11. Diseases of the Musculoskeletal and Connective System – Lupus erythematosus, disseminated; amputation of any portion of a limb, resection of a joint, artificial joint or absence of the toes which would preclude the ability to run, walk, balance oneself, grasp, and climb ladder rungs. Chronic low back pain that is disabling to the degree of interfering with job requirements.

12. Symptoms, Signs, and Other Ill Defined Conditions – Serious degree of stuttering or speech impediment sufficient to interfere with communication; alcoholism; drug addiction, other than tobacco or caffeine. Current need to use methadone, antabuse, neuroleptic drugs, antidepressants, anti-anxiety drugs.

13. Injury or Poisonings – May be temporarily disqualifying until condition resolved without disabling sequelae.

(11) While some conditions may develop during the course of employment that would be absolutely disqualifying for initial licensure, judgment by the examining physician and the board should take into consideration the pilots past experience, effectiveness of performance and predictability of performing pilotage duties without risk to further deterioration of the health of the pilot or his/her ability to perform the duties of a pilot. The list of conditions requiring in-depth evaluation is not all inclusive or intended to be complete, but represent the types of conditions that might interfere with the safe performance of pilotage duties.

A pilot may be temporarily relieved of pilotage duties until such time as a disqualifying condition is resolved or medically managed and with frequent evaluation by an examining physician or specialist. In this case, the board, with the recommendation of the physician, will determine the frequency of medical examinations. A condition should only be considered disqualifying while such a condition persists. Following corrective medical action, the individual may be removed from temporary disqualification. Provided that, if a temporary disqualifying condition continues to persist at the time the pilot's license is due to be renewed in the third year of the temporary disqualifying condition, the pilot's license shall not be renewed. The examining physician should also be aware that a second opinion concerning the diagnosis may be sought in cases of unfavorable determinations.

- 1. Neoplasms – Malignancies of any kind.
- 2. Endocrine, Nutritional, Metabolic, and Immunity Disorders – Diabetes requiring hypoglycemic drugs; cirrhosis of the liver.
- 3. Diseases of the Blood and Blood Forming Organs – Chronic leukemia.
- 4. Mental Disorders – Anxiety reactions; depression.
- 5. Diseases of the Nervous System and Sense Organs – Disturbance of balance; multiple sclerosis; epilepsy or any convulsive disorder resulting in an altered state of consciousness.
- 6. Diseases of the Circulatory System – Uncontrolled hypertension; varicose veins; pacemaker, demand.
- 7. Diseases of the Respiratory System – Respiratory impairment; permanent tracheostomy.
- 8. Diseases of the Digestive System – Permanent colostomy; permanent ileostomy.
- 9. Complications of Pregnancy, Childbirth, and the Puerperium – Pregnancy.
- 10. Diseases of the Skin and Subcutaneous Tissues – Any skin disorders that, in the opinion of the examining physician, may interfere with the performance of pilotage duties.
- 11. Diseases of the Musculoskeletal System and Connective Tissues – Lupus erythematosus, disseminated; artificial joints; chronic low back pain.
- 12. Injury or Poisonings – May be temporarily disqualifying until condition resolved without disabling sequelae.

**WSR 89-23-091**  
**EMERGENCY RULES**  
**DEPARTMENT OF HEALTH**  
 [Order 017—Filed November 21, 1989, 9:07 a.m.]

Date of Adoption: November 14, 1989.

Purpose: To conform program rules on adjudicative proceedings to the new Administrative Procedure Act, chapter 34.05 RCW, and other recent statutory changes.

Citation of Existing Rules Affected by this Order: Repealing WAC 248-33-060 and 248-33-080; and amending WAC 248-21-005, 248-33-040 and 248-140-200.

Statutory Authority for Adoption: RCW 34.05.220.

**Other Authority:**

WAC	ACTION	STATUTORY AUTHORITY	REASON FOR VARIATION FROM MODEL RULES
248-21-005	Amend	43.20.050	Required by sec. 95, chapter 175, Laws of 1989.
248-33-040	Amend	Same	Subsection (5) required by sec. 95, chapter 175, Laws of 1989.
248-33-060	Repeal	Same	Housekeeping; provisions moved to WAC 248-33-040(3)
248-33-080	Repeal	Same	Housekeeping; provisions moved to WAC 248-33-040(4)
248-140-200	Amend	42.20.050	Required by sec. 95, chapter 175, Laws of 1989

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Adjudicative proceedings in programs administered by this department were affected by the amended chapter 34.05 RCW and other statutory changes that became effective July 1, 1989. These rules comply to those statutory changes.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: See Other Authority above.

Effective Date of Rule: Immediately.

November 14, 1989  
 Pam Campbell Mead  
 for Kristine M. Gebbie  
 Secretary

**AMENDATORY SECTION (Amending Order 218, filed 11/6/81)**

**WAC 248-21-005 LICENSURE—NOTICE OF DECISION—ADJUDICATIVE PROCEEDING.** (1) *After January 1, 1982, no person acting separately or jointly with any other person shall establish, maintain, conduct or operate a hospice care center in this state or use the words "hospice care center" to describe or identify a place or building which does not have a license as a hospice care center as defined and described herein.*

(2) *An application for a hospice care center license shall be submitted to the department on forms provided by the department. The application shall be signed by the operator of the facility and the legal representative of the governing body.*

(3) *Other requirements related to licensure, fees, and inspection are as stipulated in RCW 70.41.100, 70.41.110, 70.41.120, 70.41.130, 70.41.140, 70.41.150, 70.41.160 and 70.41.170.*

(4) *There shall be compliance with other regulations to include:*

(a) *Applicable rules and regulations for hospice care centers adopted by the Washington state fire marshal pursuant to RCW 70.41.080 and chapter 48.48 RCW;*

(b) *Applicable national, state, and local electrical, fire, zoning, building, and plumbing codes.*

(5)(a) *The department's notice of a denial, suspension, modification, or revocation of a license shall be*

consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.

(b) A license applicant or holder contesting a department license decision shall within twenty-eight days of receipt of the decision:

(i) File a written adjudicative proceeding application by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

AMENDATORY SECTION (Amending Order 134, filed 10/21/76)

WAC 248-33-040 APPROVAL PROCESS. (1) A facility which seeks to qualify as an approved eye bank must submit a written request for approval to the secretary. The request must include a statement of the arrangements made for the storage of tissue received, the name and availability of ophthalmologists and the policies to be followed for the distribution of tissue.

(2) Approval may be granted by the secretary when:

(a) The eye bank meets accepted medical standards for the preservation of eye tissue in a condition suitable for transplantation including, but not limited to, the provision of a storage area for the tissue which is maintained at an appropriate temperature and in which the tissue may be protected from contamination and/or damage, and

(b) There are one or more board certified or board qualified ophthalmologists on the staff of a hospital which seeks approval for its eye bank who are able to, and express a willingness to, perform corneal transplants, and

(c) The director or administrator of the eye bank declares it to be the intention of those who direct and/or administer the eye bank to distribute available corneal tissue to recipients in a fair and reasonable manner, which means the distribution of corneal tissue to recipients requiring such tissue:

(i) Without discrimination based on race, creed, ethnic origin, sex, or age, and

(ii) With consideration of the length of time that the potential recipient has had a medically defined need to receive corneal tissue, and

(iii) With consideration of the impact of waiting to receive such tissue on the recipient and the resulting economic, educational, or developmental loss to the potential recipient, and

(iv) With provision made for emergency requests for corneal tissue.

(3) The department shall deny, suspend, modify, or revoke approval of an eye bank when a facility fails or

refuses to comply with legal requirements, including the criteria set forth in chapter 248-33 WAC.

(4) The secretary may, in the secretary's discretion, reinstate the approval of an eye bank when the facility has corrected the conditions which led to the suspension, modification, or revocation of approval.

(5)(a) The department's notice of a denial, suspension, modification, or revocation of approval shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or approval holder has the right to an adjudicative proceeding to contest the decision.

(b) An approval applicant or holder contesting a department approval decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

#### REPEALER

The following sections of the Washington Administration Code are repealed:

WAC 248-33-060 TERMINATION OF APPROVAL.

WAC 248-33-080 REINSTATEMENT OF APPROVAL.

**Reviser's note:** The typographical error in the above repealer appeared in the original copy of the repealer and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 87, filed 6/12/73)

WAC 248-140-200 ((~~PROCEDURE UPON DENIAL~~)) NOTICE OF ((~~APPLICATION FOR CERTIFICATE~~)) ~~DECISION—ADJUDICATIVE PROCEEDING. ((Applicants denied approval or persons whose certificates have been revoked shall have recourse to review of the decision of the secretary in conformance with the Administrative Procedure Act)) (1) The department's notice of a denial, suspension, modification, or revocation of a certificate shall be consistent with RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. An applicant or certificate holder has the right to an adjudicative proceeding to contest the decision.~~

(2) A certificate applicant or holder contesting a department certificate decision shall within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the

Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(b) Include in or with the application:

(i) A specific statement of the issue or issues and law involved;

(ii) The grounds for contesting the department decision; and

(iii) A copy of the contested department decision.

(3) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

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 89-23-092**

**PROPOSED RULES**

**DEPARTMENT OF FISHERIES**

[Filed November 21, 1989, 10:34 a.m.]

**Original Notice.**

Title of Rule: Fisheries regional enhancement groups.

Purpose: Establishes regional enhancement groups and provides for accountability of start-up funds.

Statutory Authority for Adoption: RCW 75.08.080.

Statute Being Implemented: Chapter 426, Laws of 1989.

Summary: These proposals establish fisheries regional enhancement groups patterned after the Grays Harbor fisheries enhancement task force.

Reasons Supporting Proposal: Regional fisheries enhancement groups which maximize volunteer donations and effort are highly effective in improving the salmon resource of the state.

Name of Agency Personnel Responsible for Drafting: Evan S. Jacoby, 115 General Administration Building, Olympia 98504, (206) 586-2429; Implementation: Kahler Martinson, 115 General Administration Building, Olympia, WA 98504, (206) 753-6631; and Enforcement: James McKillip, 115 General Administration Building, Olympia 98504, (206) 753-6585.

Name of Proponent: Department of Fisheries, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Chapter 426, Laws of 1989 was partially vetoed by the Governor, who instructed the Department of Fisheries to use its rule-making authority to implement the intent of the chapter. This proposal defines relevant terms, establishes geographical areas from which groups may be formed, and provides for a mechanism for establishing nonprofit groups. Suggested are criteria for choosing from competing prospective groups and distribution of start-up funds provided by the legislature. The use of volunteers in salmon resource enhancement has been documented through the efforts of the Grays Harbor

task force, and been found to be an effective source of salmon production. Legislation proposed for the 1990 session will create a continuing source of funding, and establishing the groups at this time will put in place a system for implementation of enhancement group projects.

Proposal does not change existing rules.

There are no regional enhancement group regulations at this time, and therefore no existing rules will be changed. It is anticipated, however, that these proposals and subsequent regulations to be promulgated after the 1990 legislative session will impact volunteer cooperative regulations found in chapter 220-130 WAC.

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

No effect on 10% of businesses in any one three-digit industrial classification nor 20% of all businesses is expected.

Hearing Location: Large Conference Room, General Administration Building, 210 11th Street, First Floor, Olympia, WA 98504, on December 27, 1989, at 1:00 p.m.

Submit Written Comments to: WDF Hearings Officer, 115 General Administration Building, Olympia, WA 98504, by December 26, 1989.

Date of Intended Adoption: January 2, 1989 [1990].

November 21, 1989

Judith Merchant

Deputy Director

for Joseph R. Blum

Director

Chapter 220-140 WAC

REGIONAL FISHERIES ENHANCEMENT GROUPS

WAC

220-140-001	Purpose.
220-140-010	Definitions.
220-140-020	Geographical regional fisheries enhancement groups.
220-140-030	Establishing a group.

NEW SECTION

WAC 220-140-001 PURPOSE. The purpose of this section is to establish regional fisheries enhancement groups, adopt procedures for the implementation of enhancement projects, and provide for accountability.

NEW SECTION

WAC 220-140-010 DEFINITIONS. The following definitions apply to this chapter:

(1) "Regional fisheries enhancement group" or "group" means a nonprofit association established in compliance with Title 24 RCW, representing diverse interests, and which will work together within a predesignated area for the express purpose of enhancing salmon production and habitat in that area.

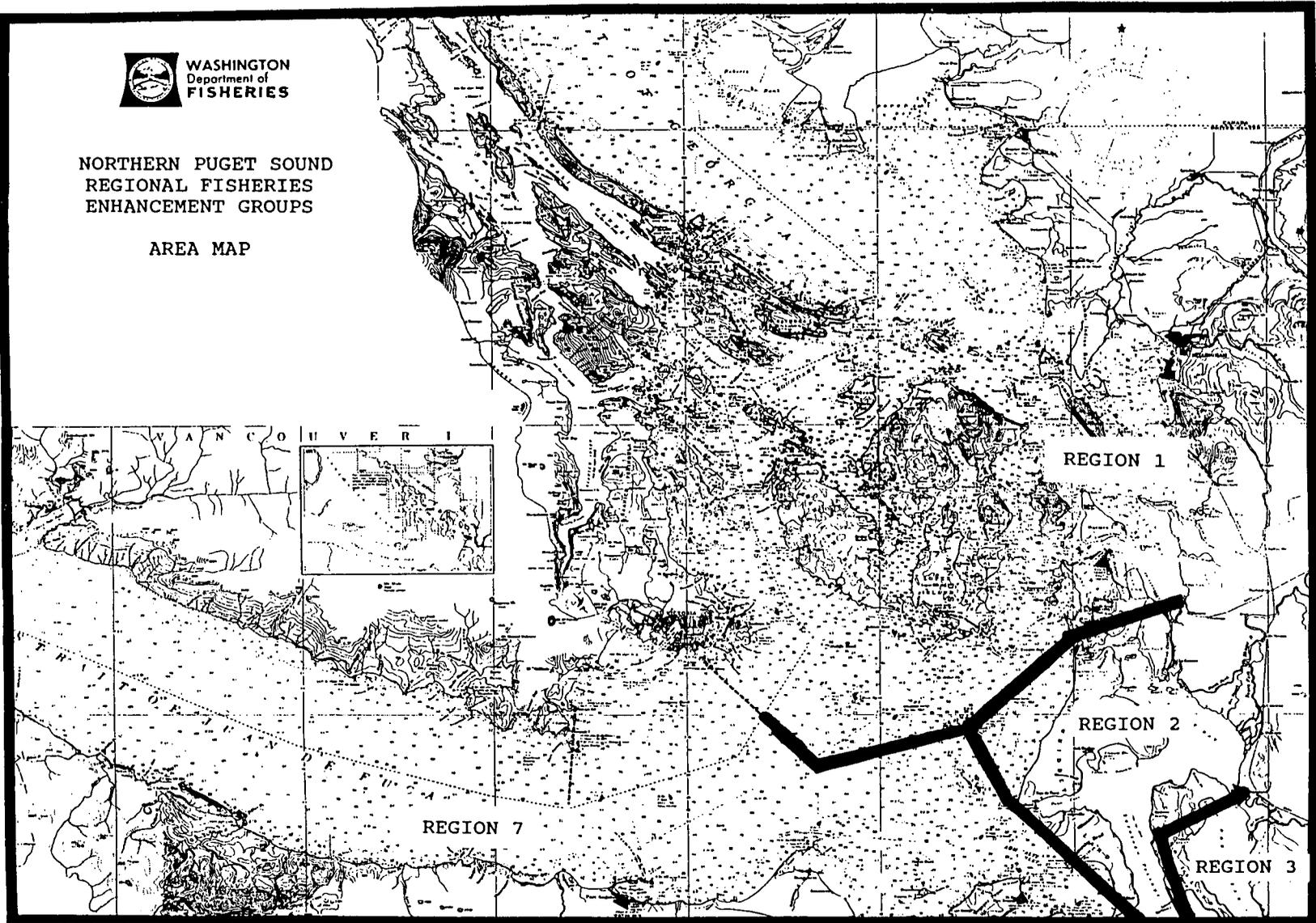
(2) "Enhancement project" means a project undertaken or overseen by a group, whether publicly or privately funded, the goal of which project is an increase in the salmon resource of the state. Enhancement projects include both salmon production and salmon habitat improvement.

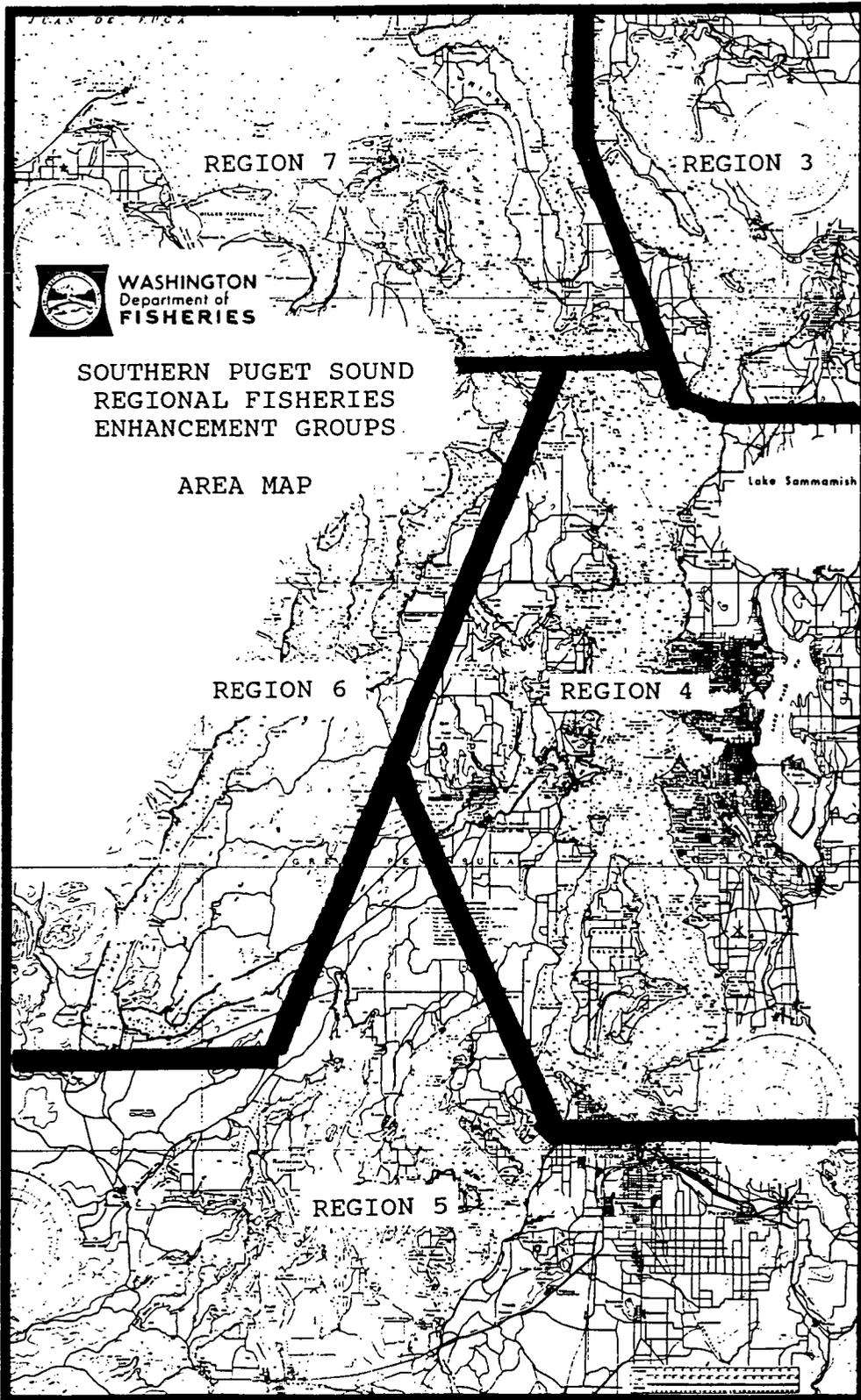
(3) "Regional enhancement task force" means persons, representing diverse interests, who have been designated by the department of fisheries to review the establishing of groups, to select among competing prospective groups, and to review start up enhancement project applications. Should the legislature authorize a regional fisheries enhancement group advisory board, the board shall take over the responsibilities of the task force.

NEW SECTION

WAC 220-140-020 GEOGRAPHICAL REGIONAL FISHERIES ENHANCEMENT GROUPS. The following geographical areas are designated as areas from which groups may be formed, and after being established as provided for in this chapter, such groups are eligible to make funding requests through the department. There shall be one group per region.

- (1) Region 1: Nooksack/Samish  
Marine Areas: 7, 7A, 7B, 7C, 7D  
Watersheds: Those entering the above marine areas, including Bellingham Bay, Samish Bay, and Padilla Bay. Major rivers include Nooksack and Samish.
- (2) Region 2: Skagit  
Marine Areas: 6A, 8  
Watersheds: Those entering Skagit Bay and Saratoga Passage south to East Point on Whidbey Island. The major watersheds are the Skagit River and its tributaries.
- (3) Region 3: Stillaguamish/Snohomish  
Marine Areas: 8A, 8D  
Watersheds: Those entering Port Susan, Port Garner, and Possession Sound, also Saratoga Passage south from Elger Bay. Major rivers include Stillaguamish and Snohomish and their tributaries.
- (4) Region 4: Mid-Sound  
Marine Areas: 10, 10A-G, 11  
Watersheds: Those entering Elliott Bay, Lake Washington, Lake Sammamish, East Passage, Colvos Passage, Sinclair Inlet, Dyes Inlet, Port Orchard, Port Madison. Major rivers include Cedar and Green.
- (5) Region 5: South Sound  
Marine Areas: 13, 13A-K  
Watersheds: Those entering Carr Inlet, Commencement Bay, Henderson Bay, Case Inlet, Nisqually Reach, Henderson Inlet, Budd Inlet, Eld Inlet, Totten Inlet, Hammersley Inlet, and Oakland Bay. Major rivers include Puyallup, Nisqually, and Deschutes.
- (6) Region 6: Hood Canal  
Marine Areas: 12, 12A-D  
Watersheds: Those entering Hood Canal, Dabob Bay, and Quilcene Bay. Major rivers include Skokomish, Hamma Hamma, Duckabush, Dosewallips, and Quilcene.
- (7) Region 7: Strait of Juan de Fuca  
Marine Areas: 4B, 5, 6B, 6C and Area 9 north of Foulweather Bluff.  
Watersheds: Those entering Admiralty Inlet and the Straits of Juan de Fuca. Major rivers include the Dungeness, Elwha, Lyre, Pysht, Clallam, and Hoko.
- (8) Region 8: North Coast  
Watersheds: Those entering directly into the Pacific Ocean, including Ozette, Quillayute, Hoh, Queets, and Quinault.
- (9) Region 9: Grays Harbor  
Watersheds: Those entering Grays Harbor, including Humptulips, Hoquiam, Wishkah, Chehalis, and Johns.
- (10) Region 10: Willapa Bay  
Watershed: Those entering Willapa Bay, including North River, Willapa, Nemah, and Naselle.
- (11) Region 11: Lower Columbia River  
Watersheds: Those entering the Columbia River below Bonneville Dam, including Grays, Elochoman, Cowlitz, Kalama, Lewis, and Washougal.
- (12) Region 12: Mid-Columbia River  
Watersheds: Those entering the Columbia River above Bonneville Dam up to Chief Joseph Dam. Major rivers include Little White Salmon, White Salmon, Wind, Yakima, Klickitat, Snake, Wenatchee, Entiat, Methow, and Okanogan.





**NEW SECTION**

WAC 220-140-030 ESTABLISHING A GROUP. (1) In order to establish a regional fisheries enhancement group, interested parties must make application through the department. In order to qualify to establish a group, interested parties must:

- (a) Identify which geographic region the interested parties live in.
  - (b) Identify the interested parties, including addresses.
  - (c) Identify a representative who will work with the department on the initial application.
  - (d) Agree to form a nonprofit corporation, registered with the secretary of state of the state of Washington.
  - (e) Agree to periodic audits by the department, or its representative.
- (2) The department will provide coordination and technical assistance to facilitate the application by prospective groups to be fisheries regional enhancement groups. The department shall provide a format and guidelines which any prospective group may use to make initial application. An initial application will be reviewed by the regional enhancement task force within thirty days, and notice will be given in writing of any omissions or errors and corrective action will be discussed with the group representative. The prospective group will be given thirty days for correction and resubmission of the application.

(3) The goal shall be one prospective group per region, and a department coordinator shall seek reconciliation of competing interests, but in the event two or more prospective groups make application, the department may request a representative of each group to meet with the regional enhancement task force and make a presentation addressing why that group should be the fisheries regional enhancement group for the region. The regional fisheries task force shall recommend to the director which group shall be selected as the regional fisheries enhancement group. The criteria to be considered when choosing from among competing groups shall include, but not be limited to:

- (a) Representation of diverse interests within the group.
- (b) The intentions of the group regarding salmon production, salmon habitat protection, and salmon habitat enhancement.
- (c) The inclusion of an educational component within the group's planning process.
- (d) Group plans to provide accountability for both salmon production and fiscal matters.
- (e) The expected level of voluntary contributions to and voluntary participation in group projects.

(4) Upon selection of the prospective group, the department will provide guidance and assistance with the articles of incorporation and establishment as a 501 (C)(3) organization.

(5) After approval as a group, incorporation, and initial 501 (C)(3) application, one-twelfth of the start up funds provided for in section 9, chapter 426, Laws of 1989, will be made available, as needed, to each group for start up costs, other than incorporation costs, or start up projects. Distribution of start up funds for start up costs or start up projects will be made by the director, based on review and recommendation by the regional enhancement task force. After January 1, 1991, uncommitted start up funds may be distributed by the director to established groups for start up projects, based on review and recommendation of the regional enhancement task force.

**WSR 89-23-093**  
**NOTICE OF PUBLIC MEETINGS**  
**HUMAN RIGHTS COMMISSION**  
 [Memorandum—November 20, 1989]

The Washington State Human Rights Commission will hold its next regular commission meeting in Seattle. The meeting on December 20 will be held at the Port of Seattle Third Floor Conference Room, Pier 66, Seattle, beginning at 7:00 p.m. and will be a training, planning and work session. The regular business meeting will be held at the Dexter Horton Building, West Wing Conference Room, Thirteenth Floor, 710 Second Avenue, Seattle, beginning at 9:30 a.m. on December 21, 1989.

**WSR 89-23-094**  
**NOTICE OF PUBLIC MEETINGS**  
**HUMAN RIGHTS COMMISSION**  
 [Memorandum—November 20, 1989]

The Washington State Human Rights Commission will hold a special commission meeting, executive session only, to discuss the selection of an executive secretary on December 7, 1989. The meeting will be held by telephone conference call at 10:00 a.m. The call will originate at the Office of the Human Rights Commission, 402 Evergreen Plaza Building, 711 South Capitol Way, Olympia.

**WSR 89-23-095**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**  
 [Filed November 21, 1989, 11:13 a.m.]

Date of Adoption: November 21, 1989.

Purpose: To establish the forest land values for each grade of bare forest land on the basis of its use only for growing and harvesting timber.

Citation of Existing Rules Affected by this Order: Amending WAC 458-40-540.

Statutory Authority for Adoption: RCW 84.33.120.

Other Authority: RCW 84.08.010.

Pursuant to notice filed as WSR 89-21-062 on October 17, 1989.

Effective Date of Rule: Thirty-one days after filing.

November 21, 1989  
 John B. Conklin  
 Assistant Director  
 Forest Tax

**AMENDATORY SECTION** (Amending Order FT-88-3, filed 11/15/88)

WAC 458-40-540 PROPERTY TAX, FOREST LAND—FOREST LAND VALUES—((+1989)) 1990. The true and fair values, per acre, for each grade of forest land for the ((+1989)) 1990 assessment year are determined to be as follows:

((+1989)) 1990 WASHINGTON FOREST LAND VALUES		
LAND GRADE	OPERABILITY CLASS	VALUE PER ACRE
1	1	\$((+26)) 135
	2	((+2+)) 130
	3	((+7)) 125
	4	((85)) 91
2	1	((+06)) 113
	2	((+02)) 109
	3	((98)) 105
	4	((7+)) 76

((1989)) 1990  
WASHINGTON FOREST LAND VALUES

LAND GRADE	OPERABILITY CLASS	VALUE PER ACRE
3	1	((83)) 89
	2	((80)) 86
	3	((78)) 84
	4	((60)) 64
4	1	((63)) 67
	2	((61)) 65
	3	((60)) 64
	4	((47)) 50
5	1	((46)) 49
	2	((42)) 45
	3	((41)) 44
	4	((27)) 29
6	1	((23)) 25
	2	((22)) 24
	3	((22)) 24
	4	((21)) 22
7	1	((11)) 12
	2	((11)) 12
	3	((10)) 11
	4	((10)) 11

**WSR 89-23-096**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**  
[Filed November 21, 1989, 11:26 a.m.]

Original Notice.

Title of Rule: WAC 308-124A-460 Real estate brokers and salesperson and land development representative fees.

Purpose: To fix certain fees for real estate brokers, salespersons and land development representatives.

Statutory Authority for Adoption: RCW 18.85.220.

Statute Being Implemented: RCW 43.24.086.

Summary: This proposal would establish new fees in connection with the regulation of chapter 18.85 RCW.

Reasons Supporting Proposal: A cost study has determined that the current fees must be raised in order to offset the costs of administering the real estate broker and salesperson program.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Syd Beckett, 1300 Quince, Olympia, WA, (206) 753-6974.

Name of Proponent: Director, Department of Licensing, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This proposal is intended to meet the requirements of RCW 43.24.086.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This proposal would establish new fee levels for real estate brokers and real estate salespersons in an amount sufficient to defray the costs of administering that program.

Proposal Changes the Following Existing Rules: This proposal changes the fees for application and examination for licensure and for renewal. The director will consider two versions of proposed fee changes.

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

The director has considered whether this rule is subject to the Regulatory Fairness Act and has determined that it is not because the rule will have minor or negligible impact on small business real estate firms and because the fees are adopted in order to conform to state law.

Hearing Location: DSHS Auditorium, Office Building No. 2, 12th and Franklin, Olympia, WA 98504, on December 28, 1989, at 9:00 a.m.

Submit Written Comments to: Syd Beckett, 1300 Quince, Olympia, WA, by December 27, 1989.

Date of Intended Adoption: December 28, 1989.

November 20, 1989

Sydney W. Beckett

Program Administrator

(Option A)

**AMENDATORY SECTION** (Amending Order PM 829, filed 3/24/89)

WAC 308-124A-460 REAL ESTATE BROKERS AND SALESPERSONS AND LAND DEVELOPMENT REPRESENTATIVE FEES. The following fees shall be charged by the professional licensing division of the department of licensing.

Title of Fee	Fee
<b>Real Estate Broker:</b>	
Application/examination	\$60.00
Reexamination	60.00
Walk-in for examination	((15.00)) 25.00
Original license	((50.00)) 85.00
License renewal	((50.00)) 85.00
Late renewal with penalty	((75.00)) 110.00
Duplicate license	((15.00)) 25.00
Certification	25.00
Name or address change, transfer or license activation	((15.00)) 25.00
<b>Real Estate Broker - Branch Office:</b>	
Original license	((40.00)) \$75.00
License renewal	((40.00)) 75.00
Late renewal with penalty	((20.00)) 100.00
Duplicate license	((15.00)) 25.00
Name or address change	((15.00)) 25.00
<b>Real Estate Salesperson:</b>	
Application/examination	\$60.00
Reexamination	60.00
Walk-in for examination	((15.00)) 25.00
Original license	((35.00)) 55.00
License renewal	((35.00)) 55.00
Late renewal with penalty	((20.00)) 80.00
Duplicate license	((15.00)) 25.00
Certification	25.00
Name or address change, transfer or license activation	((15.00)) 25.00
<b>Land Development Representative:</b>	
Registration	((20.00)) \$25.00

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.

(Option B)

**AMENDATORY SECTION** (Amending Order PM 829, filed 3/24/89)

WAC 308-124A-460 REAL ESTATE BROKERS AND SALESPERSONS AND LAND DEVELOPMENT REPRESENTATIVE FEES. The following fees shall be charged by the professional licensing division of the department of licensing.

Title of Fee	Fee
Real Estate Broker:	
Application/examination	(( <del>\$60.00</del> )) <u>\$85.00</u>
Reexamination	(( <del>60.00</del> )) <u>85.00</u>
Walk-in for examination	(( <del>15.00</del> )) <u>25.00</u>
Original license	(( <del>50.00</del> )) <u>80.00</u>
License renewal	(( <del>50.00</del> )) <u>80.00</u>
Late renewal with penalty	(( <del>75.00</del> )) <u>105.00</u>
Duplicate license	(( <del>15.00</del> )) <u>25.00</u>
Certification	25.00
Name or address change, transfer or license activation	(( <del>15.00</del> )) <u>25.00</u>
Real Estate Broker - Branch Office:	
Original license	(( <del>540.00</del> )) <u>\$75.00</u>
License renewal	(( <del>40.00</del> )) <u>75.00</u>
Late renewal with penalty	(( <del>20.00</del> )) <u>100.00</u>
Duplicate license	(( <del>15.00</del> )) <u>25.00</u>
Name or address change	(( <del>15.00</del> )) <u>25.00</u>
Real Estate Salesperson:	
Application/examination	(( <del>\$60.00</del> )) <u>\$85.00</u>
Reexamination	(( <del>60.00</del> )) <u>85.00</u>
Walk-in for examination	(( <del>15.00</del> )) <u>25.00</u>
Original license	(( <del>35.00</del> )) <u>50.00</u>
License renewal	(( <del>35.00</del> )) <u>50.00</u>
Late renewal with penalty	(( <del>20.00</del> )) <u>75.00</u>
Duplicate license	(( <del>15.00</del> )) <u>25.00</u>
Certification	25.00
Name or address change, transfer or license activation	(( <del>15.00</del> )) <u>25.00</u>
Land Development Representative:	
Registration	(( <del>\$20.00</del> )) <u>\$25.00</u>

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

**WSR 89-23-097**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
[Filed November 21, 1989, 11:55 a.m.]

Continuance of WSR 89-19-043.

Title of Rule: Scope of certificate of need review.

Purpose: To implement the ESB 6152 revisions in certificate of need review and specify tertiary services subject to review.

Statutory Authority for Adoption: Chapter 70.38 RCW.

Statute Being Implemented: Chapter 70.38 RCW.

Summary: Specifies health care facility proposals, including tertiary services, subject to certificate of need review.

Reasons Supporting Proposal: Implementing statutory changes.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Frank Chestnut, 753-5854.

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: Eliminates new institutional health services and major equipment from certificate of need review. Limits coverage of capital expenditures exceeding the expenditure minimum and substantially changes services to nursing homes. Establishes coverage of specific tertiary services.

Proposal does not change existing rules.

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

Date of Intended Adoption: November 15, 1989.

November 21, 1989  
John Toohey, Manager  
Contract Services and  
Rules Coordinator

**WSR 89-23-098**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**

[Order 019—Filed November 21, 1989, 11:58 a.m.]

Date of Adoption: November 15, 1989.

Purpose: Clarify certificate of need coverage and make the rules consistent with changes made to the RCW.

Citation of Existing Rules Affected by this Order: Repealing WAC 248-19-230.

Statutory Authority for Adoption: Chapter 70.38 RCW.

Pursuant to notice filed as WSR 89-19-043 and 89-23-097 on September 18, 1989, and November 21, 1989.

Effective Date of Rule: Thirty-one days after filing.  
November 15, 1989  
Pam Campbell Mead  
Deputy Secretary  
for Kristine Gebbie  
Secretary

**NEW SECTION**

WAC 248-19-231 APPLICABILITY OF CHAPTER 248-19 WAC. (1) The following undertakings shall be subject to the provisions of chapter 248-19 WAC, with the exceptions provided for in this section.

(a) The construction, development, or other establishment of a new health care facility:

(i) No new health care facility may be initiated as a health service of an existing health care facility without certificate of need approval as a new health care facility;

(ii) The extension, on a regular and ongoing basis, of the services of a home health agency or a hospice in a county not previously regularly included in the service area of that home health agency or hospice during the

preceding twelve months shall be considered the development of a new home health agency or hospice.

(b) The sale, purchase, or lease of part or all of any existing hospital licensed under chapter 70.41 RCW or a psychiatric hospital licensed under chapter 71.12 RCW;

(c) A change in bed capacity of a health care facility increasing the total number of licensed beds or redistributing beds among acute care, skilled nursing, intermediate care, and boarding home care, as defined under RCW 18.20.020, if the bed redistribution is effective for a period in excess of six months;

(d) Any new tertiary health services offered in or through a health care facility, and not offered on a regular basis by, in, or through such health care facility within the twelve-month period prior to the time the facility will offer such services:

(i) Tertiary services include the following:

(A) Specialty burn services;

(B) Intermediate care nursery, consistent with chapter 248-18 WAC;

(C) Neonatal intensive care nursery, consistent with chapter 248-18 WAC;

(D) Obstetric services level II. A level II service provides a full range of maternal and neonatal services for uncomplicated patients. Level II units will also provide a full range of services for the majority of complicated obstetrical problems and certain neonatal illnesses. Level II units will have a highly trained multidisciplinary staff;

(E) Obstetric services level III. Level III services are provided to the few women and infants requiring full intensive care services for the most serious type of maternal-fetal and neonatal illnesses and abnormalities. Such a service provides the coordination of care, communications, transfer, and transportation for a given region. Level III services provide leadership in preparatory and continuing education in prenatal and perinatal care and may be involved in clinical and basic research;

(F) Transplantation of specific solid organs, including, but not limited to, heart, liver, pancreas, lung, and kidney. A transplantation service for each solid organ is considered a separate tertiary service;

(G) Open heart surgery;

(H) Megavoltage radiation therapy;

(I) Cardiac catheterization;

(J) Percutaneous transluminal coronary angioplasty (PTCA);

(K) Rehabilitation services level III. Level III rehabilitation services are services for persons with usually nonreversible, multiple function impairments of a moderate-to-severe complexity resulting in major changes in the patient's lifestyle and requiring intervention by several rehabilitation disciplines. Services are provided by a multidisciplinary team, including a rehabilitation nurse; and physical, occupational, and speech therapists; and vocational counseling; and managed by a physiatrist. The service is provided in a dedicated unit with a separate nurses station staffed by nurses with specialized training and/or experience in rehabilitation nursing. While the service may specialize (i.e., spinal cord injury, severe head trauma, etc.), the service is able to treat all persons within the designated diagnostic specialization

regardless of the level of severity or complexity of the impairments; and

(L) Specialized inpatient pediatric services. The services are for complex pediatric cases requiring specialized equipment, as well as specialty and subspecialty personnel. The services are provided in dedicated pediatric units.

(ii) The department shall review, periodically revise, and update the list of tertiary services. The department shall change the tertiary services list through the adoption rules process and may change the list on an emergency basis;

(iii) The offering of an inpatient tertiary health service by a health maintenance organization or combination of health maintenance organizations is subject to the provisions under chapter 248-19 WAC unless the offering is exempt under the provisions of RCW 70.38.111.

(e) Any increase in the number of dialysis stations in a kidney disease center;

(f) Any capital expenditure in excess of the expenditure minimum for the construction, renovation, or alteration of a nursing home. However, a capital expenditure, solely for any one or more of the following, which does not substantially affect patient charges, is not subject to certificate of need review:

(i) Communications and parking facilities;

(ii) Mechanical, electrical, ventilation, heating, and air conditioning systems;

(iii) Energy conservation systems;

(iv) Repairs to, or the correction of, deficiencies in existing physical plant facilities necessary to maintain state licensure;

(v) Acquisition of equipment, including data processing equipment, not for use in the direct provision of health services;

(vi) Construction, involving physical plant facilities, including administrative and support facilities, not for use in the provision of health services;

(vii) Acquisition of land; and

(viii) Refinancing of existing debt.

(g) Any expenditure for the construction, renovation, or alteration of a nursing home or change in nursing home services in excess of the expenditure minimum made in preparation for any undertaking subject to the provisions under chapter 248-19 WAC and any arrangement or commitment made for financing such undertaking;

(h) No person may divide a project in order to avoid review requirements under any of the thresholds specified under this section; and

(i) The department may issue certificates of need authorizing only predevelopment expenditures, without authorizing any subsequent undertaking for which the predevelopment expenditures are made.

(2) No person shall engage in any undertaking subject to certificate of need review unless:

(a) A certificate of need authorizing such undertaking is issued and remains valid; or

(b) An exemption is granted in accordance with the provisions of this chapter.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 248-19-230 APPLICABILITY OF CHAPTER 248-19 WAC.

**WSR 89-23-099**  
**PROPOSED RULES**  
**DEPARTMENT OF AGRICULTURE**  
 [Filed November 21, 1989, 1:14 p.m.]

Original Notice.

Title of Rule: Chapter 16-318 WAC.

Purpose: To implement requirements of chapter 15.49 RCW.

Statutory Authority for Adoption: Chapter 15.49 RCW.

Statute Being Implemented: Chapter 15.49 RCW.

Summary: These proposed rules provide for mandatory, nonbinding arbitration for disputes. The labeling rules provide for requirements to implement truth in labeling requirements of the Washington State Seed Act.

Reasons Supporting Proposal: These rules implement changes mandated by the legislature in amendments to chapter 15.49 RCW in March, 1989. Mandatory, nonbinding arbitration rules are required to be adopted by RCW 15.49.081.

Name of Agency Personnel Responsible for Drafting: William E. Brookreson, 406 General Administration Building, Olympia, 586-5306; Implementation and Enforcement: Max Long, 2015 South First Street, Yakima, WA, 575-2750.

Name of Proponent: Department of Agriculture, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These proposed rules provide for mandatory, nonbinding arbitration for disputes involving claims caused by the failure of seed to perform as represented on the label; by warranty or as a result of negligence as a prerequisite to legal action. The labeling rules provide for requirements to implement truth in labeling requirements of the Washington State Seed Act. Treated seed rules are modified to remove inconsistencies with the act.

Proposal does not change existing rules.

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

Hearing Location: Ag Service Center Conference Room, 2015 South First Street, Yakima, WA 98903, on December 27, 1989, at 1:15 p.m.

Submit Written Comments to: Max Long, 2015 South First Street, Yakima, WA 98903, by December 27, 1989.

Date of Intended Adoption: January 10, 1989 [1990].

November 21, 1989  
 William E. Brookreson  
 Assistant Director

**AMENDATORY SECTION** (Amending Order 1700, filed 5/30/80)

WAC 16-318-040 TREATED SEED LABELING REQUIREMENTS. ((The information required in section 15.49.320 (1)(c) of)) For all seed that meets the definition of treated seed contained in RCW 15.49.011, the Washington State Seed Act, there shall be conspicuously shown on the analysis tag or label, or on a separate tag or label, attached to each container, ((for)) or printed in a conspicuous manner on the side or top of each container the following:

- (1) A word or statement indicating that the seed has been treated.
- (2) The commonly accepted coined, chemical, or abbreviated chemical (generic) name of the applied substance or description of the process used.
- (3) That information required in WAC 16-318-050 through 16-318-090.

**NEW SECTION**

WAC 16-318-065 INOCULANTS. If seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective (date of expiration) shall be shown on the label.

**NEW SECTION**

WAC 16-318-200 LABELING—REQUIREMENTS FOR AGRICULTURAL, VEGETABLE, AND FLOWER SEEDS. Each container of agricultural, vegetable or flower seeds which is sold, offered for sale or exposed for sale, or transported within this state for sowing purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving the information as described in WAC 16-318-040 through 16-318-090 for treated seeds and WAC 16-318-205 through 16-318-235, which statement shall not be modified or denied in the labeling or on another label attached to the container.

**NEW SECTION**

WAC 16-318-205 LABELING—GENERAL REQUIREMENTS FOR AGRICULTURAL SEEDS EXCEPT FOR GRASS SEED MIXTURES AND FOR HYBRIDS WHICH CONTAIN LESS THAN NINETY-FIVE PERCENT HYBRID SEED. The label for agricultural seeds, except for grass seed mixtures and for hybrids that contain less than ninety-five percent hybrid seed shall contain the following information:

- (1) The name of the kind and variety of each agricultural seed present in excess of five percent of the whole and the percentage by weight of each: PROVIDED, That if the variety as designated in the regulations is not stated, the label shall show the name of the kind and the words, "variety not stated." Hybrids shall be labeled as hybrids.
- (2) The lot number or other lot identification.
- (3) The origin state or foreign country, if known. If the origin is not known, that fact shall be stated.
- (4) The percentage, by weight, of all weed seeds present: PROVIDED, That the maximum weed seed content may not exceed two percent by weight except as provided in WAC 16-317-080 for small grain, field pea, lentil, and soybean seed.
- (5) The name and rate of occurrence in seeds per pound of each kind of restricted noxious weed seed present.
- (6) The percentage by weight of agricultural seeds, which may be designated as "crop seeds," other than those required to be named on the label.
- (7) The percentage by weight of inert matter.
- (8) For each named agricultural seed, except vegetable seeds as described in WAC 16-318-220 and flower seeds described in WAC 16-318-230:
  - (a) The percentage of germination, exclusive of hard seed, and the percentage of hard seed, if present, or "total germination and hard seed" as a single percentage.
  - (b) The calendar month and year the test was completed to determine such percentages.
- (9) The name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within this state.

**NEW SECTION**

WAC 16-318-210 LABELING—FOR SEED MIXTURES FOR LAWN AND/OR TURF PURPOSES. The labeling for seed mixtures for lawn or turf purposes shall be as follows:

- (1) The lot number or other lot identification.

(2) The origin state or foreign country, if known. If the origin is not known, that fact shall be stated.

(3) The word "mixed" or "mixture" stated with the name of the mixture.

(4) The heading "pure seed" and "germination" or "germ" used in the proper places.

(5) The commonly accepted name of kind or kind and variety of each agricultural seed component in excess of five percent of the whole, and the percentage by weight, in columnar form, of pure seed in order of its predominance.

(6) The percentage by weight of agricultural seed other than those required to be named on the label (which shall be designated as "crop seed"): PROVIDED, That if the mixture contains no crop seed, the statement, "contains no other crop seed," may be used and may be flagged.

(7) The percentage by weight of inert matter.

(8) The percentage by weight of all weed seeds: PROVIDED, That the maximum weed seed content may not exceed two percent by weight.

(9) For each agricultural seed named under subsection (3) of this section:

(a) The percentage of germination, exclusive of hard seed.

(b) The percentage of hard seed, if present.

(c) The calendar month and year of the most recent test completed to determine such percentages.

(10) The name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within this state.

**NEW SECTION**

WAC 16-318-215 LABELING—SPECIAL REQUIREMENTS FOR SEEDS THAT ARE COATED. The labeling for seeds that are coated shall include the following information in addition to the requirements of WAC 16-318-205:

(1) The percentage of pure seed with coating material removed.

(2) The percentage of coating material shown as a separate item in close association with the percentage of inert material.

(3) The percentage of germination as determined on four hundred coated seed pellets, with or without seeds.

**NEW SECTION**

WAC 16-318-220 LABELING—SPECIAL REQUIREMENTS FOR VEGETABLE SEEDS IN PACKETS AS PREPARED FOR USE IN HOME. Labeling for vegetable seeds in packets as prepared for use in home gardens or household plantings or vegetable seeds in preplanted containers, mats, tapes, or other planting devices shall include the following information in addition to that required by WAC 16-318-205:

(1) The year in which the seed was packed for sale as "packed for planting in . . . . . ." or the percentage germination and the calendar month and the year the test was completed to determine that percentage.

(2) For seeds which germinate less than the standard established by the department in WAC 16-304-010:

(a) Percentage of germination, exclusive of hard seed.

(b) Percentage of hard seed, if present.

(c) The words "below standard" in not less than eight-point type.

(3) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quality of seed without removing the seed from the medium, mat, tape or device, a statement to indicate the minimum number of seeds in the container.

**NEW SECTION**

WAC 16-318-225 LABELING—SPECIAL REQUIREMENTS FOR VEGETABLE SEEDS IN CONTAINERS OTHER THAN PACKETS. The labeling for vegetable seeds in containers, other than packets prepared for use in home gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices shall be deemed to have been met if the seed is weighed from a properly labeled container of more than one pound in the presence of the purchaser.

**NEW SECTION**

WAC 16-318-230 LABELING—SPECIAL REQUIREMENTS FOR FLOWER SEEDS. The labeling for flower seeds in packets prepared for use in home gardens or household plantings or flower seeds

in preplanted containers, mats, tapes, or other planting devices shall include the following information in addition to that required by WAC 16-318-205:

(1) For all kinds of flower seeds:

(a) The name of the kind and variety or a statement of the type and performance characteristics as prescribed in chapter 15.49 RCW and rules adopted thereunder.

(b) The calendar month and year the seed was tested or the year for which the seed was packaged.

(2) For seeds of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard established under the provisions of chapter 15.49 RCW:

(a) The percentage of germination exclusive of hard seeds.

(b) The words "below standard" in not less than eight-point type.

**NEW SECTION**

WAC 16-318-235 LABELING FOR AGRICULTURAL AND VEGETABLE HYBRID SEED WHICH CONTAINS LESS THAN NINETY-FIVE PERCENT HYBRID SEED. The labeling for agricultural and vegetable hybrid seed which contains less than ninety-five percent hybrid seed shall include the following:

(1) The lot number or other lot identification.

(2) The origin state or foreign country, if known. If the origin is not known, that fact shall be stated.

(3) The kind or variety labeled as "hybrid": PROVIDED, That varieties in which pure seed contain less than seventy-five percent hybrid seed shall not be labeled as hybrids.

(4) The percent which is hybrid labeled parenthetically in direct association following named variety; i.e., Comet (eighty-five percent hybrid).

(5) The calendar month and year of a germination test of pure live seed or the year in which the seed was packaged.

(6) The percentage by weight of inert matter.

(7) The percentage, by weight, of all weed seeds present: PROVIDED, That the maximum weed seed content may not exceed two percent by weight.

(8) The name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within this state.

**NEW SECTION**

WAC 16-318-240 LABELING—PROHIBITIONS. It shall be deemed unlawful if any labeling, advertising, or other representation subject to chapter 15.49 RCW:

(1) Represents seed to be certified seed or any class thereof unless it has been determined by a seed certifying agency that such seed conforms to standards of purity and identity as to kind, species (and subspecies, if appropriate), or variety, in compliance with the rules and laws of that agency pertaining to such seed.

(2) Represents seed to be foundation, registered, or certified seed unless it has been inspected and tagged accordingly by a certifying agency meeting certification standards of the department.

**NEW SECTION**

WAC 16-318-300 DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department of agriculture.

(3) "Dealer" means any person who distributes seeds.

(4) "Buyer" means a person who purchases seeds.

(5) "Seeds" mean agricultural or vegetable seeds or other seeds as determined by rules adopted by the department.

(6) "Agricultural seed" includes grass, forage, cereal, oil, fiber, and other kinds of crop seeds commonly recognized within this state as agricultural seeds, lawn seeds, and combination of such seeds, and may include common and restricted noxious weed seeds but not prohibited noxious weed seeds.

(7) "Flower seeds" include seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold as flower seeds in this state.

(8) "Germination" means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

(9) "Label" includes a tag or other device attached to or written, stamped, or printed on any container or accompanying any lot of bulk seeds purporting to set forth the information required on the seed label by chapter 15.49 RCW, and it may include other information including the requirement for arbitration.

(10) "Official sample" means any sample taken and designated as official by the department.

(11) "Vegetable seeds" include the seeds of all crops that are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state.

(12) "Arbitration committee" means the committee established by the director under RCW 15.49.101 to hear and make determinations in mandatory, nonbinding, arbitration cases.

(13) "Chairperson" means the person selected by the arbitration committee from among their numbers to preside.

(14) "Person" means an individual, partnership, corporation, company, association, receiver, trustee, or agent.

#### NEW SECTION

**WAC 16-318-305 MATTERS SUBJECT TO MANDATORY ARBITRATION.** A civil dispute is subject to arbitration under these rules if it involves a claim of damage caused by the failure of any seed covered by the provisions of chapter 15.49 RCW, the Washington State Seed Act, to perform as represented on the required label, by warranty, or as a result of negligence. This arbitration is a prerequisite to maintaining a legal action against the dealer of the seed. All the following conditions must be met:

(1) The parties have not agreed to submit the dispute to arbitration and to be bound by the arbitration award.

(2) The claim or counterclaim where relief is sought is, or includes, a monetary amount in excess of two thousand dollars.

(3) Any statutory period of limitations with respect to such claim had not expired.

#### NEW SECTION

**WAC 16-318-310 ARBITRATION REQUIREMENT—LABELING.** For each container of agricultural, vegetable or flower seeds which is sold, offered for sale, or exposed for sale, or transported within this state for sowing purposes, there shall be conspicuously shown on the analysis tag, or a separate tag or label attached to each container, or printed in a conspicuous manner on the side or top of each container the following:

Requirement for arbitration – The Washington State Seed Act, chapter 15.49 RCW, requires mandatory arbitration of disputes involving allegedly defective seed. For more information see WAC 16-318-300 through 16-318-420 or contact the Washington state department of agriculture, seed branch, (509) 575-2750.

#### NEW SECTION

**WAC 16-318-315 FILING OF A COMPLAINT FOR ARBITRATION.** To submit a demand for mandatory arbitration, a buyer shall make and file with the director of the department of agriculture a sworn complaint against the dealer.

(1) Such complaint shall contain:

(a) A statement setting forth the nature of the claim and damages.

(b) The dollar amount involved in the claim.

(c) The remedy sought.

(2) The complaint must be accompanied by a filing fee of one hundred dollars to cover the costs of processing the complaint.

(3) The buyer shall send the dealer that is the subject of the complaint a copy of the complaint by registered mail.

#### NEW SECTION

**WAC 16-318-320 REQUIREMENT TO RESPOND TO COMPLAINT.** Within twenty days within receipt of the sworn complaint, the dealer shall file an answer to the complaint with the director by United States registered mail.

(1) If no answer is filed within the stated time:

(a) It will be deemed that the claim is denied.

(b) The failure to file a timely response will be recorded and made a part of the official record.

(2) Failure to file a timely response shall not operate to delay the arbitration process.

#### NEW SECTION

**WAC 16-318-325 ACCEPTANCE OF FILING BY TELEFAX.** Complaints, responses to complaints, counterclaims and other communications from parties to the dispute to the committee may be transmitted electronically by telefax except where this chapter specifically requires transmission by registered mail. Such transmissions shall be regarded with the same validity as if sent by United States mail.

#### NEW SECTION

**WAC 16-318-330 ARBITRATION COMMITTEE.** The director shall create an arbitration committee composed of five members, including the director, or a department of agriculture employee as his or her designee, and four members. Four alternates shall also be appointed by the director according to the requirements of RCW 15.49.111.

(1) Each alternate member shall serve only in the absence of the member for whom the person is an alternate.

(2) The arbitration committee shall elect a chairperson and a secretary from among its members.

(a) The chairperson shall conduct meetings and deliberations of the committee and direct its other activities.

(b) The secretary shall keep accurate records of all meetings and deliberations and perform other duties as assigned by the chairperson.

(3) The committee shall be called into session at the direction of the director or the chairperson.

(4) The members of the committee shall receive no compensation for their duties but shall be reimbursed for travel expenses according to established state travel and per diem rates.

Expense reimbursement shall be borne equally by the parties to the arbitration.

(5) A committee member, delegated with investigative responsibilities outside of the hearing under WAC 16-318-395, may not participate in making the final decision and award.

#### NEW SECTION

**WAC 16-318-335 REFERRAL TO ARBITRATION COMMITTEE.** Within fifteen days of the receipt of the answer or forty-five days of the receipt of a complaint, the director shall refer the claim to the arbitration committee established by RCW 15.49.101 for investigation, finding and recommendation. The buyer and seller shall be notified by certified mail:

(1) That the claim has been submitted to the arbitration committee.

(2) The names of the members of the arbitration committee and the alternates.

Within ten days after receipt of notification from the director, either buyer or seller may petition the director that a member of the arbitration committee be disqualified for cause and replaced by an available alternate member: PROVIDED, That either buyer or seller may petition the director at any time during the process upon discovering facts that establish grounds for disqualification. Such decision shall be solely at the discretion of the director.

(3) No person may serve on the committee in any arbitration where he or she has a financial or personal interest in the result of the arbitration unless the parties, in writing, waive such disqualification.

#### NEW SECTION

**WAC 16-318-340 SCHEDULING OF HEARING.** The chairperson of the arbitration committee shall fix the time and place for each hearing and shall notify each party in writing of the scheduled hearing at least seven days in advance of the hearing date.

(1) Such notice shall include:

(a) The names and addresses of the parties to whom notice has been given.

(b) The address and telephone number of the chairperson of the arbitration committee.

(c) The names and addresses of the members of the arbitration committee.

(d) The time, place, and subject of the hearing.

(e) A statement of the legal authority under which the hearing is being held including the sections of statute and rules involved.

(2) To the extent possible, the chairperson of the arbitration committee shall attempt to schedule the hearing at a time and place mutually agreeable to the parties: PROVIDED, That if a mutually agreeable time and place cannot be found, the chairperson may set the time and place.

(3) The chairperson of the committee may allow all or a part of the hearing to be conducted by telephone, television, or other electronic means when the rights of the parties will not be prejudiced thereby and each party has an opportunity to participate.

#### NEW SECTION

WAC 16-318-345 REPRESENTATION BY COUNSEL. Any party in the arbitration may be represented by counsel. A party intending to be so represented shall notify the other party and the committee chairperson of the name and address of the counsel at least three days in advance of the hearing at which the counsel is first scheduled to appear. When an arbitration is initiated on behalf of a buyer by counsel or when a dealer replies through a counsel, such notice shall be deemed to have been given. The director shall make provision for legal support through the office of the attorney general, as requested by the arbitration committee.

#### NEW SECTION

WAC 16-318-350 WAIVER OF ORAL HEARING. The parties may provide, by written agreement submitted to the chairperson, that the hearing shall be conducted on the pleadings submitted without oral argument or testimony.

#### NEW SECTION

WAC 16-318-355 RECORD OF THE HEARING. The secretary of the arbitration committee shall maintain summary minutes of the hearing and shall provide for a tape recording of all oral proceedings. Any party may request copies of all tapes or transcription of testimony. The costs of the duplication or transcription shall be entirely borne by the requesting party.

#### NEW SECTION

WAC 16-318-360 ATTENDANCE AT HEARINGS. The hearing shall be open to the parties to the dispute and other persons having a financial interest. The committee chairperson shall have the authority to require that any witness or witnesses retire from the hearing during the testimony of other witnesses. The admission of other persons to the arbitration hearing shall be at the discretion of the chairperson of the arbitration committee.

#### NEW SECTION

WAC 16-318-365 COMMITTEE INVESTIGATION. Upon referral of a complaint for investigation to the committee, the arbitration committee shall make a prompt and full investigation by the proceedings specified in this chapter of the matters in the complaint and report its award to the director within sixty days of such referral unless the parties in the dispute agree in writing to the chairperson to a later date: PROVIDED, That if the committee decides to grow a representative sample of the seed that sixty-day period shall be extended an additional thirty days.

#### NEW SECTION

WAC 16-318-370 EVIDENCE. The parties may produce such evidence as they desire and such additional evidence as the arbitration committee may deem necessary to understand the dispute and determine an award. The committee shall be the judge of the admissibility and relevance of all evidence offered. Conformity to strict legal rules of evidence shall not be required. All evidence shall be taken in the presence of the parties concerned, except where a party has waived that right or is absent after receiving proper notice.

#### NEW SECTION

WAC 16-318-375 EVIDENCE BY AFFIDAVIT. Evidence may be submitted for consideration of the arbitration committee in the form of witness by affidavit. The committee shall consider such evidence and give to it only such weight as the committee deems appropriate after consideration of any objections made to its admission. All parties shall be entitled to examine such documents and shall be entitled to a copy upon request and payment of duplication costs.

#### NEW SECTION

WAC 16-318-380 DISCOVERY. Use of discovery is limited in mandatory arbitration cases.

(1) The following types of discovery may be requested of the arbitration committee:

- (a) Deposition.
- (b) Written interrogatories.
- (c) Request for production of documents.

(2) The arbitration committee may allow and condition use of discovery on a showing of necessity and an unavailability by other means.

#### NEW SECTION

WAC 16-318-385 ARBITRATION IN THE ABSENCE OF A PARTY. The arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to request an adjournment or postponement. An award may not be made solely on the failure to appear. The arbitration committee, in these cases, shall require the party who is present to present such evidence or information as the committee deems necessary to determine an award.

#### NEW SECTION

WAC 16-318-390 ORDER OF PROCEEDINGS. When an oral hearing is held, the order of procedure for conducting arbitration hearings shall be as follows:

(1) The chairperson shall open the hearing on behalf of the committee stating the place, time and date of the hearing; the members of the arbitration committee and the parties to the arbitration and their counsel, if any; and recital of the buyer's claim, any counterclaim, and the dealer's response, if any.

(2) The parties shall have the opportunity to present an opening statement.

(3) The complaining party shall have the opportunity to present the claim for damages, the proof and witnesses and shall submit to questions and other examination by the arbitration committee.

(4) The defending party shall present the defense and his or her proof including witnesses and shall submit to questions or other examination by the arbitration committee.

(5) Each party shall have the right of cross-examination.

(6) The arbitration committee may vary this procedure: PROVIDED, That both parties are provided a full and equal opportunity to present their evidence and proofs.

(7) The names and addresses of all witnesses shall be recorded and made a part of the record.

(8) Both parties shall have an opportunity to present a summary statement.

#### NEW SECTION

WAC 16-318-395 EXPERT EVIDENCE AND PERFORMANCE TESTS. The committee may delegate one of its members to seek advice from experts in the seed industry and/or the seed inspection service of the department of agriculture or the Washington State Crop Improvement Association; may cause to be obtained and grow out a representative sample of the seed; may delegate a portion of the investigation to one of its members who reports back to the committee as a whole at the hearing; or may cause to be performed such other tests of seed quality as may be deemed necessary to render a decision. The results of any such investigation or tests shall be entered into the record at the arbitration hearing. The costs of any such tests necessary to determine an award shall be considered in the award.

#### NEW SECTION

WAC 16-318-400 CONSERVATION OF PROPERTY. The chairperson, on behalf of the arbitration committee, may issue such orders as may be deemed necessary to safeguard the seed that is the subject of the dispute without prejudice to the rights of the parties or to the final determination of the dispute.

#### NEW SECTION

WAC 16-318-405 REOPENING OF A HEARING. An arbitration hearing may be reopened by the following:

(1) The chairperson of the arbitration committee with the assent of a majority of the committee members may reopen a hearing.

(2) A hearing may be reopened by the chairperson with assent of a majority of the committee upon petition of either party prior to the final committee report.

(3) A hearing may not be reopened if such action would cause the sixty-day time limit (ninety days with a grow out test) to be exceeded without the written consent of both parties.

#### NEW SECTION

WAC 16-318-410 EXPENSES. The expenses for witnesses for either side shall be borne entirely by the party producing such witnesses. The expenses of expert witnesses deemed necessary by the committee shall be borne by the department according to established state travel and per diem rates. The costs of grow out tests or other tests that may be required that exceed the amount of the filing fee may be allocated by the committee in making the award.

#### NEW SECTION

WAC 16-318-415 ARBITRATION COMMITTEE REPORT. The arbitration committee shall prepare a written report of its findings within the established time frames. The report shall include findings of fact and conclusions, the award and allocations as to costs, if any.

(1) If a quorum is present, a simple majority of the arbitration committee shall be sufficient to make a decision.

(2) Any member disagreeing with an award may prepare a dissenting opinion and that opinion shall be included in the committee report.

(3) The report shall be sent to the director.

The director shall promptly send copies of the report to the parties by registered mail.

#### NEW SECTION

WAC 16-318-420 AWARD UPON SETTLEMENT. If the parties to a dispute settle that dispute during the course of an arbitration, the committee, at the request of the parties, may set forth the terms of the agreed settlement in the award.

Explanation of Rule, its Purpose, and Anticipated Effects: New rule sets interest rate and property tax component for valuing farm and agricultural land.

Proposal Changes the Following Existing Rules: Moves interest rate and property tax component from existing rule and places in new rule.

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

The Department of Revenue has reviewed the administrative provisions contained in chapter 458-30 WAC in order to determine the economic impact on small business. The new provisions incorporated in the rule do not change the reporting frequency of tax returns, require new forms, nor alter long standing and generally accepted record keeping requirements. These rules will have no economic impact on small business.

Hearing Location: 6004 Capitol Boulevard, Tumwater, WA, on December 26, 1989, at 9:00 a.m.

Submit Written Comments to: Larry D. Stout, 6004 Capitol Boulevard, Tumwater, WA 98502, by December 26, 1989.

Date of Intended Adoption: December 27, 1989.

November 21, 1989

Will Rice

Assistant Director

Property Tax Division

AMENDATORY SECTION (Amending Order PT 89-2, filed 2/8/89)

WAC 458-30-260 VALUATION PROCEDURES AND STANDARDS. The assessor shall use all available information to determine the productive capacity of classified farm and agricultural land. Consideration shall be given to actual production within an area, averaged over not less than the immediate past five years. Farm production information and other related data shall be available to the assessor as provided by the act and this chapter. Reliable statistical sources may also be used. A soil capability analysis may be considered in determining the productive or earning capacity of the land.

In determining the current use value of farm and agricultural land, the assessor shall use the capitalization of income method described in the following subsections of this section.

(1) The net cash rental to be capitalized shall be determined as follows:

(a) The assessor shall use leases of farm land paid on an annual basis, in cash or its equivalent. The land must have been available for lease for a period of at least three years to any reliable person without unreasonable restrictions on its use for production of agricultural crops. If leases do not meet these requirements, they will not be used. The lease payments shall be averaged as follows:

(i) Each annual lease payment, or rent, shall be averaged for the typical crops within that area; and

(ii) The typical cash rental for each year shall be averaged for not less than the last five crop years. A deduction shall be allowed for the customary costs that are paid by the land owner. All costs and expenses shall be averaged over the immediate past five years. If the land is irrigated by a sprinkler system, an amount for the irrigation equipment shall be deducted from the gross cash rent to determine the net rent for the land only. However, such irrigation equipment shall be placed on the assessment roll at its true and fair value.

(b) Should there be an insufficient number of leases available to adequately determine net cash rental, it shall be established by determining:

(i) The landlord's share of the cash value of typical or usual crops grown on land of similar quality. The cash value shall include government subsidies if they are based on the productive capacity of the land. The acreage kept out of production because of these subsidies shall be included in the total acreage valued by capitalization of the income;

(ii) The landlord's share of the standard cost of production will be determined and deducted from his or her share of the cash value established pursuant to this subsection.

### WSR 89-23-100

#### PROPOSED RULES

#### DEPARTMENT OF REVENUE

[Filed November 21, 1989, 3:59 p.m.]

#### Original Notice.

Title of Rule: WAC 458-30-260 Valuation procedures and standards; and 458-30-262 Agricultural land valuation—Interest rate—Property tax component.

Purpose: To place the interest rate and component for property tax calculations in its own WAC section for ease of annual updating.

Statutory Authority for Adoption: RCW 84.08.010(2) and 84.34.141.

Statute Being Implemented: RCW 84.34.065.

Summary: Interest rate and property tax component were formerly part of WAC 458-30-260.

Reasons Supporting Proposal: To make annual updating simpler and less confusing.

Name of Agency Personnel Responsible for Drafting: Larry D. Stout, 6004 Capitol Boulevard, Tumwater, WA, 586-4739; Implementation and Enforcement: Will Rice, 6004 Capitol Boulevard, Tumwater, WA, 753-5503.

Name of Proponent: Department of Revenue, governmental.

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

The resulting amount shall be averaged for not less than five crop years.

(c) When the land being valued is not in use for commercial agricultural purposes, or where the available information is insufficient to determine an agricultural income, the assessor shall compute a reasonable amount to be capitalized as income, based on the land's estimated productive capacity.

(2) The capitalization rate to be used in valuing land shall be the sum of the following:

(a) An interest (~~rate of 11.18 percent~~) component to be determined by the department and certified to the assessor on or before January 1st of each year, and shall be comparable to interest rates charged on long-term loans secured by mortgages on farms or agricultural lands averaged over the last five years; plus

(b) A component for property taxes (~~in the following amounts for each county:~~) that shall be determined by dividing the total taxes levied within the county for the year preceding the assessment by the total assessed value of the county.

<del>(Adams</del>	<del>1.33%</del>	<del>Lewis</del>	<del>1.23%</del>
<del>Asotin</del>	<del>1.50%</del>	<del>Lincoln</del>	<del>1.33%</del>
<del>Benton</del>	<del>1.49%</del>	<del>Mason</del>	<del>1.14%</del>
<del>Chelan</del>	<del>1.38%</del>	<del>Okanogan</del>	<del>1.42%</del>
<del>Clallam</del>	<del>1.17%</del>	<del>Pacific</del>	<del>1.42%</del>
<del>Clark</del>	<del>1.28%</del>	<del>Pend Oreille</del>	<del>1.22%</del>
<del>Columbia</del>	<del>1.14%</del>	<del>Pierce</del>	<del>1.59%</del>
<del>Cowlitz</del>	<del>1.16%</del>	<del>San Juan</del>	<del>0.92%</del>
<del>Douglas</del>	<del>1.31%</del>	<del>Skagit</del>	<del>1.25%</del>
<del>Ferry</del>	<del>0.95%</del>	<del>Skamania</del>	<del>1.37%</del>
<del>Franklin</del>	<del>1.66%</del>	<del>Snohomish</del>	<del>1.22%</del>
<del>Garfield</del>	<del>1.70%</del>	<del>Spokane</del>	<del>1.45%</del>
<del>Grant</del>	<del>1.36%</del>	<del>Stevens</del>	<del>1.15%</del>
<del>Grays Harbor</del>	<del>1.36%</del>	<del>Thurston</del>	<del>1.54%</del>
<del>Island</del>	<del>0.96%</del>	<del>Wahkiakum</del>	<del>1.22%</del>
<del>Jefferson</del>	<del>1.07%</del>	<del>Walla Walla</del>	<del>1.29%</del>
<del>King</del>	<del>1.33%</del>	<del>Whatcom</del>	<del>1.24%</del>
<del>Kitsap</del>	<del>1.19%</del>	<del>Whitman</del>	<del>1.56%</del>
<del>Kittitas</del>	<del>1.15%</del>	<del>Yakima</del>	<del>1.27%</del>
<del>Klickitat</del>	<del>1.34%</del>		

(3) The value of the agricultural land shall be the net cash rental of the land divided by the capitalization rate determined in subsection (2) of this section.

(4) The department's determination of the interest rate established in subsection (2)(a) of this section may be appealed to the state board of tax appeals not later than thirty days after the notice has been issued by:

(a) An owner of a parcel(s) of land classified as farm and agricultural; or

(b) The assessor of any county containing parcels of land that are classified as farm and agricultural.

(5) Land presently used as a residential building site shall be valued at its true and fair value as a homesite in accordance with WAC 458-12-301. However, land that migratory farm labor accommodations, bunkhouses, storeyards, barns, machine sheds, and similar type structures are located upon shall not be considered as a residential building site.

(6) Except for a parcel(s) of land classified under a rating system, a parcel of land classified as open space shall have an assessed value not less than what it would have if classified as farm and agricultural land.

(7) Timber land shall be valued according to chapter 84.33 RCW.

**NEW SECTION**

**WAC 458-30-262 AGRICULTURAL LAND VALUATION—INTEREST RATE—PROPERTY TAX COMPONENT.**

Adams	1.32%	Lewis	1.25%
Asotin	1.50%	Lincoln	1.45%
Benton	1.55%	Mason	1.25%
Chelan	1.26%	Okanogan	1.38%
Clallam	1.25%	Pacific	1.44%
Clark	1.35%	Pend Oreille	1.24%
Columbia	1.38%	Pierce	1.59%
Cowlitz	1.20%	San Juan	0.95%
Douglas	1.38%	Skagit	1.27%
Ferry	0.95%	Skamania	0.96%
Franklin	1.64%	Snohomish	1.31%
Garfield	1.82%	Spokane	1.55%

Grant	1.40%	Stevens	1.10%
Grays Harbor	1.43%	Thurston	1.64%
Island	0.98%	Wahkiakum	1.21%
Jefferson	1.10%	Walla Walla	1.34%
King	1.38%	Whatcom	1.34%
Kitsap	1.30%	Whitman	1.61%
Kittitas	1.15%	Yakima	1.38%
Klickitat	1.32%		

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 458-30-261 FIVE YEAR AVERAGE GRAIN PRICES.

**WSR 89-23-101**

**PROPOSED RULES**

**LOTTERY COMMISSION**

[Filed November 21, 1989, 4:51 p.m.]

Original Notice.

Title of Rule: Amendment to WAC 315-11-480, 315-11-490 and 315-11-491.

Purpose: To amend the game play rules for instant games 48 and 49.

Statutory Authority for Adoption: RCW 67.70.040.

Statute Being Implemented: RCW 67.70.040.

Summary: See above.

Reasons Supporting Proposal: To correct rules previously adopted on amount of prizes.

Name of Agency Personnel Responsible for Drafting: Jeff Burkhardt, Contracts Specialist, Olympia, 586-6583; Implementation and Enforcement: Evelyn Y. Sun, Director, Olympia, 753-3330.

Name of Proponent: Lottery Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: For each instant game certain terms must be defined in order to provide consistency in the game play rules. The play criteria will explain how the game functions to licensed retailers and players. Rigid validation requirements are set forth which will prevent the lottery from paying out prize money on invalid tickets.

Proposal Changes the Following Existing Rules: Amendment to WAC 315-11-480 provides for a \$21,000 prize which was inadvertently omitted from original rule. Amendment to WAC 315-11-490 and 315-11-491 provides for a \$7,000 prize and changes \$10 prize to \$11.

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

The lottery has considered whether this rule is subject to the Regulatory Fairness Act, chapter 19.85 RCW, and has determined that it is not for the following reasons: (1) The rule has no economic impact on business' cost of equipment, supplies, labor or administrative costs. The rule is designed to establish rules and procedures for the playing of instant lottery games. (2) The rules will have a negligible impact on business because they are interpretive. They have been promulgated for the purpose of stating policy, procedure and practice and

do not include requirements for forms, fees, appearances or other actions by business.

Hearing Location: Washington State Lottery, Region 3 Office, 5963 Corson Avenue South, #106, Seattle, WA 98108, on January 5, 1990, at 10:00 a.m.

Submit Written Comments to: Judith Giniger, Lottery, P.O. Box 9770, Olympia, Washington 98504, by January 4, 1990.

Date of Intended Adoption: January 5, 1990.

November 20, 1989

Scott Milne

Deputy Director

**AMENDATORY SECTION** (Amending WSR 89-21-028, filed 10/10/89, effective 11/10/89)

WAC 315-11-480 DEFINITIONS FOR INSTANT GAME NUMBER 48 ("BLACK JACK"). (1) Play symbols: The following are the "play symbols": "11"; "12"; "13"; "15"; "16"; "17"; "19"; "20"; "21." One of these symbols appears under each of the three rub-off spots in the "your hand" column and under each of the three rub-off spots in the "dealer's hand" column in the play field on the front of the ticket.

(2) Captions: The small printed characters appearing below each play symbol which correspond with and verify that play symbol. The caption is a spelling out in full or in abbreviated form of the play symbol. One and only one caption appears under each play symbol. The number 1, 2 or 3 precedes the play symbols to indicate the location of the play symbol in Game 1, Game 2, or Game 3. For Instant Game Number 48, the captions which correspond with and verify the play symbols are:

PLAY SYMBOL	CAPTION
11	ELEVN
12	TWLVE
13	THRTN
15	FIFTN
16	SIXTN
17	SVNTN
19	NINTN
20	TWNTY
21	TTYON

(3) Prize symbols: The following are the "prize symbols": "\$1.00"; "\$2.00"; "\$4.00"; "\$10.00"; "\$50.00"; "\$500"; "\$21,000." One of these prize symbols appears for each game (row) in the prize column on the front of the ticket.

(4) Captions: The small printed characters appearing below the prize symbol which verify and correspond with that prize symbol. The caption is a spelling out, in full or abbreviated form, of the prize symbol. Only one caption appears under the prize symbol. The number 1, 2 or 3 precedes the prize symbols to indicate the location of the prize symbol in Game 1, Game 2 or Game 3. For Instant Game Number 48, the prize symbol captions which correspond with and verify the prize symbols are:

PRIZE SYMBOL	CAPTION
\$ 1.00	ONE
\$ 2.00	TWO
\$ 4.00	FOUR
\$ 10.00	TEN
\$ 50.00	FIFTY
\$ 500	FIV HUN
\$21,000	21 THOU

(5) Validation number: The unique nine-digit random number on the front of the ticket. The number is covered by latex.

(6) Pack-ticket number: The ten-digit number of the form 4800001-000 printed on the front of the ticket. The first two digits are the game identifier. The first seven digits of the pack-ticket number for Instant Game Number 48 constitute the "pack number" which starts at 4800001; the last (~~two~~<sup>three</sup>) three digits constitute the

"ticket number" which starts at 000 and continues through 399 within each pack of tickets.

(7) Retailer verification codes: Codes consisting of small letters found under the removable latex covering on the front of the ticket which the lottery retailer uses to verify instant winners of \$25 and less. For Instant Game Number 48, the retailer verification codes are three-letter codes, with each letter appearing in a varying three of six locations among the play symbols and prize symbols on the front of the ticket. The retailer verification codes are:

VERIFICATION CODE	PRIZE
ONE	\$1.00
TWO	\$2.00 (\$1 and \$1)
FOR	\$4.00 (\$1 and \$1 and \$2; \$2 and \$2; \$4)
TEN	\$10.00 (\$4 and \$4 and \$2; \$10)
TWY	\$20.00 (\$10 and \$10)

(8) Pack: A set of four hundred fanfolded instant game tickets separated by perforations and packaged in a plastic bag or plastic shrinkwrapping.

**AMENDATORY SECTION** (Amending WSR 89-21-028, filed 10/10/89, effective 11/10/89)

WAC 315-11-490 DEFINITIONS FOR INSTANT GAME NUMBER 49 ("PLAY IT AGAIN"). (1) Play symbols: The following are the "play symbols":

- \$ 1.00
- \$ 2.00
- \$ 7.00
- ~~(\$10.00)~~
- \$11.00
- \$24.00
- \$70.00
- ~~(\$700)~~
- \$7,000

One of these play symbols appears in each of the seven blocks under the scratch-off material covering the game play data.

(2) Captions: The small printed characters appearing below each play symbol which verifies and corresponds with that play symbol. The caption is a spelling out, in full or abbreviated form of the play symbol. One and only one of these captions appears under each play symbol. For Instant Game Number 49, the captions which correspond with and verify the play symbols are:

<del>((PLAY NUMBER))</del>	PLAY SYMBOL	CAPTION
	\$ 1.00	ONE
	\$ 2.00	TWO
	\$ 7.00	SEVEN
	<del>(\$10.00)</del>	<del>((TEN))</del>
	\$ 11.00	ELEVN
	\$ 24.00	TWTY FOR
	\$ 70.00	SEVENTY
	<del>(\$700)</del>	<del>((SVN HUND))</del>
	\$7,000	SVN THOU

(3) Validation number: The unique nine-digit number on the front of the ticket. The number is covered by latex covering.

(4) Pack-ticket number: The ten-digit number of the form 4900001-000 printed on the front of the ticket. The first seven digits of the pack-ticket number for Instant Game Number 49 constitute the "pack number" which starts at 4900001; the last three digits constitute the "ticket number" which starts at 000 and continues through 399 within each pack of tickets.

(5) Retailer verification codes: Codes consisting of small letters found under the removable latex covering on the front of the ticket which the lottery retailer uses to verify instant winners of \$25 or less. For Instant Game Number 49, the retailer verification codes are three-letter codes, with each letter appearing in a varying three of six locations among the play symbols on the front of the ticket. The retailer verification codes are:

VERIFICATION CODE	PRIZE
ONE	\$ 1.00
TWO	\$ 2.00
SVN	\$ 7.00
((TEN))	(( <del>\$10.00</del> ))
ELV	\$ 11.00
TFO	\$ 24.00

(6) Pack: A set of four hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

**AMENDATORY SECTION** (Amending WSR 89-21-028, filed 10/10/89, effective 11/10/89)

WAC 315-11-491 CRITERIA FOR INSTANT GAME NUMBER 49. (1) The price of each instant game ticket shall be \$1.00.

(2) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

(a) The bearer of a ticket having the following play symbols in any three of the seven spots beneath the removable covering on the front of the ticket shall win the following prize:

Three \$ 1.00 play symbols	- Win \$ 1.00
Two \$ 1.00 play symbols and one \$ 1.00 Bonus	- Win \$ 1.00
Three \$ 2.00 play symbols	- Win \$ 2.00
Two \$ 2.00 play symbols and one \$ 2.00 Bonus	- Win \$ 2.00
Three \$ 7.00 play symbols	- Win \$ 7.00
Two \$ 7.00 play symbols and one \$ 7.00 Bonus	- Win \$ 7.00
<del>((Three \$ 10.00 play symbols</del>	<del>- Win \$ 10.00))</del>
Three \$ 11.00 play symbols	- Win \$ 11.00
<del>((Two \$ 10.00 play symbols and one \$ 10.00 Bonus</del>	<del>- Win \$ 10.00))</del>
Two \$ 11.00 play symbols and one \$ 11.00 Bonus	- Win \$ 11.00
Three \$ 24.00 play symbols	- Win \$ 24.00
Two \$ 24.00 play symbols and one \$ 24.00 Bonus	- Win \$ 24.00
Three \$ 70.00 play symbols	- Win \$ 70.00
Two \$ 70.00 play symbols and one \$ 70.00 Bonus	- Win \$ 70.00
<del>((Three \$ 700 play symbols</del>	<del>- Win \$ 700.00))</del>
Three \$ 7,000 play symbols	- Win \$ 7,000.00
<del>((Two \$ 700 play symbols and one \$ 700 Bonus</del>	<del>- Win \$ 700.00))</del>
Two \$ 7,000 play symbols and one \$ 7,000 Bonus	- Win \$ 7,000.00

(b) In any event, only the highest instant prize amount meeting the standards of (a) of this subsection will be paid on a given ticket.

(3) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(4) The determination of prize winners shall be subject to the general ticket validation requirements of the lottery as set forth in WAC 315-10-070, to the particular ticket validation requirements for Instant Game Number 49 set forth in WAC 315-11-492, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(5) Notwithstanding any other provisions of these rules, the director may:

- (a) Vary the length of Instant Game Number 49; and/or
- (b) Vary the number of tickets sold in Instant Game Number 49 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

**WSR 89-23-102**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 [Filed November 22, 1989, 11:24 a.m.]

Original Notice.

Title of Rule: Adjudicative proceedings, see below.

Purpose: To conform program rules on adjudicative proceedings to the new Administrative Procedure Act, chapter 34.05 RCW, and other recent statutory changes.

Other Identifying Information: This proposal was adopted as emergency rules effective November 21, 1989.

Statutory Authority for Adoption: See below, also RCW 34.05.220.

Statute Being Implemented: Chapter 34.05 RCW.

Summary: This proposal conforms adjudicative proceedings to the new Administrative Procedure Act.

Reasons Supporting Proposal: To comply with statutory law and to achieve greater procedural uniformity in adjudical proceedings in programs the department administers.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bill Williams, AAG, 12th and Franklin, Olympia, 586-6500.

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: These rule changes will conform our procedural rules with the requirements of the Administrative Procedure Act.

WAC	STATUTORY ACTION AUTHORITY	REASON FOR VARIATION FROM MODEL RULES
248-21-005	Amend 43.20.050	Required by sec. 95, chapter 175, Laws of 1989
248-33-040	Amend Same	Subsection (5) required by sec. 95, chapter 175, Laws of 1989
248-33-060	Repeal Same	Housekeeping; provisions moved to WAC 248-33-040(3)
248-33-080	Repeal Same	Housekeeping; provisions moved to WAC 248-33-040(4)
248-140-200	Amend 42.20.050	Required by sec. 95, chapter 175, Laws of 1989

Proposal does not change existing rules.

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

Hearing Location: OB-2 Auditorium, 12th and Franklin, Olympia, Washington, on January 4, 1990, at 10:00 a.m.

Submit Written Comments to: Leslie Baldwin, 1300 Quince Street, Olympia, WA 98504, by January 3, 1990.

Date of Intended Adoption: January 10, 1990.

November 22, 1989  
 Pam Campbell Meed  
 for Kristine Gebbie  
 Secretary

**AMENDATORY SECTION** (Amending Order 218, filed 11/6/81)

WAC 248-21-005 LICENSURE--NOTICE OF DECISION--ADJUDICATIVE PROCEEDING. (1) After January 1, 1982, no person acting separately or jointly with any other person shall establish, maintain, conduct or operate a hospice care center in this state or use the words "hospice care center" to describe or identify a place or building which does not have a license as a hospice care center as defined and described herein.

(2) An application for a hospice care center license shall be submitted to the department on forms provided by the department. The application shall be signed by the operator of the facility and the legal representative of the governing body.

(3) Other requirements related to licensure, fees, and inspection are as stipulated in RCW 70.41.100, 70.41.110, 70.41.120, 70.41.130, ~~((70.41.140))~~ 70.41.150, 70.41.160 and 70.41.170.

- (4) There shall be compliance with other regulations to include:
  - (a) Applicable rules and regulations for hospice care centers adopted by the Washington state fire marshal pursuant to RCW 70.41.080 and chapter 48.48 RCW;
  - (b) Applicable national, state, and local electrical, fire, zoning, building, and plumbing codes.

(5)(a) The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.205. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.

(b) A license applicant or holder contesting a department license decision shall within twenty-eight days of receipt of the decision:

(i) File a written adjudicative proceeding application by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

#### AMENDATORY SECTION (Amending Order 134, filed 10/21/76)

WAC 248-33-040 APPROVAL PROCESS. (1) A facility which seeks to qualify as an approved eye bank must submit a written request for approval to the secretary. The request must include a statement of the arrangements made for the storage of tissue received, the name and availability of ophthalmologists and the policies to be followed for the distribution of tissue.

(2) Approval may be granted by the secretary when:

(a) The eye bank meets accepted medical standards for the preservation of eye tissue in a condition suitable for transplantation including, but not limited to, the provision of a storage area for the tissue which is maintained at an appropriate temperature and in which the tissue may be protected from contamination and/or damage, and

(b) There are one or more board certified or board qualified ophthalmologists on the staff of a hospital which seeks approval for its eye bank who are able to, and express a willingness to, perform corneal transplants, and

(c) The director or administrator of the eye bank declares it to be the intention of those who direct and/or administer the eye bank to distribute available corneal tissue to recipients in a fair and reasonable manner, which means the distribution of corneal tissue to recipients requiring such tissue:

(i) Without discrimination based on race, creed, ethnic origin, sex, or age, and

(ii) With consideration of the length of time that the potential recipient has had a medically defined need to receive corneal tissue, and

(iii) With consideration of the impact of waiting to receive such tissue on the recipient and the resulting economic, educational, or developmental loss to the potential recipient, and

(iv) With provision made for emergency requests for corneal tissue.

(3) The department shall deny, suspend, modify, or revoke approval of an eye bank when a facility fails or refuses to comply with legal requirements, including the criteria set forth in chapter 248-08 WAC.

(4) The secretary may, in the secretary's discretion, reinstate the approval of an eye bank when the facility has corrected the conditions which led to the suspension, modification, or revocation of approval.

(5)(a) The department's notice of a denial, suspension, modification, or revocation of approval shall be consistent with RCW 43.20A.205. An applicant or approval holder has the right to an adjudicative proceeding to contest the decision.

(b) An approval applicant or holder contesting a department approval decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 248-33-060 TERMINATION OF APPROVAL.  
WAC 248-33-080 REINSTATEMENT OF APPROVAL.

#### AMENDATORY SECTION (Amending Order 87, filed 6/12/73)

~~WAC 248-140-200 ((PROCEDURE UPON DENIAL OF APPLICATION FOR CERTIFICATE)) NOTICE OF DECISION—ADJUDICATIVE PROCEEDING. ((Applicants denied approval or persons whose certificates have been revoked shall have recourse to review of the decision of the secretary in conformance with the Administrative Procedure Act.)) (1) The department's notice of a denial, suspension, modification, or revocation of a certificate shall be consistent with RCW 43.20A.205. An applicant or certificate holder has the right to an adjudicative proceeding to contest the decision.~~

~~(2) A certificate applicant or holder contesting a department certificate decision shall within twenty-eight days of receipt of the decision:~~

~~(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and~~

~~(b) Include in or with the application:~~

~~(i) A specific statement of the issue or issues and law involved;~~

~~(ii) The grounds for contesting the department decision; and~~

~~(iii) A copy of the contested department decision.~~

~~(3) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.~~

### WSR 89-23-103

#### PROPOSED RULES

#### LIQUOR CONTROL BOARD

[Filed November 22, 1989, 11:36 a.m.]

#### Original Notice.

Title of Rule: Amending WAC 314-60-040 Operations and procedures.

Purpose: Perform housekeeping action on the existing rule relative to matters which are exempt from the Open [Public] Meetings Act and identifying specific days of the week the board will meet in open session.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 42.30.070.

Summary: Adding language to the existing rule-making reference to those subjects which are exempt from chapter 42.30 RCW as identified under RCW 42.30.140 and 42.30.110 and setting aside Tuesdays and Wednesdays as days for regular meetings of the board.

Reasons Supporting Proposal: More clearly identify when the board will normally be in regular sessions in order to allow more public involvement.

Name of Agency Personnel Responsible for Drafting: Mary Tennyson, 1025 East Union Avenue, Olympia, 753-6283; Implementation and Enforcement: Board members.

Name of Proponent: Liquor Control Board, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The board currently indicates regular meetings will be Monday through Friday from 9:30 a.m. onward. By conducting formal business on Tuesday and Wednesday of each week, the board provides more structured hours for public involvement. Tuesdays will normally be for work sessions and staff meetings, while

Wednesdays will hear petitions, public testimony, adopting of resolutions and formal board actions.

Proposal Changes the Following Existing Rules: As indicated above.

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

Hearing Location: Washington State Liquor Control Board, 5th Floor, Board Room, 1025 East Union Avenue, Olympia, WA 98504, on Wednesday, January 3, 1990, at 9:30 a.m.

Submit Written Comments to: M. Carter Mitchell, Information Officer, Washington State Liquor Control Board, 1025 East Union Avenue, Olympia, WA 98504, by January 2, 1990.

Date of Intended Adoption: January 3, 1990.

November 15, 1989

Paula C. O'Conner  
Chairman

AMENDATORY SECTION (Amending Order 104, Resolution No. 113, filed 4/28/82)

WAC 314-60-040 OPERATIONS AND PROCEDURE. The general course and method by which the operations of the board are channeled and determined are illustrated by the following:

(1) An organizational chart is available from the board's public records office which illustrates the general structure and composition of the board's operations.

(2) Board procedures relating to hearings involving alleged violations of the liquor act and/or revised rules and regulations of the board are covered in (~~the Title X Hearings WAC 314-04-010;~~) chapter 314-04 WAC Hearings and in (~~the Title XIV~~) chapter 314-08 WAC, Practice and Procedure (~~WAC 314-08-010 through 314-08-590~~).

(a) General information pertaining to formal hearings is available from the board's public records office.

(b) Forms of notice of proposed order of summary license suspension are available from the board's public records office.

(3) Pursuant to the requirements of the Open Public Meetings Act (chapter 42.30 RCW) all determinations and business of the board, except (~~except~~) matters which are exempt from the Act under RCW 42.30.140, or properly conducted in executive session, pursuant to RCW 42.30.110, will be made and conducted in meetings open to the public. Regular meetings of the board are held on (~~Monday through Friday~~) Tuesday and Wednesday of each week, except on holidays, beginning at 9:30 a.m. or as soon thereafter as a quorum is assembled at its offices on the Fifth Floor, Capital Plaza Building, 1025 East Union Avenue, Olympia, Washington. For scheduling purposes, it is the Board's intent to conduct staff meetings and work sessions at its Tuesday meetings, and to schedule petitions, public testimony, and adoption of resolutions at its Wednesday meetings.

**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 89-23-104

### PROPOSED RULES

#### DEPARTMENT OF NATURAL RESOURCES

[Filed November 22, 1989, 1:15 p.m.]

#### Original Notice.

Title of Rule: WAC 332-30-166 Aquatic land management open water disposal sites.

Purpose: Amends WAC 332-30-166 to increase disposal site use fee from 15 cents per cubic yard to 40

cents per cubic yard for all eight Puget Sound disposal sites to pay for site management.

Statutory Authority for Adoption: RCW 79.90.560.

Statute Being Implemented: RCW 79.90.550, 79.90.555 and 79.90.560.

Summary: Increase fee for Phase II PSDDA dredged material disposal sites from 15 cents per cubic yard to 40 cents per cubic yard. Brings Phase II to same level as Phase I. Money will be used to pay for site management.

Reasons Supporting Proposal: Currently, Phase I sites pay 40 cents, Phase II sites' fees must be increased to same level to make all sites have the same fee so the closest regional site would be used and to provide sufficient funds to adequately manage all sites.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ann J. Morgan, Division of Aquatic Lands, Mailstop QW-21, Olympia, Washington 98504, (206) 753-5326.

Name of Proponent: Department of Natural Resources, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Amend existing rule to raise disposal site use fee in Puget Sound to a uniform 40 cents per cubic yard for all sites. Purpose is to provide funds sufficient to administer and conduct permit compliance and environmental monitoring needs for all sites in Puget Sound. The anticipated effect is to permit sufficient monitoring to determine if unanticipated environmental harm is occurring at the sites.

Proposal Changes the Following Existing Rules: Increase fees for five Puget Sound disposal sites from 15 cents per cubic yard to 40 cents per cubic yard. Fee at remaining three sites will stay at 40 cents per cubic yard.

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

1. Fees are charged based on volume of material disposed at the site. Size of affected business is not a factor in setting the fee.

2. At 15 cents per cubic yard, the fee represents four percent of the total cost of approximately \$4.15 per cubic yard, US Army Corps of Engineers, for testing, dredging and transportation to the disposal site. Raising the fee to 40 cents per cubic yard would only raise the total cost by six percent. Therefore, the increase in the fee from 15 cents per cubic yard to 40 cents per cubic yard would not significantly affect small business economically.

Hearing Location: House Office Building, Hearing Room 1, Olympia, Washington 98504, on December 28, 1989, at 10:00 a.m.

Submit Written Comments to: Ann J. Morgan, Division of Aquatic Lands, QW-21, Olympia, Washington 98504, by December 28, 1989.

Date of Intended Adoption: January 3, 1990.

November 21, 1989

Ann J. Morgan  
Division Manager

**AMENDATORY SECTION** (Amending Order 537, Resolution No. 585, filed 4/6/88 [6/17/88])

**WAC 332-30-166 OPEN WATER DISPOSAL SITES.** (1) Open water disposal sites are established primarily for the disposal of dredged material obtained from marine or fresh waters. These sites are generally not available for disposal of material derived from upland or dryland excavation except when such materials would enhance the aquatic habitat.

(2) Material may be disposed of on state-owned aquatic land only at approved open water disposal sites and only after authorization has been obtained from the department. Applications for use of any area other than an established site shall be rejected. However, the applicant may appeal to the interagency open water disposal site evaluation committee for establishment of a new site.

(3) Application for use of an established site must be for dredged material that meets the approval of federal and state agencies and for which there is no practical alternative upland disposal site or beneficial use such as beach enhancement.

(4) The department will only issue authorization for use of the site after:

(a) The environmental protection agency and department of ecology notify the department that, in accordance with Sections 404 and 401, respectively, of the Federal Clean Water Act, the dredged materials are suitable for in-water disposal and do not appear to create a threat to human health, welfare, or the environment; and

(b) All necessary federal, state, and local permits are acquired.

(5) Any use authorization granted by the department shall be subject to the terms and conditions of any required federal, state, or local permits.

(6) The department shall suspend or terminate any authorization to use a site upon the expiration of any required permit.

(7) All leases for use of a designated site must require notification to DNR in Olympia twenty-four hours prior to each use. DNR Olympia must be notified five working days prior to the first use to permit an on-site visit to confirm with dump operator the site location.

(8) Pipeline disposal of material to an established disposal site will require special consideration.

(9) Fees will be charged at rates sufficient to cover all departmental costs associated with management of the sites. Fees will be reviewed and adjusted annually or more often as needed. A penalty fee may be charged for unauthorized dumping or dumping beyond the lease site. Army Corps of Engineers navigation channel maintenance projects are exempt from this fee schedule.

#### FEES

(a) Puget Sound and Strait of Juan De Fuca:

(i) ~~All ((Seattle, Tacoma, and Everett)) disposal sites \$0.40 per cubic yard (c.y.), \$2,000 minimum.~~

~~((ii) Other disposal sites \$0.15 per c.y. for the first 200,000 c.y.; negotiated fee for project volumes exceeding 200,000 c.y., \$2,000 minimum.))~~

(b) Grays Harbor/Willapa Harbor: Minimum fee \$300.00

(c) Damage fee - \$5.00/cubic yard

(10) Open water disposal site selection. Sites are selected and managed by the department with the advice of the interagency open water disposal site evaluation committee (a technical committee of the aquatic resources advisory committee). The committee is composed of representatives of the state departments of ecology, fisheries, game, and natural resources as well as the Federal Army Corps of Engineers, National Marine Fisheries Service, Environmental Protection Agency, and Fish and Wildlife Service. The department chairs the committee. Meetings are irregular. The committee has developed a series of guidelines to be used in selecting disposal sites. The objectives of the site selection guidelines are to reduce damage to living resources known to utilize the area, and to minimize the disruption of normal human activity that is known to occur in the area. The guidelines are as follows:

(a) Select areas of common or usual natural characteristics. Avoid areas with uncommon or unusual characteristics.

(b) Select areas, where possible, of minimal dispersal of material rather than maximum widespread dispersal.

(c) Sites subject to high velocity currents will be limited to sandy or coarse material whenever feasible.

(d) When possible, use disposal sites that have substrate similar to the material being dumped.

(e) Select areas close to dredge sources to insure use of the sites.

(f) Protect known fish nursery, fishery harvest areas, fish migration routes, and aquaculture installations.

(g) Areas proposed for dredged material disposal may require an investigation of the biological and physical systems which exist in the area.

(h) Current velocity, particle size, bottom slope and method of disposal must be considered.

(i) Projects transporting dredged material by pipeline will require individual review.

(j) Placement of temporary site marking buoys may be required.

(k) The department will assure disposal occurs in accordance with permit conditions. Compliance measures may include, but are not limited to, visual or electronic surveillance, marking of sites with buoys, requiring submittal of operator reports and bottom sampling or inspection.

(l) Special consideration should be given to placing material at a site where it will enhance the habitat for living resources.

(m) Locate sites where surveillance is effective and can easily be found by tugboat operators.

(11) The department shall conduct such subtidal surveys as are necessary for siting and managing the disposal sites.

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

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

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

**WSR 89-23-105  
PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Public Assistance)**

[Filed November 22, 1989, 1:41 p.m.]

#### Original Notice.

Title of Rule: WAC 388-83-013 Cooperation in securing medical care support.

Purpose: To change the cross-references to WAC 388-14-200.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

Summary: The department shall require the AFDC/FIP related medical client to cooperate as described under WAC 388-14-200 (2)(a), (b), (c), (3), (4), (5), (6), (7), (8), (9) and (16), unless there is a finding of good cause.

Reasons Supporting Proposal: This rule is necessary to assure proper cross-referring to WAC 388-14-200.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bobbe Andersen, Medical Assistance, 753-0529.

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

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

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

Proposal Changes the Following Existing Rules: See above.

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

Hearing Location: OB-2 Auditorium, 12th and Franklin, Olympia, Washington, on December 28, 1989, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop OB-33H, Olympia, Washington 98504, by December 28, 1989.

Date of Intended Adoption: January 29, 1990.

November 22, 1989  
Leslie F. James, Director  
Administrative Services

AMENDATORY SECTION (Amending Order 2809, filed 6/7/89)

WAC 388-83-013 COOPERATION IN SECURING MEDICAL CARE SUPPORT. (1) As a condition of ~~((medical))~~ eligibility for medical assistance, the department shall require the applicant or recipient/enrollee to cooperate with the department in:

(a) Obtaining medical care support or payment for the applicant or recipient/enrollee or for any other applicant or recipient/enrollee other than an unborn for whom the applicant or recipient/enrollee can legally assign rights; and

(b) Identifying and providing information to assist the department in pursuing any liable third party.

(2) The department shall also require an AFDC/FIP-related medical assistance client to cooperate as described under WAC 388-14-200 (2)(a), (b), (c), (3), (4), (5), ~~(6)~~, (7), (8), (9), and ~~((+7))~~ (16), unless there is a finding of good cause under WAC 388-24-111, except for the provision under WAC 388-24-111 (15)(b), in establishing:

(a) The paternity of a child; and

(b) Medical care support.

(3) The department shall waive such cooperation requirements if the department finds the applicant or recipient/enrollee has good cause under WAC 388-83-014 for noncooperation.

(4) Unless the department finds good cause for noncooperation under WAC 388-24-111 or 388-83-014, the department shall find the applicant or recipient/enrollee, who refuses to cooperate under subsection (1) of this section, ineligible to receive medical assistance.

(5) The department shall provide medical assistance to an otherwise eligible applicant or recipient/enrollee when the person who has the legal authority to cooperate on behalf of the applicant or recipient/enrollee refuses such cooperation.

**WSR 89-23-106**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Filed November 22, 1989, 1:46 p.m.]

Original Notice.

Title of Rule: WAC 388-83-025 Residence.

Purpose: To clarify residence rules and to incorporate the definitions from WAC 388-80-002(58) into the residence rules for easier access to the residence material. Adds that a person is not considered a resident if entering the state for the sole purpose of receiving medical care.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

Summary: The new rules add the definition of residence from WAC 388-80-005. Also adds that a person

is not a resident if they enter the state for the sole purpose of obtaining medical care.

Reasons Supporting Proposal: This rule is necessary to clarify residence rules.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bobbe J. Andersen, Medical Assistance, 753-0529.

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

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

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

Proposal Changes the Following Existing Rules: See above.

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

Hearing Location: OB-2 Auditorium, 12th and Franklin, Olympia, Washington, on December 28, 1989, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop OB-33H, Olympia, Washington 98504, by December 28, 1989.

Date of Intended Adoption: December 29, 1989.

November 22, 1989  
Leslie F. James, Director  
Administrative Services

AMENDATORY SECTION (Amending Order 1646, filed 4/27/81)

WAC 388-83-025 RESIDENCE. (1) ~~((An applicant or recipient))~~ A client of the benefits of the medical care program ~~((must))~~ shall be a resident of the state of Washington; ~~((an applicant-recipient))~~ a client need not be a resident of the county in which medical care is obtained.

(2) The department shall consider a client a resident if the client:

(a) Intends to remain permanently or for an indefinite period in the state; or

(b) Enters the state with a job commitment or seeks employment, whether the client is or is not currently employed.

(3) The department shall not consider a person, entering the state temporarily for the sole purpose of obtaining medical care, a resident.

(4) The department shall consider a client's residence the state:

(a) Making a state supplemental security income (SSI) supplementary payment;

(b) Making Federal payments for foster or adoption assistance under Title IV-E of the Social Security Act;

(c) Of residence of the parent or legal guardian, if one has been appointed, for an institutionalized minor child;

(d) Of residence of the parent or legal guardian, if one has been appointed, for an institutionalized client twenty-one years of age or older who became incapable of determining residential intent before twenty-one years of age;

(e) Where a client is residing if the person becomes incapable before twenty-one years of age; and

(f) Making placement in an out-of-state institution.

(5) State of residence of a noninstitutionalized minor child, unless married or emancipated, follows the rules under chapter 388-24 WAC.

(6) Married or emancipated minor children follow the rules of subsections (1), (2), (3), and (4) of this section.

(7) Where two or more states cannot resolve which state is the client's state of residence, the state where the client is physically located is the state of residence.

**WSR 89-23-107**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Filed November 22, 1989, 1:49 p.m.]

**Original Notice.**

Title of Rule: WAC 388-49-560 Issuance.

Purpose: To amend food stamp program rules to require a combined food stamp allotment for the first and second months when an eligible household applies on the 16th or after.

Statutory Authority for Adoption: RCW 74.04.050.

Statute Being Implemented: RCW 74.04.050.

Summary: When an eligible household applies on or after the 16th of the month, the department shall issue the prorated benefits for the initial month and the benefits for first full month at the same time. If any food coupon authorization, FCA, is issued after the 20th, changed from the 25th, the department shall issue a replacement if the household is unable to transact the FCA before the expiration date.

Reasons Supporting Proposal: This rule is necessary to implement provisions of the Hunger Prevention Act of 1988 and the implementing federal regulations, in 7 CFR 274.2 and 274.3(e).

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Randall Francom, Income Assistance, 753-4918.

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

Rule is necessary because of federal law, Hunger Prevention Act of 1988, 7 CFR 274.2 and 274.3(e).

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

Proposal Changes the Following Existing Rules: See above.

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

Hearing Location: OB-2 Auditorium, 12th and Franklin, Olympia, Washington, on December 28, 1989, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop OB-33H, Olympia, Washington 98504, by December 28, 1989.

Date of Intended Adoption: January 16, 1990.

November 22, 1989  
 Leslie F. James, Director  
 Administrative Services

**AMENDATORY SECTION** (Amending Order 2575, filed 12/31/87)

WAC 388-49-560 ISSUANCE. (1) The department shall issue food coupons through a:

(a) ((A)) Food coupon authorization (FCA) system staggered through the tenth of the month, or

(b) ((A)) Direct coupon mail out system staggered through the tenth of the month.

(2) For FCAs issued after the ((~~twenty-fifth~~)) twentieth of the month, the department shall issue a valid FCA:

(a) Until the end of the month and issue a valid replacement FCA if the household is unable to transact the FCA before the expiration date, or

(b) For the current month's benefits valid in the following month.

(3) For eligible households applying on the sixteenth of the month or after, the department shall issue the prorated allotment for the initial month and the allotment for the first full month at the same time, except for:

(a) Households eligible for expedited services for which missing or postponed verification have not been provided; and

(b) Households ineligible for the initial month, or the second month.

(4) The department shall maintain issuance records for a period of three years from the month of origin.

**WSR 89-23-108**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Institutions)**

[Filed November 22, 1989, 2:05 p.m.]

**Supplemental Notice to WSR 89-20-008.**

Title of Rule: Chapter 275-56 WAC, Community mental health programs.

Purpose: To amend rules relating to community mental health.

Statutory Authority for Adoption: RCW 74.24.035 [71.24.035].

Statute Being Implemented: RCW 74.24.035 [71.24.035].

Summary: These rule changes will have the following effect: New definitions; new sections on the development of regional support networks; revisions to provider licensure; and new sections on resource management services, emergency response system, community support services and residential services.

Reasons Supporting Proposal: This rule is necessary to establish rules and regulations for county and regional administration of community mental health programs, licensing service providers, information, accountability contracts and services.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Hanig, Mental Health Division, 586-6766.

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

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

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

Proposal Changes the Following Existing Rules: See above.

Small Business Economic Impact Statement: These revisions to chapter 275-56 WAC are necessitated by changes in chapter 71.24 RCW, transferring responsibility for administering the mental health programs to localities. The revisions will significantly affect residential providers by including them as licensed mental health providers for the first time. The following changes may be expected: WAC 275-56-180, requires supervision by a mental health professional for programs with more than 30 beds. We estimate the additional cost to be \$8,000 annually. WAC 275-56-185, requires the treatment of specialized populations by or with consultation from mental health professionals qualified to treat

the particular population. The residential providers may purchase consultation from mental health specialists. The cost will vary depending upon the number of underserved consumers present in the program and the cost of obtaining consultation. For a 40 bed facility with 4 underserved consumers, we estimate the cost to be \$1000 annually. WAC 275-56-200, requires 24 hours of annual training for each staff person. Using a 40 bed facility meeting the new staff requirements in WAC 275-56-465 as a model, we estimate the wages to a staff of eight at \$2,500 per year for staff wages, plus additional costs incurred for training itself. WAC 275-56-205, requires a quality assurance program. For a 40 bed supervised living facility, we estimate the cost at \$800 annually. WAC 275-56-270, requires a financial audit, proposed budget and submitting BARS reports. These requirements are estimated to cost \$6,000 annually. WAC 275-56-465, has additional requirements for staffing during afternoons and evenings for each twenty residents. For a 40 bed facility, we estimate the cost to be \$20,000 annually. The additional expenses are incurred only in regional support networks which will receive new, additional funding which may be applied toward these costs.

Hearing Location: OB-2 Auditorium, 12th and Franklin, Olympia, Washington, on December 28, 1989, at 10:00 a.m.; and at the Health Department, West 1101 College Avenue, Room 140, Spokane, WA, on January 8, 1990, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop OB-33H, Olympia, Washington 98504, by January 8, 1990.

Date of Intended Adoption: January 12, 1990.

November 22, 1989

Leslie F. James, Director  
Administrative Services

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-005 PURPOSE AND AUTHORITY. The purpose of chapter 275-56 WAC is to establish a county-managed community mental health program to help people experiencing mental illness retain respected and productive positions in their community. This chapter (~~(275-56 WAC)~~) establishes rules and regulations for county and regional support network administration of community mental health programs, licensing service providers, information, accountability, contracts and services. Chapter 275-56 WAC is adopted under (~~authority of~~) chapter 71.24 RCW.

(1) Chapter 275-56 WAC enables participation in the community mental health system by service providers which are profit or nonprofit businesses, private or public businesses, individuals or partnerships, as well as corporations. A provider may contract with a county or regional support network (RSN) for one or more services defined by chapter 71.24 RCW.

(2) The rules and regulations (~~of~~) for county (~~administration~~) duties are specified in two areas:

(a) County (~~administration and~~) planning (~~(t)~~) under WAC 275-56-020 (~~(through)~~), 275-56-025, 275-56-040, 275-56-050, 275-56-055, and 275-56-060(~~());~~ and

(b) County fiscal (~~administration~~) requirements under WAC 275-56-065 through 275-56-085(~~());~~

(3) Compliance with the rules and regulations for RSN duties shall be phased in according to the RSN contract (WAC 275-56-042). These rules and regulations are specified in two areas:

(a) RSN development and planning (WAC 275-56-016, 275-56-017, 275-56-035, 275-56-042, 275-56-043, 275-56-050, 275-56-055, 275-56-060, 275-56-087, 275-56-088, and 275-56-089; and

(b) RSN fiscal requirements (WAC 275-56-065 through 275-56-085).

(4) Minimum standards for licensing service providers are specified in four areas:

(a) Licensing procedures (~~(t)~~) under WAC 275-56-090 through 275-56-105(~~());~~

(b) Organizational administration (~~of~~) for the provider(~~(including~~) under WAC 275-56-110 through 275-56-215(~~());~~), as follows:

(i) Administration;

(ii) Provider fiscal administration;

(iii) Personnel management;

(iv) Quality assurance;

(v) Program evaluation; and

(vi) Facilities(~~(:);~~);

(c) Services administration (~~(including~~) under WAC 275-56-220 through (~~(275-56-330)~~) 275-56-340, as follows:

(i) Accessibility and awareness of services;

(ii) (~~Client~~) Consumer rights;

(iii) (~~Client~~) Consumer entry, service planning, and service operations; and

(iv) (~~Client~~) Consumer records(~~(:);~~);

(d) Services (~~(including (WAC 275-56-335))~~) under WAC 275-56-355 through (~~(275-56-445)~~) 275-56-515:

(i) Emergency services, including preadmission screening services;

(ii) Outpatient services;

(iii) Day treatment services;

(iv) Consultation and education services;

(v) Community support services; and

(vi) Residential services.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-010 PRIORITY POPULATIONS. Chapter 275-56 WAC establishes rules, regulations, and standards for community mental health programs providing for:

(1) Access to mental health services for residents of the state of Washington who (~~(in priority order)~~) are:

(a) In non-RSN counties, in priority order:

(i) Acutely mentally ill;

(~~(b)~~) (ii) Chronically mentally ill; or

(~~(c)~~) (iii) Seriously disturbed.

(b) For RSNs, when established:

(i) Acutely mentally ill adults and children;

(ii) Chronically mentally ill adults and children; or

(iii) Seriously disturbed adults and children at risk of becoming acutely or chronically mentally ill, as determined by the RSN at their sole discretion.

(2) Mental health services recognizing the special needs of underserved groups within the priority populations, including:

(a) Minorities(~~(:);~~);

(b) Children(~~(:);~~);

(c) Elderly(~~(:);~~);

(d) Disabled(~~(:);~~); and

(e) Low-income persons.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-015 DEFINITIONS. For the purposes of the rules, regulations, and standards of chapter 275-56 WAC, the following words and phrases shall have the following meaning:

(1) "Acutely mentally ill" means a condition limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in this chapter;

(b) Being gravely disabled as defined in this chapter; or

(c) Presenting a likelihood of serious harm as defined in this chapter.

(2) "Authority" means the board of county commissioners, county council, county executive, or RSN entity having the authority to establish a community mental health program.

(3) "Available resources" means funds appropriated by the legislature during any biennium for the purpose of providing community mental health programs. When RSNs are established or after July 1, 1995, "available resources" means:

(a) Federal funds, except those provided according to Title XIX of the Social Security Act; and

(b) State funds appropriated under this chapter or chapter 71.05 RCW by the legislature during a biennium to provide mental health services.

~~((+3))~~ (4) "Case management" means assistance to the ~~((client))~~ consumer and family or significant others to obtain, maintain, or develop ~~((an))~~ appropriate ~~((place))~~ resources for the ~~((client in the community))~~ consumer. This ~~((service))~~ involves ~~((assistance in))~~ obtaining or providing the full range of needed services ~~((, routine monitoring, supervision of client's functioning, and establishing and maintaining support for the client and his or her family or significant others))~~ to help consumers establish and maintain respected positions in the community, including:

- (a) Housing;
- (b) Income;
- (c) Employment and other meaningful activities;
- (d) Monitoring and interventions; and
- (e) Crisis intervention and resolution.

~~((+4))~~ (5) "Child" or "children" means a person or persons ~~((under eighteen))~~ seventeen years of age and younger.

~~((+5))~~ (6) "Chronically mentally ill" means a person having a mental disorder and meeting at least one of the following criteria:

- (a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years;
- (b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months duration within the preceding year; ~~((or))~~

(c) Has been unable to engage in ~~((any))~~ substantial gainful activity (subsection (46) of this section) by reason of any mental disorder ~~((which has lasted))~~ lasting for a continuous period of not less than twelve months; or

(d) In the case of a child:

(i) Has been subjected to continual distress as indicated by repeated physical or sexual abuse or neglect;

(ii) Is placed by the department or its designee, not limited to placement by child protective services and child welfare services, two or more times outside of the home;

(iii) Is placed due to a mental disorder (as defined in chapter 71.34 RCW); and

(iv) Is placed and the placement progresses to a more restrictive setting.

~~((+6))~~ "Clients" means persons, couples or families receiving clinical, coordinative, or supportive services;)

(7) "Clinical staff member" means a regularly employed or contracted staff member or supervisor engaged ~~((to any extent))~~ in providing direct evaluative, diagnostic, or therapeutic services to ~~((clients))~~ consumers. The term does not include volunteers or students.

(8) "Community mental health program" means the total mental health program established by a county or group of counties acting in combination for the purpose of providing mental health services in accordance with the Community Mental Health Services Act, chapter 71.24 RCW. After July 1, 1995, or when RSNs are established, "community mental health program" means all activities or programs using available resources, under subsection (3) of this section.

(9) "Community Mental Health Services Act" means chapter 71.24 RCW.

(10) "Community support services" means ~~((those))~~:

(a) For non-RSN counties before July 1, 1995, services for acutely and chronically mentally ill ~~((persons which include))~~ consumers including:

~~((+7))~~ (i) Discharge planning for ~~((clients))~~ consumers leaving:

(A) State hospitals and other acute care inpatient facilities;

(B) Inpatient psychiatric facilities for consumers twenty years of age or younger; and

(C) Children's mental health residential treatment facilities;

~~((+8))~~ (ii) Contacts with ~~((clients))~~ consumers, ~~((family))~~ families, schools, or significant others to provide for an effective program of community maintenance; and

~~((+9))~~ (iii) Medication monitoring.

(b) After July 1, 1995, or when RSNs are established, for adult and children priority populations under WAC 275-56-010 (1)(b), services authorized, planned, and coordinated through resource management services include:

(i) Assessment and diagnosis;

(ii) Emergency crisis intervention available twenty-four hours a day, seven days a week;

(iii) Prescreening determinations for mentally ill consumers considered for placement in nursing homes as required by federal law;

(iv) Screening for patients considered for admission to residential services;

(v) Investigation, legal, and other nonresidential services (chapter 71.05 RCW);

(vi) Case management services;

(vii) Psychiatric treatment, including medication supervision;

(viii) Counseling;

(ix) Psychotherapy;

(x) Assured transfer of relevant patient information among service providers;

(xi) Maintenance of client tracking information for priority populations; and

(xii) Other services determined by RSNs.

(11) "Consumers" means persons, couples or families receiving clinical, coordinative, or support services.

(12) "Consultation" means review and recommendations regarding the job responsibilities, activities ~~((;))~~ or decisions of administrative, clinical ~~((;))~~ or clerical staff, contracted employees, volunteers ~~((;))~~ or students by ~~((a person or))~~ persons with appropriate knowledge and experience to make ~~((such))~~ recommendations. This definition does not constitute a definition of consultation and education.

~~((+2))~~ (13) "Consultation and education services" means those services provided to assist others in the community ~~((to understand))~~ in understanding and ~~((care))~~ caring for ~~((acutely and chronically mentally ill and seriously disturbed persons and includes))~~ priority populations including:

(a) Consultation to other community providers ~~((;))~~; and

(b) Educational and public information services.

~~((+3))~~ "County authority" means the board of county commissioners, county council or county executive having the authority to establish a community mental health program;)

(14) "Crisis" means a situation where ~~((, because of severe internal or external stresses,))~~ a person is acutely mentally ill or experiencing serious disruption in cognitive, volitional, psychosocial or ~~((physiological))~~ neurophysiological functioning.

(15) "Crisis respite services" means residential support services provided to an individual who is in crisis or at risk of crisis; such services may be provided, in their own home or another home-like setting.

(16) "Crisis response system" means the system designed to resolve crises in the least restrictive manner possible, including:

(a) Emergency services;

(b) Crisis intervention;

(c) Crisis respite;

(d) Investigation and detention services; and

(e) Evaluation and treatment services.

(17) "Day treatment services" means ~~((those))~~ services for mentally ill ~~((persons which include))~~ consumers, including training in basic living and social skills, supported work, vocational rehabilitation ~~((, day))~~ activities, and may include therapeutic treatment.

~~((+6))~~ (18) "Department" means the department of social and health services.

~~((+7))~~ (19) "Direct treatment services" means clinical services provided directly to ~~((clients to meet))~~ consumers meeting the ~~((clients))~~ consumer's mental health needs, as distinct from activities conducted with other persons, organizations, or groups on behalf of ~~((clients))~~ consumers, and also as distinct from supervisory, consultative or training activities conducted with regard to ~~((clients))~~ consumers or services.

~~((+8))~~ (20) "Disabled" means a ~~((developmentally disabled person or one with))~~ consumer with a developmental disability, serious physical or sensory impairment.

~~((+9))~~ (21) "Elderly" means a person sixty years of age or older.

~~((+20))~~ "Emergency" means a situation where there is likelihood of serious harm to the person, other persons or property resulting from the actions or threatened actions of a mentally ill person, or when the person is gravely disabled.

~~((+1))~~ (22) "Emergency services" means those responses and intervention services provided to ~~((persons))~~ consumers experiencing mental health emergencies or crises ~~((and include))~~, including:

(a) Twenty-four hour telephone service; and

(b) Twenty-four hour crisis intervention and outreach services ~~((;))~~;

(c) Crisis resolution services; and

(d) Pre-admission screening services).

~~((+22))~~ (23) "Geriatric long-term rehabilitative services" means long-term rehabilitative services (subsection (30) of this section) for individuals age fifty-five and over, or fifty-four and under who, because of psychoneurological impairments, are appropriate for this level of care.

(24) "Governing body" means the final decision-making body for a provider.

~~((23))~~ (25) "Gravely disabled" means a condition where a person, as a result of a mental disorder:

(a) Is in danger of serious physical harm resulting from a failure to provide for ~~((his or her))~~ their essential human needs of health or safety; or

(b) Manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognition or volitional control over ~~((his or her))~~ their actions and is not receiving such care as is essential for ~~((his or her))~~ their health or safety.

~~((24))~~ (26) "Individualized service plan" (ISP) means the plan developed by resource management services assuring continuity of care and identifying needed residential and community support services.

(27) "Individualized treatment plan" (ITP) means the plan developed by the service provider identifying treatment needs and methods of treatment and, in RSNs, is consistent with the ISP.

(28) "Less restrictive setting" means that service in which the consumer functions at maximum independence in the most normative environment possible.

(29) "Long-term adaptive services" means a facility-based residential program with twenty-four hour nursing care and medical supervision, and mental health services which include:

(a) Program and case consultation from a mental health professional;

(b) Individualized treatment, as appropriate; and

(c) Staff training.

(30) "Long-term rehabilitative services" means a facility-based residential program for adults or children who:

(a) Require twenty-four hour supervision;

(b) Do not require extensive medical care; and

(c) Have a severe functional or behavioral impairment as a result of a psychiatric disorder; or

(d) Do not follow or do not have an effective medication regime.

(31) "Material adjustment" means a budget revision equaling ten percent of a cost center.

~~((25))~~ (32) "Mental disorder" means ~~((any))~~ organic, mental, or emotional impairment having substantial adverse effect on an individual's cognitive or volitional functions.

~~((26))~~ (33) "Mental health professional" means:

(a) A physician or osteopath licensed under chapter 18.57 or 18.71 RCW, who is board eligible in psychiatry;

(b) A psychologist licensed under chapter 18.83 RCW;

(c) A psychiatric nurse which means a registered nurse licensed under chapter 18.88 RCW and having at least two years' experience in the direct treatment of mentally ill individuals under the supervision of a mental health professional;

(d) A social worker, which means a person with a masters or further advanced degree from an accredited school of social work or a degree from a graduate school deemed equivalent by the secretary;

(e) A person having at least a masters degree in behavioral sciences, nursing sciences, or related field from an accredited college or university and having at least two years' experience in the direct treatment of mentally ill individuals under the supervision of a mental health professional;

(f) A mental health counselor or marriage and family therapist certified under chapter 18.19 RCW and having at least two years' experience in the direct treatment of mentally ill individuals under the supervision of a mental health professional;

(g) A professionally licensed occupational or physical therapist having at least two years' experience in the direct treatment of mentally ill individuals under the supervision of a mental health professional; or

(h) A person having at least a bachelors degree in behavioral sciences or related field from an accredited college or university and having at least five years' experience in the direct treatment of mentally ill individuals under the supervision of a mental health professional.

(34) "Mental health services" means ~~((those))~~ services required ~~((pursuant to))~~ under chapter 71.24 RCW, including:

(a) In non-RSN counties:

(i) Emergency services, including screening for patients being considered for admission to state hospitals;

~~((b))~~ (ii) Outpatient services;

~~((c))~~ (iii) Day treatment;

~~((d))~~ (iv) Consultation and education services; and

~~((e))~~ (v) Community support services.

~~((27))~~ (b) When RSNs are established, or after July 1, 1995, "mental health services" shall mean all services provided by RSNs.

(35) "Mentally ill persons" and "the mentally ill" means a person or condition defined in this chapter as:

(a) Acutely mentally ill;

(b) Chronically mentally ill; or

(c) Seriously disturbed.

~~((28))~~ (36) "Minority" or "ethnic minority" means any of the following general population groups:

(a) American Indian or Alaskan native, which includes:

(i) An enrolled Indian;

(A) A person enrolled or eligible for enrollment in a recognized tribe.

(B) A person determined eligible to be found Indian by the secretary of the interior.

(C) An Eskimo, Aleut or other Alaskan native.

(ii) A Canadian Indian: A person being a member of a treaty tribe, Metis community or nonstatus Indian community from Canada.

(iii) An unenrolled Indian: A person considered Indian by a federal-ly or nonfederally recognized Indian tribe or off reservation Indian/Alaskan native community organization;

(b) Asian or Pacific Islander(;;);

(c) Black(;;); or

(d) Hispanic.

~~((29))~~ (37) "Outpatient services" means those services provided ~~((in less than a residential or day treatment setting for clients whose dysfunction is not so severe as to need such intense or restrictive service))~~ to priority populations needing less intensive treatment than that provided through inpatient, residential, or day treatment programs. ~~((Outpatient))~~ Services ~~((may))~~ shall include, but are not limited to(;;):

(a) Evaluation~~((, diagnosis,));~~

(b) Individual, family, and group psychotherapy(;;); and

(c) Medication management~~((, and activities therapy)).~~

~~((30))~~ (38) "Preadmission screening services" means those services provided for ~~((clients))~~ consumers being considered for voluntary admission to state hospitals to determine the appropriateness of admission and availability of alternatives.

~~((31))~~ (39) "Properly executed accounting documents" means accounting documents processed in a manner consistent with provider policies and procedures and providing sufficient and adequate documentation for an audit of the agency's financial transactions.

~~((32))~~ (40) "Provider" means licensed service provider as defined in chapter 71.24 RCW.

~~((33))~~ (41) "Regional support network" (RSN) means a county authority or group of county authorities recognized by the secretary that enter into joint operating agreements to contract with the secretary under this chapter.

(42) "Registration records" means all the records of the department, RSN, treatment facilities and other persons providing services to the department, county departments, or facilities. Registration records identify individuals receiving or having received services for mental illness which have been funded by available resources.

(43) "Residential services" means a complete range of residences and supports authorized by resource management services. These may involve a facility, a distinct part thereof or services supporting community living, including, at least:

(a) Evaluation and treatment services as defined in chapter 71.05 RCW;

(b) Crisis respite care;

(c) Supported living services;

(d) Supervised care;

(e) Long-term rehabilitative care;

(f) Long-term adaptive care; and

(g) Support services to nursing home residents.

(44) "Resource management services" means the planning, coordination, and authorization of residential and community support services administered under an ISP for priority populations, including:

(a) Seven day a week, twenty-four hour a day availability of information regarding mentally ill adults' and children's enrollment in services; and

(b) Access to their ISP by county-designated mental health professionals, evaluation and treatment facilities, and others as determined by the RSN.

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

~~((34))~~ (46) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to self or others as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder (~~which causes~~) causing major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a minor child diagnosed by a mental health professional as defined in RCW 71.05.020, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school, or with peers or is clearly interfering with the child's personality development and learning.

~~((35))~~ (47) "Substantial gainful activity" is work ~~((that involves))~~ involving significant physical or mental activities done for pay or profit. Substantial gainful activity means, for elderly, retired persons and disabled persons, due to physical or mental impairment, the ability to manage retirement and/or disability income and activities of daily living. Substantial gainful activity means, for children, the ability to productively participate in educational activities.

(48) "Supervised living services" means facility-based care for adults requiring twenty-four hour supervision but are able to use community-based resources outside of the facility when needed. Supervised living services provide minimal-to-moderate on-site programming primarily directed at maintaining consumers at this level of care or preparing consumers for transition into supported living services.

~~((36))~~ (49) "Supervision" means regular or occasional ~~((oversight))~~ monitoring of the administrative, clinical or clerical work performance of staff, students, volunteers or contracted employees by ~~((person or))~~ persons with the authority to give direction and require change.

~~((37))~~ (50) "Supported living services" means nonfacility programs for adults and children requiring a flexible array of services and supports to successfully live in their homes, adult family homes, or foster homes.

(51) "Training" means planned educational events or activities designed to instill or enhance skills and to increase knowledge.

(52) "Treatment records" means registration and all other records concerning consumers receiving or at any time having received services for mental illness, which are maintained by the department, RSNs, and service providers. Treatment records do not include notes or records maintained for personal use by RSN or treatment facility staff providing treatment services if the notes or records are unavailable to others.

#### NEW SECTION

WAC 275-56-016 REGIONAL SUPPORT NETWORKS—RECOGNITION AND CERTIFICATION. (1) A county or group of counties desiring recognition as a regional support network (RSN) shall submit to the department:

(a) A statement of intent for recognition as an RSN;

(b) Documentation showing a total RSN population greater than forty thousand;

(c) For RSNs of more than one county, documentation of interlocal agreements, including:

(i) Identification of a single authority; and

(ii) Assignment of all responsibilities to specified parties;

(d) A preliminary plan, detailing the following elements:

(i) Crisis response system (WAC 275-56-089);

(ii) Resource management services (WAC 275-56-087);

(iii) System of ongoing care, including:

(A) Community support services (WAC 275-56-088); and

(B) Residential services (WAC 275-56-465);

(iv) Taking responsibility for short-term commitments.

(2) Counties desiring recognition as RSNs by December 1, 1989, shall submit notice of intent and preliminary plans to the department by October 30, 1989. Counties desiring recognition as RSNs by January 1, 1993, shall submit notice of intent and preliminary plans by November 30, 1992.

(3) Within thirty days of application, the department shall provide written response either:

(a) Recognizing the RSN; or

(b) Denying recognition and stating the reasons for denial under subsection (1) of this section.

(4) Recognition and initial certification shall depend on the RSN meeting the standards for planning and provision of services specified in this chapter.

(5) Renewal of certification shall occur prior to each contract between the department and the RSN.

#### NEW SECTION

WAC 275-56-017 REGIONAL SUPPORT NETWORK PLANNING—SIX-YEAR AND BIENNIAL PLANS. (1) Within three months of recognition, the RSN shall submit an overall plan elaborating the preliminary plan. Development of the plan shall include participation by consumers, advocates, and service providers.

(2) The overall plan shall be for a six-year period and include the following elements:

(a) Estimated timelines for implementation of each phase;

(b) Estimated operating and capital budgets;

(c) Documentation that state funds are in no case used to replace local funds from any source used to finance mental health services prior to January 1, 1990;

(d) Administration and provision of:

(i) Crisis response system (WAC 275-56-089);

(ii) Resource management services (WAC 275-56-087) with the definition of access points and criteria for consumer admission and discharge from resource management services; and

(iii) System of ongoing care, including:

(A) Community support services (WAC 275-56-088), with the definition of criteria for admission to and discharge from each component of the RSN's system; and

(B) Residential services (WAC 275-56-465), with the definition of criteria for admission to and discharge from each component in the continuum;

(e) An estimate of the number of transfers from nursing homes due to the Omnibus Budget Reconciliation Act (OBRA);

(f) The appointment of a mental health advisory board to advise the authority on RSN plans and policies. The composition of the board shall be broadly representative of the demographic character of the region and the mentally ill consumers served and shall include:

(i) Consumers;

(ii) Family and other advocates; and

(iii) Parents of mentally ill children;

(g) Provision of eighty-five percent of seventy-two hour detentions and fourteen-day commitments within the RSN by:

(i) July 1, 1993, for RSNs recognized before July 1, 1991;

(ii) July 1, 1995, for RSNs recognized after June 30, 1991;

(h) Administration of a portion of funds appropriated by the legislature to house mentally ill consumers from the RSN, excluding mentally ill offenders (chapter 10.77 RCW), in state institutions. The RSN shall provide for up to seventeen days of evaluation and treatment services (under chapter 71.05 RCW) in appropriate residential services, which may include state institutions. The RSNs shall reimburse the state for use of state institutions at a rate equal to that assumed by the legislature when appropriating funds for such care at state institutions during the biennium reimbursement occurs. This requirement shall be met by:

(i) July 1, 1993, for RSNs recognized before July 1, 1991;

(ii) July 1, 1995, for RSNs recognized after June 30, 1991;

(i) All other mental health services required by the Community Mental Health Services Act for priority populations, including:

(i) Outpatient services (WAC 275-56-385);

(ii) Day treatment services (WAC 275-56-400);

(iii) Consultation and education services (WAC 275-56-425); and

(iv) Mental health services to children.

(j) Mental health services designed for, available and accessible to children, elderly, minorities, disabled, and low-income priority populations. In RSNs where a significant ethnic minority exists, as defined by department guidelines, the plan shall ensure that culturally relevant services are available and accessible to this population. RSNs shall recognize the unique cultural, religious, and tribal sovereignty of Indian nations, tribes, and communities.

(3) Consumer residency in an RSN shall be defined according to guidelines determined by the department in consultation with RSNs.

(4) The RSN shall submit an updated two-year plan each biennium in accordance with department guidelines for RSN planning. The RSN shall identify capital and operating budget requests in each biennial plan.

AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-020 COUNTY (~~(ADMINISTRATION AND)~~) PLANNING—BIENNIAL MENTAL HEALTH NEEDS ASSESSMENT. (~~(The)~~) Prior to July 1, 1995, the non-RSN county authority shall submit to the department ((x)) biennial mental health needs assessments in accordance with department guidelines.

(1) The county authority shall prepare and submit to the department a biennial needs assessment of county residents ((of the county)) who are acutely mentally ill, chronically mentally ill, or seriously disturbed, including minorities, children, elderly, disabled, and low-income groups in these priority populations ((shall be prepared for submittal to the state)). The biennial needs assessment shall determine need ((with respect to)) for mental health services required by the Community Mental Health Services Act.

(2) The biennial needs assessment ((with)) shall include:

(a) Estimates of the type and extent of significant mental health needs of the mentally ill, including estimates of the number of chronically mentally ill persons, seriously disturbed ((persons)) consumers, and acute crises occurring in the county during the biennium.

(b) A projection of the amount and type of mental health services necessary to meet identified mental health needs of the acutely mentally ill, chronically mentally ill, and seriously disturbed.

(c) Identification of public and private resources available to meet the mental health needs of the acutely mentally ill, chronically mentally ill, and seriously disturbed, including:

(i) Identification of licensed service providers in the county.

(ii) Assessment of the capability of the current mental health program and providers to meet the needs of the mentally ill.

(d) A prioritization of unmet needs for the mentally ill.

~~((3) The biennial needs assessment shall be conducted in accordance with department guidelines for needs assessment.)~~

AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-025 COUNTY (~~(ADMINISTRATION AND)~~) PLANNING—BIENNIAL MENTAL HEALTH PLAN AND BUDGET. (~~(The)~~) Prior to July 1, 1995, the non-RSN county authority shall submit to the department a biennial mental health plan and budget in accordance with department standards.

(1) The biennial plan shall address the needs identified in the biennial needs assessment for the acutely mentally ill, chronically mentally ill, and seriously disturbed, including minorities, children, elderly, disabled, and low-income groups in these priority populations. The biennial plan shall be developed based on available resources and priorities established in the biennial needs assessment.

(2) The biennial plan shall include the following components:

(a) ~~((A plan narrative identifying))~~ Identification of needs to be met, goals and objectives, an action plan for coordination and delivery of mental health services(;) and program development activities (related to) regarding needs and priorities identified in the biennial needs assessment. The plan ((narrative)) shall include all mental health services required by the Community Mental Health Services Act ((and may include optional services)) for priority populations, including:

(i) Emergency services including preadmission screening services (WAC 275-56-365);

(ii) Outpatient services (WAC 275-56-385);

(iii) Day treatment (WAC 275-56-400);

(iv) Consultation and education services (WAC 275-56-425);

(v) Case management services (WAC 275-56-445);

(vi) Inpatient services (optional); and

(vii) Residential services (optional).

(b) Description of how mental health services are to be made available to priority consumers throughout the county, including location.

The plan shall indicate how services shall be extended to mentally ill consumers who, because of situation, age or disability, cannot travel to facilities where mental health services are routinely provided.

(c) Description of how mental health services are to be made available and accessible to children, elderly, minorities, disabled, and low-income consumers who are acutely mentally ill, chronically mentally ill, or seriously disturbed. In counties where a significant ethnic minority, as defined by department guidelines, exists, the county plan shall ensure that culturally relevant services are available and accessible to this population. RSNs shall recognize the unique cultural, religious, and tribal sovereignty of Indian nations, tribes, and communities.

(d) A budget identifying revenues and expenditures for mental health services, program development activities, and administration of the mental health program and services. The budget ((with)) shall be

submitted in accordance with the requirements specified in WAC 275-56-070.

~~((3) ((The biennial plan shall be developed in accordance with the planning guidelines of the department.~~

~~((4)) The secretary may modify deadlines for submission of plans, responses to written reviews or contract proposals when, in the secretary's judgment, the modification ((would)) enable the county to improve the program planning process.~~

~~((5))~~ (4) The secretary may authorize the county to continue providing services in accordance with the previous plan ((and)) by amending the existing contract, as necessary, and reimburse at the average level of the previous contract, in order to continue services until the contract is executed.

~~((6) Any))~~ (5) A provider having applied to participate in the community mental health program who objects to county decisions regarding the biennial plan may request a hearing before the county authority. When an appeal is made, the county authority shall review the appeal and notify the provider, in writing, of the appeal disposition within thirty days after the appeal ((has been)) is received.

~~((7) Any))~~ (6) A county objecting to the department's disposition of the county's biennial plan may request an administrative review ((pursuant to)) under the Administrative Procedure Act, chapter ((34.04)) 34.05 RCW.

AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-035 COUNTY (~~(ADMINISTRATION))~~ AND REGIONAL SUPPORT NETWORK PLANNING—PROVIDERS ELIGIBLE FOR FUNDING. The ~~((county))~~ authority shall ensure the biennial plan ~~((is inclusive of))~~ includes only licensed service providers.

(1) The county or RSN may become a provider under the following conditions:

(a) No other provider is available to provide the mental health services; ((and)) or

(b) The county ((has demonstrated)) or RSN demonstrates to the department that ((the county)) it can provide the mental health services more efficiently and cost effectively than other available providers without loss of quality of care. Evidence that ((the county)) it would be more efficient and cost effective than other available providers includes, but is not limited to, lower administrative costs, lower unit cost for comparable services, and higher productivity.

(2) ~~((Where the county is a licensed service provider of mental health services, the department shall meet the following responsibilities of the county authority for the services:~~

~~((a) Contract monitoring of the provider (WAC 275-56-050);~~

~~((b) Fiscal auditing of the provider (WAC 275-56-085);~~

~~((c) Review an appeal of the provider (WAC 275-56-025(6)).~~

~~((3))~~ If a county decides not to participate in the community mental health program, the department shall assume all responsibilities ((of the county authority)) for planning and administering mental health services in that county.

~~((4))~~ (3) Providers contracting with the county or RSN for mental health services shall be licensed by the department in accordance with state minimum standards for community mental health programs.

~~((5))~~ (4) Counties proposing to contract with more than one licensed provider shall demonstrate the following criteria are met:

(a) Assured continuity of care ((is assured));

(b) Services ((will be)) provided in an efficient and cost-effective manner; and

(c) Duplication of services and administrative costs are minimized.

~~((6))~~ (5) County or RSN contracts with individual providers licensed under chapters 18.57, 18.71, 18.83 or 18.88 RCW shall require ((and)) fiscal accountability and participation in the client ((tracking)) mental health information systems as required in this chapter.

~~((7))~~ (6) The department shall determine standards in this chapter applicable to individual providers which shall be incorporated in the contracts with the individual providers.

AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-040 COUNTY (~~(ADMINISTRATION AND)~~) PLANNING—BIENNIAL PLAN AS A BASIS FOR CONTRACTING. ~~((The county authority))~~ Prior to July 1, 1995, the department shall ((utilize)) use the biennial plan and budget as the basis for contracting with the county authority.

(1) A work statement and budget shall be incorporated into the contract ((with the department)).

(2) The contract between the ((county)) department and the ((department)) county shall serve as the basis for county contracts with providers.

(3) When contracting with providers, the county shall ((utilize)) use standardized contract terms and conditions consistent with department guidelines for contracting and including requirements for at least the following:

(a) Reporting of revenue, expenditures, service outcomes, and statistical information on all mental health services provided to priority populations by the provider; and

(b) Compliance with minimum standards as defined under this chapter for community mental health programs.

#### NEW SECTION

WAC 275-56-042 REGIONAL SUPPORT NETWORKS PLANNING—BIENNIAL PLAN AS A BASIS FOR CONTRACTING. The department shall, within available resources, contract with RSNs certified to perform services.

(1) Biennial goals identified in the six-year plan and biennial updates shall serve as the primary source for contractual expectations. The contract shall include:

(a) Requirements under WAC 275-56-017; and

(b) A fiscal plan.

(2) The contract shall specify the requirements for timely reporting of data, statistics, schedules, and information, including:

(a) Fiscal reports;

(b) Reports on the development of identified service components; and

(c) Reports on utilization under WAC 275-56-050.

#### NEW SECTION

WAC 275-56-043 REGIONAL SUPPORT NETWORKS—PENALTIES FOR NONCOMPLIANCE. (1) Failure to provide the department with requested data, statistics, schedules, or information; filing of fraudulent reports; or failure to meet contractual terms may result in:

(a) Suspension, revocation, limitation, or restriction of certification;

(b) Refusal to grant certification; or

(c) The department petitioning the superior court to restrain any person or governmental unit from operating an RSN or service provider without certification or a license. The department may petition the superior court to issue a warrant, authorizing the department to enter at reasonable times, and examine the records, books, and accounts of RSNs or service providers.

(2) The department shall deny funding to RSNs based solely upon findings of noncompliance with the terms of the RSN's contract.

(3) RSNs objecting to the department's disposition of the plan may request an administrative review under the Administrative Procedure Act, chapter 34.05 RCW.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-050 COUNTY ((ADMINISTRATION)) AND REGIONAL SUPPORT NETWORK PLANNING—((COUNTY)) MONITORING OF PROVIDERS. The ((county)) authority shall be responsible for monitoring providers ((which have contracted)) contracting with the ((county)) authority to provide mental health services.

(1) The ((county)) authority shall evaluate, at least annually, ((each)) provider((s)) compliance with ((its)) contract work statements.

(2) Each biennium, the ((county)) authority shall ensure a program audit of the provider is conducted in accordance with guidelines of the department.

(3) The RSN, when established, shall ensure annual independent reviews of utilization of services authorized and coordinated through resource management services. If necessary, the RSN shall take corrective action based on findings from the review. At a minimum, the review shall determine to what extent:

(a) Consumers who are high utilizers of acute care services are enrolled and served;

(b) Consumers in community support and residential services are receiving sufficient and not unnecessary services; and

(c) Mental health services are available and accessible to underserved groups (WAC 275-56-010 (1)(b) and (2)).

(4) The ((county)) authority shall notify the department of ((any findings resulting from the county's monitoring of providers)) observations indicating ((that)) the provider ((is)) may not be in compliance with ((contract terms)) licensing requirements. The ((county)) authority shall submit a written report of program evaluations and audits to the department within thirty days of completion.

~~((4) The)~~ (5) Prior to July 1, 1995, in non-RSN counties, responsibilities specified in this section may be assumed by one county ((where)) when a combination of counties ((have established)) establishes a community mental health program, and the administration of the program is provided by one county.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-055 COUNTY ((ADMINISTRATION)) AND REGIONAL SUPPORT NETWORK PLANNING—((CLIENT TRACKING)) MENTAL HEALTH INFORMATION SYSTEM. The ((county)) authority shall ((be responsible for ensuring)) ensure that ((client tracking)) information for ((the chronically mentally ill)) priority populations is ((maintained on)) promptly reported to the state mental health ((client tracking)) information system. The ((state)) department and the authority shall use the mental health ((client tracking)) information system ((will be a centralized file which may be used by)) for state-wide, county ((authorities for tracking of the chronically mentally ill)), and/or RSN management reports and for locating priority population consumers.

(1) ~~((The counties shall require all))~~ State hospitals, certified evaluation and treatment facilities, other inpatient or residential facilities, county-designated mental health professionals, resource management services, and licensed providers ((of service to the chronically mentally ill to)) under contract to the authority or department shall collect and submit the following information consistent with department guidelines:

(a) ~~((A department-designated client identifier enabling the person to be uniquely identified in any mental health service he or she receives.~~

(b) ~~Name of the state hospital, certified evaluation and treatment facility, other inpatient or residential facility or licensed provider referring the client, and the date of referral.~~

(c) ~~Identification of the facility or provider accepting the client upon referral from another facility or provider, including designation of the licensed provider providing case management services, if any.~~

(d) ~~Service utilization in the community mental health program since the most recent date of referral or release from another facility or provider, including provider name and beginning and ending dates of treatment.~~

(2) ~~The client tracking information shall be provided to the state client tracking system by state hospitals, certified evaluation and treatment facilities, other inpatient or residential facilities, county-designated mental health professionals (chapter 71.05 RCW), and licensed providers under contract to the county authority or department.~~

(a) ~~Referring entities referenced in this section shall provide the department with client tracking information consistent with department guidelines on notification of client referral or release.~~

(b) ~~Providers accepting a client referred from another facility or provider shall notify the state client tracking system of the outcome of the referral, and any subsequent referrals, transfers, or termination of the client)) Name, birthdate, sex, and other identifiers enabling the consumer to be uniquely identified;~~

(b) For registered consumers, the number identifying the agency registering the consumer;

(c) For registered, enrolled consumers, the number identifying the provider enrolling the consumer and information required by resource management services necessary to complete the ISP (WAC 275-56-087);

(d) Services provided; and

(e) Notification of consumer registration within twenty-four hours and notification of enrollment and discharge within seventy-two hours.

(2) Consumers having at least one contact with the mental health system and for whom additional services are planned shall be registered. Registered consumers approved by resource management services for community support or residential services shall be considered enrolled.

(3) The confidentiality of information contained in the ((client tracking file or record)) mental health information system shall be maintained ((in accordance with)) according to WAC 275-56-240 and chapter 71.05 RCW ((71.05.390 through 71.05.440)). All county, RSN, or provider staff having access to the ((client tracking file or

record)) mental health information systems shall be instructed in these confidentiality requirements. A statement signed by the ((individual)) staff acknowledging ((his or her)) understanding and agreement to abide by these requirements shall be kept on file by the county, RSN, or provider.

(4) If ((a county)) an authority chooses to maintain a client tracking system based on other than the state mental health client tracking system, prior approval by the department is required.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-060 COUNTY ((ADMINISTRATION)) AND REGIONAL SUPPORT NETWORK PLANNING—((COUNTY)) COORDINATION OF SERVICES. The ((county)) authority shall ensure coordination of services for ((the acutely mentally ill, chronically mentally ill, and seriously disturbed, including underserved groups within these)) priority populations (WAC 275-56-010). The ((county)) authority shall ((utilize)) use information from the state ((client tracking)) mental health information systems to coordinate ((community support and outreach)) mental health services. The ((county)) authority may contract with and designate a provider to meet the requirements of this section.

((1) Service providers discharging or referring chronically mentally ill clients to another service provider shall provide written notification to the state mental health client tracking system and the receiving agency of that discharge or referral within seventy-two hours.

(2) The receiving agency shall notify the state mental health client tracking system of the admission of the referred client within seventy-two hours of the admission. If the client has not been admitted within two weeks of the referral date, the receiving agency shall notify the state mental health client tracking system of the noncompleted referral.

(3) The county authority or its designee shall utilize information from the state mental health client tracking system to ensure efforts are made to provide needed services to all chronically mentally ill persons referred to providers, inpatient, or residential facilities within the county. When the county or its designee receives notification of noncompleted or inappropriate referrals, the county or its designee shall determine and document the reasons and attempt to arrange an appropriate referral.

(4)) The ((county)) authority shall ((utilize)) use information from the ((state client tracking system)) mental health information systems to routinely monitor continuity of care for ((chronically)) mentally ill ((clients)) consumers.

((5) The county shall at least annually utilize client tracking information to assess the effectiveness of referral patterns and procedures.))

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-065 COUNTY AND REGIONAL SUPPORT NETWORK FISCAL ADMINISTRATION—DISBURSEMENT OF FUNDS ADVANCED BY THE DEPARTMENT. The ((county)) authority shall be responsible for establishing procedures ((to ensure)) ensuring proper application and use of funds advanced by the department for the community mental health program. The ((county)) authority shall maintain adequate documentation of disbursements of the advance account to providers.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-070 COUNTY AND REGIONAL SUPPORT NETWORK FISCAL ADMINISTRATION—SUBMITTAL AND APPROVAL OF MENTAL HEALTH BUDGET. The ((county)) authority shall submit a mental health budget to the department for approval consistent with department guidelines ((of the department)).

(1) The ((county)) budget shall include ((all)) available resources from the department, RSN, and county mental health funds. The budget shall categorize estimated revenues and expenses according to the department's budgeting, accounting, reporting system (BARS), or other department standards consistent with generally accepted accounting principles (GAAP).

((2) The mental health budgets of all providers contracting with the county shall be on file with the county. Provider budgets shall include available resources and other revenues that will support mental health services for acutely mentally ill, chronically mentally ill, and seriously disturbed clients. The provider budget shall categorize estimated revenues and expenses according to the department's standardized accounting system.

((3)) (2) The county or RSN mental health budget and all material adjustments thereof shall be reviewed and formally approved by the ((county)) authority prior to review and approval by the department.

((4)) (3) All county, RSN, or provider requests for federal funding to support any aspect of the community mental health program shall be submitted to the department for review and approval before the request is submitted to any federal agency.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-075 COUNTY AND REGIONAL SUPPORT NETWORK FISCAL ADMINISTRATION—ACCOUNTING RECORDS. The RSN, when established, or the county accounting records shall clearly identify all revenues ((received)) from ((the department)) available resources and expenditures ((thereof)) consistent with the department's budgeting, accounting, reporting system (BARS), or other department standards.

Accounting records shall be supported by properly executed accounting documents. Records, supporting documentation and statistical reports shall be retained for a period of five years, with the following qualifications:

(1) If ((any)) litigation, claim, or audit is started before the expiration of the five-year period, the records shall be retained until ((all)) litigation, claims, or audit findings involving the records ((have been)) are resolved.

(2) Records for nonexpendable property acquired with resources from the department shall be retained for five years after final disposition.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-080 COUNTY AND REGIONAL SUPPORT NETWORK FISCAL ADMINISTRATION—REPORTS TO AND AUDITS BY THE DEPARTMENT. The RSN, when established, or the county shall maintain financial records and provide the department with information on the fiscal performance of the community mental health program.

(1) An original and one copy of the financial report shall be submitted to the department on a semiannual basis consistent with department guidelines ((of the department)).

(a) The report shall account for all mental health funds included in the ((county's)) contract with the department.

(b) The report shall be due in the department within ((forty)) sixty days following the end of each reporting period.

(2) All county records of mental health funds provided to the county by the department shall be maintained in an auditable format. These records shall be available for audit upon request by the department or the department's designated audit agent.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-085 COUNTY AND REGIONAL SUPPORT NETWORK FISCAL ADMINISTRATION—BIENNIAL FISCAL AUDIT OF PROVIDERS. The RSN, when established, or the county authority or designee shall ((be responsible for performing)) perform a biennial fiscal audit of each provider ((which is)) under contract ((to the county)) to provide mental health services.

(1) The biennial audit shall be conducted in accordance with applicable, generally accepted auditing standards (GAAS).

(2) Documentation shall verify that the reports of such audits ((have been)) are reviewed by the governing body of the provider and the ((county)) authority.

(3) The biennial audit shall be completed within twelve months following the end of the department's biennium.

(4) The ((county)) authority shall notify the department of ((any)) audit findings indicating the provider is not in compliance with the county's contract or with minimum standards for community mental health programs.

(5) The ((county)) authority may use an independent audit secured by the provider to meet the requirements of the biennial ((county)) audit.

(6) Where available resources from the department can be separated from other provider revenues ((of the provider)), the audit shall apply only to available resources. Otherwise the ((county)) authority shall perform a biennial fiscal audit of all provider revenues ((of the provider)).

(7) The mental health budgets for all providers contracting with the authority shall be on file with the authority. Provider budgets shall include available resources and other revenues supporting mental health services for priority populations. The provider budget shall categorize estimated revenues and expenses according to department standards.

#### NEW SECTION

WAC 275-56-087 REGIONAL SUPPORT NETWORKS—RESOURCE MANAGEMENT SERVICES. RSNs, when established, shall ensure the provision of resource management services to provide integrated and coordinated services for priority consumers (WAC 275-56-010 (1)(b)), needing community support and residential services.

(1) Resource management services shall develop written criteria for admissions, placements, transfers, and discharges to and from the system of ongoing community (WAC 275-56-088) and residential services (WAC 275-56-465 through 275-56-515), including evaluation and treatment services (chapter 71.05 RCW). Such criteria shall ensure that priority population consumers who are high utilizers of acute care services be enrolled and served.

(2) Resource management services shall identify and establish methods of access to the system which shall include but not be limited to consumers identified by:

- (a) Crisis response system;
- (b) Inpatient programs;
- (c) Jails;
- (d) Shelters;
- (e) Community support and residential providers;
- (f) Families and advocates; and
- (g) Self-referral.

(3) Resource management services shall maintain a liaison with state mental health facilities, evaluation and treatment facilities (chapter 71.05 RCW) and other local inpatient psychiatric facilities to be informed of the status of enrolled and potentially enrolled consumers needing community support services. Resource management services shall assess referrals from the crisis response system and inpatient programs, and if enrolled in community support services, the consumer shall be assigned a case manager within three working days.

(4) Resource management services shall, in collaboration with the consumer or legally responsible other, determine consumer placement within the system of community support and residential services, ensuring that enrolled consumers are provided an integrated and coordinated individualized service plan (ISP) for adequate services and treatment, including:

- (a) Least restrictive housing;
- (b) Treatment;
- (c) Supports to minimize acute crises;
- (d) Income supports; and
- (e) Services to address the specialized needs of underserved populations.

(5) The consumer's preferences shall be given maximum consideration in development and implementation of the ISP for services and placement.

(6) Resource management services shall identify a single entity with primary responsibility for effective implementation of each consumer's ISP.

(7) Where resource management and case management services are integrated, the ISP and the ITP may be a single document.

(8) Resource management services shall approve all terminations of enrolled consumers.

(9) Resource management services staff shall have clinical training assuring appropriate assessment, admission, placement, transfers, and discharges. Resource management services supervisors shall be mental health professionals.

(10) Resource management services shall participate in the state mental health information systems, reporting admissions, placements, transfers, and discharges according to WAC 275-56-055.

(11) Resource management services shall assure access to seven day a week, twenty-four hour availability of information regarding mentally ill adults' and children's enrollment in services and their ISP's to county-designated mental health professionals, evaluation and treatment facilities, and others as determined by the RSN.

#### NEW SECTION

WAC 275-56-088 REGIONAL SUPPORT NETWORKS—COMMUNITY SUPPORT SERVICES. After July 1, 1995, or when

RSNs are established, for adults and children priority populations (WAC 275-56-010 (1)(b)), community support services shall include:

- (1) Assessment and diagnosis (WAC 275-56-260);
- (2) Emergency crisis intervention available twenty-four hours, seven days a week (WAC 275-56-355);
- (3) Prescreening determinations for mentally ill consumers being considered for placement in nursing homes as required by federal law and department issuances;
- (4) Screening for consumers being considered for admission to residential services;
- (5) Discharge planning for consumers leaving state mental hospitals, other acute care inpatient facilities, and other children's mental health residential treatment facilities (WAC 275-56-445);
- (6) Investigation, legal, and other nonresidential services (chapter 71.05 RCW);
- (7) Case management services (WAC 275-56-445);
- (8) Psychiatric treatment, including medication supervision (WAC 275-56-295);
- (9) Counseling (WAC 275-56-385);
- (10) Psychotherapy (WAC 275-56-385);
- (11) Assuring transfer of relevant patient information between service providers (WAC 275-56-240);
- (12) Participation in the state mental health information systems for priority populations (WAC 275-56-055); and
- (13) Other services determined by RSNs, including day treatment services (WAC 275-56-400).

#### NEW SECTION

WAC 275-56-089 REGIONAL SUPPORT NETWORKS—CRISIS RESPONSE SYSTEM. RSNs, when established, shall develop an integrated crisis response system (CRS). The CRS shall serve consumers of all ages in emotional crisis in the community.

(1) The CRS shall provide twenty-four hour telephone screening (WAC 275-56-355 (1)(a)) which has working relationships with other emergency telephone systems, where available.

(2) To ensure the least restrictive resolution of the crisis, the RSN shall integrate the provision of the following services:

- (a) Initial screening and assessment (WAC 275-56-355) to determine:
  - (i) Whether the crisis has an emotional or mental illness basis;
  - (ii) Course of action; and
  - (iii) Assignment of resources necessary to resolve the crisis;
- (b) Twenty-four hour mobile outreach to:
  - (i) Conduct face-to-face evaluations (WAC 275-56-355 (1)(b) and (4)); and
  - (ii) Support and assistance to stabilize the consumer in the community, if possible;
  - (c) Crisis respite care (WAC 275-56-465(5));
  - (d) Investigation and detention services (chapter 71.05 RCW);
  - (e) Twenty-four hour access to:
    - (i) Voluntary and involuntary (chapter 71.05 RCW) psychiatric inpatient care;
    - (ii) Medical services, including:
      - (A) Emergency medical services, including preliminary screening for organic complications;
      - (B) Prescription services; and
      - (C) Medication administration;
    - (iii) Interpretative services enabling staff to communicate with consumers;
  - (f) Within available resources and extent of authority, twenty-four hour access to:
    - (i) Drug and alcohol detoxification resources; and
    - (ii) Emergency basic services, including:
      - (A) Food;
      - (B) Clothing;
      - (C) Shelter; and
      - (D) Transportation.

(3) CRS staff shall use the mental health information systems to determine consumer enrollment status in the ongoing system of community support or residential services.

(a) If the consumer is enrolled by resource management services, CRS staff shall involve the case manager in resolving the crisis.

(b) Following resource management services criteria, CRS staff shall refer priority population consumers (WAC 275-56-010 (1)(b)) who are not enrolled to resource management services.

(4) The CRS shall develop and maintain working relationships with supportive services needed by consumers in crisis, but not available in the mental health system.

(5) Caregivers shall have immediate access to CRS staff.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-090 LICENSING PROCEDURES FOR PROVIDERS—APPLICABILITY OF MINIMUM STANDARDS FOR COMMUNITY MENTAL HEALTH PROGRAMS. The department shall license providers (excluding individual providers licensed under chapter 18.57, 18.71, 18.83 or 18.88 RCW) (~~shall be licensed by the department~~) according to established standards before (~~entering~~) they may enter into a contract with the RSN, when established, or the county to provide mental health services.

(1) A provider contracting with the county or RSN for (~~an~~) services required by the Community Mental Health Services Act shall meet all minimum standards for (~~organizational administration, services administration, and services~~) service delivery in this chapter.

(2) (~~Where~~) The department shall determine the minimum standards when the provider contracts with the county or RSN for some but not all of the required mental health services (~~the department shall determine the minimum standards applicable to the provider and the contracted services~~).

(3) (~~Where~~) When a provider is part of a superordinate structure (e.g., county, hospital, university), the standards shall apply only to the community mental health component of that structure.

(4) (~~Where~~) Only when a provider is able to separate contracted mental health services for (~~the acutely mentally ill, chronically mentally ill, and seriously disturbed~~) priority populations from mental health services provided other (~~client~~) consumer populations, (~~organizational administration, services administration, and services~~) shall service standards (~~shall~~) apply (~~only~~) to the contracted services. The provider shall demonstrate to the department's satisfaction that (~~the~~) contracted services are distinct from other services with respect to (~~the following~~):

- (a) Budget, revenues, and expenditures(~~;~~);
- (b) Staffing(~~;~~); and
- (c) (~~Clients~~) Consumers served(~~;~~ and
- (d) Identification in the organizational structure).

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-095 LICENSING PROCEDURES FOR PROVIDERS—APPLICATION AND APPROVAL. The department shall review applications for licensure and approve those (~~which meet~~) meeting minimum standards for community mental health programs.

(1) Applications for licensure shall be submitted to the department on forms furnished by the department. The applicant shall indicate the services for which licensure is requested.

(a) Applications shall be signed by the applicant's governing body and administrator.

(b) The applicant shall send a copy of the application to the (~~county~~) authority or (~~the~~) designee. The (~~county~~) authority or (~~the~~) designee may review the application and send written comments to the department with a copy to the applicant. If the department does not receive a response from the (~~county~~) authority or (~~the~~) designee within thirty days, the department shall proceed with the application.

(2) The department shall conduct an on-site review (~~shall be conducted for the purpose of collecting~~) to collect and (~~analyzing the~~) analyze information (~~necessary for the department~~) to determine (~~whether~~) if a provider is in compliance with the minimum standards (~~specified in~~) of this chapter. The department shall provide forty-five days written notice prior to the date scheduled for the licensure review.

(3) The department shall notify the applicant of the review results (~~of the review~~) and make the review report (~~of the on-site review~~) available to the applicant and (~~county~~) the authority within sixty days of the last day of the on-site review.

(4) The (~~applicant may appeal the department's licensure decision within thirty days of notification of decision. The appeal shall be made in accordance with the Administrative Procedure Act, chapter 34.04 RCW~~) department's notice of denial, revocation, suspension, or modification of a licensing decision is governed by RCW 43.20A.— (section 95, chapter 175, Laws of 1989). The provider's right to an adjudicative proceeding is in the same law.

(5) A provider wanting to contest a department licensing decision shall, within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(b) Include in or with the application:

- (i) A specific statement of the issue or issues and law involved;
- (ii) The grounds for contesting the department decision; and
- (iii) A copy of the department decision being contested.

The proceeding shall be governed by the Administrative Procedure Act (chapter 34.05 RCW); RCW 43.20A.— (section 95, chapter 175, Laws of 1989); this section; and chapter 388-08 WAC. If any provision of this section conflicts with chapter 388-08 WAC, the provision in this section governs.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-100 LICENSING PROCEDURES FOR PROVIDERS—WAIVER OF RULES. (~~Any~~) (1) A provider or applicant subject to the provisions of this chapter may seek a waiver of any requirement of this chapter(~~:~~):

(1) The provider or applicant shall file a written request for a waiver with the department which shall include:

(a) The name and address of the provider or applicant seeking the waiver;

(b) The specific section or subsection of this chapter for which waiver is sought;

(c) An explanation of why a waiver of the section or subsection is necessary;

(d) A description of the alternative practice or procedure the provider proposes to follow in lieu of that required by the section or subsection; or a plan for satisfying the requirement with the section or subsection for which the waiver is sought; and

(e) by submitting forms furnished by the department and signed (~~documentation~~) approval from the (~~county~~) authority or designee reviewing the waiver including recommendations regarding the request.

(2) Upon receipt of a request for waiver, the department shall consider the following:

(a) Impact on accountability, efficiency, and quality of care;

(b) (~~The~~) Degree of noncompliance (~~being~~) sought;

(c) Whether the waiver (~~would~~) run counter to the intent of chapter 71.24 RCW or other laws or regulations; and

(d) (~~Whether~~) Precedents, if any (~~similar requests for waiver have been granted or denied~~).

(3) The department's response to the waiver request shall be provided in writing within sixty days of receipt of the request.

(a) If the waiver is granted, the notice shall include:

(i) (~~The~~) Section or subsection waived;

(ii) (~~Any~~) Conditions (~~which the applicant must comply with~~);

(iii) (~~The~~) Duration of the waiver which shall in no case exceed two years from the date of the licensure; and

(iv) Notification that the waiver shall be subject to review and possible renewal, if requested.

(b) If the waiver request is denied, the notice shall include reasons for the decision.

(4) The denial of a waiver request may be appealed to the secretary (~~whose decision shall be final~~) in accordance with the Administrative Procedure Act, chapter 34.05 RCW.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-105 LICENSING PROCEDURES FOR PROVIDERS—LICENSURE STATUS. The department shall, based on findings of a licensure review, assign the provider one of the following licensure statuses:

(1) Licensed

(a) Under this status the (~~provider is eligible to enter into a~~) authority may contract with the (~~county authority~~) provider to provide those mental health services for which the provider is licensed.

(b) The department (~~may~~) shall require the provider to submit and implement a plan of correction to resolve deficiencies, if present. The department may revoke the license if the provider does not implement the (~~provider's~~) plan of correction.

(c) At any time the department receives information indicating the provider (~~has~~) is not (~~continued to comply~~) in compliance with minimum standards for community mental health programs, the department may conduct a new licensure review.

(d) The department may revoke the license if the review (~~determines~~) shows the provider is not in substantial compliance.

(e) If evidence indicates that the health and safety of the ~~((client))~~ consumer is in danger, the revocation may be ~~((made effective))~~ immediately effective.

~~(2) ((Interim licensure~~

~~(a) Interim licensure shall be given to all providers contracting with a county authority to provide mental health services as of the effective date of this chapter:~~

~~(b) Interim licensure shall remain in effect until notification of licensure status resulting from the department's first licensure review of the provider or until two years following the effective date of this chapter:~~

~~(c) Following the department's first licensure review the provider shall have the licensure status assigned by the department:~~

~~(3)) Probationary licensure~~

~~(a) Under this status the provider is eligible to contract with the ((county)) authority on conditions specified by the department.~~

~~(b) To achieve full licensure the provider shall demonstrate to the department that it has met the conditions of the probationary status.~~

~~(c) The provider shall request that the department ((to)) review its corrective actions within six months of notification of probationary status or its licensure shall be revoked.~~

~~(d) The department shall review the provider's corrective actions and make a redetermination of licensure status within six months of the date of the provider's request for review.~~

~~(e) Probationary status shall only be assigned a provider as an outcome of the department's first licensure review of a provider or ((of)) a new provider service ((of that provider)).~~

~~((4)) (3) Provisional licensure~~

~~A new provider or a provider planning to offer a new service may be given a provisional license for up to one year if the following conditions are met:~~

~~(a) It has an acceptable detailed plan for the development and operation of such service;~~

~~(b) It can demonstrate the availability of administrative and clinical expertise required to develop and provide the planned services; and~~

~~(c) It has the fiscal management and existing or projected resources to reasonably assure ((the)) stability and solvency of the planned service.~~

~~((5)) (4) The ((provider's contract with the county)) authority shall ((be terminated)) terminate the contract with the provider thirty days following the department's notification to the provider and the ((county)) authority of failure to attain or maintain licensure.~~

~~((6)) (5) Providers failing to attain licensure or whose licensure ((has been)) is revoked may reapply for licensure no earlier than six months following the date of the department's notification.~~

~~(a) The application shall document the actions the provider has taken to correct deficiencies found in the prior licensure review.~~

~~(b) If the application demonstrates the provider has made every reasonable effort to correct deficiencies, the department shall schedule a licensure review to evaluate compliance with those standards previously unmet.~~

~~((7)) (6) A license shall be in effect for two years or until a review for relicensure ((has been)) is conducted.~~

AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-110 PROVIDER ADMINISTRATION—POLICIES AND PROCEDURES. The provider shall have written policies and procedures for ~~((operations and administration))~~ the delivery of services. The provider's policies and procedures shall ~~((include:~~

~~(1) Fiscal administration;~~

~~(2) Personnel management;~~

~~(3) Affirmative action;~~

~~(4) Staff training;~~

~~(5) Quality assurance;~~

~~(6) Client rights;~~

~~(7) Client records;~~

~~(8) Client entry, service planning, operations, and~~

~~(9) Services)) serve to ensure maintenance of minimum standards as established by the department in this chapter.~~

AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-115 PROVIDER ADMINISTRATION—GOVERNING BODY. (1) The provider shall have a governing body which shall ~~((be responsible for the provider's:~~

~~(1) Policies;~~

~~(2) Total budget;~~

~~(3) Biennial plan and budget for services proposed for contract with the county authority; and~~

~~(4) Contract with the county authority for mental health services)) authorize and approve:~~

~~(a) Policies;~~

~~(b) Budget and audit; and~~

~~(c) Contract with the RSN or county authority for mental health services.~~

~~(2) The governing body shall designate an administrator.~~

AMENDATORY SECTION (Amending Order 2474, filed 2/27/87)

WAC 275-56-135 PROVIDER FISCAL ADMINISTRATION—WRITTEN SCHEDULE OF FEES. The provider, excepting services also licensed under chapter 248-14, 248-16 or 248-25 WAC, shall establish and use a sliding fee schedule based on the resources available to the ~~((client))~~ consumer to pay for mental health services and the provider's actual cost of care.

~~((Use of the fee schedule shall be approved by))~~ The department ~~((as part of the licensing process. Effective April 1, 1987, approval will))~~ shall only ~~((be given to))~~ approve sliding scale fee schedules ~~((which do))~~ not ~~((require))~~ requiring payment from ~~((individuals))~~ consumers with ~~((an))~~ income levels equal to or below the grant standards for the general assistance program (WAC 388-29-100).

(2) The fee schedule shall be accessible to the provider's staff and ~~((clients))~~ consumers.

AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-150 PROVIDER FISCAL ADMINISTRATION—ACCOUNTING SYSTEM. The provider shall maintain an ~~((appropriate))~~ accounting system ~~((for administration of financial resources:~~

~~(1) The provider shall maintain the accounting system))~~ in accordance with applicable, generally accepted accounting principles (GAAP) and department standards.

~~((2) Accounting records shall clearly identify all revenues by source:~~

~~(3) All expenses shall be recorded in a manner to clearly show the budget category charged:))~~ (1) Financial records, supporting documentation, and statistical reports shall be retained for a period of five years, with the following qualifications:

~~(a) If any litigation, claim, or audit is started before the expiration of the five-year period, the records shall be retained until all litigation, claims, or audit findings involving the records is resolved.~~

~~(b) Records for nonexpendable property acquired with resources from the department shall be retained for five years after final disposition of the property.~~

(2) The provider shall prepare a formal, written budget of all expected revenues and expenses identifying mental health services for priority populations. The budget shall categorize revenues by source and expenses by types of services and/or program components consistent with GAAP and department standards.

(3) Financial statements shall be prepared at least annually in conformity with generally accepted accounting principles (GAAP) and shall be available to the authority and department upon request.

(4) If the provider has a contract with the RSN or county, the provider shall submit to the authority at least semiannual revenue and expense reports based on department standards. The revenue and expense reports shall include the relationship of the approved budget to actual revenue and expenditure.

(5) The provider's financial operations shall receive an independent audit at least biennially.

(a) The audit shall be conducted in accordance with generally accepted auditing standards (GAAS).

(b) The audit shall be completed within twelve months following the end of the state's biennium.

(c) The RSN or county biennial fiscal audit of the provider may be used to meet the audit requirements of this section.

AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-170 PERSONNEL MANAGEMENT—PERSONNEL RECORDS. A personnel record shall be kept on file by the provider for each staff member. ~~((The))~~

(1) Clinical staff personnel records shall contain:

~~((+)) (a) Documentation verifying education, experience, and clinical training;~~

- ~~((2)) (b) Verification of required licensure or certification;~~  
~~((3)) (c) Job ~~(description)~~ title; and~~  
~~((4)) (d) Documentation of continuing education ~~(including in-~~  
~~service training received and training needs; and~~  
 (5) Documentation of the staff member's review of client rights).  
 (2) The provider shall maintain a job description for each job title.~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-175 PERSONNEL MANAGEMENT—STAFF QUALIFICATIONS. The provider shall ensure that all direct treatment services ~~(shall be)~~ are provided and supervised by staff members with the ~~(appropriate)~~ clinical qualifications listed below.

(1) All direct treatment services shall be provided by a mental health professional or under the clinical supervision of a mental health professional as defined ~~(pursuant to)~~ under chapter 71.05 RCW (as follows:

- (a) A physician or osteopath licensed pursuant to chapter 18.57 or 18.71 RCW, who is board eligible in psychiatry; or  
 (b) A psychologist licensed pursuant to chapter 18.83 RCW; or  
 (c) A psychiatric nurse or social worker; or  
 (d) A person having at least a masters degree in behavioral, nursing sciences, or related field from an accredited college or university and having at least two years' experience in the direct treatment of mentally ill clients under the supervision of a mental health professional; or  
 (e) A person professionally registered or certificated (e.g., registered nurse, occupational therapist, physical therapist) and having at least three years' experience in working with mentally ill clients under supervision of a mental health professional. Such a person shall be defined as a mental health professional only when working within the skill areas for which he or she is registered or certificated.

(2) A clinical staff member or trainee not meeting the qualifications stated in subsection (1) of this section shall only provide direct treatment, screening, case management or support services under the following conditions:

- (a) The person has been evaluated by a mental health professional and determined to possess the skills and knowledge necessary to work with the client population to be served, and in the identified function or role to be performed; and  
 (b) The service is provided under the supervision of a mental health professional or as part of an organized treatment team;) and WAC 275-56-015(32).

(2) Clinical supervision and consultation for each service component shall be provided by a mental health professional with two years' experience in that service component.

(3) The staff member with overall responsibility for providing clinical services shall be a mental health professional with at least five years' experience in mental health services to priority populations and have documented supervisory training or experience.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-180 PERSONNEL MANAGEMENT—CLINICAL SUPERVISION. The provider shall ensure that all persons providing direct treatment services ~~(shall)~~ receive appropriate clinical supervision and/or consultation.

(1) ~~(Clinical supervision shall be provided by a mental health professional:~~

~~(2)) Full-time clinical staff members who are mental health professionals providing direct treatment services shall receive at least one hour ~~(per)~~ every two weeks of clinical supervision and/or consultation. Proportionately less time is required for part-time mental health professional staff and volunteers. ~~(Persons)~~ Mental health professionals with medical and/or overall clinical responsibilities shall receive ~~(appropriate)~~ peer consultation, as needed.~~

~~((3-Other)) (2) Full-time ~~(clinical)~~ nonmental health professional staff members providing direct treatment services shall receive at least two hours per week of clinical supervision from a mental health professional. Proportionately less time is required for part-time staff.~~

~~((4) Volunteers and trainees providing direct services, who are mental health professionals, shall receive at least three hours per week of clinical supervision from a mental health professional. Proportionately less time is required for persons providing direct treatment services on a part-time basis.~~

~~(5)) (3) Volunteers and trainees providing direct ~~(treatment)~~ services, who are not mental health professionals, shall receive at least one hour of clinical supervision from a mental health professional for~~

every ~~(five)~~ twenty hours of direct treatment services provided. ~~(Volunteers, trainees or other persons providing telephone screening or telephone crisis counseling shall not be subject to this subsection; given clinical supervision is available in person, by telephone, or by radio communication at all times.~~

~~(6)) (4) Clinical backup by a mental health professional in person, by telephone, or by radio communication shall be available to staff at all times when service is being provided.~~

~~((7)) (5) Where required by law, specialized services (e.g., medical, psychiatric, psychological, and nursing services) shall be provided or supervised by ~~(appropriately)~~ licensed or credentialed persons in accordance with respective professional standards.~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-185 PERSONNEL MANAGEMENT—QUALIFICATIONS APPROPRIATE TO THE NEEDS OF THE ~~(ELDERLY)~~ CONSUMER POPULATION. The provider shall ensure that the clinical qualifications of persons providing and/or supervising direct treatment services ~~(shall)~~ reflect the needs of the ~~(client)~~ consumer population.

(1) ~~(Services to persons acutely mentally ill, chronically mentally ill, or seriously disturbed shall be provided by or under the supervision of a mental health professional with at least two years of experience in treatment of such clients.~~

~~(2)) Services directed to children shall be provided by, under the supervision of, or with consultation from a child mental health specialist defined as follows:~~

(a) A mental health professional having completed a minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to the study of child development and the treatment of seriously disturbed children and their families; and

(b) Having the equivalent of one year of full-time experience in the treatment of seriously disturbed children and their families under the supervision of a child mental health specialist.

~~((3)) (2) Services directed to the elderly shall be provided by, under the supervision of, or with consultation from a geriatric mental health specialist defined as follows:~~

(a) A mental health professional having completed a minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to the problems and treatment of the elderly; and

(b) Having the equivalent of one year of full-time experience in the treatment of the elderly, under the supervision of a geriatric mental health specialist.

~~((4)) (3) Services directed to ethnic minority ~~(persons)~~ consumers shall be provided by, under the supervision of, or with consultation from a minority mental health specialist defined as follows:~~

(a) A mental health professional having ~~(completed a minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to minority issues and treatment of minority persons; and~~

~~(b) Having)) the equivalent of one year of full-time experience in the treatment of ~~(persons)~~ consumers in the ethnic minority group ~~(he or she serves)~~ served. Such experience shall have been supervised by a mental health ~~(professional and shall have included consultation with minority providers and/or community leaders who are members of)~~ specialist in the minority group served; and~~

~~(b) Received sixteen annual hours of related specialized training up to a total of one hundred hours; or~~

~~(c) Completed a minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to ethnic minority issues and treatment of ethnic minority consumers.~~

~~((5)) (4) Services directed to ~~(disabled persons)~~ consumers with a disability shall be provided by, under the supervision of or with consultation from a mental health specialist with special expertise in working with that disabled group.~~

(a) If the ~~(client)~~ consumer is deaf, the specialist shall be a mental health professional knowledgeable of deaf culture and psychosocial problems, and able to communicate ~~(with the person and be knowledgeable of the special psychosocial problems of the deaf)~~ fluently in the preferred language system of the consumer.

(b) The specialist for ~~(developmentally disabled clients)~~ consumers with developmental disabilities shall have a minimum of one hundred actual hours (not semester or quarter hours) of specialized training devoted to the problem and treatment of the developmentally disabled, or have one year of supervised experience in a developmental disability or special education program, or be a developmental disability or special education professional.

~~((6))~~ (5) Where the mental health specialists required under this section are unavailable within the RSN, when established, or county, the ~~(provider)~~ authority shall:

(a) Document effort to acquire the services of the required specialists; and

(b) Develop a training program using in-service training or outside resources to assist ~~(existing staff members)~~ service providers to acquire necessary skills and experience to serve the needs of the consumer population; and, if a significant ethnic minority, as defined by department guidelines, exists in the county or RSN, the authority shall develop the training program to assist provider staff members to acquire the specialized training and supervision to become qualified specialists; or

(c) Contract or otherwise establish a working relationship with the required specialists to provide all or part of the direct treatment services for these populations or to supervise or provide consultation to staff members providing direct treatment services to these populations.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-195 PERSONNEL MANAGEMENT—AFFIRMATIVE ACTION. The provider shall have an affirmative action program ~~((which complies))~~ complying with Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, Section 504 of the 1974 Rehabilitation Act, the department's affirmative action guidelines, and other applicable federal, state, and local laws and regulations.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-200 PERSONNEL MANAGEMENT—TRAINING ~~((OPPORTUNITIES))~~. The provider shall make training opportunities ~~((shall be made))~~ available to administrative, clinical and clerical staff, and volunteers relevant to their areas of responsibility through in-service programs and/or training offered by outside resources.

(1) Each full-time clinical staff member, including volunteers, shall receive a minimum of ~~((forty))~~ twenty-four hours of training per year without loss of pay. Proportionately less training shall be received by part-time clinical staff and volunteers.

(2) Volunteers, trainees or other nonprofessional persons providing telephone screening or telephone crisis counseling shall receive a minimum of thirty hours of appropriate training prior to providing telephone screening or telephone crisis counseling.

(3) Required training is in addition to routine supervision or consultation.

(4) ~~((Training shall be consistent with needs identified in the individual's personnel file.~~

(5) All training received by staff and volunteers shall be documented in the personnel files.) The provider shall maintain minimal documentation of all training.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-205 QUALITY ASSURANCE—CASE REVIEW. The provider shall establish and maintain a quality assurance ~~((case review process shall be established for all direct treatment services:~~

~~((1) The quality assurance review shall objectively assess the progress and outcome of treatment.~~

~~((a) The review shall be conducted by a person or persons not participating in treatment of the case under review. The review may be conducted by an outside consultant.~~

~~((b) At least one mental health professional shall participate in the review.~~

~~((c) At least fifteen cases or five percent, whichever is larger, of the provider's open cases shall be randomly sampled every three months and reviewed for quality of care.~~

~~((i) The sample shall be stratified to:~~

~~((A) Represent each mental health service at least every six months;~~

~~((B) Represent at least one case from each primary therapist or case manager every six months.~~

~~((ii) The cases shall represent acutely mentally ill, chronically mentally ill, and seriously disturbed persons appropriate to the service provided.~~

~~((2) The case review shall result in a determination of whether:~~

~~((a) The client's psychosocial, medical and treatment history, mental and medical status, and special assessments support the needs, problems, and diagnosis specified in the individual's service plan.~~

~~((b) Treatment goals follow from identified needs and problems; identify the expected outcome of treatment, and can be realistically achieved;~~

~~((c) Case progress indicates the goals of treatment have been or will be achieved;~~

~~((d) Medication and other services prescribed or assigned are utilized appropriately; and~~

~~((e) The client should continue in treatment.~~

~~((3) Client records shall be accurate and complete and shall contain the information required by this chapter.~~

~~((4) Corrective actions shall be recommended where a case review indicates inappropriate clinical care.~~

~~((a) Corrective action shall be considered for both the service program and the individual client's service plan.~~

~~((b) Recommendations for corrective action shall be submitted to the primary therapist or case manager, his or her supervisor, and other appropriate supervisors.~~

~~((c) Actions taken in regard to an individual client as a result of the review shall be documented in the client's record))~~ program to enhance consumer care through objective assessment of such care and the correction of identified problems.

(1) Problem identification: The quality assurance program shall include identification of important or potential problems, or related concerns, in the care of consumers, including whether:

(a) Treatment goals follow from identified needs and problems, identify the expected outcomes of treatment, and can be realistically achieved;

(b) Case progress indicates the goals of treatment have been or will be achieved; and

(c) Medications and other prescriptive services are appropriate to current need.

(2) Problem assessment: The quality assurance program shall include objective assessment of the cause and scope of the problems or concerns.

(3) Problem correction: The quality assurance program shall include implementation, by appropriate individuals of decisions or actions designed to eliminate identified problems.

(4) Monitoring of problem resolution: The provider shall, through periodic monitoring of the results of the corrective actions taken, assure that the identified problem is eliminated or satisfactorily reduced.

(5) The review shall be conducted by a person or persons not participating in treatment of the case under review.

(6) A mental health professional shall participate in the review.

(7) The quality assurance program shall assure random review of each clinical staff person's work and each service component over twelve months.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-210 ~~((PROGRAM EVALUATION))~~ RESEARCH—REQUIREMENTS. ~~((The provider shall have a system for determining the degree to which service activities meet its goals and objectives.~~

~~((1) The provider shall have an information system providing relevant, accurate, and timely data in order to monitor program goals and objectives. The provider shall maintain sufficient data to report the Washington state mental health information system minimum data set.~~

~~((2) At least one study of provider operations and intended results of services shall be completed annually. The studies shall address priority issues of concern to the provider and be related to its goals and objectives.~~

~~((3)) Program evaluation or research involving human subjects shall be conducted in accordance with RCW 71.05.390, and "Guide to DSHS policy on protection of human research subjects," July 1, 1981.~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-215 FACILITY CHARACTERISTICS. The provider shall deliver services ~~((shall be provided))~~ in a setting safe and conducive to the attainment of ~~((therapeutic))~~ ITP goals.

~~((1))~~ Provider facilities shall meet federal, state, and local requirements, including building, health, and fire codes.

~~((2))~~ Group therapy rooms shall be of adequate size to accommodate the groups without crowding.

~~(3) Rooms used for client services shall be fully enclosed, have closing doors, and shall be reasonably soundproofed to reduce both distracting noises and the possibility of conversations being overheard outside the room.~~

~~(4) If physical examinations are routinely performed within the facility, a suitably equipped examination room shall be available.)~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-220 SERVICES ADMINISTRATION—ACCESSIBILITY. ~~((Services))~~ The provider shall ~~((be))~~ deliver services in an accessible ~~((in a))~~ and nondiscriminatory manner and at times and locations ~~((which facilitate client utilization of services))~~ that assist consumer use.

~~(1) Services to priority populations (WAC 275-56-010) shall include alternative locations for service delivery, including home visits, school visits, or visits to other community agencies.~~

~~((†)) (2) Services to ((acutely and chronically mentally ill and seriously disturbed clients)) priority population consumers from underserved groups, including minorities, children, the elderly, disabled, and low-income ((persons)) consumers shall be accessible and meet the special needs of these populations.~~

~~(a) The provider shall eliminate or substantially reduce physical, communication, and sociocultural barriers to utilization of services.~~

~~(b) The provider shall assure access to TTY and certified interpreters for hearing impaired consumers.~~

~~(c) Services shall be compatible with the culture and in the language of ethnic minority ((clients)) consumers where a significant ethnic minority population as defined by department guidelines, exists in the RSN or county.~~

~~((†)) (d) In-home services shall be available to homebound ((persons)) consumers, where possible.~~

~~((†)) (e) Alternative service delivery models shall be provided, where possible, to enhance utilization by these underserved groups.~~

~~((2)) (3) Services shall be provided regularly on some evenings and/or weekends as determined by ((client and potential)) consumer needs.~~

~~((3)) (4) In non-RSN counties, if the provider does not offer ((appropriate)) necessary services, the ((client)) consumer shall be referred to such services and the provider shall facilitate the referral.~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-225 SERVICES ADMINISTRATION—AWARENESS OF SERVICES. The location of the provider and services offered shall be ~~((made known to the public))~~ publicized.

~~(1) The provider shall maintain listings in ((att)) telephone and other public directories of the service area.~~

~~(2) The provider shall publish and disseminate brochures and other materials describing services and hours of operation.~~

~~(3) ((The provider shall publish and disseminate)) Bilingual ((brochures and other)) materials shall be disseminated when there is a significant non-English speaking population in the service area.~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-230 SERVICES ADMINISTRATION—~~((CLIENT))~~ CONSUMER RIGHTS. The provider shall maintain written policies and procedures relating to ~~((client))~~ consumer rights, and shall ensure all personnel are informed and adhere to policies and procedures.

~~(1) ((Clients)) Consumers, prospective ((clients)) consumers, and/or legally responsible others shall be informed of ((client)) consumer rights at admission.~~

~~(2) The provider shall post a written statement of ((client)) consumer rights in public areas. A copy shall be available to ((clients)) consumers on request. Providers of only telephone services (e.g., crisis lines) shall post the statement of ((client)) consumer rights in a location visible to staff and volunteers during working hours.~~

~~(3) Provider staff shall make information available regarding local advocacy organizations that may assist consumers in understanding their rights.~~

~~(4) The statement of ((client)) consumer rights shall include at least:~~

~~(a) The right to receive appropriate care and treatment, employing the least restrictive alternatives available;~~

~~(b) The right to be treated with respect and dignity;~~

~~(c) The right to receive treatment which is nondiscriminatory and sensitive to differences of race, culture, language, sex, age, national origin, disability, creed, socioeconomic status, marital status, sexual orientation, and ability to pay((:));~~

~~(d) The right to an individualized ((service)) treatment plan reflecting problems and/or needs identified for or with the ((client)) consumer;~~

~~(e) The right to confidentiality as specified in relevant statutes (chapter 71.05 RCW) and regulations (chapter 275-55 WAC and WAC 275-56-240)((:));~~

~~((†)) (f) The right to refuse any proposed treatment consistent with chapter 71.05 RCW;~~

~~(g) The right to review the consumer's case record under conditions specified in WAC 275-56-235(2);~~

~~(h) The right to receive an explanation of all medications prescribed, including expected effect and possible side effects;~~

~~(i) The right to be free of any sexual exploitation or harassment;~~

~~(j) The right to lodge a grievance with the provider if the consumer has reason to believe their rights have been violated. The statement shall include the grievance procedure.~~

~~(5) Policies of the provider shall address circumstances where confidentiality shall not be maintained, including at least:~~

~~(a) ((Where)) When there is reason to suspect the occurrence of adult or child abuse or neglect;~~

~~(b) ((Where there is)) When the consumer presents a clear threat to do serious bodily harm to self or others; and~~

~~(c) To a court under court order((:));~~

~~(d) The right to refuse any proposed treatment consistent with chapter 71.05 RCW;~~

~~(e) The right to review the client's case record under conditions specified in WAC 275-56-235(2);~~

~~(f) The right to receive an explanation of all medications prescribed, including expected effect and possible side effects;~~

~~(g) The right to be free of any sexual exploitation or harassment;~~

~~(h) The right to lodge a grievance with the provider if the client has reason to believe his or her rights have been violated. The statement shall include the grievance procedure)).~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-235 SERVICES ADMINISTRATION—PROTECTION OF ~~((CLIENT))~~ CONSUMER RIGHTS. The provider shall protect and ensure the rights of all ~~((clients))~~ consumers and former ~~((clients))~~ consumers.

~~(1) ((Neither evaluation nor treatment services shall be provided to any person under fourteen years of age without the signed consent of the parent or guardian. In an emergency, such child may be seen for one session without consent of parent or guardian. Parental consent for evaluation or treatment services shall not be necessary in the case of a child referred by child protective services or other public agency because of physical, sexual, or psychological abuse or neglect by a parent or parent surrogate.~~

~~(2) When client, or the parent or guardian of a child thirteen years of age or under, requests review of his or her case record, the provider shall:~~

~~(a) Grant the request within seven days, except the request need not be granted if the provider knows or has reason to believe the parent or parent surrogate has been a child abuser or might otherwise harm the child.) Any minor thirteen years of age or older may request and receive outpatient treatment without consent of the minor's parents. Parental consent for evaluation and treatment services shall not be necessary in the case of a child referred by child protective services or other public agency because of physical, sexual, or psychological abuse or neglect by a parent or parent surrogate.~~

~~(2) When the consumer, or the consumer's legally responsible other, requests review of their case records, the provider shall:~~

~~(a) Grant the request within seven days, unless the provider knows or has reason to believe the parent or parent surrogate has been a child abuser or might otherwise harm the child;~~

~~(b) Review the case record in order to identify and remove any material confidential to another person((:));~~

~~(c) In the presence of a staff member, allow the ((client)) consumer sufficient time and privacy to review the record to ((his or her)) their satisfaction. A clinical staff member shall be available to answer questions((:));~~

~~(d) Permit the following persons to be present during the review, with the consent of the ((client)) consumer;~~

~~(i) Next-of-kin((:));~~

- (ii) ~~((The family))~~ Consumer's physician((-or));
- (iii) ~~((The client's))~~ Consumer's attorney((-)); or
- (iv) Consumer's advocate;
- (e) Document the review session in the ~~((client's))~~ consumer's record((-));
- (f) Assess a reasonable and uniform charge for reproduction, if so desired.
- (3) The written, informed consent of the ~~((client))~~ consumer or legally responsible other shall be obtained before:
  - (a) Use of ~~((any))~~ medication((-));
  - (b) Initiation of ~~((any))~~ nonemergency ((service)) treatment plan((-));
  - (c) Use of ~~((any))~~ unusual diagnostic or treatment procedure((-);
  - (d) Use of ~~((any))~~ audio and/or visual device to record the ((client's)) consumer's behavior((-);
  - (e) The ((client)) consumer serves as a subject for ((any)) research.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-240 SERVICES ADMINISTRATION—CONFIDENTIALITY OF ~~((CLIENT))~~ CONSUMER INFORMATION. The provider shall protect the confidentiality of all information relating to ~~((clients))~~ consumers or former ((clients)) consumers pursuant to this chapter and chapter 71.05 RCW.

- (1) The provider shall disclose no confidential information, including the fact a person is or has been a ~~((client))~~ consumer, without ~~((a current))~~ the informed consent signed by the ((client)) consumer or legally responsible other except as set forth in subsection (3) of this section.
- (2) Standardized forms authorizing release and/or exchange of confidential information shall be used and contain the following:
  - (a) ~~((The))~~ Name of the ((client,)) consumer;
  - (b) ~~((The))~~ Date((-);
  - (c) ~~((The))~~ Name and address of the provider((-);
  - (d) ~~((The))~~ Name and address of the person or entity to whom the information is to be provided((-);
  - (e) ~~((The))~~ Reason for disclosure((-);
  - (f) ~~((The))~~ Specific kind of information to be disclosed((-);
  - (g) ~~((The))~~ Period of time the consent is to be in force((-);
  - (h) ~~((The))~~ Signature of the ((client)) consumer and/or responsible other((-); and
    - (i) ~~((The))~~ Signature of a witness.
- (3) Exceptions to subsection (1) of this section are as follows:
  - (a) Disclosures permitted under relevant statute (chapters 10.77 and 71.05 RCW) or regulations (chapter 275-55 WAC);
  - (b) To a court under court order;
  - (c) The fact of admission and any pertinent information and records may be disclosed:
    - (i) To provider personnel, as needed; however, volunteers and trainees shall have access to ~~((client))~~ consumer records only ((to the extent)) as necessary for treatment;
    - (ii) ~~((To the extent))~~ As necessary to make an insurance or medical assistance claim. This shall include the department, RSN, county, and providers authorized by the RSN or their designee;
    - (iii) To a county-designated mental health professional (chapter 71.05 RCW);
    - (iv) To a hospital or emergency medical personnel for purposes of dealing with an emergency; and
    - (v) To law enforcement or public health officers under the following conditions:
      - (A) Only ~~((to the extent))~~ as necessary to carry out the responsibilities of the law enforcement or public health officer;
      - (B) Such persons shall be responsible for keeping all information confidential ~~((pursuant to))~~ under these standards.
    - (vi) To a certified evaluation and treatment facility (chapter 71.05 RCW) or to facilitate transfer of the consumer from one treatment facility to another provider, limited to the following:
      - (A) Treatment records required by law;
      - (B) A summary of all somatic treatments; and
      - (C) A discharge summary, which may not include the complete treatment record, but may include:
        - (I) Statement of the consumer's problem;
        - (II) Treatment goals;
        - (III) Type of treatment provided; and
        - (IV) Recommendation for further treatment;
    - (vii) To the person designated by the RSN or county to track ~~((the chronically mentally ill))~~ priority populations. Such disclosures shall be limited to the facts of admission, placement, transfer, discharge or referral of ~~((chronically mentally ill persons))~~ priority populations;

(d) Pertinent information must be disclosed, and the provider is obligated to initiate disclosure, under the following conditions:

- 26.44.030 or chapter 74.34 RCW;
- (ii) To law enforcement officers and the intended victim when there is a clear ~~((and serious))~~ threat of homicide or intent to do serious bodily harm to another person ((or persons));
- (e) To the extent necessary to use a collection agency or the court system to collect delinquent consumer fees when the consumer has sufficient resources to afford payment;
  - (f) To an individual or organization as necessary for management or financial audits or program monitoring and evaluation. Such information shall remain confidential and may not be used in a manner which discloses the name or other identifying information about the consumer whose records are being released;
  - (g) For purposes of research as permitted under chapter 42.48 RCW;
    - (h) To the department, RSN, county or designee, resource management services responsible for serving the consumer or service providers designated by resource management services as necessary to determine placements, progress, and adequacy of treatment;
    - (i) To the consumer's counsel or guardian ad litem pursuant to chapter 71.05 RCW;
      - (j) To a correctional facility or correctional officer who is responsible for the supervision of a consumer who is receiving evaluation and treatment services. Release of records under this subsection is limited to:
        - (i) Evaluation report provided for a written supervision plan;
        - (ii) Discharge summary including a record or summary of all somatic treatments at the termination of any treatment provided as part of the supervision plan;
        - (iii) When an individual is returned from a treatment facility to a correctional facility, the following information shall be disclosed: Any information necessary to establish or implement changes in the individual's treatment plan or the level or the kind of supervision as determined by resource management services. Disclosure shall be made to clinical staff or the supervising corrections officer, as appropriate;
        - (k) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of consumers with mental illness or developmental disabilities. Resource management services may limit the release of information to:
          - (i) Name, birthdate, and county of residence of the consumer;
          - (ii) Information regarding whether the consumer was voluntarily admitted, or involuntarily committed;
          - (iii) Date and place of admission, placement, or commitment;
          - (iv) Name and address of a guardian of the consumer; and
          - (v) Date and place of the guardian's appointment.
  - Any staff member who wishes to obtain additional information shall notify the consumer's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information;
  - (l) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of individuals who are under the supervision of the department.
  - (4) All disclosures made, both with and without the ~~((client's))~~ consumer's consent, shall be documented in the case record to include:
    - (a) Date of disclosure;
    - (b) Person or entity receiving information;
    - (c) Nature of information disclosed; and
    - (d) Reasons for disclosure ((if consent has not been obtained)).
    - (5) All consumer records shall be stored in a manner ensuring record security and consumer confidentiality. Records shall be maintained in locked cabinets or be housed in a secure room with a lockable door.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-245 SERVICES ADMINISTRATION—RESOLVING ~~((CLIENT))~~ CONSUMER GRIEVANCES. The provider shall ~~((act promptly to hear and take appropriate steps to resolve client grievances. Procedures shall ensure the involvement of appropriate supervisory and administrative staff, and the governing body, as~~

necessary. Confidential information shall not be disclosed to the governing body pursuant to client grievances without the signed consent of the client)) establish a formal procedure giving consumers the opportunity to report grievances and have them investigated and resolved promptly, including:

- (1) Grievances must be put in writing and be dated and signed by the consumer or their representative;
- (2) The names or titles of designated supervisory or administrative staff to whom grievances may be taken;
- (3) A staff person shall not participate in accepting, investigating, or deciding any grievance in which they are the object of the grievance;
- (4) Consumers may choose a staff member, family member, friend, or other advocate to represent them through the grievance procedure. The provider shall make assistance available to help the consumer initiate the grievance;
- (5) A written report of the investigation and initial disposition of the grievance shall be made to the consumer within thirty days;
- (6) If dissatisfied, the consumer may appeal decisions of the grievance staff to the administrator. A written report of the administrator's decision shall be made to the consumer within thirty days;
- (7) The consumer may appeal the administrator's decision to the provider's governing board. A written report of the governing board's decision shall be made to the consumer within thirty days;
- (8) The consumer may appeal the governing board's decision to the county or RSN authority. A written report of the authority's response shall be made to the consumer within thirty days;
- (9) There shall be no retaliation, formal or informal, against a grievant;
- (10) The provider shall retain full records of all grievances in agency confidential files, but not in a consumer's case records.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-260 SERVICES ADMINISTRATION—INTAKE AND INITIAL EVALUATION. ((At intake a clinical staff member shall assess and document the client's presenting problems, history, mental status, need for additional examinations, and treatment needs:

- (1) A formal, standardized application for services shall be completed by or for each client and shall become a part of the client's record.
- (2) Information describing client rights and confidentiality of information shall be provided at the time of intake.
- (3) The initial evaluation shall include:
  - (a) A clear statement of the presenting problems preferably in the client's own words and/or the parent's words in the case of a child;
  - (b) A psychosocial, substance abuse, and medical history;
  - (c) A history of mental health treatment covering at least the last two years;
  - (d) For children, a developmental history and assessment of academic background and learning problems;
  - (e) A mental status examination;
  - (f) Direct observation of client behavior;
  - (g) An assessment of the client's current level of functioning, strengths, needs, and problems, a provisional diagnosis (Diagnostic and Statistical Manual, 3rd edition), and a determination as to whether the person is acutely mentally ill, chronically mentally ill or seriously disturbed.

(h) The name and telephone number of the client's present or most recent physician, and the date of the most recent examination or treatment by the physician:

(4) The client shall be referred for a medical examination when determined necessary. All clients aged sixty and over shall be referred for a medical examination, if such examination has not been done within the preceding ninety days:

(5) The need for special psychiatric, psychological, neurological, medical or other examinations, tests or procedures shall be determined. The basis for such decisions shall be documented and appropriate referrals made. Before a diagnosis of primary degenerative dementia with senile or presenile onset is made, assessments shall be completed to rule out all forms of treatable medical or mental disorders:

(6) Fees appropriate to the client's ability to pay shall be established, and the client shall be informed of the fees and of the provider's fee policies during the intake process.)) Upon entry into nonemergency services, a clinical staff member shall obtain or develop a current assessment and initiate the individualized treatment plan (ITP). Information obtained from other providers shall be current as of ninety days prior to initiating the intake.

(1) The following shall be included in the intake:

- (a) A standardized application and consent for services completed by or for each consumer as part of the consumer's record;
  - (b) Written information describing consumer rights and confidentiality of information provided each consumer;
  - (c) A clear statement of the present problems, preferably in the consumer's own words and/or the parent's words, in the case of a child;
  - (d) A history of mental health treatment covering at least the last two years;
  - (e) The name of the consumer's most recent physician, if known;
  - (f) A mental status exam; and
  - (g) An initial plan of action oriented to the presenting problems.
- (2) A full evaluation, obtained within fourteen days, shall include the following additional information:
- (a) A psychosocial history, including substance abuse;
  - (b) A medical history, including an account of medications used during the past six months. The client shall be referred for a medical examination when determined necessary. All clients aged sixty and over shall be referred for a medical examination, if such examination has not been done within the preceding ninety days;
  - (c) For children, a developmental history and description of any academic or learning problems;
  - (d) A description of the consumer's current level of functioning, social supports, strengths, and needs;
  - (e) A provisional diagnosis. Before a diagnosis of primary degenerative dementia with senile or presenile onset is made, assessments shall be completed to rule out all forms of treatable medical or mental disorders; and
  - (f) A determination on priority population status.
- (3) For purposes of outreach to hard-to-serve consumers, any of the above items may be left incomplete, providing that noncompletion and reasons are documented in the record monthly.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-275 SERVICES ADMINISTRATION—DEVELOPMENT OF INDIVIDUALIZED ((SERVICE)) TREATMENT PLAN. Upon entry into nonemergency services, provider staff shall develop an individualized ((service)) treatment plan ((shall be developed for)) (ITP) with each ((client)) enrolled consumer.

(1) From the assessment, the plan shall identify ((each)) those problems ((or need)) to be addressed in treatment.

(2) The ((plan)) ITP shall contain clearly stated goals for the treatment of those problems.

(a) Each goal shall state the intended ((result to occur)) outcome in ((client)) consumer behavior, skills, attitudes, or circumstances as a result of treatment.

(b) The ((plan)) ITP shall ((specify)) contain an expected timeframe for the attainment of goals ((and for termination)).

((3)) The plan shall identify the services and specific treatment modalities to be utilized:

((a)) (c) The ((plan)) ITP shall include referral for necessary services not offered by the provider.

((b)) (3) The ITP shall identify the primary therapist and/or case manager responsible for providing and coordinating services ((shall be identified)).

(4) The ((plan)) ITP shall ((clearly show the relationships between the proposed services, intended results, and needs of the client, including how treatment goals are to be met by the particular modalities and techniques to be utilized)) identify the services and strategies to be used to meet the ITP goals.

(5) An assessment and review of progress and updating of the ((plan)) ITP shall be performed at least every ninety days ((in the case of outpatient, day treatment or community support services)). For consumers served by the provider over two years, the ITP may be updated every one hundred eighty days.

(a) The primary therapist and/or case manager shall assess with the consumer their progress and need for continued treatment, and where appropriate, modify the ITP and reproject the length of time for goal attainment.

(b) The clinical supervisor shall review, approve, and sign ninety-day summaries prepared by the primary therapist or case manager.

(6) The ((client)) consumer shall participate in ((service)) treatment planning and implementation according to ((his or her)) ability, and the family or significant other shall be involved where available and appropriate to the ((client's)) consumer's needs.

(7) The ~~((client))~~ consumer or responsible other shall consent to treatment by signing the ~~((initial service plan))~~ ITP and ~~((when significant changes are made in))~~ updates to the plan. In the event the ~~((client))~~ consumer refuses to sign, efforts to obtain signature shall be documented.

(8) The ~~((service plan))~~ ITP shall be completed and a mental health professional shall review and sign the ~~((plan))~~ ITP within thirty days after initiating the ITP. ~~((When appropriate and sufficient staff are available, the initial service plan shall be reviewed and revised as necessary by a multidisciplinary treatment team including individuals licensed under chapter 18.57, 18.71, 18.83 or 18.88 RCW.))~~

(9) For providers contracting with RSNs, the ITP and updates to the ITP shall be consistent with resource management services' ISP.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-285 SERVICES ADMINISTRATION—PROGRESS NOTES ~~((AND REVIEW))~~. ~~((Client progress in meeting goals shall be documented in the case record:))~~

~~((1) Progress notes shall be recorded in the case and group record as follows:~~

~~((a) After every client contact for outpatient services;~~

~~((b) At least weekly for day treatment services;~~

~~((c) After each event for emergency services;~~

~~((d) Providers utilizing a problem-oriented record system may record progress less frequently, provided a narrative summary of client progress is entered in the case record at least every thirty days, and the date and type of each contact is recorded.~~

~~((2) Progress notes shall document each service provided, including date, nature of service, progress toward established goals, changes in service plan, referrals, extraordinary events, and be signed by the responsible staff member.~~

~~((3) The service plan and progress shall be formally assessed at least every ninety days for outpatient, day treatment, and community support services.~~

~~((4) The assessment of progress shall cover course and progress of treatment in relationship to client needs, problems and goals, noting unusual events, assessing current status and need for continued treatment, reprojecting length of treatment, and modifying the service plan, if necessary.~~

~~((5) The clinical supervisor shall participate where possible in the formal progress assessment, and in all cases shall review, approve, and sign summaries prepared by the primary therapist or case manager.)) Consumer progress in achieving treatment goals shall be documented in the case record.~~

~~((1) Staff responsible for the provision or coordination of a consumer's treatment shall enter a narrative summary of the consumer's progress in the consumer's case record at least monthly.~~

~~((2) The summary shall include specific progress toward each established goal, changes in treatment plans, referrals, and extraordinary events. The responsible staff member shall sign the summary.~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-290 SERVICES ADMINISTRATION—TRANSFER AND ~~((TERMINATION))~~ CONTINUITY OF CARE. ~~The provider shall assure continuity of care ((shall be assured)) and promptly close cases ((shall be closed promptly)) upon transfer or termination.~~

~~((1) ((A comprehensive summary shall be prepared by responsible staff)) The case manager and/or primary therapist shall prepare a service summary and ((shall be made)) make it available to the provider assuming primary responsibility for the ((client)) consumer. ((A copy shall be placed in the client's record.))~~

~~((2) ((Cases involving planned transfer and termination shall be closed within fourteen days of final contact.~~

~~((3) Planned and/or necessary leaves from treatment for up to ninety days shall be documented in the client's record, and the case need not be closed.~~

~~((4) Other cases shall be closed within ninety days of the last attempt to contact the client.)) The case manager and/or primary therapist shall follow up any unexplained interruptions in ((client)) consumer contacts ((shall be followed up by the primary therapist or case manager, and these attempts documented in the client's record. Special efforts shall be made to contact the client when he or she is thought to be dangerous to self or others or property or gravely disabled, and shall be documented in the client's record)), as clinically appropriate, prior to termination.~~

~~((3) The provider shall keep open cases in which the consumer was committed under chapter 71.05 RCW.~~

~~((4) Providers contracting with RSNs shall promptly notify resource management services regarding unexplained interruptions. Resource management services shall approve all terminations of enrolled consumers.~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-295 SERVICES ADMINISTRATION—MEDICAL RESPONSIBILITY. Medical responsibility shall be vested in a psychiatrist, other physician or osteopath.

(1) A physician licensed to practice ~~((pursuant to))~~ under chapter 18.57 or 18.71 RCW, and at least board eligible in psychiatry, shall be responsible for medical services. ~~((a))~~ Providers unable to recruit a psychiatrist may employ a physician without board eligibility in psychiatry provided:

~~((i))~~ (a) Psychiatric consultation is provided to the physician at least monthly; and

~~((ii))~~ (b) The psychiatrist is accessible in person, by telephone, or by radio communication to the physician for emergency consultation.

~~((iii))~~ (c) The physician participates in at least twenty hours per year of continuing medical education in psychiatry.

~~((b) The provider may divide medical responsibility among a number of physicians employed in part-time staff or consultative roles.))~~

(2) Medications shall be reviewed at least every three months by a physician. ~~((A registered nurse or licensed practical nurse))~~

(3) Only staff licensed to do so may administer medications ~~((under the supervision of a physician. Medications shall be monitored by a physician or registered nurse (WAC 308-120-300)).~~

~~((3))~~ (4) Medication information shall be maintained in the ~~((client))~~ consumer record documenting at least the following for each prescribed medication:

~~((i))~~ (a) Name of medication(;;);

~~((ii))~~ (b) Dosage and method of administration(;;);

~~((iii))~~ (c) Purpose of medication(;;);

~~((iv))~~ (d) Dates prescribed, reviewed and/or renewed(;;);

~~((v))~~ (e) Observed effects, interactions, and side effects, including laboratory findings and corrective actions taken for side effects(;;);

~~((vi))~~ (f) Reasons for change or termination of medication(;;); and

~~((vii))~~ (g) Name and signature of prescribing person.

~~((4) When a psychiatrist is available, he or she shall participate in multidisciplinary teams responsible for treatment planning and review.))~~

(5) When medical problems are suspected or identified, a psychiatrist or other physician shall be consulted and included in treatment planning ~~((at regular intervals)).~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-300 SERVICES ADMINISTRATION—MEDICATION STORAGE. ~~Provider staff shall inspect and inventory medication storage areas ((shall be inspected and inventoried)) at least quarterly ((by the administrator, or designated clinical staff member)).~~

(1) ~~((A))~~ Medications shall be kept in locked well-illuminated storage.

(2) ~~((Any))~~ Medications kept in a refrigerator containing other items shall be kept in a separate container with proper security.

(3) No outdated medications shall be retained, and medications shall be disposed of in accordance with regulations of the state board of pharmacy.

(4) Medications for external use shall be stored separately from oral and injectable medications.

(5) Poisonous external chemicals and caustic materials shall be stored separately.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-305 SERVICES ADMINISTRATION—EXTRAORDINARY OCCURRENCES. ~~((There shall be written procedures for the handling, review, and documentation of extraordinary occurrences.~~

~~((1) Procedures shall be established for responding to and)) The provider shall write and establish procedures for the objective handling, reviewing, and documenting situations involving:~~

~~((a) Injury to clients or staff;~~

~~((b)) (1) Injury;~~

(2) Suicide or homicide by a ((client)) consumer;  
 ((c) Client)) (3) Consumer behavior so bizarre or disruptive as to threaten the program;

((d)) (4) Disaster or threatened disaster ((of natural or human origin)).

(2) Extraordinary occurrences shall be reported to appropriate supervisory staff, administrator, and governing body.

(3) Each such occurrence shall be subject to a case review by one or more mental health professionals not participating in the treatment of the client.

(a) A corrective action plan to prevent similar occurrences shall be developed where appropriate.

(b) The review, correction action plan, and its implementation shall be documented, including entries in the client's record where appropriate); and

(5) Abuse.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-335 SERVICES ADMINISTRATION—CONSUMER RECORD RETENTION AND DESTRUCTION ((OF CLIENT RECORDS)). ((Records shall be retained by)) The provider ((in accordance with WAC 275-56-325 and shall be destroyed)) shall retain records and destroy obsolete records in a manner completely eradicating content and ((client)) consumer names.

(1) ((Client)) The provider shall retain consumer records ((shall be retained)) for a period of not less than five years beyond the last contact with the ((client)) consumer.

(2) When the ((client)) consumer is a minor, the provider shall retain the record ((shall be maintained)) for a period of not less than three years beyond the ((client's)) consumer's eighteenth birthday, or five years beyond the last contact, whichever is the longer period of time.

(3) The provider shall retain a complete termination summary and reports of special assessment and/or examination procedures ((shall be retained)) for a period of not less than ten years beyond the last contact with the ((client)) consumer or three years beyond the ((client's)) consumer's eighteenth birthday, whichever is the longer period of time.

(4) The provider shall retain emergency records such as telephone crisis logs ((shall be retained)) for not less than two years.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-340 ((EMERGENCY)) SERVICES—WRITTEN DESCRIPTIONS. ((There)) The provider shall ((be)) maintain written descriptions of all ((emergency services)) components specifying:

(1) Nature, location, and availability of services;

(2) ((Qualifications of staff;

(3) Client)) Consumer needs addressed by these services;

((4) Usual referral sources and)) (3) Procedures; and

((5) Policies for each emergency service component to include criteria for outreach response;

(6) Policies on responding to referrals, preadmissions screening services, and liaison and communication with state hospitals, and other common referral sources, and other preadmission screening services;

(7)) (4) Expected ((client)) consumer outcomes stated((, as much as possible,)) in behavioral terms((, and

(8) Expected service outcome stated in terms of appropriate admission to state hospitals and diversion to less restrictive alternatives)).

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-355 EMERGENCY SERVICES((= TWENTY-FOUR HOUR OUTREACH SERVICES)). ((Twenty-four hour)) The provider shall deliver emergency ((outreach)) services ((shall be provided in the home or other community setting. Outreach services shall consist)) twenty-four hours per day consisting of ((face-to-face)) evaluation and treatment of mental health emergencies and crises for acutely mentally ill ((persons)) consumers of all ages((, and with)).

(1) ((Be provided in accordance with written protocol;

(2) Be provided promptly after screening and dispatch, and document any decision not to respond;

(3)) Components of emergency services include:

(a) Telephone emergency services; and

(b) Crisis stabilization and outreach services.

(2) All emergency services shall:

(a) Seek to stabilize the emergency or crisis situation and provide ((immediate or continuing)) treatment and support in the least restrictive, clinically appropriate environment available;

((4)) (b) Be closely coordinated with the RSN or county's involuntary treatment system, and draw upon the resources of that system as needed;

((5) Utilize)) (c) Use and mobilize ((all)) other necessary community emergency resources;

((6)) (d) Be appropriate to the age of the ((person)) consumer, and involve family and significant others when indicated and possible;

((7)) (e) Refer, when appropriate, to other services of the provider or to other resources. When a consumer receiving emergency services is determined to be a priority consumer (WAC 275-56-010) and in need of further treatment, the provider shall maintain continuity of care through transfer to other services of the provider or referral to other appropriate providers and resources. For providers contracting with RSNs, the provider shall refer nonenrolled priority consumers to resource management services according to resource management services' referral criteria;

((8)) (f) Provide follow-up on emergency contacts to maintain stabilization and ((to)) ensure referrals are carried out and needed services and linkages are provided; and

((9)) (g) Document all contacts and the contact's disposition, including any significant departures from written ((protocol)) procedures. Emergency records shall document the following:

(i) Consumer name, address, and telephone number, when appropriate;

(ii) Name and telephone number of person or agency making initial contact (if other than consumer), when appropriate;

(iii) Time of initial contact;

(iv) Responsible staff;

(v) Time and location of outreach;

(vi) Nature of emergency;

(vii) Summary of services provided; and

(viii) Referrals or other disposition, including to resource management services.

(3) Telephone emergency services shall:

(a) Respond promptly to calls and provide information, referral, or immediate counseling to assist the caller in resolving the emergency;

(b) Facilitate access to other emergency services in the community, as necessary;

(c) Document all telephone contacts and disposition; and

(d) Ensure that emergency telephone numbers be prominently listed in telephone directories in areas served by the provider.

(4) Crisis stabilization and outreach services to consumers shall:

(a) Be conducted face-to-face;

(b) Be provided promptly after screening and dispatch; and

(c) Document disposition, including decisions not to respond, and referrals made.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-365 ((EMERGENCY SERVICES—)) PREADMISSION SCREENING SERVICES. In non-RSN counties, the provider shall deliver screening ((shall be provided)) services for voluntary admission to state hospitals. Information, screening, and assessment shall be provided to ((persons)) consumers on referral or at their own request to determine need for and appropriateness of admission to a state hospital.

(1) ((Information and assistance shall be provided in the same manner and subject to applicable standards for emergency services.

(2) All common referral sources shall be informed of the availability of preadmission screening services and requested to utilize these services in lieu of direct referral to a state hospital.

(3) Assessments shall include face-to-face or telephone contact with the client and discussion with the referral source when possible.

(4)) The availability of appropriate alternatives shall be explored and discussed with ((client)) the consumer and referral source. Admission to a less restrictive and/or less costly alternative shall be facilitated where appropriate.

((5) Screening services shall utilize state hospitals when the following conditions are met:

(a) The client meets standards for involuntary commitment under chapter 71.05 RCW;

(b) The client will accept voluntary admission;

(c) No appropriate alternative is available to the client; and

(d) The state hospital serving the county agrees to admit the client.

~~(6) Pre-admission)~~ (2) Preadmission screening of involuntary ~~((clients))~~ consumers shall be performed subject to chapter 71.05 RCW and chapter 275-55 WAC.

(3) Staff shall be trained in assessing clinical status, severity of disturbance, and availability of less restrictive and/or less costly alternatives.

(4) The provider shall maintain a record of all preadmission screening services. The record shall document:

- (a) Consumer name;
- (b) Referring agency or person;
- (c) Referral information, including evidence of appropriateness for involuntary detention;
- (d) Services provided; and
- (e) Recommendations and disposition.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-385 OUTPATIENT SERVICES(~~(=SERVICE DELIVERY))~~. (1) The provider shall deliver outpatient services ~~((shall be provided))~~ to ~~((acutely and chronically mentally ill and seriously disturbed persons))~~ priority populations when appropriate to their treatment needs.

~~((1))~~ Outpatient services shall include the following modalities:

- (a) Individual therapy;
- (b) Group therapy;
- (c) Family therapy;
- (d) Marital or couples therapy;
- (e) Medication evaluation and monitoring; and
- (f) Activities therapy.

(2) Outpatient services shall be provided in accordance with written protocol. Significant departures from protocol shall be documented in the client's record.

~~(3))~~ (2) Outpatient services to underserved groups ~~((minorities, children, elderly, disabled, and low-income persons within the priority populations))~~ (WAC 275-56-010(2)) shall, ~~((where))~~ when possible ~~((include alternative models of service delivery such as:~~

- (a) Services in a location and environment appropriate to the clientele;
- (b) Outreach services such as home visits, school visits or visits to other community agencies; and)) provide alternative service delivery models, which:
  - (a) Emphasize and incorporate the values and norms of the group served; and
  - ~~((c))~~ (b) Use services offered by natural caregivers or traditional healers.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-400 DAY TREATMENT SERVICES—SERVICE DELIVERY. The provider shall deliver day treatment services ~~((shall be provided))~~ on a regular basis to ~~((acutely and chronically mentally ill and seriously disturbed persons))~~ priority populations needing this type of service.

(1) Day treatment services shall be provided ~~((in accordance with written protocol. Significant departures from protocol shall be documented in the client's record))~~ by adequate numbers of staff, as follows:

- (a) One clinical staff member shall be present in all day treatment sessions conducted by the provider;
- (b) Minimum staff-to-consumer ratios for day treatment sessions shall be maintained as follows:
  - (i) One clinical staff member for every five consumers thirteen years of age and under, with supervision or consultation from a child mental health specialist;
  - (ii) One clinical staff member for every six consumers aged fourteen through seventeen, with supervision or consultation from a child mental health specialist; and
  - (iii) One clinical staff member for every twelve consumers aged eighteen and over, and with supervision or consultation from a geriatric mental health specialist in sessions serving primarily elderly consumers.

(2) Day treatment services shall be available to ~~((clients))~~ consumers at least three times weekly and may be provided in either the provider's facility or outside that facility.

(3) Day treatment services shall be planned and structured activities designed for:

(a) Maintaining ~~((clients))~~ consumers in an environment less restrictive than an inpatient setting ~~((through))~~ by structuring ~~((of))~~ their day and leisure time~~((:))~~;

(b) Developing daily living, social, and prevocational skills ~~((to increase))~~ increasing the likelihood of ~~((clients))~~ consumers engaging in productive activities, and attaining the capacity for independent or semi-independent living~~((:))~~; and

(c) Assisting ~~((clients))~~ consumers in making the transition from acute inpatient services or serving as an alternative to inpatient care.

(4) ~~((The provider shall maintain formal agreements or working relationships and coordinate services where possible with other persons, agencies or facilities serving day treatment clients.))~~

Each day treatment program shall provide or arrange for the following service components, with the particular mix determined by consumer need:

- (a) Training in basic living and social skills;
- (b) Vocational habilitation or rehabilitation, including prevocational services;
- (c) Sheltered work, training, or education;
- (d) Activities, including socialization and recreation; and
- (e) Therapeutic community or milieu therapy.

(5) Day treatment services shall be age-appropriate as follows:

(a) Services to school-age children shall include or arrange for suitable educational and developmental programs;

(i) Children with special educational needs shall be provided with special educational programs by cooperative arrangements with schools; and

(ii) Day treatment shall be scheduled to permit regular school attendance for consumers able to function in a regular school setting.

(b) Services to children shall include parent involvement, when possible; and

(c) Services to elderly shall include attention to medical and nutritional needs and shall arrange for emergency medical services during all hours of operation.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-425 CONSULTATION AND EDUCATION SERVICES(~~(=SERVICE DELIVERY))~~. The provider shall deliver consultation and education services ~~((shall be provided))~~ to assist others in the community to understand and care for ~~((acutely and chronically mentally ill and seriously disturbed persons))~~ priority populations.

(1) ~~((Case consultation shall be available to staff of other services, including inpatient and residential facilities, and other community caregivers as a means of developing or improving service delivery for the priority populations.~~

~~(2))~~ The following components may be provided:

(a) Case consultation to other providers to assist them in the care of priority consumers;

(b) Program consultation to other entities to assist in program design and planning for treatment and support services for ~~((acutely and chronically mentally ill and seriously disturbed persons))~~ priority populations;

~~((b))~~ (c) Continuing education programs and training for community caregivers to develop and/or increase their skills in providing mental health services to the priority populations and underserved groups;

~~((c))~~ (d) Information and education for the public about mental health issues and services through various public media (newspapers, television, radio), and presentations to community groups; and

~~((d))~~ (e) Educational services for families of ~~((acutely and chronically mentally ill and seriously disturbed persons))~~ priority populations.

~~((3))~~ (2) Records shall be maintained of all consultation and education services provided.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-445 ~~((COMMUNITY SUPPORT))~~ CASE MANAGEMENT SERVICES(~~(=SERVICE DELIVERY))~~. The provider shall deliver a program of ~~((community support))~~ case management services ~~((shall be provided to acutely and chronically mentally ill persons to assist such persons in living in the community))~~ to priority populations to help maintain consumers at their highest possible level of functioning.

(1) ~~((Services shall be provided in accordance with written protocol. Any significant departure from protocol shall be documented in the~~

client's record-)) Each consumer shall have one case manager who shall assist the enrolled consumer to achieve goals identified in the ISP and ITP by:

(a) Coordinating and/or developing necessary support services on the consumer's behalf, including:

- (i) Mental health;
- (ii) Residential;
- (iii) Social;
- (iv) Vocational;
- (v) Health;
- (vi) Educational; and
- (vii) Income management;

(b) Providing direct services in the natural environment, including:

- (i) Living skills training;
- (ii) Medication monitoring;
- (iii) Accessing housing; and
- (iv) Accessing social supports;

(c) Consulting with, providing information to, and assisting other significant persons (e.g., family, landlord, clergy, police, physician, attorney) to be supportive and act in the best interests of the consumer;

(d) Participating with other treatment staff and providers in treatment and discharge planning for the enrolled consumer.

(2) ((Acutely and chronically mentally ill persons seeking or referred for community support services shall be screened, admitted to the service, and assigned a case manager if appropriate.)) For providers contracting with an RSN, the case manager shall periodically review the ISP and coordinate its revision and updates with resource management services and other providers.

(3) In non-RSN counties, provider staff shall attempt to contact referred ((clients)) consumers within two working days ((of the client's release)) after referral from a state mental health facility, certified evaluation and treatment facility (chapter 71.05 RCW), or other inpatient psychiatric facility in order to describe and offer community support and other available services.

(4) Resource management services when established, or case management services in non-RSN counties, shall maintain a liaison with state mental health facilities, certified evaluation and treatment facilities (chapter 71.05 RCW) and other local inpatient psychiatric facilities to be informed of the status of consumers, former consumers, and potential consumers needing community support services.

(a) When an enrolled consumer is in an inpatient facility, the case manager shall contact facility staff and the consumer at least weekly.

(b) The case manager shall participate in treatment and discharge planning for both voluntary and involuntary patients in inpatient facilities when those patients are enrolled consumers of the provider or are accepted for community support services. In RSNs, the case manager shall have primary responsibility for discharge planning for enrolled involuntary patients.

(5) The provider shall establish and maintain working relationships with:

(a) County-designated mental health professionals (chapter 71.05 RCW);

(b) Community services offices (CSO);

(c) Social Security and employment security offices;

(d) Division of vocational rehabilitation;

(e) Residential services;

(f) Advocate and self-help groups; and

(g) Other entities needed to implement the ISP.

(6) Where supported living services (WAC 275-56-485) are provided under case management services, such services shall meet the requirements of WAC 275-56-485.

#### NEW SECTION

WAC 275-56-465 REGIONAL SUPPORT NETWORK RESIDENTIAL SERVICES—GENERAL REQUIREMENTS. (1) The RSN, when established, shall ensure consumer access to a full range of residential services, including:

- (a) Crisis respite services;
- (b) Supported living services;
- (c) Supervised living services;
- (d) Long-term rehabilitative services;
- (e) Long-term adaptive services; and
- (f) Evaluation and treatment services under chapter 71.05 RCW.

(2) The RSN shall emphasize the availability of nonfacility homes for consumers and provision of support services to consumers in those homes.

(3) The RSN shall emphasize stability for consumers in the least restrictive residence.

(4) Each residential service shall ensure:

- (a) Sufficient supports to minimize the likelihood of hospitalization;
- (b) Planned assistance to consumers making residential transitions;
- (c) Twenty-four hour access to:

(i) Consultation from a mental health professional;

(ii) Crisis response system (WAC 275-56-089);

(iii) Emergency medical services;

(iv) Prescription services; and

(v) Medication administration;

(d) An assessment of level of functioning;

(e) Approval by resource management services (WAC 275-56-087) for placements in and transfers from residential services; and

(f) Notification to resource management services, when a consumer is discharged due to an emergency or disappearance. Staff shall document efforts taken within forty-eight hours to locate the consumer and encourage return to the residential program.

#### NEW SECTION

WAC 275-56-475 REGIONAL SUPPORT NETWORK RESIDENTIAL SERVICES—CRISIS RESPITE SERVICES. (1) The RSN shall provide crisis respite services as a component of both the crisis response system and residential services.

(2) A mental health professional authorized by resource management services shall approve access to crisis respite services.

(3) Services shall be made available to individuals experiencing an acute crisis regardless of age or enrollment status in community support or residential services.

(4) If the consumer is currently enrolled in community support services, then the case manager shall be responsible for the coordination of follow-up services per WAC 275-56-445.

(5) For unenrolled individuals, staff shall remain responsible until the crisis is resolved or the individual is transferred to needed services. Following resource management services criteria, staff shall refer unenrolled priority population individuals to resource management services.

(6) The consumer's case manager, or CRS staff shall make reasonable efforts to engage and involve significant others during the period of crisis respite.

(7) Crisis respite staff shall be trained in the treatment of individuals experiencing a mental health crisis.

(8) Crisis respite services are exempt from WAC 275-56-465 (4)(d).

#### NEW SECTION

WAC 275-56-485 REGIONAL SUPPORT NETWORK RESIDENTIAL SERVICES—SUPPORTED LIVING SERVICES. (1) Provider staff shall provide care to consumers in the consumer's home in the community, an adult family home licensed under chapter 388-76 WAC, or for children, an alternative foster home licensed under chapter 388-73 WAC. Supported living services may be provided under case management services (WAC 275-56-445) so long as those services comply with requirements of this section.

(2) Supported living services staff shall assist consumers in locating and accessing homes in the community, including:

(a) An inventory of housing stock available to participating consumers, or adult family homes licensed under chapter 388-76 WAC, or alternative foster homes licensed under chapter 388-73 WAC; and

(b) Agreements with landlords, as needed, to assure continued housing, including during crises for consumer tenants.

(3) The program shall include:

(a) Assurance of ongoing medication services;

(b) Availability of supported living staff for twenty-four hour, seven-day-per-week coverage of crisis situations; and

(c) Regularly scheduled contacts with consumers for independent living training and support. Service length and frequency shall vary depending on consumer need.

(4) Clinical staff shall receive training in the treatment of consumers in independent or foster care settings.

(5) The program shall maintain an average caseload of no more than twenty consumers.

(6) Routine staff coverage shall include evening and weekend hours.

**NEW SECTION**

**WAC 275-56-495 REGIONAL SUPPORT NETWORK RESIDENTIAL SERVICES—SUPERVISED LIVING SERVICES.** (1) Supervised living services shall be licensed under chapter 248-16 WAC.

(2) The provider shall assure the availability of and encourage participation in a minimum of fourteen hours per week of varied, planned activities to help foster independence and self-reliance. Such services may be provided by either the provider or outside resources.

(3) Clinical staff shall receive training in the treatment of consumers in residential settings.

(4) The provider shall maintain staffing levels which ensure twenty-four hour, seven-day-per-week safety and supervision of program participants.

(a) The provider shall ensure an average of at least one full time equivalent (FTE) clinical staff member for every twenty consumers from 3:00 p.m. to 9:00 p.m., and at least one clinical staff member at all other times.

(b) Staff shall be available and awake at all times.

(c) The provider shall identify one staff person to assume clinical responsibility on each shift.

(d) Facilities with fewer than thirty consumers may be exempt from WAC 275-56-175(2) if staff have daily access to a mental health professional for clinical consultation under WAC 275-56-180.

(e) Supervised living services may be exempt from WAC 275-56-175(3).

**NEW SECTION**

**WAC 275-56-505 REGIONAL SUPPORT NETWORK RESIDENTIAL SERVICES—LONG-TERM REHABILITATIVE SERVICES.** (1) Long-term rehabilitative services for children shall be licensed under chapter 248-23 WAC. Long-term rehabilitative services for adults shall be licensed under chapter 248-25 or 248-16 WAC. Long-term rehabilitative services licensed under chapter 248-16 WAC shall also meet the following requirements:

(a) A physician shall authenticate a comprehensive health assessment and medical history completed within fourteen days after admission unless a comprehensive health assessment performed within the previous ninety days is available upon admission.

(b) The provider shall establish written policy and procedures to guide staff in:

(i) Summoning of internal or external resource agencies, poison center, police, fire department;

(ii) Immediate actions required when consumer behavior is violent or assaultive;

(iii) Regular documented rehearsals of safe, effective staff action when a consumer is violent or assaultive;

(iv) Regular documented rehearsal of a fire and disaster plan; and

(v) Safe transportation of residents, including:

(A) Assuring facility-owned vehicles used for consumer transport are in safe operating condition with records of preventive maintenance;

(B) Facility authorization, including a requirement for a current driver's license, for each driver of facility-owned vehicle transporting consumers;

(C) Mandatory use of seat belts or other safety devices;

(D) Observation of maximum vehicle passenger capacity; and

(E) Description of circumstances when residents are transported in vehicles not owned or operated by the facility.

(c) Each facility shall have an agreement with a pharmacist to advise on matters relating to the practice of pharmacy, drug utilization, control, and accountability. The provider shall establish, with the written approval of a physician and pharmacist, written policies and procedures addressing:

(i) Procuring;

(ii) Prescribing;

(iii) Transcription of orders;

(iv) Use of standing orders. A physician shall order all drugs brought into the facility for consumer use;

(v) Dispensing;

(vi) Administering;

(vii) Self-administration of medication;

(viii) Recording drug administration in the consumer record;

(ix) Storage; and

(x) Disposal of drugs, including control or disposal of drugs brought into the facility by residents.

(d) The provider shall maintain a current drug reference readily available for use by staff.

(e) The provider shall establish written policies and procedures addressing infection control for consumers and staff, including a current system for:

(i) Investigating;

(ii) Reporting (in accordance with chapter 248-100 WAC);

(iii) Isolation of residents, should isolation be necessary and medically appropriate; and

(iv) Reviewing and recording infections.

(f) When medical and nursing supplies and equipment are washed, disinfected, handled, or stored, the facility shall provide utility and storage areas designed and equipped for these functions and ensuring segregation of clean and sterile supplies and equipment from contaminated supplies and equipment.

(g) The provider shall account for consumer allowances, earnings, and expenditures including:

(i) Informing each consumer of any responsibility for the cost of care or treatment per law or rule; and

(ii) Permitting a discharged resident to take the balance of his or her money; or

(iii) Fully informing the consumer when his or her money is transferred to another facility or organization as permitted by state or federal law.

(h) The facility shall comply with chapter 212-43 WAC standards for fire protection.

(2) Provider staff shall offer, encourage, and document participation in a minimum of twenty-eight hours per week of activities provided during the day, evening and weekend hours, including:

(a) Therapeutic community;

(b) Self-care and daily living skills;

(c) Medication management and education;

(d) Socialization skills;

(e) Communication skills;

(f) Recreation/leisure skills;

(g) Exercise; and

(h) Vocational opportunities, as appropriate.

(3) Clinical staff shall receive training in the treatment of consumers in residential settings, including the management of assaultive or self-destructive behavior.

(4) The provider shall maintain staffing levels which ensure twenty-four hour, seven-day-per-week safety and supervision of program participants.

(a) The provider shall ensure an average of at least .60 full time equivalent (FTE) clinical staff members for each consumer served.

(b) The provider shall employ a psychiatric nurse (WAC 275-56-015(33)) who is responsible for all nursing functions.

(c) At least two staff shall be available at all times.

(d) The provider shall identify one staff person to assume clinical responsibility on each shift.

**NEW SECTION**

**WAC 275-56-515 REGIONAL SUPPORT NETWORK RESIDENTIAL SERVICES—GERIATRIC LONG-TERM REHABILITATIVE SERVICES.** (1) Geriatric long-term rehabilitative services shall meet all of the requirements under WAC 275-56-505. However, geriatric long-term rehabilitative facilities shall be exempt from WAC 275-56-505(1) if licensed under chapter 248-14 WAC.

(2) Staff shall have access to twenty-four hour consultation from a geriatric specialist (WAC 275-56-185).

(3) A nurse shall be on the premises at all times. Facilities with over fifty consumers shall have at least two nurses on the premises at all times.

(4) Clinical staff shall receive training in the treatment of geriatric consumers in residential settings.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

**WAC 275-56-030 COUNTY ADMINISTRATION AND PLANNING—AVAILABILITY AND ACCESSIBILITY OF REQUIRED MENTAL HEALTH SERVICES FOR ACUTELY MENTALLY ILL, CHRONICALLY MENTALLY ILL, AND SERIOUSLY DISTURBED PERSONS.**

WAC 275-56-120 PROVIDER ADMINISTRATION—DESIGNATION OF ADMINISTRATOR.

WAC 275-56-125 PROVIDER ADMINISTRATION—ORGANIZATIONAL STRUCTURE.

WAC 275-56-130 PROVIDER FISCAL ADMINISTRATION—FISCAL POLICIES AND PROCEDURES.

WAC 275-56-140 PROVIDER FISCAL ADMINISTRATION—PROCEDURES TO MAXIMIZE REVENUES.

WAC 275-56-145 PROVIDER FISCAL ADMINISTRATION—BUDGET OF EXPECTED REVENUES AND EXPENSES.

WAC 275-56-155 PROVIDER FISCAL ADMINISTRATION—DOCUMENTATION AND RETENTION OF ACCOUNTING TRANSACTIONS.

WAC 275-56-160 PROVIDER FISCAL ADMINISTRATION—FISCAL MANAGEMENT SYSTEM REPORTING.

WAC 275-56-165 PROVIDER FISCAL ADMINISTRATION—INDEPENDENT AUDIT OF FINANCIAL OPERATIONS.

WAC 275-56-190 PERSONNEL MANAGEMENT—ADMINISTRATIVE QUALIFICATIONS.

WAC 275-56-250 SERVICES ADMINISTRATION—POLICIES AND PROCEDURES FOR PROVIDER OPERATIONS.

WAC 275-56-255 SERVICES ADMINISTRATION—SCREENING AND INFORMATION AND REFERRAL.

WAC 275-56-265 SERVICES ADMINISTRATION—DRUG USE PROFILE.

WAC 275-56-270 SERVICES ADMINISTRATION—COORDINATION OF SERVICE.

WAC 275-56-280 SERVICES ADMINISTRATION—GROUP SERVICE PLAN.

WAC 275-56-310 SERVICES ADMINISTRATION—POLICIES AND PROCEDURES RELATED TO CLIENT RECORDS.

WAC 275-56-315 SERVICES ADMINISTRATION—CONTENT OF CLIENT RECORDS.

WAC 275-56-320 SERVICES ADMINISTRATION—OUTPATIENT GROUP RECORDS.

WAC 275-56-325 SERVICES ADMINISTRATION—TELEPHONE AND OUTREACH EMERGENCY SERVICES RECORDS.

WAC 275-56-330 SERVICES ADMINISTRATION—SECURITY OF CLIENT RECORDS.

WAC 275-56-345 EMERGENCY SERVICES—STAFFING.

WAC 275-56-350 EMERGENCY SERVICES—TWENTY-FOUR HOUR TELEPHONE SERVICES.

WAC 275-56-360 EMERGENCY SERVICES—CRISIS INTERVENTION SERVICES.

WAC 275-56-370 EMERGENCY SERVICES—RECORD OF PREADMISSION SCREENING SERVICES.

WAC 275-56-375 OUTPATIENT SERVICES—WRITTEN DESCRIPTIONS.

WAC 275-56-380 OUTPATIENT SERVICES—STAFFING.

WAC 275-56-390 DAY TREATMENT SERVICES—WRITTEN DESCRIPTIONS.

WAC 275-56-395 DAY TREATMENT SERVICES—STAFFING.

WAC 275-56-405 DAY TREATMENT SERVICES—SERVICE COMPONENTS.

WAC 275-56-410 DAY TREATMENT SERVICES—AGE-APPROPRIATE SERVICES.

WAC 275-56-415 CONSULTATION AND EDUCATION SERVICES—WRITTEN DESCRIPTIONS.

WAC 275-56-420 CONSULTATION AND EDUCATION SERVICES—STAFFING.

WAC 275-56-430 COMMUNITY SUPPORT SERVICES—WRITTEN DESCRIPTIONS.

WAC 275-56-435 COMMUNITY SUPPORT SERVICES—STAFFING AND CASE MANAGEMENT.

WAC 275-56-440 COMMUNITY SUPPORT SERVICES—COORDINATION WITH INPATIENT FACILITIES AND OTHER AGENCIES.

WAC 275-56-450 COMMUNITY SUPPORT SERVICES—RECORD OF COMMUNITY SUPPORT SERVICES.

**WSR 89-23-109**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Order 2905—Filed November 22, 1989, 2:06 p.m.]

Date of Adoption: November 22, 1989.

Purpose: To change the cross-references to WAC 388-14-200.

Citation of Existing Rules Affected by this Order: Amending WAC 388-83-013.

Statutory Authority for Adoption: RCW 74.08.090.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Effective Date of Rule: November 23, 1989, at 12:01 a.m.

November 22, 1989  
 Leslie F. James, Director  
 Administrative Services

**AMENDATORY SECTION** (Amending Order 2809, filed 6/7/89)

**WAC 388-83-013 COOPERATION IN SECURING MEDICAL CARE SUPPORT.** (1) As a condition of ((*medical*)) eligibility for medical assistance, the department shall require the applicant or recipient/enrollee to cooperate with the department in:

(a) Obtaining medical care support or payment for the applicant or recipient/enrollee or for any other applicant or recipient/enrollee other than an unborn for whom the applicant or recipient/enrollee can legally assign rights; and

(b) Identifying and providing information to assist the department in pursuing any liable third party.

(2) The department shall also require an AFDC/FIP-related medical assistance client to cooperate as described under WAC 388-14-200 (2)(a), (b), (c), (3), (4), (5), (6), (7), (8), (9), and ((+7)) (16), unless there is a finding of good cause under WAC 388-24-111, except for the provision under WAC 388-24-111 (15)(b), in establishing:

(a) The paternity of a child; and

(b) Medical care support.

(3) The department shall waive such cooperation requirements if the department finds the applicant or recipient/enrollee has good cause under WAC 388-83-014 for noncooperation.

(4) Unless the department finds good cause for noncooperation under WAC 388-24-111 or 388-83-014, the department shall find the applicant or recipient/enrollee, who refuses to cooperate under subsection (1) of this section, ineligible to receive medical assistance.

(5) The department shall provide medical assistance to an otherwise eligible applicant or recipient/enrollee when the person who has the legal authority to cooperate

on behalf of the applicant or recipient/enrollee refuses such cooperation.

**WSR 89-23-110**  
**PERMANENT RULES**  
**TRANSPORTATION COMMISSION**  
 [Order 68—Filed November 22, 1989, 2:20 p.m.]

Date of Adoption: November 16, 1989.

Purpose: To update regulations on size and weight to reflect changing industry practice and changing DOT procedures.

Citation of Existing Rules Affected by this Order: Amending several regulations in chapter 468-38 WAC.

Statutory Authority for Adoption: RCW 46.44.090.

Pursuant to notice filed as WSR 89-19-042 on September 18, 1989.

Effective Date of Rule: Thirty-one days after filing.  
 November 16, 1989  
 Richard Odabashian  
 Chairman

**AMENDATORY SECTION** (Amending Order 31, Resolution No. 156, filed 8/20/82)

WAC 468-38-030 ISSUANCE OF ADDITIONAL TONNAGE PERMITS. (1) ~~((All permits for annual additional tonnage are to be issued at the headquarters office of the department of transportation, Olympia, Washington.))~~ Permits for annual, quarterly, monthly, or temporary additional tonnage may be issued in the department's permit offices or by agents of the department located throughout the state.

(2) ~~((The department shall periodically publish a map showing which highways may be traversed by vehicles using additional tonnage permits. These routes are subject to change or cancellation by the department if deterioration occurs.))~~

~~((3))~~ Permits will be issued only to the following types of vehicles: Three or more axle full trucks; three or more axle truck-tractors; three or more axle dromedary truck-tractors; ~~((; three axle full trailers. Three axle full trailers will require a permit only when towed by a two axle full truck, or if the towing vehicle is not covered by an additional tonnage permit))~~, and two axle tractors to pull double trailers.

~~((4))~~ (3) Permits will not be issued to semi-trailers.

~~((5))~~ (4) The fees for additional tonnage permits shall be prorated under the following conditions and by the following method:

(a) ~~((Additional tonnage permits will be prorated only to firms or individuals listed by the department of licensing to be fleet operators and only when the name is indicated on the listing furnished by the department of licensing.))~~

~~((b))~~ All power units in a fleet that have been reported to the department of licensing as proportionally registered are eligible for proration.

~~((c))~~ The total cost of additional tonnage requested by the applicant for all units within the fleet shall be computed as if those fees were not subject to prorate.

~~((d))~~ (b) Those firms or individuals who license their vehicles under chapters 46.85 and 46.87 RCW shall submit a copy of their Schedule A and B that has been approved by their respective jurisdiction when applying for annual additional tonnage.

(c) The percentage of mileage operated in Washington, which is the percentage as reported for vehicle license proration, shall be multiplied by the amount in ~~((subparagraph (c)))~~ (a) of this subsection to determine the amount to be paid to the department of transportation: PROVIDED, HOWEVER, That the minimum fee assessed for any permit shall ~~((not be less than five dollars))~~ be determined by RCW 46.44.095.

~~((e))~~ (d) Additions to fleets may be issued additional tonnage permits and payment shall be determined by using the same method as described above: PROVIDED, HOWEVER, That no additional tonnage permits will be issued until the vehicle or vehicles involved have been duly registered with ~~((the department of licensing as additions to the fleet))~~ their respective jurisdiction in accordance with chapters 46.85 and 46.87 RCW.

~~((f))~~ (5) Quarterly or monthly additional tonnage permits may be purchased only when the applicant has purchased licensed tonnage on a quarterly or monthly basis.

~~((7))~~ (6) Temporary additional tonnage permits may be purchased when the applicant has licensed tonnage in effect for the period for which he is applying.

~~((8))~~ (7) Additional tonnage purchased on a quarterly ~~((or monthly))~~ basis may be prorated if the prorate percentage for Washington state is at least sixty percent. Temporary additional tonnage may not be prorated.

~~((9))~~ (8) If a permit to increase weight by means of a boost-a-load or similar device is requested, the applicant must produce written evidence from respective county and/or city authorities indicating approval to travel over county roads or city streets.

**AMENDATORY SECTION** (Amending Order 31, Resolution No. 156, filed 8/20/82)

WAC 468-38-040 SPECIAL LOG TOLERANCE TRANSPORTATION PERMITS. (1) Special log tolerance transportation permits shall be issued ~~((only at the headquarters office of the department of transportation located in Olympia, Washington))~~ at all department of transportation permit offices or by agents of the department located throughout the state.

(2) A permit will be denied if the vehicle does not meet the axle distance requirements of RCW 46.44.047, i.e., the distance between the front axle and the last axle of the combination shall be at least 37 feet.

(3) Maximum gross weight of the combination shall not exceed 68,000 lbs. by more than 6800 lbs. gross.

(4) Maximum gross weight on tandem axles shall not exceed 33,600 lbs. on each set of tandem axles.

(5) Operators having special log tolerance transportation permits are subject to all posted road and bridge restrictions.

(6) Special log tolerance transportation permits may be transferred to the purchaser of a log truck or to another vehicle owned by the permittee. A fee of five dollars will be charged.

(7) Any approved route, previously granted, shall be subject to immediate cancellation if upon determination of the department of transportation the section of state highway involved is showing abnormal failure or overstress.

~~(8) ((The department shall periodically publish a map showing which highways may be traversed by vehicles using special log tolerance transportation permits. The department shall be guided in its determination by the ability of each section of highway to accommodate the increased loading:~~

~~(9))~~ When county roads or city streets are used to reach state highways, a permit for the use of such county roads or city streets is to be obtained from the proper county or city authorities.

~~((+10))~~ (9) The fee for special log tolerance transportation permits may not be prorated.

**AMENDATORY SECTION** (Amending Order 31, Resolution No. 156, filed 8/20/82)

WAC 468-38-050 SPECIAL PERMITS FOR MOVEMENT OF OVERLEGAL SIZE OR WEIGHT LOADS. The department of transportation may issue permits for movement of overlegal size or weight loads when:

(1) Application has been made to the department and the applicant has shown that there is good cause for the move, and that the applicant is capable of making the move.

(2) The applicant has shown that the load cannot reasonably be dismantled or disassembled.

(3) The vehicle, combination, or load has been dismantled and made to conform to legal limitations where practical. Reductions shall be made even though the use of additional vehicles becomes necessary.

(4) The vehicle(s) and load have been thoroughly described and identified; the points of origin and destination and the route of travel have been stated and approved.

(5) The proposed move has been determined to be consistent with public safety and the permittee has shown proof of seven hundred fifty thousand dollars liability insurance for the cost of any accident, damage, or injury to any person or property resulting from the operation of the vehicle covered by the permit upon the public highways of this state: PROVIDED, That a non-commercial operator shall have at least three hundred thousand dollars liability insurance.

(6) The permittee affirms that:

(a) The vehicles have been properly licensed to make the proposed move or carry the load described in accordance with the provisions of Washington law;

(b) The drivers are properly licensed to operate in Washington in the manner proposed.

(7) The permittee will comply with all applicable rules pertaining to the issuance of any special permit.

(8) Except as provided for in RCW 46.44.140, the original permit or certified copy must be carried on the power unit at all times the permit is in effect.

**AMENDATORY SECTION** (Amending Order 31, Resolution No. 156, filed 8/20/82)

WAC 468-38-100 ESCORT CAR REQUIREMENTS. Escort cars are required:

(1) When vehicle, vehicles or load is over ~~((+10))~~ eleven feet in width, escort cars (both front and rear) are required on a two-lane highway.

(2) When vehicle, vehicles or load is over ~~((+4))~~ fourteen feet wide, one escort car in rear of movement is required on multiple-lane highways.

(3) When vehicle, vehicles or load is over ~~((+20))~~ twenty feet wide, escort cars in both front and rear of movement are required when the highway is a multiple-lane, undivided highway.

(4) When overall length of load, including vehicles, exceeds ~~((+100))~~ one hundred feet or when rear overhang of load measured from the last axle exceeds one-third of the total length, one escort car is required on two-lane highways. The permit may authorize a riding flagperson in lieu of an escort car.

(5) When overall length of load, including vehicles, exceeds ~~((+40))~~ one hundred forty feet, one rear escort car is required on multiple-lane highways.

(6) When in the opinion of the department of transportation, escort cars are necessary to protect the traveling public, for any overdimension and/or overweight move either across, upon, or along a highway.

**AMENDATORY SECTION** (Amending Order 31, Resolution No. 156, filed 8/20/82)

WAC 468-38-160 SIDE MIRRORS FOR OVERWIDE LOADS. Side mirrors shall be so mounted on vehicles hauling overwide loads that the driver can see the highway for a distance of two hundred feet directly to the rear of the driver's side of the vehicle. Escort vehicles may be used in lieu of this distance requirement.

All escort vehicles must be equipped with outside rear-view mirrors on each side of the vehicle to provide vision to the rear to ensure that the movement is progressing safely.

**AMENDATORY SECTION** (Amending Order 31, Resolution No. 156, filed 8/20/82)

WAC 468-38-200 SAFETY CHAINS AND DEVICES. Special permits will not authorize the operation of any vehicle upon the public highways of this state without having the load thereon securely fastened and protected by safety chains or other load securing device pursuant to the Code of Federal Regulations, Title 49, part 393.100. Dragging of load on the roadway will not be permitted. Vehicles with a boom or structural erection member attached thereto must have the boom or member secured in such a manner that it will not elevate or sway in transportation.

AMENDATORY SECTION (Amending Order 31, Resolution No. 156, filed 8/20/82)

WAC 468-38-230 **DAYS ON WHICH PERMIT MOVEMENTS ARE PROHIBITED.** Oversize movements are prohibited on Fridays after ~~((2:00 p.m. if width is in excess of 10 feet; all other overlegal movements prohibited after 4:00))~~ 3:00 p.m. ((Fridays)) and after 12:00 noon on Sundays. Overlegal movements are allowed all day on Saturday. Overlegal movements are prohibited on the holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and during the afternoon of the day preceding said holidays. Should any of the holidays fall on a Saturday or Sunday, the preceding Friday or the following Monday shall be considered such holiday.

Movements may be made on holidays that are not universally observed, provided they do not conflict with the policy for Fridays and Sundays, e.g., Lincoln's Birthday, Washington's Birthday, Columbus Day, Veterans' Day and General Election Day.

AMENDATORY SECTION (Amending Order 31, Resolution No. 156, filed 8/20/82)

WAC 468-38-250 **DAYS ON WHICH PERMITS ((NOT)) ARE ISSUED.** ~~((All offices of the department authorized to issue permits for the movement of vehicles or loads of excess size or weight are closed on Saturdays, Sundays and legal holidays. Consequently, permits will not be issued on these days. Applicants are required to arrange moving schedules and apply for permits sufficiently in advance of the moving dates to allow for this contingency.))~~ Permits may be purchased at any authorized department of transportation office or agency Monday through Friday during normal business hours. Permits are not available on Saturdays, Sundays, or legal holidays. Permits may be purchased at ports of entry on the interstate highway system twenty-four hours a day, seven days a week, excluding legal holidays.

AMENDATORY SECTION (Amending Order 31, Resolution No. 156, filed 8/20/82)

WAC 468-38-260 **NIGHT-TIME MOVEMENTS.** Special permits will authorize overlegal movements only during daytime hours under normal atmospheric conditions, except that movements up to ~~((10))~~ ten feet wide may be made by permit at night on fully controlled access highways ((whose lanes of travel are at least 12 feet wide)). Those oversize loads that are allowed to move at night shall have lighting equipment as required by the Code of Federal Regulations, Title 49, part 393.18. No movements shall be made when visibility is reduced to less than ~~((1,000))~~ one thousand feet or when hazardous roadway conditions exist. Daytime means from one-half hour before sunrise to one-half hour after sunset. Night-time means any other hour. It shall be the responsibility of the permittee to discontinue movement and remove the unit from the highway when any of the above conditions exist which could create an unsafe movement.

AMENDATORY SECTION (Amending Order 31, Resolution No. 156, filed 8/20/82)

WAC 468-38-350 **LANE OF TRAVEL.** The vehicle or combination moving by permit shall be operated in the right lane except when passing or when required to accommodate the height of the load.

AMENDATORY SECTION (Amending Order 31, Resolution No. 156, filed 8/20/82)

WAC 468-38-390 **WINTER ROAD RESTRICTIONS.** During periods when "emergency load restrictions" or "severe emergency load restrictions" are in effect, only vehicles equipped with tires required by WAC 468-38-080 may operate under permit. Movement by permit of units whether driven, towed or hauled is prohibited in areas where any of the following signs are displayed: "Snow tires advised," "approved snow tires recommended," "approved snow tires required," or "tire chains required."

Special permits for movements over mountain passes (Snoqualmie, Stevens, Sherman, Blewett, White and Satus) will not be valid during periods when snow is falling to a degree that visibility is limited to less than 1,000 feet; immediately following a severe storm when snow removal equipment is operating; when fog or rain limits visibility to less than 1,000 feet; or when compact snow and ice conditions require the use of chains. If hazardous conditions are encountered after a move is undertaken, it shall be the responsibility of the permittee to remove the oversize load from the highway, and he shall not proceed until conditions have abated and he has obtained clearance from the nearest department of transportation office or the Washington state patrol.

The secretary of transportation may issue special permits for department vehicles used for snow removal or the sanding of highways during emergency winter conditions. Such permits shall also be valid for vehicles in transit to or from the work site. Limitations on movement during hours of the day or days of the week may be waived. Sign requirements may be waived if weather conditions render such signs ineffectual. Movements at night may be made only by department vehicles whose lights meet the standards for emergency maintenance vehicles established by the commission on equipment.

**WSR 89-23-111****NOTICE OF PUBLIC MEETINGS  
FOREST PRACTICES BOARD**

[Memorandum—November 22, 1989]

November 30, 1989

1:25 p.m. – 2:30 p.m.

Department of Natural Resources  
Real Estate Division  
Metropolitan Park Building  
1100 Olive Way, Suite 1450  
Seattle, Washington

**WSR 89-23-112**  
**PROPOSED RULES**  
**DEPARTMENT OF WILDLIFE**  
**(Wildlife Commission)**  
 [Filed November 22, 1989, 2:59 p.m.]

**Original Notice.**

**Title of Rule:** WAC 232-28-61728, Amendment to 1988-90 Game fish seasons and catch limits—Cedar and Sammamish River systems, and in Lakes Washington and Sammamish, Salmon Bay, and Lake Washington Ship Canal, also known as Lake Union Ship Canal.

**Purpose:** The 1989-90 Lake Washington wild steelhead run size is estimated to be 2,093 fish. Of the 2,093, it is predicted that 1,157 will be taken by sea lions and 94 will be taken by the Suquamish and Muckleshoot tribes in their gillnet fisheries. Thus, 842 wild steelhead are expected to reach the spawning grounds which is 53 percent of the escapement goal of 1,600 fish. Since the escapement goal will not be met, wild steelhead release regulations must be promulgated.

**Statutory Authority for Adoption:** RCW 77.12.040.

**Statute Being Implemented:** RCW 77.12.040.

**Summary:** The harvest of steelhead will be restricted and/or prohibited on the specified river and lake systems.

**Reasons Supporting Proposal:** The department has determined wild steelhead escapement goal will not be met on the Lake Washington system and wild steelhead release regulations must be promulgated to minimize the harvest of wild steelhead. This emergency regulation is necessary to implement the regulations during a crucial time in the steelhead run. Steelhead begin entering the Lake Washington system during early December.

**Name of Agency Personnel Responsible for Drafting and Implementation:** Pat Doyle, AD, Fisheries Management Division, Olympia, 753-5713; and Enforcement: Dan Wyckoff, AD, Wildlife Enforcement Division, Olympia, 753-5740.

**Name of Proponent:** Department of Wildlife, governmental.

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

**Explanation of Rule, its Purpose, and Anticipated Effects:** The sport fishery will be allowed the opportunity to catch hatchery steelhead even though the wild escapement goal will not be met. This regulation is the same as 1987-88, except for March 1 - May 31 closure, and represents a liberalization from 1988-89 when the entire system was closed to all fishing. The tribes will concentrate their fishery during December and January when hatchery fish predominate in the run. They will close when their catch plus net robbing by sea lions equals 50 percent of the harvestable number of hatchery fish or when they have killed 101 wild steelhead, whichever occurs first.

Proposal does not change existing rules.

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

**Hearing Location:** Washington Department of Wildlife, 600 Capitol Way North, Olympia, WA 98501-1091, on January 2, 1990, at 11:00.

Submit Written Comments to: Lee S. Smith, Department of Wildlife, Olympia, Washington 98501-1091, by December 22, 1989.

Date of Intended Adoption: January 2, 1990.

November 22, 1989

Lee S. Smith

Administrative Regulations Officer

**NEW SECTION**

WAC 232-28-61728 AMENDMENT TO 1988-90 GAME FISH SEASONS AND CATCH LIMITS - CEDAR AND SAMMAMISH RIVER SYSTEMS, AND IN LAKES WASHINGTON AND SAMMAMISH, SALMON BAY, AND LAKE WASHINGTON SHIP CANAL (ALSO KNOWN AS LAKE UNION SHIP CANAL). Notwithstanding the provisions of WAC 232-28-617, on the Cedar and Sammamish River systems, and in Lakes Washington and Sammamish, Salmon Bay, and Lake Washington Ship Canal (also known as Lake Union Ship Canal), WILD STEELHEAD RELEASE, only steelhead with missing adipose or ventral fins may be possessed (there must be a healed scar in the location of the missing fin) as follows:

Effective 12:01 a.m. December 1, 1989 to 11:59 p.m. February 28, 1990, Cedar and Sammamish River Systems, Salmon Bay, Lake Washington, Lake Sammamish, and Lake Washington Ship Canal (also known as the Lake Union Ship Canal).

Also, notwithstanding the provisions of WAC 232-28-617, the following waters are closed to the taking of steelhead:

Effective 12:01 a.m. March 1, 1990 to 11:59 p.m. March 31, 1990, Cedar and Sammamish River Systems, and Salmon Bay (only that portion as follows—from the east end of the north wing wall of the Chittenden Locks to a line approximately 175 feet seaward of, and parallel to the railroad bridge, and which runs through the wooden tower structure near the south shore).

Also, notwithstanding the provisions of WAC 232-28-617 and WAC 232-28-618, the following waters are closed to the taking of steelhead:

Effective 12:01 a.m. March 1, 1990 to 11:59 p.m. May 31, 1990, Lake Washington, Lake Sammamish, Salmon Bay (only that portion as follows—all waters from the Chittenden Locks (in Ballard) upstream (east) to the Fremont Bridge), and Lake Washington Ship Canal (also known as the Lake Union Ship Canal).

All other provisions of WAC 232-28-617 and WAC 232-28-618 relating to the above waters remain in effect.

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

**WSR 89-23-113**  
**PROPOSED RULES**  
**DEPARTMENT OF WILDLIFE**  
**(Wildlife Commission)**  
 [Filed November 22, 1989, 3:02 p.m.]

**Original Notice.**

**Title of Rule:** WAC 232-28-61729, Amendment to 1988-90 Game fish regulations—Puyallup and Carbon rivers.

**Purpose:** The Department of Wildlife has concluded that the wild steelhead runs in the Puyallup River is unknown. However, all available data indicates that the wild run is underescapement. It is estimated that the acceptable incidental harvest of wild steelhead for the Puyallup River system will have been caught by January 31 will adversely impact escapement. Therefore, any further harvest must be limited to hatchery fish.

**Statutory Authority for Adoption:** RCW 77.12.040.

**Statute Being Implemented:** RCW 77.12.040.

**Summary:** No wild steelhead will be harvested by the sport or tribal fisheries after January 31. This is the same regulation that was promulgated last season but it represents an extension from the previous five seasons. The sport fishery went to wild steelhead release during the second week in January in 1988, 1987, 1986, 1985 and 1984. This regulation will result in a higher escapement of wild steelhead than the regulations in the 1989-90 pamphlet.

**Reasons Supporting Proposal:** The Department of Wildlife has concluded that the wild steelhead runsize in the Puyallup River is unknown. However, all available data indicates that the wild run is underescaped. It is estimated that the acceptable incidental harvest of wild steelhead for the Puyallup River system will have been caught by January 31 will adversely impact escapement. Therefore, any further harvest must be limited to hatchery fish.

**Name of Agency Personnel Responsible for Drafting and Implementation:** Pay Doyle, AD, Fisheries Management Division, Olympia, 753-5713; and **Enforcement:** Dan Wyckoff, AD, Wildlife Enforcement Division, Olympia, 753-5740.

**Name of Proponent:** Department of Wildlife, governmental.

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

**Explanation of Rule, its Purpose, and Anticipated Effects:** No wild steelhead will be harvested by the sport or tribal fisheries after January 31. This is the same regulation that was promulgated last season but it represents an extension from the previous five seasons. The sport fishery went to wild steelhead release during the second week in January in 1988, 1987, 1986, 1985 and 1984. This regulation will result in a higher escapement of wild steelhead than the regulations in the 1989-90 pamphlet.

Proposal does not change existing rules.

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

**Hearing Location:** Washington Department of Wildlife, 600 Capitol Way North, Olympia, WA 98501-1091, on January 2, 1990, at 11:00 a.m.

**Submit Written Comments to:** Lee S. Smith, Department of Wildlife, 600 Capitol Way North, Olympia, 98501, by November 22, 1989.

**Date of Intended Adoption:** January 2, 1990.

November 22, 1989

Lee S. Smith

Administrative Regulations Officer

#### NEW SECTION

WAC 232-28-61729 AMENDMENT TO 1988-90 GAME FISH REGULATIONS - PUYALLUP AND CARBON RIVERS Notwithstanding the provisions of WAC 232-28-617, effective 12:01 a.m. on February 1, 1990, the game fish regulations for the Puyallup and Carbon Rivers are as follows: WILD STEELHEAD RELEASE, only steelhead with missing adipose or ventral fins may be possessed (there must a healed scar in the location of the missing fin) between the dates of February 1 and March 31, 1990, inclusive. All other provisions of WAC 232-28-617 relating to the Puyallup and Carbon Rivers remain in effect.

#### WSR 89-23-114

#### PROPOSED RULES

#### DEPARTMENT OF FISHERIES

[Filed November 22, 1989, 3:12 p.m.]

Original Notice.

**Title of Rule:** Definitions, licensing and catch recording rules.

**Purpose:** Amend and establish definitions, clarify personal use license rules, and amend catch reporting rules.

**Statutory Authority for Adoption:** RCW 75.08.080.

**Statute Being Implemented:** RCW 75.08.080.

**Summary:** Correct scrivener's error in definition of "extenuating circumstances," define "explosive substance," clarify nonretention of fees for free licenses, provide stamp may be affixed to 2-day license, delete IPSFC reference in catch reporting, delete personal and driver's license information from personal use catch record cards, change area definitions.

**Reasons Supporting Proposal:** Certain definitions need modification due to errors, personal use rules need clarification and catch reporting rules need to be updated.

**Name of Agency Personnel Responsible for Drafting:** Evan S. Jacoby, 115 General Administration Building, Olympia, 586-2429; **Implementation:** Carol B. Felton, 115 General Administration Building, Olympia, 753-6517; and **Enforcement:** James W. McKillip, 115 General Administration Building, Olympia, 753-6585.

**Name of Proponent:** Department of Fisheries, governmental.

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

**Explanation of Rule, its Purpose, and Anticipated Effects:** Area 2A boundary redefined as dock removed; Area 7 boundary corrected as reference was to magnetic heading rather than true; extenuating circumstances definition applies to title rather than chapter, explosive substance definition needed to include seismic testing; dealer fee established and exempted from free license; affixing stamp to 2-day card negates necessity of completing separate recreational license form and saves time; IPSFC no longer requires fish tickets, catch record card information is not needed for management or enforcement. The anticipated effects of these changes are minimal as these are primarily housekeeping changes.

**Proposal Changes the Following Existing Rules:** Modify boundary definitions, clarify application of extenuating circumstances, allow stamp to be affixed to catch record card, delete IPSFC reference, delete personal and driver's license information from catch record card.

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

These proposals will not affect 10% of the businesses in any one three-digit industrial classification nor 20% of all businesses.

**Hearing Location:** Large Conference Room, General Administration Building, 210 11th Street, First Floor, Olympia, WA 98504, on December 27, 1989, at 3:00 p.m.

Submit Written Comments to: WDF Hearings Officer, 115 General Administration Building, Olympia, WA 98504, by December 26, 1989.

Date of Intended Adoption: January 2, 1989 [1990].

November 21, 1989

Judith Merchant  
Deputy Director  
for Joseph R. Blum  
Director

AMENDATORY SECTION (Amending Order 84-66, filed 7/6/84)

WAC 220-22-020 COAST, WILLAPA HARBOR, GRAYS HARBOR SALMON MANAGEMENT AND CATCH REPORTING AREAS. (1) Area 1 shall include those waters of District 1 and the Oregon coast westerly of a line projected from the inshore end of the north Columbia River jetty in the state of Washington to the knuckle of the south Columbia River jetty in the state of Oregon, northerly of a line projected true west from Tillamook Head in Oregon and southerly of a line projected true west from Leadbetter Point in Washington.

(2) Area 2 shall include those waters of District 1 northerly of a line projected true west from Leadbetter Point and southerly of a line projected true west from the Queets River mouth.

(3) Area 2A shall include those waters of Grays Harbor and the Chehalis River estuary upstream from the Union Pacific Railroad Bridge at Aberdeen to a line projected from the ((~~Standard Oil Dock~~)) Lakeside Industries asphalt plant tower at a right angle to the thread of the stream to ((~~a fishing boundary marker set on~~)) the opposite shore.

(4) Area 2B shall include those waters of Grays Harbor lying easterly of a straight line projected from the Point Chehalis light, located 123 feet above mean high water at Westport, through the Coast Guard look out tower to the shore near Point Brown, southerly of a line projected from a fishing boundary marker at Ocean Shores Marina, to a fishing boundary marker on Sand Island and thence to the tripod station at Brackenridge Bluff, westerly of a line projected from the tripod station at Brackenridge Bluff southward and extending through channel marker 8 in the south channel at the mouth of Johns River to the mainland, and northerly of the Bay City Bridge.

(5) Area 2C shall include those waters of Grays Harbor northerly of a line projected from a fishing boundary marker at Ocean Shores Marina to a fishing boundary marker on Sand Island to the tripod station at Brackenridge Bluff and westerly of a line starting at a monument located at the point of Holman Bluff near the mouth of Grass Creek and projected to a monument set on Point New, exclusive of those waters within 1/4 mile of a monument set on the beach near the mouth of Chenois Creek and those waters northerly of a line starting at a monument located near the beach in front of the Giles Hogan residence located west of the mouth of the Humptulips River, thence projected in a southeasterly direction to a monument set on the most southerly tip of the grass spit at the mouth of the Humptulips River, thence projected in an easterly direction to a point on Chenois Bluff at 47° 0' 32" N latitude, 124° 1' W longitude.

(6) Area 2D shall include those waters of Grays Harbor and the Chehalis River estuary easterly of a line projected from the tripod station at Brackenridge Bluff southward and through channel marker 8 at the mouth of Johns River in the south channel to the mainland and westerly of the Union Pacific Railroad Bridge in Aberdeen and westerly (downstream) of the Highway 105 Bridge on Johns River.

(7) Area 2G shall include those waters of Willapa Harbor northerly of a line projected from Needle Point approximately ((285°)) 305° true to the Island Sands light approximately 2 miles south of Riddle Spit light No. 10 and thence true west to the North Beach Peninsula, westerly of a line projected from Needle Point northerly to day beacon No. 14 and thence to Ramsey Point, outside and westerly of a line projected from Stony Point to the Bay Center Channel light (F1 4 seconds, 16 feet) to the northern tip of Goose Point, downstream and westerly of a line projected 235 degrees true from the north shore of the Willapa River through Willapa River light number 33 to the south shore, outside and southerly of a line commencing at a boundary marker on the west shore of the North River projected 82 degrees true through channel marker No. 16 to a boundary marker on the east shore, outside and southerly of a line projected from the Cedar River's

meander corner between Section 31, Township 15N, and Section 6, Township 14N, Range 10W, W.M., to the meander corner between Sections 36, Township 15N, and Section 1, Township 14N, Range 11W, W.M., and inside and easterly of a straight line projected from the Cape Shoalwater light through buoy 8A, located between buoy 8 and buoy 10, approximately 1,500 yards from Cape Shoalwater light on a line 171° true, to Leadbetter Point.

(8) Area 2H shall include those waters of Willapa Harbor and the Willapa River estuary easterly of Area 2G and downstream from a line projected true north from the Standard Oil dock in South Bend to the opposite shore of the Willapa River.

(9) Area 2J shall include those waters of Willapa Harbor lying southerly and westerly of a line projected from Diamond Point to the Island Sands light, approximately 2 miles south of Riddle Spit light No. 10, and thence due west to the North Beach Peninsula, and northerly of a line projected true east-west through marker 20 between Long Island and the North Beach Peninsula.

(10) Area 2K shall include those waters of Willapa Harbor easterly of a line projected from the northern tip of Goose Point to the Bay Center Channel light (F1 4 seconds, 16 feet) to Stony Point and westerly of the Palix River Highway 101 Bridge.

(11) Area 2M shall include those waters of Willapa Harbor lying southerly and easterly of a line projected from Needle Point approximately 285° true to the Island Sands light, approximately 2 miles south of Riddle Spit light No. 10, and south to Diamond Point, downstream and westerly of the Highway 101 Bridge over the Naselle River, and northerly and easterly of a line from Stanley Point to Paradise Point.

(12) Area 3 shall include those waters of District 1 northerly of a line projected true west from the Queets River mouth and southerly of a line projected true west from Cape Alava.

(13) Area 4 shall include those waters of District 1 northerly of a line projected true west from Cape Alava, westerly of lines projected from the northern tip of Portage Head to the southern tip of Waatch Point and from the Tatoosh Island light to Bonilla Point and southerly of a line projected true west from the intersection of the Bonilla-Tatoosh line with the U.S.-Canada International Boundary Line.

(14) Area 4A shall include those waters easterly and inside of a line projected from the northern tip of Portage Head to the southern tip of Waatch Point, outside and westerly of the mouth of any river or stream flowing to the sea.

AMENDATORY SECTION (Amending Order 89-61, filed 7/14/89)

WAC 220-16-410 DEFINITION—EXTENUATING CIRCUMSTANCES. "Extenuating circumstances" for purposes of this ((chapter)) title mean circumstances that lessen the seriousness or magnitude of an act, and which are to be considered in determining if an individual is to be granted extraordinary relief. Such personal characteristics as age, education, fishing experience, and physical capability, as well as other personal characteristics, and such physical circumstances as weather, age of vessel, and vessel propulsion mechanism, as well as other physical circumstances, may be considered when reviewing a set of facts for extenuating circumstances.

NEW SECTION

WAC 220-16-420 EXPLOSIVE SUBSTANCE. The term "explosive substance" includes, but is not limited to, any gaseous discharge that generates pressure waves capable of harming food fish or shellfish.

AMENDATORY SECTION (Amending Order 89-05, filed 3/20/89)

WAC 220-55-086 TWO-CONSECUTIVE-DAY COMBINED LICENSE AND CATCH RECORD CARD. A two-consecutive-day combined license and catch record card (also referred to as a punch-card in chapter 75.25 RCW) shall consist of a two-consecutive-day license stamp affixed to a recreational license form and the appropriate catch record card or a two-consecutive-day license stamp affixed to the appropriate catch record card.

NEW SECTION

WAC 220-55-150 DEALERS FEES. Personal use license dealers may retain a recreational license fee of fifty cents for each recreational license sold. No license fee may be charged or retained for free licenses issued under RCW 75.25.110.

**AMENDATORY SECTION** (Amending Order 86-102, filed 9/12/86)

WAC 220-69-220 DEFINITION OF TERMS. (1) DEPARTMENT OF FISHERIES as referred to in this chapter means:

Department of Fisheries  
Data Processing Section  
Room 115 General Administration Building  
Olympia, Washington 98504  
Telephone (206) 753-2540 or (206) 753-6580

(2) DEALER as referred to in this chapter means the original purchaser or receiver of food fish, shellfish, or parts thereof.

(3) BUYER as referred to in this chapter means the person who originally receives food fish, shellfish, or parts thereof on behalf of a dealer whose name appears on the buyer's license.

(4) FISHERMAN as referred to in this chapter means the person who catches or delivers food fish, shellfish, or parts thereof.

(5) ORIGINAL RECEIVER OR RECEIVER as referred to in this chapter means the first person in possession of food fish or shellfish in the state of Washington who is a licensed wholesale dealer or fish handler or who is acting in that capacity, after the food fish or shellfish have been caught or harvested by a commercial fisherman.

(6) ((HPSFC as referred to in this chapter means:

~~International Pacific Salmon Fisheries  
Commission  
P.O. Box 30  
New Westminster, British Columbia CANADA~~

(7)) TREATY as referred to in this chapter means any person, group, or activity thereof made unique by virtue of descendency from Indian tribes signatory to treaties made with the United States government in the mid-1850's where such treaties reserved certain rights in what is now the state of Washington or waters bordering that state.

((7)) (7) NONTREATY as used in this chapter means all entities not qualified by definition as treaty.

((9)) (8) TREATY INDIAN as referred to in this chapter means an individual treaty Indian fisherman.

((10)) (9) WORKING DAY as referred to in this chapter means Monday through Friday exclusive of a Washington state or federal holiday.

**AMENDATORY SECTION** (Amending Order 86-102, filed 9/12/86)

WAC 220-69-260 DISTRIBUTION OF COPIES OF CANNERY AND TROLL FISH RECEIVING TICKET. State of Washington cannery and troll fish receiving tickets shall be made out in quintuplicate (five copies) at the time of landing. Upon completion of the fish receiving ticket the copies shall be distributed as follows:

(1) The dealer copy #1 (white) shall be retained by receiver for their use.

(2) The state ((copy)) copies #1 and #2 (green and pink) shall be mailed to the department of fisheries. It is required that the state ((copy)) copies be received by the department no later than the fourth working day after the day the ticket was completed by the original receiver.

(3) ((The HPSFC copy (pink) shall be mailed to the HPSFC, P.O. Box 30, New Westminster, B.C.: PROVIDED, That in the event the fish receiving ticket does not contain any pink or sockeye salmon caught in catch Areas 3, 4, 4A, 4B, 5, 6, 6A, 6B, 6C, 6D, 7, 7A, 7B, 7C, 57, 58 and 59 the fish receiving ticket shall be mailed to the department of fisheries with the state copy:

(4)) Dealer copy #2 (yellow) shall be retained by receiver for their use.

((5)) (4) Fisherman copy (gold) shall be retained by the deliverer for their use.

**AMENDATORY SECTION** (Amending Order 86-102, filed 9/12/86)

WAC 220-69-264 DISTRIBUTION OF COPIES OF TREATY INDIAN FISH RECEIVING TICKETS. State of Washington treaty Indian fish receiving tickets shall be made out in quintuplicate (five copies) at the time of landing. Upon completion of the treaty Indian fish receiving ticket, the copies shall be distributed as follows:

(1) The dealer copy #1 (white) shall be retained by receiver for their use.

(2) The state copy (green) and the game copy (pink) shall be mailed to the Northwest Indian Fisheries Commission, P.O. Box 5247, Lacey, Washington 98503. It is required that the state copy and game copy be received by the Northwest Indian Fisheries Commission no later than the fourth working day after the day the ticket was completed by the original receiver.

(3) ((The HPSFC copy (pink) shall be mailed to the HPSFC, P.O. Box F 203-2112, Blaine, WA 98230. PROVIDED, That in the event the fish receiving ticket does not contain any pink or sockeye salmon caught in Catch Areas 3, 4, 4A, 4B, 5, 6, 6A, 6B, 6C, 6D, 7, 7A, 7B, 7C, 57, 58 and 59 the fish receiving ticket shall be mailed to the Northwest Indian Fisheries Commission, P.O. Box 5247, Lacey, Washington 98503 with the state copy:

(4)) The tribal copy (yellow) shall be mailed with the state ((copy)) and game copies to the Northwest Indian Fisheries Commission, P.O. Box 5247, Lacey, Washington 98503: PROVIDED, That upon written agreement received by the department of fisheries from a specific tribe and buyer indicating the desire to transmit the tribe's copy directly to the fisherman's tribe, then that one copy may be so disposed.

((5)) (4) The fisherman copy (gold) shall be retained by the deliverer for their use.

**AMENDATORY SECTION** (Amending Order 89-05, filed 3/20/89)

WAC 220-69-237 DESCRIPTION OF SPORT SALMON CATCH RECORD AND REQUIRED INFORMATION. (1) There is hereby created a sport salmon catch record form to be prepared, printed, and distributed on request, by the department of fisheries,

(2) The sport salmon catch record card shall contain space for the following information:

(a) Name of angler.

(b) Home address.

(c) City, state, zip code.

(d) ((Angler's driver's license number, or, in the case the angler does not have a driver's license, the first five letters of the anglers last name and the initial for the angler's first and middle name. If the last name is less than five letters, enter the entire last name followed by the first and middle initial. If no middle name, leave blank the initial space:

(e)) Angler's birthdate, height, and weight.

((f)) (e) Date of issue.

((g)) (f) Angler's signature.

((h)) (g) Month of catch.

((i)) (h) Day of catch.

((j)) (i) Marine code or stream: Location of catch.

((k)) (j) Species: Catch type code.

The information in (a) through ((ff)) (e) of this subsection must be completed prior to the catch record card being separated from the underlying copy of the catch record card. The angler's signature, ((g)) (f) of this subsection, must be present prior to angling. The information in ((h)) (g) through ((k)) (j) of this subsection must be completed immediately upon catching a salmon to be retained.

**AMENDATORY SECTION** (Amending Order 89-05, filed 3/20/89)

WAC 220-69-238 DESCRIPTION OF STURGEON CATCH RECORD AND REQUIRED INFORMATION. (1) There is hereby created a sturgeon catch record form to be prepared, printed, and distributed on request, by the department of fisheries.

(2) The sturgeon catch record card shall contain space for the following information:

(a) Name of angler.

(b) Home address.

(c) City, state, zip code.

(d) ((Angler's birthdate, height, and weight:

(e)) Angler's driver's license number, or, in the case the angler does not have a driver's license, the first five letters of the anglers last name and the initial for the angler's first and middle name. If the last name is less than five letters, enter the entire last name followed by the first and middle initial. If no middle name, leave blank the initial space:

(f)) Date of issue.

((g)) (e) Angler's signature.

((h)) (f) Month of catch.

((i)) (g) Day of catch.

((j)) (h) Marine code, river code, or stream: Location of catch.

((k)) (i) Species: Catch type code.

((l)) (j) Length of fish.

(3) The information in subsection (2)(a) through ((f)) (d) of this section must be completed prior to separating the catch record card from the underlying copy of the catch record card. The angler's signature, ((g)) (e) of this subsection, must be present prior to angling. The information in subsection (2)((h)) (f) through ((i)) (j) of this section must be completed immediately upon catching a sturgeon to be retained.

**WSR 89-23-115****EMERGENCY RULES****DEPARTMENT OF FISHERIES**

[Order 89-142—Filed November 22, 1989, 3:15 p.m.]

Date of Adoption: November 22, 1989.

Purpose: Commercial fishing regulations.

Citation of Existing Rules Affected by this Order:

Repealing WAC 220-47-526.

Statutory Authority for Adoption: RCW 75.08.080.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The opening in Area 7B provides opportunity to harvest non-Indian allocation of Nooksack-Samish origin chum, and is necessary to reduce wastage. The in-season area restriction in Area 7B is necessary to maintain an orderly fishery. All other Puget Sound areas are closed to prevent overharvest of local salmon stocks.

Effective Date of Rule: 5:00 p.m., November 25, 1989.

November 22, 1989

Judith Merchant

Deputy Director

for Joseph R. Blum

Director

**NEW SECTION**

**WAC 220-47-527 PUGET SOUND ALL-CITIZEN COMMERCIAL SALMON FISHERY.** *Notwithstanding the provisions of Chapter 220-47 WAC, effective 5:00 PM Saturday, November 25, until further notice, it is unlawful to take, fish for, or possess salmon or Atlantic salmon for commercial purposes taken from the following Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the following open periods and restrictions:*

- \* Area 7B - Gill nets using 6-inch minimum mesh and purse seines may fish continuously from 5:00 PM Saturday, November 25 to 12:00 noon Sunday December 3. This opening excludes those waters north and east of a line projected from the light at the Port of Bellingham North Terminal to the light at the end of Squaticum Creek waterway.
- \* Areas 4B, 5, 6, 6A, 6B, 6C, 6D, 7, 7A, 7C, 7D, 7E, 8, 8A, 8D, 9, 9A, 10, 10A,

10C, 10D, 10E, 10F, 10G, 11, 11A, 12, 12A, 12B, 12C, 12D, 13, 13A, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, and 13K and all freshwater areas - Closed.

**REPEALER**

*The following section of the Washington Administrative Code is repealed effective 5:00 PM Saturday, November 25:*

**WAC 220-47-526 PUGET SOUND ALL-CITIZEN COMMERCIAL SALMON FISHERY (89-141)**

**WSR 89-23-116****PROPOSED RULES****DEPARTMENT OF AGRICULTURE**

[Filed November 22, 1989, 3:23 p.m.]

Original Notice.

Title of Rule: Chapter 16-228 WAC, Pesticide applicator recordkeeping.

Purpose: Recordkeeping requirements for pesticide applicators.

Statutory Authority for Adoption: Chapters 15.58 and 17.21 RCW.

Statute Being Implemented: Chapter 17.21 RCW.

Summary: The proposed amendments include changes in pesticide applicator recordkeeping and include a form which would be used jointly by the Department of Agriculture and Department of Labor and Industries.

Reasons Supporting Proposal: Pesticide laws were revised by the 1989 legislative session in EHB 2222. Revisions included that the Departments of Agriculture and Labor and Industries adopt one form that covers pesticide applicator recordkeeping and a workplace pesticide list.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ted Maxwell, Program Manager, 406 General Administration Building, AX-41, 753-5062.

Name of Proponent: Departments of Agriculture and Labor and Industries, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Record information required by law would be kept on a prescribed form by Departments of Labor and Industries and Agriculture so that this information will be available in a uniform way when required by the agencies.

Proposal Changes the Following Existing Rules: Prior to EHB 2222, the recordkeeping information was only required for commercial applicators and public operators. Recordkeeping information is now required for all certified applicators and all persons applying pesticides to more than one acre of agricultural land. These amendments will also require the information to be kept on a prescribed form.

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

Hearing Location: January 3, 1990, 9:30 a.m., Red Lion Inn, 1507 North 1st Street, Yakima, WA; on January 4, 1990, 9:30 a.m., Hallmark Inn, 3000 West Marina Drive, Moses Lake, WA; and on January 9, 1990, 9:30 a.m., Elks Lodge, 2111 Riverside Drive, Mt. Vernon, WA.

Submit Written Comments to: Alan S. Paja, Acting Assistant Director, Department of Labor and Industries, 805 Plum Street Southeast, Olympia, WA 98504, by January 9, 1990.

Date of Intended Adoption: February 9, 1990.

November 22, 1989

Art G. Losey  
Assistant Director

AMENDATORY SECTION (Amending Order 1981, filed 7/1/88)

WAC 16-228-190 APPLICATOR REQUIREMENTS. (1) ((Commercial applicators and public operators when applying any pesticide, and private commercial applicators and demonstration and research applicators when applying pesticides restricted to use by certified applicators only, shall keep records)) Certified applicators and all persons applying pesticides to more than one acre of agricultural land in a calendar year including public entities engaged in roadside spraying shall keep records on a form prescribed by the director which shall include the following:

(a) The name and address of the person for whom the pesticide was applied.

(b) The address or location of the land where the pesticide was applied, specifying township, range, and section where applicable.

(c) The year, month, day and time the pesticide was applied.

(d) The ((trade name and/or common name of the pesticide which was applied and/or EPA registration number for that product)) product name used on the registered label and the United States Environmental Protection Agency registration number, if applicable, of the pesticide which was applied.

(e) The direction from which the wind is blowing and estimated velocity of the wind in miles per hour(mph) and the temperature in degrees Fahrenheit at the time the pesticide was applied: PROVIDED, That this subsection ((does)) shall not apply to applications of baits in bait stations and pesticide applications within structures.

(f) ((The amount, or amount and concentration (pounds or gallons per acre and percentage of active ingredient and/or concentration per 100 gallons) of the pesticide used:

For PCO classification, the amount and concentration of the pesticide(s) applied which may be recorded to the nearest ounce of active ingredient or to the nearest gallon of liquid spray; fumigation records shall include the pounds of gas released per one thousand cubic feet of space, the temperature, and the duration of the exposure period)) The total amount of pesticide applied such as pounds, gallons, ounces, etc.

(g) The amount of pesticide applied per acre or one thousand square feet or other appropriate measure.

(i) For PCO classification or residential ornamental applications, the amount shall be recorded to the nearest ounce of product or to the nearest gallon of liquid spray per site.

(ii) Fumigation records shall include the pounds of gas released per one thousand cubic feet of space, the temperature, and the duration of the exposure period.

(h) The concentration of pesticide that was applied. Liquid applications may be recorded as amount of product per one hundred gallons of liquid spray or other appropriate measure.

((f)) (i) The active ingredient(s) and percentage(s) found in the pesticide(s) applied.

(j) The pests to be controlled (for PCO classification only).

((h)) (k) Specific crop or site to which pesticide was applied.

((f)) (l) Apparatus license plate number.

((f)) (m) The licensed applicator's name ((and)), address, telephone number, and the name of the individual or individuals making the application.

((k) Acreage or area treated: PROVIDED, That residential ornamental and lawn applications, and applications within structures are exempt from this requirement:)) (n) The number of acres or other appropriate measure to which the pesticide was applied.

(2) Application records shall be completed and available to the department the same day the pesticides were applied.

(3) Application records shall be kept for a period of ((three)) seven years from the date of the application of the pesticide to which such records refer. The director shall, upon request in writing, be furnished with a copy of such records forthwith by the licensee.

(4) Upon written request, the applicator shall provide the customer with a record of each application of pesticides to his/her land, for the current season, which shall contain the information listed in WAC 16-228-190(1).

(5) The information required in subsection (1) of this section shall be kept on the appropriate portion of the pesticide record form (Figures 1-6).

(6) All apparatus shall be kept in good repair and only that apparatus capable of performing all functions necessary to ensure proper and thorough application of pesticides shall be used. Apparatus shall be cleaned so that no residue remains which may cause injury to land, including humans, desirable plants and animals, from subsequent applications.

((f)) (7) On demand of the director, the applicator shall make immediately available for inspection the pesticides being applied and the apparatus used for the application: PROVIDED, That this inspection is made at the site of application of where the apparatus is located.

((f)) (8) The applicator shall make available necessary safety equipment in proper working order and advise employees on its use to meet the safety requirements of the pesticide label.

((f)) (9) Maintain a uniform mixture at all times in operating apparatus when applying pesticides.

((f)) (10) All containers used for prepared mixtures, other than those in an apparatus, shall have a label identifying the contents as a pesticide, the active ingredient, and appropriate cautions.

### PESTICIDE APPLICATION RECORD for application of one acre or more

**NOTE:** This form must be completed same day as the application and it must be retained for 7 years. (Ref. RCW 17.21)

1. Date of Application - Year: ..... Month: ..... Day: ..... Time: .....
2. Name of person for whom the pesticide was applied: .....  
Firm Name (if applicable): .....
- Street Address: ..... City: ..... State: ..... Zip: .....
3. Licensed Applicator's Name (if different from #2 above): ..... License No. ....  
Firm Name (if applicable): ..... Tel. No. ....  
Street Address: ..... City: ..... State: ..... Zip: .....
4. Name of person(s) who applied the pesticide (if different than #3 above): .....  
License No(s) if applicable: .....

5. Application Crop or Site: .....
6. Total Area Treated (acre, sq. ft., etc): .....

7. Was this application made as a result of a WSDA Permit?  No  Yes (if yes, give Permit No.) # .....

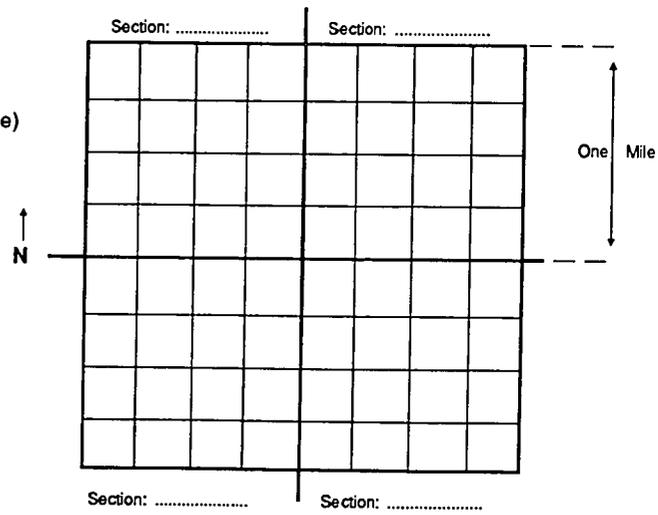
8. Pesticide Information (please list all information for each pesticide in the tank mix):

a) Brand Name	b) Active Ingredients & % (Common Name)	c) EPA Reg. No.	d) Total Amount of Pesticide Applied in Area Treated	e) Pesticide Applied/Acre (or other measure)	f) Concentration Applied
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____

9. Location of Application:

Township: ..... N  
 Range: ..... E or W (please indicate)  
 Section(s): .....  
 County: .....

*The map to the right is divided into 4 sections with each section divided into quarter-quarter sections. Please complete it by marking the appropriate section number(s) on the map and indicate as accurately as possible the location of the area treated.*



10. Wind direction and estimated velocity during the application.....
11. Temperature during application: .....
12. Apparatus license plate number (if applicable): .....

RIGHT OF WAY  
PESTICIDE APPLICATION RECORD

NOTE: This form must be completed same day as the application and it must be retained for 7 years. (Ref. RCW 17.21)

1. Date of Application - Year: ..... Month: ..... Day: ..... Time: .....
2. Agency / Company making application: ..... Tel. No. ....  
Address: ..... City: ..... State: ..... Zip: .....
3. Licensed Applicator/Operator(s) responsible for application: .....  
License Number(s): .....
4. Name of person(s) who applied the pesticide (if different from #3 above): .....  
License No(s) if applicable: .....
5. Name of person for whom the pesticide was applied (if different from #2 above): .....  
Address: ..... City: ..... State: ..... Zip: .....
6. Total Area Treated (acre, sq. ft., etc): .....
7. Was this application made as a result of a WSDA Permit?  No  Yes (if yes, give Permit No.) # .....

8. Pesticide Information (list all information for each pesticide in the tank mix):

a) Brand Name	b) Active Ingredients & % (Common Name)	c) EPA Reg. No.	d) Total Amount of Pesticide Applied in Area Treated	e) Pesticide Applied/Acre (or other measure)	f) Concentration Applied
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____

9. The following information must also be recorded. The information may be listed on this form, or attached as supplemental information:
- a) apparatus license plate number (if applicable); b) the exact location of the application; c) the application site (roadside, irrigation canal, railroad right-of-way, etc.); d) wind direction and estimated velocity during the application; e) temperature during application
  - f) any other applicable information

Figure 2

**PESTICIDE APPLICATION RECORD  
for applications of less than one acre**

**NOTE:** This form must be completed same day as the application and it must be retained for 7 years. (Ref. RCW 17.21)

1. Date of Application - Year: ..... Month: ..... Day: ..... Time: .....
2. Name of person for whom the pesticide was applied: .....  
Firm Name (if applicable): .....  
Street Address: ..... City: ..... State: ..... Zip: .....
3. Licensed Applicator's Name (if different from #2 above): ..... License No. ....  
Firm Name (if applicable): ..... Tel. No. ....  
Street Address: ..... City: ..... State: ..... Zip: .....
4. Name of person(s) who applied the pesticide (if different than #3 above): .....  
..... License No(s) if applicable: .....
5. Total area treated (acre, sq. ft., etc.).....
6. Was this application made as a result of a WSDA Permit?  No  Yes (if yes, give Permit No.): # .....
7. Pesticide Information (list all information for each pesticide in the tank mix):

a) Brand Name	b) Active Ingredients & % (Common Name)	c) EPA Reg. No.	d) Total Amount of Pesticide Applied in Area Treated	e) Pesticide Applied/Acre (or other measure)	f) Concentration Applied
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____

8. The following information must also be recorded. The information may be listed on this form, or attached as supplemental information:
  - a) apparatus license plate number;
  - b) the exact location of the application;
  - c) application crop or site;
  - d) pest(s) to be controlled (PCO use only);
  - e) wind direction and estimated velocity during the application;
  - f) temperature during application;
  - g) any other applicable information.

### RESEARCH AND DEMONSTRATION PESTICIDE APPLICATION RECORD

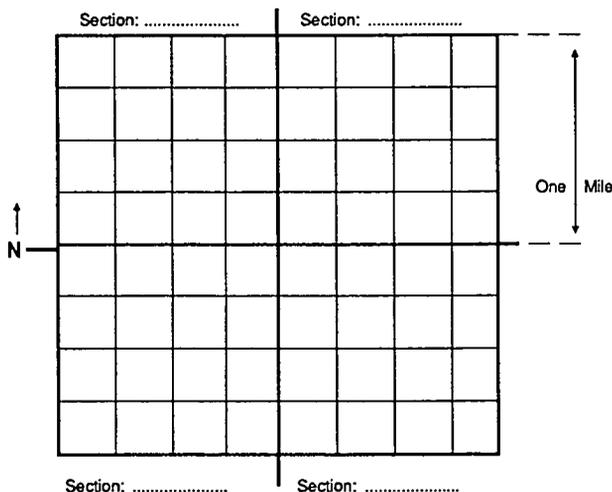
NOTE: This form must be completed same day as the application and it must be retained for 7 years. (Ref. RCW 17.21)

1. Date of Application - Year: ..... Month: ..... Day: ..... Time: .....
2. Agency/Company making application: .....  
Address: ..... City: ..... State: ..... Zip: .....
3. Licensed Applicator/Operator responsible for the application: .....  
Address: ..... City: ..... State: ..... Zip: .....  
License No. .... Telephone No. ....
4. Name of person(s) who applied the pesticide (if different than #3 above): .....  
License No(s): .....
5. Name of person for whom the pesticide was applied (if different from #2 above) .....  
Address ..... City: ..... State: ..... Zip: .....
6. Was this application made as a result of a WSDA Permit?  No  Yes (if yes, give Permit No.) # .....
7. Location of Application:

- a) If application was made to **one acre or more**, item # 8 and the map must be completed.
- b) If application was made to **less than one acre**, the location may be described below.

.....  
 .....  
 .....

*The map to the right is divided into 4 sections with each section divided into quarter-quarter sections. Please complete it by marking the appropriate section number(s) on the map and indicate as accurately as possible the location of the area treated.*



8. Township: ..... N  
Range: ..... E or W (please indicate)  
Section(s): .....  
County: .....

9. The following information must also be recorded. Information may be listed on this form or attached as supplemental information:
  - a) product or experimental name of the pesticide; b) the EPA Registration number or experimental code number;
  - c) active ingredients (common name) and %; d) total amount of pesticide applied; e) amount of pesticide applied per acre or other measure; f) concentration applied; e) the pest(s) to be controlled; h) apparatus license plate number; i) crop or site;
  - j) wind direction and estimated velocity during the application; k) temperature during application; l) any other applicable information.

### PESTICIDE APPLICATION RECORD

May be used for Commercial Residential Ornamental and Lawn Applications only

NOTE: This form must be completed same day as the application and it must be retained for 7 years. (Ref. RCW 17.21)

A. Date of Application - Year: ..... Month: ..... Day: .....

B. Firm name: ..... Telephone No. ....

Commercial Applicator's Name: ..... License No. ....

Street Address: ..... City: ..... State: ..... Zip: .....

C. Name of person(s) who applied the pesticide:..... License No(s): .....

D. Pesticide Information (please list all information for each pesticide in the tank mix):

Brand Name	Active Ingredients & % (Common Name)	EPA Reg. No.	Concentration
			Amount - (Lbs., Qts., etc.) of brand per 100 gallons of tank mix. Amount and unit must be specified

E. Application crop or site: ..... F. Apparatus License Plate No. ....

G. Record the following information for the specific conditions during each application:

	CUSTOMER		AMOUNT APPLIED (gals. of mix)	AREA TREATED (sq. ft., etc.)	TIME	TEMP F°	WIND	
	(a) full name	(b) location of application - street address					DIR	VEL (mph)
1. a)								
b)								
2. a)								
b)								
3. a)								
b)								
4. a)								
b)								
5. a)								
b)								
6. a)								
b)								
7. a)								
b)								
8. a)								
b)								
9. a)								
b)								

# PESTICIDE STORAGE RECORD

## STORAGE RECORD OF PESTICIDES USED IN THE PRODUCTION OF AN AGRICULTURAL CROP

NOTE: This form must be completed the same day as the storage and it must be retained for 7 years. (Ref. RCW 21 and RCW 49.70)

1. Name of person storing pesticide: .....
2. Name of Pesticide Owner: .....
3. Owner's Address: ..... Tele. ....
4. Other applicable information: .....
5. Pesticide Information:

<u>Brand Name</u>	<u>Active Ingredients Common Name</u>	<u>EPA Reg. No.</u>	<u>Amount Stored</u>

6. Location of Storage:

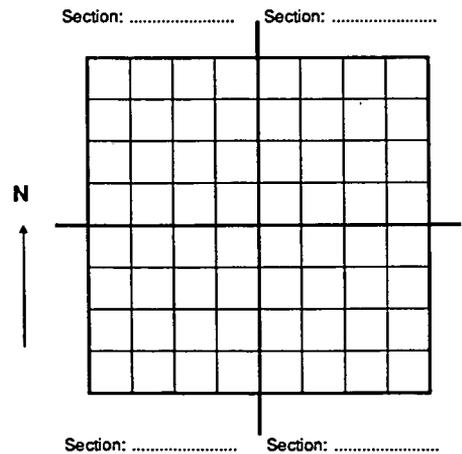
a) Street Address

.....  
.....

b) If a street location is not appropriate, pinpoint the exact location of the storage and describe the location:

Township: ..... N  
 Range: ..... E or W (please indicate)  
 Section(s): .....  
 County: .....

*The map to the right is divided into 4 sections with each section divided into quarter-quarter sections. Please complete it by marking the appropriate section number(s) on the map and indicate as accurately as possible the location of the area treated.*



7. \_\_\_\_\_  
 Type or Print Name of Person Completing the Form

8. \_\_\_\_\_  
 Signature Date  
 (If additional space is required - use plain sheet of paper and staple with form)

**WSR 89-23-117**  
**PERMANENT RULES**  
**WASHINGTON STATE UNIVERSITY**  
 [Filed November 22, 1989, 3:30 p.m.]

Date of Adoption: November 17, 1989.

Purpose: These rules of practice and procedure are implemented to comply with the Administrative Procedure Act as amended.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 504-08-001, 504-08-010, 504-08-080, 504-08-090, 504-08-100, 504-08-110, 504-08-120, 504-08-130, 504-08-140, 504-08-230, 504-08-240, 504-08-250, 504-08-260, 504-08-270, 504-08-280, 504-08-290, 504-08-300, 504-08-310, 504-08-320, 504-08-330, 504-08-340, 504-08-350, 504-08-360, 504-08-400, 504-08-410, 504-08-420, 504-08-510, 504-08-520, 504-08-530, 504-08-540, 504-08-550, 504-08-560 and 504-08-570.

Statutory Authority for Adoption: RCW 34.05.220, 28B.30.095 and 28B.30.125.

Other Authority: RCW 28B.10.648, 34.05.250 and 34.05.482.

Pursuant to notice filed as WSR 89-20-036 on October 18, 1989 [October 2, 1989].

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 34.05.250 requires a statement of reasons for variance from the model rules of procedure. Because of the confidential nature of university hearings, assurance was necessary that presiding officers in such hearings could protect confidentiality. WAC 10-08-190 did not provide such assurance. Therefore, WSU has not adopted that rule.

Effective Date of Rule: Thirty-one days after filing.  
 November 17, 1989

Samuel H. Smith  
 Secretary  
 Board of Regents

**PRACTICE AND PROCEDURE: WAC 504-04 AND 504-08**

**Chapter 504-04 WAC  
 PRACTICE AND PROCEDURE**

**PART I  
 GENERAL PROCEDURAL RULES**

- WAC  
 504-04-010 Matters Subject to Brief Adjudication.  
 504-04-020 Appointment of Presiding Officers for All Adjudicative Proceedings.

**PART II  
 PROCEDURAL RULES FOR FORMAL PROCEEDINGS**

- WAC  
 504-04-110 Adoption of Model Rules of Procedure for Formal Proceedings—Exception.

- 504-04-120 Confidentiality of Student, Faculty and Staff Formal Adjudicative Proceedings.  
 504-04-130 Advising and Representation of Parties.  
 504-04-140 Discovery.

**PART I  
 GENERAL PROCEDURAL RULES**

NEW SECTION

WAC 504-04-010 MATTERS SUBJECT TO BRIEF ADJUDICATION. The following proceedings are matters to be treated as brief adjudications pursuant to RCW 34.05.482 through 491:

(1) Student conduct proceedings. The procedural rules of Chapter 504-25 apply to these proceedings.

(2) Appeals of residency determinations. If a hearing is required by law or constitutional right, appeals of residency determinations under RCW 28B.15.013 are brief adjudicative proceedings conducted by the Office of Admissions.

(3) Appeals of parking violations. Appeals of parking violations are brief adjudicatory proceedings conducted pursuant to applicable rules. See WAC 504-17-240 and 504-18-170.

(4) Hearings on student records. Hearings pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g are to be brief adjudicative proceedings conducted pursuant to the rules of Chapter 504-21 WAC.

(5) Hearings on denial of financial aid. Any hearings required by state or federal law regarding granting, modification or denial of financial aid are brief adjudicative proceedings conducted by the Office of Scholarships and Financial Aid.

(6) Emergency withdrawal of students. Proceedings to disenroll students for medical or psychological reasons are brief adjudicative proceedings conducted by the Office of Student Affairs.

(7) Discipline and termination of student employees. When required by law, hearings for the termination of or imposition of disciplinary measures on student employees shall be brief adjudicative proceedings.

NEW SECTION

WAC 504-04-020 APPOINTMENT OF PRESIDING OFFICERS FOR ALL ADJUDICATIVE PROCEEDINGS. The President of Washington State University or his or her designee shall have the power to appoint committees or members of the faculty, staff and student body to be presiding officers for formal and brief adjudicative proceedings. The term "presiding officer" as used in this Chapter shall be read in the plural when the context demands.

**PART II  
 PROCEDURAL RULES FOR FORMAL PROCEEDINGS**

NEW SECTION

WAC 504-04-110 ADOPTION OF MODEL RULES OF PROCEDURE FOR FORMAL PROCEEDINGS—EXCEPTION. In formal proceedings pursuant to RCW 34.05.413-476 Washington State University adopts the Model Rules of Procedure adopted by the Office of Administrative Hearings, Chapter 10-08 WAC, with the following exception:

WAC 10-08-190 Adjudicative Proceedings, Cameras—Recording Devices.

See WAC 504-04-120 which determines the use of cameras and recording devices at adjudicative proceedings.

Other procedural rules adopted in this title and this chapter are supplementary to the Model Rules. In the case of a conflict between the Model Rules and procedural rules adopted by Washington State University, the procedural rules adopted by the university shall govern.

NEW SECTION

WAC 504-04-120 CONFIDENTIALITY OF STUDENT, FACULTY AND STAFF FORMAL ADJUDICATIVE PROCEEDINGS. In formal adjudicative proceedings, the presiding officer shall have the power to close all or part of the hearing to public observation. The presiding officer shall have the power to impose reasonable conditions upon observation of the proceeding. The presiding officer also shall have the power to regulate the use of photographic and recording equipment. In the case of hearings involving discipline, termination, or medical withdrawal, hearings will normally be closed to public observation.

NEW SECTION

WAC 504-04-130 ADVISING AND REPRESENTATION OF PARTIES. Any person whose rights are in issue in a formal adjudicative proceeding shall have the right to have an adviser present during any stage of the proceedings. However, only persons admitted to the practice of law in the State of Washington shall be permitted to act as a representative at the proceedings. The presiding officer shall have the power to impose reasonable conditions upon participation of advisers and representatives.

NEW SECTION

WAC 504-04-140 DISCOVERY. Discovery in formal hearings may be permitted at the discretion of the presiding officer. In permitting discovery, reference shall be made to the Civil Rules applicable in court proceedings for guidance.

The presiding officer shall have the power to control the frequency and nature of discovery permitted, and to order discovery conferences to discuss discovery issues.

REPEALER (Amending Order 1981, filed 7/1/88)

The following sections of the Washington Administrative Code are each repealed:

(1) WAC 504-08-001 Definitions.

(2) WAC 504-08-010 Appearance and practice before agency.

(3) WAC 504-08-080 Notice and opportunity for hearing in contested cases.

(4) WAC 504-08-090 Service of process—By whom served.

(5) WAC 504-08-100 Service of process—Upon whom served.

(6) WAC 504-08-110 Service of process—Service upon parties.

(7) WAC 504-08-120 Service of process—Method of service.

(8) WAC 504-08-130 Service of process—When service complete.

(9) WAC 504-08-140 Service of process—Filing with agency.

(10) WAC 504-08-230 Depositions and interrogatories in contested cases—Right to take.

(11) WAC 504-08-240 Depositions and interrogatories in contested cases—Scope.

(12) WAC 504-08-250 Depositions and interrogatories in contested cases—Officer before whom taken.

(13) WAC 504-08-260 Depositions and interrogatories in contested cases—Authorization.

(14) WAC 504-08-270 Depositions and interrogatories in contested cases—Protection of parties and deponents.

(15) WAC 504-08-280 Depositions and interrogatories in contested cases—Oral examination and cross-examination.

(16) WAC 504-08-290 Depositions and interrogatories in contested cases—Recordation.

(17) WAC 504-08-300 Depositions and interrogatories in contested cases—Signing attestation and return.

(18) WAC 504-08-310 Depositions and interrogatories in contested cases—Use and effect.

(19) WAC 504-08-320 Depositions and interrogatories in contested cases—Fees of officers and deponents.

(20) WAC 504-08-330 Depositions upon interrogatories—Submission of interrogatories.

(21) WAC 504-08-340 Depositions upon interrogatories—Interrogation.

(22) WAC 504-08-350 Depositions upon interrogatories—Attestation and return.

(23) WAC 504-08-360 Depositions upon interrogatories—Provisions of deposition rule.

(24) WAC 504-08-400 Stipulations and admissions of record.

(25) WAC 504-08-410 Form and content of decisions in contested cases.

(26) WAC 504-08-420 Definition of issues before hearing.

(27) WAC 504-08-510 Continuances.

(28) WAC 504-08-520 Rules of evidence—Admissibility criteria.

(29) WAC 504-08-530 Tentative admission—Exclusion—Discontinuance—Objections.

(30) WAC 504-08-540 Petitions for rule making, amendment or repeal—Who may petition.

(31) WAC 504-08-550 Petitions for rule making, amendment or repeal—Requisites.

(32) WAC 504-08-560 Petitions for rule making, amendment or repeal—Agency must consider.

(33) WAC 504-08-570 Petitions for rule making, amendment or repeal—Notice of disposition.

### WSR 89-23-118

#### PROPOSED RULES

#### DEPARTMENT OF LABOR AND INDUSTRIES

[Order 89-19—Filed November 22, 1989, 3:40 p.m.]

Original Notice.

Title of Rule: Chapter 296-306 WAC, Safety standards for agriculture.

Purpose: Chapter 296-306 WAC is being amended to implement statutory requirements through EHB 2222 during the 1989 legislative session, relating to pesticides.

Statutory Authority for Adoption: Chapter 49.17 RCW.

Statute Being Implemented: RCW 49.17.040, 49.17.050 and 49.17.060.

Summary: State-initiated changes to comply with EHB 2222 which adds a new section to chapter 49.70 RCW relating to Worker and Community Right to Know Act, addressing the protection of workers from pesticide exposure.

Reasons Supporting Proposal: To ensure a safe and healthful workplace for all employees in Washington state.

Name of Agency Personnel Responsible for Drafting: Ray V. Wax, 805 Plum Street Southeast, Olympia, WA, 753-6500; Implementation and Enforcement: Alan S. Paja, 805 Plum Street Southeast, Olympia, WA, 753-6500.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The costs for implementing the new requirement is minimal.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These are state-initiated changes to comply with EHB 2222 which adds a new section to chapter 49.70 RCW relating to Worker and Community Right to Know Act, addressing the protection of workers from pesticide exposure. Since the agriculture employer is already required to provide education and training on hazardous chemicals in the workplace and to have available material safety data sheets, MSDS, the costs for implementing the new requirements for posting and maintaining a pesticide list is minimal.

Proposal Changes the Following Existing Rules: The department is adding new sections to the agriculture standard, chapter 296-306 WAC. New sections are WAC 296-306-400 Posting requirements; and 296-306-40003 General requirements. A new pesticides record form, WAC 296-306-40005 is also added.

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

The department has considered whether this rule is subject to the Regulatory Fairness Act and has determined that it is not for the following reasons: The proposed amendment to the rule potentially influences any and all agriculture employees, who engage in using pesticides, having workplaces under the jurisdiction of the Department of Labor and Industries in the state of Washington; the proposed rules do not place disproportionate burden on small business. Only employers having employees potentially exposed to pesticides are affected by the rule; amendments are to implement statutory requirements enacted through EHB 2222 during the 1989 legislative session, adding a new section to chapter 49.70 RCW, Worker and Community Right to Know Act and the administrative costs of these amendments are estimated to be minimal. During the last legislative session, a new section, section 76, relating to pesticides, was added to chapter 49.70 RCW, the Workers and Community Right to Know Act. The department's hazard communication standard, WAC 296-62-054, implements that portion of the act relating to the workplace. To implement the new legislation on pesticides, the department is adding new sections to the agriculture standard, chapter 296-306 WAC. Since the agriculture employer is already required to provide education and training on hazardous chemicals in the workplace and to have available material safety data sheets, MSDS, the cost for implementing the new requirements for posting and maintaining a pesticide list is minimal.

Hearing Location: January 3, 1990, 9:30 a.m., Red Lion Inn, 1507 North First Street, Yakima, WA; on January 4, 1990, 9:30 a.m., Best Western Hallmark Inn, 3000 West Marina Drive, Moses Lake, WA; and on January 9, 1990, 9:30 a.m., Elks Lodge, 211 Riverside Drive, Mount Vernon, WA.

Submit Written Comments to: Alan S. Paja, Acting Assistant Director, Division of Industrial Safety and Health, by January 9, 1990.

Date of Intended Adoption: February 9, 1990.

November 22, 1989

Joseph A. Dear  
Director

#### NEW SECTION

WAC 296-306-400 POSTING REQUIREMENTS. (1) When a pesticide having a reentry interval greater than twenty-four hours is applied to a labor-intensive agricultural crop, the pesticide-treated area shall be posted with warning signs in accordance with the requirements of this section.

(2) For the purposes of this section, "labor-intensive agricultural crop" means crops requiring extensive hand-labor for planting, thinning, cultivating, etc., such as, but not limited to apple, cherry, peach, berry, hops, grapes, asparagus, etc. By virtue of mechanization, crops such as, but not limited to, wheat, oat, barley, potato, etc., would be excluded unless hand-labor would be utilized. "Reentry interval" means the length of time after an application until personnel will be allowed to reenter a treated area for work purposes without personal protective equipment.

(3) Pesticide warning signs required under this section shall be posted in such a manner as to be clearly visible from all usual points of entry to the pesticide-treated area. If there are no usual points of entry or the area is adjacent to an unfenced public right of way, signs shall be posted:

(a) At each corner of the pesticide-treated area; and

- (b) At intervals not exceeding six hundred feet; and/or
- (c) At other locations approved by the department that provide maximum visibility.
- (4) The signs shall be posted within twenty-four hours before scheduled application of the pesticide, and remain posted during application and throughout the applicable reentry interval. Signs shall be removed within two days after the expiration of the applicable reentry interval and before employee reentry is permitted.
- (5) Signs shall be legible for the duration of use and wording shall be in English and Spanish.
- (6) Signs shall meet the following criteria:
  - (a) The background color shall be white.
  - (b) The border at least one-half inch in width shall be red.
  - (c) The words "DANGER" and "PELIGRO" shall be at the top. Letters for these words shall be black and at least two and one-half inches in height.
  - (d) The words "pesticides" and "pesticidas" shall be at the top but below the words "DANGER" and "PELIGRO," respectively. Letters for these words shall be black and at least one inch in height.
  - (e) The center of the sign shall contain a circle comprised of a one-inch thick red line and contain an upraised hand in black with the white words "STOP" and "ALTO," respectively shown on the palm in the center of the circle. The hand shall be at least six inches in length.
  - (f) The words "NO ENTRY" and "ENTRADA PROHIBIDA" shall be at the bottom. Letters for these words shall be black and at least one and one-half inches in height.
  - (g) Sizes of letters and symbols listed are minimum acceptable size posters. Larger posters may be used provided the proportionate size of letters and symbols are maintained.
- (7) A small black and white facsimile of the warning sign meeting these requirements is shown in Figure 1.



(8) The effective date of this regulation is July 1, 1990. All requirements of this section will be implemented by the effective date.

**NEW SECTION**

- WAC 296-306-40003 GENERAL REQUIREMENTS.** (1) An employer who applies or stores pesticides in connection with the production of an agricultural crop shall compile and maintain a workplace pesticide list (form AGR 4227) by crop or land area for each pesticide that is applied to a crop or land area, or stored in a work area.
- (2) The workplace pesticide list shall be kept on the form prescribed by the department and shall contain at least the following information:
- (a) The location of the land where the pesticide was applied or site where the pesticide was stored;
  - (b) The year, month, day, and time the pesticide was applied;
  - (c) The product name used on the registered label and the United States Environmental Protection Agency registration number, if applicable, of the pesticide that was applied or stored;
  - (d) The crop or site to which the pesticide was applied;

- (e) The amount of pesticide applied per acre, or other appropriate measure;
  - (f) The concentration of pesticide that was applied;
  - (g) The number of acres, or other appropriate measure, to which pesticide was applied;
  - (h) If applicable, the licensed applicator's name, address, and telephone number and the name of the individual or individuals making the application; and
  - (i) The direction and estimated velocity of the wind at the time the pesticide was applied: PROVIDED, That this subsection (i) shall not apply to applications of baits in bait stations and pesticide applications within structures.
- (3) The employer shall update the workplace pesticide list on the same day that a pesticide is applied or is first stored in a work area.
- (a) The workplace pesticide list may be prepared for the workplace as a whole or for each work area and must be readily available to employees and their designated representatives.
- (b) New or newly assigned employees shall be made aware of the pesticide chemical list before working with pesticides or in a work area containing pesticides.
- (4) An employer subject to this section shall maintain one form for each application on each crop or work area, or workplace as a whole, as appropriate.
- (a) The forms shall be accessible and available for copying and shall be stored in a location suitable to preserve their physical integrity.
- (b) The employer shall maintain and preserve the forms required under this section for no less than seven years.
- (c) The records shall include an estimation of the total amount of each pesticide listed on the forms.
- (5) After the effective date of this section, if an employer has failed to maintain and preserve the forms as required, the employer shall be subject to any applicable penalties authorized under chapter 49.70 or 49.17 RCW.

- (6) If activities for which forms are maintained cease at a workplace, the forms shall be filed with the department. If an employer subject to this section is succeeded or replaced in that function by another person, the person who succeeds or replaces the employer shall retain the forms as required by this section but is not liable for violations committed by the former employer under chapter 49.70 RCW or rules adopted under chapter 49.70 RCW, including violations relating to the retention and preservation of forms.
- (7) The employer shall provide copies of the forms, on request, to an employee or the employee's designated representative in the case of an industrial insurance claim filed under Title 51 RCW with the department of labor and industries, treating medical personnel, the pesticide incident reporting and tracking review panel, or department representative.
- (a) The designated representative or treating medical personnel are not required to identify the employee represented or treated.
  - (b) The department shall keep the name of any affected employee confidential in accordance with RCW 49.17.080(1).
  - (c) If an employee, a designated representative, treating medical personnel, or the pesticide incident reporting and tracking review panel requests a copy of a form and the employer refuses to provide a copy, the requester shall notify the department of the request and the employer's refusal.
  - (d) Within seven working days, the department shall request that the employer provide the department with all pertinent copies, except that in a medical emergency the request shall be made within two working days.
  - (e) The employer shall provide copies of the form to the department within twenty-four hours after the department's request.
- (8) The employer may maintain computerized records as long as upon request, the records are produced in the form and format prescribed by the department in subsection (9) of this section.
- (9) The employer shall keep, maintain, and utilize the Pesticides Record Form, WAC 296-306-40005, as provided in this subsection, to comply with the provisions of this section.

**NEW SECTION**

WAC 296-306-40005 PESTICIDES RECORD FORM.

**PESTICIDE APPLICATION RECORD  
for application of one acre or more**

**NOTE:** This form must be completed same day as the application and it must be retained for 7 years. (Ref. RCW 17.21)

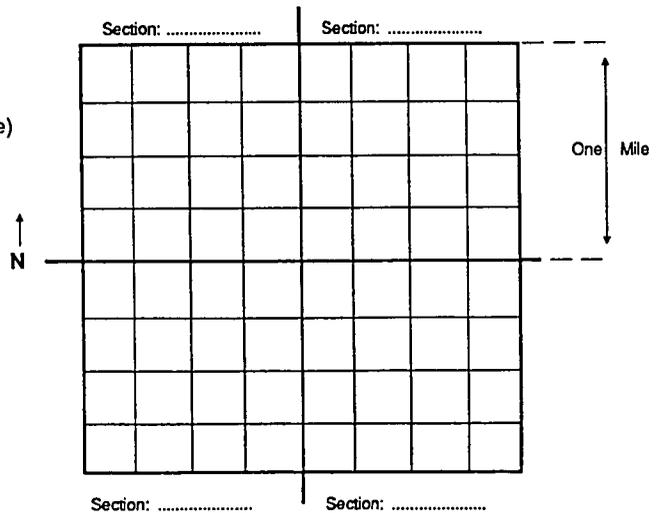
1. Date of Application - Year: ..... Month: ..... Day: ..... Time: .....
2. Name of person for whom the pesticide was applied: .....  
Firm Name (if applicable): .....  
Street Address: ..... City: ..... State: ..... Zip: .....
3. Licensed Applicator's Name (if different from #2 above): ..... License No. ....  
Firm Name (if applicable): ..... Tel. No. ....  
Street Address: ..... City: ..... State: ..... Zip: .....
4. Name of person(s) who applied the pesticide (if different than #3 above): .....  
..... License No(s) if applicable: .....
5. Application Crop or Site: .....
6. Total Area Treated (acre, sq. ft., etc): .....
7. Was this application made as a result of a WSDA Permit?  No  Yes (if yes, give Permit No.) # .....
8. Pesticide Information (please list all information for each pesticide in the tank mix):

a) Brand Name	b) Active Ingredients & % (Common Name)	c) EPA Reg. No.	d) Total Amount of Pesticide Applied in Area Treated	e) Pesticide Applied/Acre (or other measure)	f) Concentration Applied
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____

9. Location of Application:

Township: ..... N  
Range: ..... E or W (please indicate)  
Section(s): .....  
County: .....

*The map to the right is divided into 4 sections with each section divided into quarter-quarter sections. Please complete it by marking the appropriate section number(s) on the map and indicate as accurately as possible the location of the area treated.*



10. Wind direction and estimated velocity during the application.....
11. Temperature during application: .....
12. Apparatus license plate number (if applicable): .....

RIGHT OF WAY
PESTICIDE APPLICATION RECORD

NOTE: This form must be completed same day as the application and it must be retained for 7 years. (Ref. RCW 17.21)

- 1. Date of Application - Year: Month: Day: Time:
2. Agency / Company making application: Tel. No. Address: City: State: Zip:
3. Licensed Applicator/Operator(s) responsible for application: License Number(s):
4. Name of person(s) who applied the pesticide (if different from #3 above): License No(s) if applicable:
5. Name of person for whom the pesticide was applied (if different from #2 above): Address: City: State: Zip:
6. Total Area Treated (acre, sq. ft., etc):
7. Was this application made as a result of a WSDA Permit? No Yes (if yes, give Permit No.) #
8. Pesticide Information (list all information for each pesticide in the tank mix):

Table with 6 columns: a) Brand Name, b) Active Ingredients & % (Common Name), c) EPA Reg. No., d) Total Amount of Pesticide Applied in Area Treated, e) Pesticide Applied/Acre (or other measure), f) Concentration Applied. Includes a row with slashes in columns e and f.

- 9. The following information must also be recorded. The information may be listed on this form, or attached as supplemental information:
a) apparatus license plate number (if applicable); b) the exact location of the application; c) the application site (roadside, irrigation canal, railroad right-of-way, etc.); d) wind direction and estimated velocity during the application; e) temperature during application
f) any other applicable information

**PESTICIDE APPLICATION RECORD  
for applications of less than one acre**

**NOTE:** This form must be completed same day as the application and it must be retained for 7 years. (Ref. RCW 17.21)

1. Date of Application - Year: ..... Month:..... Day: ..... Time: .....
2. Name of person for whom the pesticide was applied: .....  
 Firm Name (if applicable): .....  
 Street Address: ..... City: ..... State: ..... Zip: .....
3. Licensed Applicator's Name (if different from #2 above): ..... License No. ....  
 Firm Name (if applicable): ..... Tel. No. ....  
 Street Address: ..... City: ..... State: ..... Zip: .....
4. Name of person(s) who applied the pesticide (if different than #3 above): .....  
 ..... License No(s) if applicable: .....
5. Total area treated (acre, sq. ft., etc.) .....
6. Was this application made as a result of a WSDA Permit?  No  Yes (if yes, give Permit No.): # .....
7. Pesticide Information (list all information for each pesticide in the tank mix):

a) Brand Name	b) Active Ingredients & % (Common Name)	c) EPA Reg. No.	d) Total Amount of Pesticide Applied in Area Treated	e) Pesticide Applied/Acre (or other measure)	f) Concentration Applied
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____
_____	_____	_____	_____	/	_____

8. The following information must also be recorded. The information may be listed on this form, or attached as supplemental information:
  - a) apparatus license plate number; b) the exact location of the application; c) application crop or site; d) pest(s) to be controlled (PCO use only); e) wind direction and estimated velocity during the application; f) temperature during application; g) any other applicable information.

RESEARCH AND DEMONSTRATION PESTICIDE APPLICATION RECORD

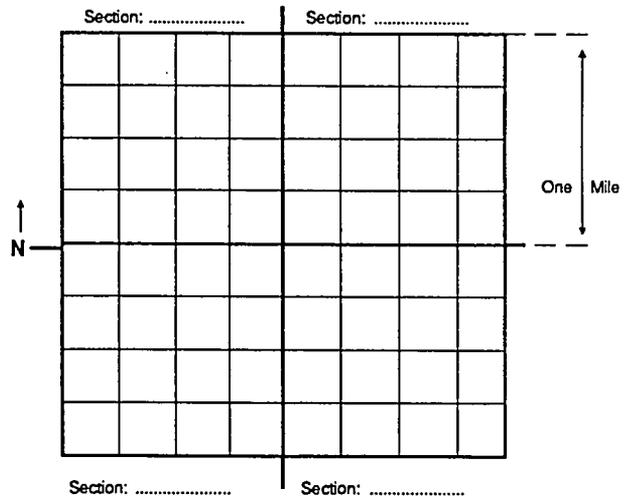
NOTE: This form must be completed same day as the application and it must be retained for 7 years. (Ref. RCW 17.21)

- 1. Date of Application - Year: Month: Day: Time:
2. Agency/Company making application: Address: City: State: Zip:
3. Licensed Applicator/Operator responsible for the application: Address: City: State: Zip: License No. Telephone No.
4. Name of person(s) who applied the pesticide (if different than #3 above): License No(s):
5. Name of person for whom the pesticide was applied (if different from #2 above) Address: City: State: Zip:
6. Was this application made as a result of a WSDA Permit? No Yes (if yes, give Permit No.) #
7. Location of Application:

- a) If application was made to one acre or more, item # 8 and the map must be completed.
b) If application was made to less than one acre, the location may be described below.

.....
.....
.....
.....

The map to the right is divided into 4 sections with each section divided into quarter-quarter sections. Please complete it by marking the appropriate section number(s) on the map and indicate as accurately as possible the location of the area treated.



- 8. Township: N
Range: E or W (please indicate)
Section(s):
County:

- 9. The following information must also be recorded. Information may be listed on this form or attached as supplemental information:
a) product or experimental name of the pesticide; b) the EPA Registration number or experimental code number;
c) active ingredients (common name) and %; d) total amount of pesticide applied; e) amount of pesticide applied per acre or other measure; f) concentration applied; e) the pest(s) to be controlled; h) apparatus license plate number; i) crop or site;
j) wind direction and estimated velocity during the application; k) temperature during application; l) any other applicable information.

### PESTICIDE APPLICATION RECORD

May be used for Commercial Residential Ornamental and Lawn Applications only

NOTE: This form must be completed same day as the application and it must be retained for 7 years. (Ref. RCW 17.21)

- A. Date of Application - Year: ..... Month: ..... Day: .....
- B. Firm name: ..... Telephone No. ....  
 Commercial Applicator's Name: ..... License No. ....  
 Street Address: ..... City: ..... State: ..... Zip: .....
- C. Name of person(s) who applied the pesticide: ..... License No(s): .....

D. Pesticide Information (please list all information for each pesticide in the tank mix):

Brand Name	Active Ingredients & % (Common Name)	EPA Reg. No.	Concentration
			Amount - (Lbs., Qts., etc.) of brand per 100 gallons of tank mix. Amount and unit must be specified

- E. Application crop or site: ..... F. Apparatus License Plate No. ....

G. Record the following information for the specific conditions during each application:

	CUSTOMER		AMOUNT APPLIED (gals. of mix)	AREA TREATED (sq. ft., etc.)	TIME	TEMP F°	WIND	
	(a) full name	(b) location of application - street address					DIR	VEL (mph)
1. a)								
b)								
2. a)								
b)								
3. a)								
b)								
4. a)								
b)								
5. a)								
b)								
6. a)								
b)								
7. a)								
b)								
8. a)								
b)								
9. a)								
b)								

# PESTICIDE STORAGE RECORD

## STORAGE RECORD OF PESTICIDES USED IN THE PRODUCTION OF AN AGRICULTURAL CROP

NOTE: This form must be completed the same day as the storage and it must be retained for 7 years. (Ref. RCW 21 and RCW 49.70)

1. Name of person storing pesticide: .....
2. Name of Pesticide Owner: .....
3. Owner's Address: .....Tele. ....
4. Other applicable information: .....
5. Pesticide Information:

<u>Brand Name</u>	<u>Active Ingredients Common Name</u>	<u>EPA Reg. No.</u>	<u>Amount Stored</u>

6. Location of Storage:

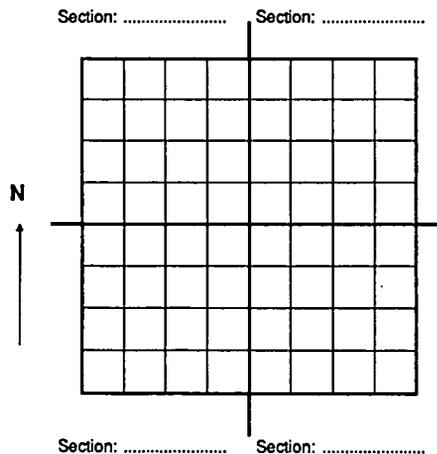
a) Street Address

.....  
.....

b) If a street location is not appropriate, pinpoint the exact location of the storage and describe the location:

Township: ..... N  
 Range: ..... E or W (please indicate)  
 Section(s): .....  
 County: .....

*The map to the right is divided into 4 sections with each section divided into quarter-quarter sections. Please complete it by marking the appropriate section number(s) on the map and indicate as accurately as possible the location of the area treated.*



7. \_\_\_\_\_  
 Type or Print Name of Person Completing the Form

8. \_\_\_\_\_  
 Signature Date  
 (If additional space is required - use plain sheet of paper and staple with form)

## WSR 89-23-119

## PROPOSED RULES

## DEPARTMENT OF LABOR AND INDUSTRIES

[Filed November 22, 1989, 3:42 p.m.]

## Original Notice.

Title of Rule: Proposed amendment to chapters 296-20 and 296-23A WAC, dealing with rules and fees for treatment of injured workers.

Purpose: To clarify rules relating to utilization management and corrective action programs.

Statutory Authority for Adoption: RCW 51.04.020(4) and 51.04.030.

Statute Being Implemented: RCW 51.04.020(4) and 51.04.030.

Summary: The Department of Labor and Industries is proposing the following changes to the medical aid rules and maximum fee schedules in order to improve program administration. The changes to the enclosed Washington Administrative Code amend and clarify the department's rules relating to utilization management and corrective action programs.

WAC 296-20-010, General information, has been amended to clarify rules regarding the billing of workers by health care providers, changes the phrase "medically necessary" to "proper and necessary medical care" and modifies the language to be gender neutral; WAC 296-20-01002, Definitions, has been amended to clarify documentation of by-report procedures, terms relating to osteopathic physicians, adds definitions of emergent and nonemergent hospital admissions and modifies the language to be gender neutral; WAC 296-20-015, Who may treat, has been amended to clarify the types of providers who may treat workers covered under the Industrial Insurance Act, the department's role as trustee of the medical aid fund, the conditions under which the department may limit a provider's authorization to treat workers, and types of corrective actions the department may take against identified providers; WAC 296-20-02001, Penalties, has been amended to clarify the department's authority to assess penalties against providers; WAC 296-20-02010, Review of health services providers, has been amended to clarify the department's rules regarding review of health services providers; WAC 296-20-022, Payment of out-of-state providers, has been amended to clarify the department's rules for payment of out-of-state providers; WAC 296-20-024, Utilization management, has been amended to clarify the department's utilization management programs; WAC 296-20-03001, Treatment requiring authorization, clarifies the department's rules regarding authorization for inpatient hospital admissions; WAC 296-20-045, Consultation requirements, amends the rules regarding consultation requirements; WAC 296-20-075, Hospitalization, clarifies the rules regarding hospital admissions and expands the department's ability to develop and implement utilization management criteria; WAC 296-23A-150, Billing procedures, clarifies supporting documentation for hospital billing; and WAC 296-23A-170, Outliers, modifies rules and requirements regarding a hospital's outlier status.

Name of Agency Personnel Responsible for Drafting: Bill Stoner, General Administration Building, HC-251-2, Olympia, 586-4015; Implementation and Enforcement: Joseph A. Dear, General Administration Building, HC-101, Olympia, 753-6307.

Name of Proponent: Health Services Analysis, 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: Proposes amendment of chapters 296-20 and 296-23A WAC of the medical aid rules and maximum fee schedules to clarify rules relating to the department's utilization management and corrective action programs.

Proposal Changes the Following Existing Rules: Please see Summary above.

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

Hearing Location: First Floor Conference Room, General Administration Building, 11th and Columbia Streets, Olympia, Washington, on January 3, 1990, at 9:00 a.m.

Submit Written Comments to: Bill Stoner, Supervisor, Provider Education, HC-251-2, by January 3, 1990.

Date of Intended Adoption: February 2, 1990.

November 22, 1989

Joseph A. Dear  
Director

AMENDATORY SECTION (Amending Order 87-23, filed 11/30/87, effective 1/1/88)

WAC 296-20-010 GENERAL INFORMATION. (1) The following rules and fees are promulgated pursuant to RCW 51.04.020. This fee schedule is intended to cover all services for accepted industrial insurance claims. All fees listed are the maximum fees allowable. Practitioners shall bill their usual and customary fee for services. IF A USUAL AND CUSTOMARY FEE FOR ANY PARTICULAR SERVICE IS LOWER TO THE GENERAL PUBLIC THAN LISTED IN THE FEE SCHEDULE, THE PRACTITIONER SHALL BILL THE DEPARTMENT OR SELF-INSURER AT THE LOWER RATE. The department or self-insurer will pay the lesser of the billed charge or the fee schedule maximum allowable.

(2) The rules contained in the introductory section pertain to all practitioners regardless of specialty area or limitation of practice. Additional rules pertaining to specialty areas will be found in the appropriate section.

(3) The maximum allowable fee for a procedure is determined by multiplying the unit value of a procedure by the appropriate conversion factor, per the conversion factor tables listed in WAC 296-20-135 to 296-20-155.

(4) Initial and follow-up visit charges by practitioners include routine examinations, physical modalities, injections, minor procedures, etc., not otherwise provided for in this schedule. No fee is payable for missed appointments unless the appointment is for an examination arranged by the department or self-insurer.

(5) When a claim has been accepted by the department or self-insurer, no provider or his/her representative may bill the worker for the difference between the allowable fee and ((his)) the usual and customary charge. Nor can the worker be charged a fee, either for interest or completion of forms, related to services rendered for the industrial injury or condition. Refer to RCW 51.04.030 for rules regarding the billing of workers.

(6) Practitioners must maintain documentation in claimant medical or health care service records adequate to verify the level, type, and extent of services provided to claimants.

(7) Except as provided in WAC 296-20-055 (temporary treatment of unrelated conditions when retarding recovery), practitioners shall bill, and the department or self-insurer shall pay, only for ((medically necessary services)) proper and necessary medical care required for the

diagnosis and curative or rehabilitative treatment of the accepted condition.

(8) When an injured worker is being treated concurrently for an unrelated condition the fee allowable for the service(s) rendered must be shared proportionally between the payors.

(9) Correspondence: Correspondence pertaining to state fund and department of energy claims should be sent to Department of Labor and Industries, Claims Administration, MS: HC-241, Olympia, Washington 98504. Accident reports should be sent to Department of Labor and Industries, P.O. Box 9001, Olympia, Washington 98504-9001. Billings should be sent to Department of Labor and Industries, P.O. Box 9002, Olympia, Washington 98504-9002. State fund claims have six digit numbers preceded by a letter other than "S," "T," or "V."

Department of energy claims have seven digit numbers with no letter prefix.

All correspondence and billings pertaining to crime victims claims should be sent to Crime Victims Division, Department of Labor and Industries, 925 Plum Street, MS: HC-720, Olympia, Washington 98504.

Crime victim claims have six digit numbers preceded by a "V."

All correspondence and billings pertaining to self-insured claims should be sent directly to the employer or ~~((his))~~ the service representative as the case may be. A listing of self-insured employers and service representatives can be found in Appendix B.

Self-insured claims are six digit numbers preceded by a "S," or "T."

Communications to the department or self-insurer must show the patient's full name and claim number. If the claim number is unavailable, providers should contact the department or self-insurer for the number, indicating the patient's name, Social Security number, the date and the nature of the injury, and the employer's name. A communication should refer to one claim only. Correspondence must be legible and reproducible, as department records are microfilmed. Correspondence regarding specific claim matters should be sent directly to the department in Olympia or self-insurer in order to avoid rehandling by the service location.

(10) APPENDIX C is a listing of the department's various local service locations. These facilities should be utilized by providers to obtain information, supplies, or assistance in dealing with matters pertaining to industrial injuries.

#### AMENDATORY SECTION (Amending Order 87-23, filed 11/30/87, effective 1/1/88)

WAC 296-20-01002 DEFINITIONS. 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.

UNUSUAL OR UNLISTED PROCEDURE: Value of unlisted services or procedures should be substantiated "by report" (BR).

"BY REPORT": BR (by report) in the value column 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 ~~((should))~~ shall provide an adequate definition or description of the services or procedures that explain why the services or procedures (e.g., operative or narrative 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) Major surgical procedure and supplementary procedure(s);
- (4) Whenever possible, list the nearest similar procedure by number according to this schedule;
- (5) Estimated follow-up;
- (6) Operative time.

The department or self-insurer may adjust BR procedures when such action is indicated.

"INDEPENDENT OR SEPARATE PROCEDURE": Certain of the 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.

SV. ITEMS: Sv (service) procedures are not essentially a single procedure, rather they are comprised of several other procedures. These "Sv" procedures although identified by a specific code number, can be described only in terms of the several services included. Therefore, unit values are not indicated for Sv procedures and total value is derived from the values of the individual services performed. These Sv procedures require "BR" (see above) information to substantiate billing.

MODIFIED WORK STATUS: The injured worker is not able to return to ~~((his))~~ their previous work, but is physically capable of carrying out work of a lighter nature. Injured 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, ~~((his))~~ 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.

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.

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.

TEMPORARY PARTIAL DISABILITY: Partial time loss compensation may be paid when the worker can return to work on a limited basis or return to lesser paying job is necessitated by the accepted injury or condition. The worker must have a reduction in wages of at least 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.

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. Appendix D contains a schedule of the permanent disability maximum awards. 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.

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, ~~((he))~~ 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.

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 (see Appendix C) 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.

**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; drugless therapeutics; podiatry; dentistry; optometry.

Only those persons so licensed may sign report of accident forms and time loss cards except as provided in WAC 296-20-100.

**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, (~~osteopaths~~) osteopathic physicians, pharmacists, podiatrists, physical therapists, occupational therapists, massage therapists, psychologists, drugless therapeutics, and durable medical equipment dealers.

**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.

**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.

**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).

**AUTHORIZATION:** Notification by a qualified representative of the department or self-insurer that specific medically 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.

**MEDICALLY NECESSARY:** Those health services are medically necessary which, in the opinion of the director or his or her designee, are:

- (a) Proper and necessary for the diagnosis and curative or rehabilitative treatment of an accepted condition; and
- (b) Reflective of accepted standards of good practice within the scope of the provider's license or certification; and
- (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.

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 medically necessary. Services which are controversial, obsolete, experimental, or investigational are presumed not to be medically necessary, and shall be authorized only as provided in WAC 296-20-03002(6).

**UTILIZATION REVIEW:** The assessment of a claimant's medical care to assure that it is medically 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.

**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.

**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.

**AMENDATORY SECTION** (Amending Order 86-36, filed 10/1/86, effective 11/1/86)

WAC 296-20-015 WHO MAY TREAT. (~~Only that treatment which falls within the scope and field of the practitioner's license to practice will be allowed as treatment to an injured worker.~~) (1) In order to treat workers under the Industrial Insurance Act, a health

care provider must qualify as an approved provider under the department's rules. The department must approve the health care provider through the issuance of a provider number before the health care provider is eligible for payment for services.

(2) Para-professionals, who are not independently licensed, must practice under the direct supervision of a licensed health care professional whose scope of practice and specialty training includes the service provided by the para-professional.

(3) Procedures and evaluations requiring specialized skills and knowledge will be limited to board certified or board qualified physicians, or osteopathic physicians as specified by the American Medical Association or the American Osteopathic Association.

(~~Practitioners may be formally refused permission to treat cases coming under the jurisdiction of the department for reasons that are, in the opinion of the department, to the best interest of the workers and the funds created for their protection.~~)

Reasons for holding a practitioner ineligible to treat industrial insurance cases include, but are not necessarily limited to any one or a combination of the following:

(1) Failure, neglect or refusal to submit complete, adequate and detailed reports;

(2) Failure, neglect or refusal to respond to requests by the department for additional reports;

(3) Failure, neglect or refusal to observe and comply with the department's orders and medical aid rules;

(4) Persistent failure to notify the department immediately and prior to burial in any death where the cause of death is not definitely known or where there is question of death being due to an industrial injury;

(5) Persistent failure to recognize emotional and social factors impeding recovery of injured workers;

(6) Persistent unreasonable refusal to comply with the recommendations of board certified or qualified specialists who have examined the worker;

(7) Submission of false or misleading reports to the department;

(8) Collusion with any other persons in submission of false or misleading information to the department;

(9) Submission of inaccurate or misleading bills;

(10) Persistent submission of false or erroneous diagnosis;

(11) Knowingly submitting bills to an injured worker for treatment of an industrial condition for which the department has accepted responsibility;

(12) Persistent use of:

(a) Treatment of controversial or experimental nature;

(b) Contraindicated or hazardous treatment measures;

(c) Continuation of treatment measures past stabilization of the industrial condition or after maximum improvement has been obtained;

(d) Nonspecific treatment measures;

(e) Treatment terminating in unsatisfactory results;

(13) Charging or attempting to charge industrially injured workers fees in addition to the fee paid by the department or self-insurer for care of the industrial injury or billing for difference between the maximum allowable fee set forth in this schedule and usual and customary charges;

(14) Conviction in any court of any offense involving moral turpitude, in which case the record of such conviction shall be conclusive evidence;

(15) The use or prescription for use, of narcotic, addictive, habituating or dependency inducing drugs in any way other than for therapeutic purposes;

(16) Repeated acts of gross misconduct in the practice of the profession;

(17) Declaration of mental incompetency by a court of competent jurisdiction;

(18) The finding of any peer group disciplinary board of reason to suspend or revoke a practitioner's practice privilege temporarily or permanently;))

(4) The department as a trustee of the medical aid fund has a duty to supervise provision of proper and necessary medical care that is delivered promptly, efficiently, and economically. The department can deny, revoke, suspend, limit, or impose conditions on a health care provider's authorization to treat workers under the Industrial Insurance Act. Reasons for denying issuance of a provider number or imposing any of the above restrictions include, but are not limited to the following:

(a) Incompetence, negligence, or malpractice which results in injury to a worker or which creates an unreasonable risk that a worker may be harmed.

(b) The possession, use, prescription for use, or distribution of controlled substances, legend drugs, or addictive, habituating, or dependency-inducing substances in any way other than for therapeutic purposes.

(c) Any temporary or permanent probation, suspension, revocation, or type of limitation of a practitioner's license to practice by any court, board, or administrative agency.

(d) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the provider's profession. The act need not constitute a crime. If a conviction or finding of such an act is reached by a court or other tribunal pursuant to plea, hearing, or trial, a certified copy of the conviction or finding is conclusive evidence of the violation.

(e) The failure to comply with the department's orders, rules, or policies.

(f) The failure, neglect, or refusal to:

(i) Provide records requested by the department pursuant to a health care services review or an audit.

(ii) Submit complete, adequate, and detailed reports or additional reports requested or required by the department regarding the treatment and condition of a worker.

(g) The submission or collusion in the submission of false or misleading reports or bills to any government agency.

(h) Billing a worker for:

(i) Treatment of an industrial condition for which the department has accepted responsibility; or

(ii) The difference between the amount paid by the department under the maximum allowable fee set forth in these rules and any other charge.

(i) Repeated failure to notify the department immediately and prior to burial in any death, where the cause of the death is not definitely known and possibly related to an industrial injury or occupational disease.

(j) Repeated failure to recognize emotional and social factors impeding recovery of a worker who is being treated under the Industrial Insurance Act.

(k) Repeated unreasonable refusal to comply with the recommendations of board certified or qualified specialists who have examined a worker.

(l) Repeated use of:

(i) Treatment of controversial or experimental nature;

(ii) Contraindicated or hazardous treatment;

(iii) Treatment past stabilization of the industrial condition or after maximum curative improvement has been obtained; or

(iv) Treatment terminating in unsatisfactory results.

(m) Declaration of mental incompetency by a court or other tribunal.

(n) Failure to comply with the applicable code of professional conduct or ethics.

(o) Failure to inform the department that any disciplinary action has been taken against the provider's license to practice.

(p) The finding of any peer group review body of reason to take action against the provider's practice privileges.

(q) Misrepresentation or omission of any material information in the application for authorization to treat workers. (RCW 51.04.020(4) and 51.04.030.)

(5) If the department finds reason to take corrective action, the department may also order one or more of the following:

(a) Recoupment of payments made to the provider, including interest; (RCW 51.04.020(4) and 51.04.030 and WAC 296-20-02015.)

(b) Denial or reduction of payment;

(c) Assessment of penalties for each action that falls within the scope of subsection (4)(a) through (q) of this section; (RCW 51.48.060 and 51.48.080.)

(d) Placement of the provider on a prepayment review status requiring the submission of supporting documents prior to payment;

(e) Requirement to satisfactorily complete remedial education courses and/or programs; and

(f) Imposition of other appropriate restrictions or conditions on the provider's privilege to be reimbursed for treating workers under the Industrial Insurance Act.

(6) The department shall forward a copy of any corrective action taken against a provider to the applicable disciplinary authority.

AMENDATORY SECTION (Amending Order 80-29, filed 12/23/80, effective 3/1/81)

~~WAC 296-20-02001 PENALTIES. ((RCW 51.48.060 of the industrial insurance law provides that a civil penalty of \$100.00 may be assessed against any doctor who, ". . . fails, neglects or refuses to file a report with the director, as required by this title, within five days of treatment showing the condition of the injured worker at the time of treatment, a description of the treatment given, and an estimate of the probable duration of the injury, or who fails or refuses to render all necessary assistance to the injured worker, as required by this title,~~

~~RCW 51.48.080 of the industrial insurance law provides that, "Every person, firm or corporation who violates or fails to obey, observe or comply with any rule of the department promulgated under authority of this title, shall be subject to a penalty of not to exceed two hundred and fifty dollars.") The department has the right to assess penalties against providers. See RCW 51.48.060 and 51.48.080.~~

AMENDATORY SECTION (Amending Order 86-36, filed 10/1/86, effective 11/1/86)

~~WAC 296-20-02010 ((CONDUCT OF AUDITS)) REVIEW OF HEALTH SERVICES PROVIDERS. (((+ In order to ensure that the industrially injured worker receives the services paid for by the state of Washington, the department of labor and industries conducts audits of providers of medical, dental, vocational rehabilitation, and other health services furnished to industrially injured workers. Audits may be for cause or at random and may consist of, but not be limited to, an on-site review of any of a provider's files and records related to the provision of services to industrially injured workers or the submission of any bill to the department for payment for such services.~~

~~(2) In the conduct of such audits, the director or the director's authorized auditors may examine all records, or portions thereof, including patient records, related to services rendered by a health services provider with payment requested of, or made by the department, notwithstanding the provisions of any statute which may make or purport to make such records privileged or confidential. The examination of records may include the utilization of statistical sampling methodologies and projections based upon sample findings.~~

~~(3) No original records shall be removed from the premises of a health services provider by the auditors. The department shall destroy all copies of patient medical records made during an audit, and such records destruction will be accomplished not later than ninety days after completion of the audit, investigation, or proceeding.~~

~~(4) The department will give ten working days written notification to any provider, except as authorized in WAC 296-18-460, that the provider's billing and injured worker claimant records will be reviewed by an auditor at the provider's place(s) of business to determine compliance with medical aid rules and standards.~~

~~(5) A provider, or the provider's designee, will be notified upon the auditor's arrival at the provider's place of business. The notification takes place during an entrance interview attended by the auditor and the provider or the provider's designee. The provider is to furnish the records requested by the auditor and provide a work space adequate and suitable for the auditor to conduct the records review at the provider's place(s) of business.~~

~~(6) A provider, or the provider's designee, will be notified by the auditor upon conclusion of the review of records at the provider's place(s) of business. The auditor will advise the provider, or the provider's designee, that an exit conference can be scheduled. The purpose of the exit conference is to informally review and discuss the preliminary audit findings. The conference is conducted at the provider's place of business. The conference may be waived at the discretion of the provider.~~

~~(7) The provider will be given a draft audit report for review and comment. Upon receipt from the department of a draft audit report, the provider will have fifteen working days to submit written comments on the draft audit report or to request to meet in conference in Olympia with the director's authorized representative(s) to discuss the draft audit report. Written comments by the provider will be incorporated into a final audit report.~~

~~(8) The department will issue a final audit report to each audited provider. If as a result of the audit it is determined that moneys are due the department, the final audit report will be accompanied by an order and notice identifying the amount due and any interest. If as a result of the audit it is determined that no moneys are due to the department, the final audit report will not be accompanied by an order~~

and notice. In either case, the final audit report will tell the provider of the department's process for addressing disputes which might arise as a result of the audit.

(9) A provider, upon receipt from the department of a final audit report not accompanied by an order and notice, shall have sixty calendar days to submit to the department a written request for reconsideration of any audit finding or directive which the audited provider believes to be inconsistent with statute, rule or departmental policy. Requests must be submitted to: Director, department of labor and industries. A provider requesting reconsideration shall be granted a conference in Olympia presided over by the director or the director's authorized representative. The director or the director's authorized representative shall issue a final decision within thirty days of concluding the conference. That decision shall become final within sixty days from the date the decision is communicated to the provider unless an appeal is filed with the board of industrial insurance appeals. The conference in response to the final audit report is the final level of appeal within the department.

(10) Based upon the findings of an audit or other proceeding, the director or the director's authorized representative may order repayment by a provider of any excess payments received by the provider under Title 51 RCW to which the provider was not entitled, plus interest on the amount of any excess payments received by a provider to which the provider was not entitled. In the determination of excess payments, the department may use projections based upon sample findings.

(11) A department order or decision making demand, whether with or without penalty, for repayment of sums paid to a provider of medical, dental, vocational rehabilitation, or other health services rendered to an industrially injured worker, shall become final within twenty days from the date the order or decision is communicated to the provider unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals.

(12) A provider, upon receipt from the department of a final audit report accompanied by an order and notice, and aggrieved by the department order and notice making demand, whether with or without penalty, for repayment of sums paid to that provider, who files with the department in Olympia a timely written request for reconsideration of the order and notice making demand, shall be granted a conference in Olympia presided over by the director or the director's authorized representative. The director or the director's authorized representative shall issue a final decision within thirty days after concluding the conference. That decision shall become final within twenty days from the date the decision is communicated to the provider unless the provider files an appeal with the board of industrial insurance appeals.

(13) The department may conduct or contract for hospital bill review services from time to time. Subsections (4), (5), (6), (7), (8), and (9) of this section shall not apply to hospital bill reviews: (1) The department may review providers' records to ensure workers are receiving proper and necessary medical care and to ensure providers' compliance with the department's medical aid rules, fee schedules, and policies. A records review may be the basis for corrective action against the provider.

(2) The department may review records before, during, or after delivery of health services. Records reviews may be for cause or at random and may include the utilization of statistical sampling methodologies and projections based upon sample findings. Records reviews may be conducted at or away from the provider's places of business, at the department's discretion.

(3) The department may request legible copies of providers' records. Providers shall furnish copies of the requested records within thirty calendar days of receipt of the request. Providers shall be responsible for any copying costs associated with complying with such a request.

(4) The department will not remove original records from provider's premises.

**AMENDATORY SECTION** (Amending Order 87-23, filed 11/30/87, effective 1/1/88)

WAC 296-20-022 PAYMENT OF OUT-OF-STATE PROVIDERS. (1) Beginning February 1, 1987, providers of health services in the bordering states of Oregon and Idaho shall bill and be paid according to the medical aid rules of the state of Washington.

(2) Providers of health services in other states and other countries shall be paid at rates which take into account:

(a) Payment levels allowed under the state of Washington medical aid rules;

(b) Payment levels allowed under workers compensation programs in the provider's place of business; and

(c) The ((reasonableness of the provider's charges)) usual, customary, and reasonable charges in the provider's state of business.

(3) In all cases these payment levels are the maximum allowed to providers of health services to ((injured)) workers. Should a health services provider's charge exceed the payment amount allowed under the state of Washington medical aid rules, the provider is prohibited from charging the injured worker for the difference between the provider's charge and the allowable rate. Providers violating this provision are ineligible to treat injured workers as provided by WAC 296-20-015 and are subject to other applicable penalties.

(4) Only those diagnostic and treatment services authorized under the state of Washington medical aid rules may be allowed by the department or self-insurer. As determined by the department of labor and industries, the scope of practice of providers in bordering states may be recognized for payment purposes, except that in all cases WAC 296-20-03002 (Treatment not authorized) shall apply. Specifically, services permitted under workers compensation programs in the provider's state or country of business, but which are not allowed under the medical aid rules of the state of Washington, may not be reimbursed. When in doubt, the provider should verify coverage of a service with the department or self-insurer.

(5) Out-of-state hospitals will be paid according to WAC 296-23A-165.

**AMENDATORY SECTION** (Amending Order 87-23, filed 11/30/87, effective 1/1/88).

WAC 296-20-024 UTILIZATION ((REVIEW AND QUALITY ASSURANCE)) MANAGEMENT. ((To ensure that injured workers receive good quality health care, provided in an efficient manner and in the most appropriate setting, the department has instituted a program of utilization review and quality assurance. This program is designed to monitor and control the use of health care services, and includes, but is not limited to, the following:

(1) Authorization for reimbursement must be obtained from a qualified representative of the department or self-insurer prior to the provision of certain medical treatment, equipment or supplies. This requirement applies to all nonemergent major surgery, diagnostic studies other than routine radiology and laboratory studies, therapy extending beyond a specified number of days or treatments, and to certain other medical treatment, equipment and supplies. Emergency medical services can be provided without prior authorization, but reimbursement may be withheld, or recovery of prior payments made, if utilization review fails to confirm the medical necessity of such services.

(2) Medical treatment, equipment and supplies which are normally reimbursed without prior authorization are nevertheless subject to specific limitations with respect to the duration, frequency, and quantity that may be provided without review. If such services are delivered in excess of the limitations which apply to them, reimbursement will not be made unless prior authorization has been obtained from a qualified representative of the department or self-insurer.

(3) Certain types of medical treatment, equipment and supplies are not approved for the diagnosis or treatment of accepted conditions, and will not be authorized or reimbursed by the department or self-insurer.

(4) Specific limitations are placed on the duration, frequency and types of prescription drugs and controlled substances that will be reimbursed by the department or self-insurer.

(5) Documentation of the need for and efficacy of continued medical care by the health care provider is required at regular intervals while a claim is open. Such documentation enables the department or self-insurer to review the plan of treatment, assess the quality and medical necessity of services, authorize or deny reimbursement for continued provision of services, evaluate eligibility for time loss compensation, and pay medical bills.

(6) The department's second opinion program requires consultations prior to the authorization of reimbursement for some types of surgery, for all procedures of a controversial or uncommon nature, and for conservative or chiropractic care which extends past 120 days following the initial visit.

(7) Hospitalization will be reimbursed only when it is determined to be medically necessary for the diagnosis and curative or rehabilitative treatment of accepted conditions. Hospital bills and supporting medical documents may be audited to verify the accuracy or appropriateness of charges, and recovery of overpayments will be made.

~~(8) Medical treatment, equipment and supplies provided for the diagnosis and curative or rehabilitative treatment of a condition unrelated to the accepted medical condition will not be reimbursed unless prior authorization has been obtained from the department or self-insurer.~~

~~(9) The department's mandatory outpatient surgery program requires that certain diagnostic and surgical procedures be reimbursed only if they are performed in an outpatient setting. If a worker's medical condition necessitates performance of such a procedure in an inpatient setting, prior authorization must be obtained from the department or self-insurer.)) The department, as a trustee of the medical aid fund, has a duty to supervise the provision of proper and necessary medical care that is delivered promptly, efficiently, and economically. Toward this end, the department will institute programs of utilization management. These programs are designed to monitor and control the proper and necessary use and cost of, health care services. These programs include, but are not limited to, managed care contracting, prior authorization for services, and alternative reimbursement systems.~~

AMENDATORY SECTION (Amending Order 86-36, filed 10/1/86, effective 11/1/86)

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) ((All nonemergent major surgery must be authorized prior to surgery date. Some surgical procedures require concurring opinions prior to authorization. (See WAC 296-20-045 for details.)) 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 WAC 296-21-095 and 296-23-710.

(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 authorized. No more than six injections will be authorized per acute episode.

(8) Home nursing or convalescent center care must be authorized per provision outlined in WAC 296-20-091.

(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. See WAC 296-21-0501 and ~~((296-20-0502)) 296-21-0502~~ 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 antiinflammatory 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 antiinflammatory 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 Order 80-29, filed 12/23/80, effective 3/1/81)

WAC 296-20-045 ~~((PROCEDURES REQUIRING))~~ CONSULTATION REQUIREMENTS. In the event of complication, controversy, or dispute over the treatment aspects of any claim, the department or self-insurer will not authorize treatment until the attending doctor has arranged a consultation with a qualified doctor with experience and expertise on the subject, and the department or self-insurer has received notification of the findings and recommendations of the consultant.

This consultation must be arranged in accordance with WAC 296-20-051.

Consultations are also required in the following situations:

~~(1) ((All nonemergent neck and back surgery.~~

~~(2) All repeat nonemergent major surgery, except inguinal hernia.~~

~~(3)) All nonemergent major surgery on a patient with serious medical, emotional or social problems which are likely to complicate recovery.~~

~~((4)) (2) All procedures of a controversial nature or type not in common use for the specific condition.~~

~~((5)) (3) Surgical cases where there are complications or unfavorable circumstances such as age, preexisting conditions or interference with occupational requirements, etc.~~

~~((6)) (4) If the attending doctor, the department, self-insurer, or authorized department representative requests a consultation.~~

~~(5) Conservative ((or) care including chiropractic ((care)), extending past one hundred twenty days following initial visit. Such consultation may be with a chiropractic or a medical or osteopathic consultant.~~

AMENDATORY SECTION (Amending Order 87-23, filed 11/30/87, effective 1/1/88)

WAC 296-20-075 HOSPITALIZATION. (1) Hospitalization will be paid ~~((when medically necessary))~~ for proper and necessary medical treatment of the accepted condition(s). ~~((Unless the worker's condition requires special care.))~~ The department may develop and implement utilization management criteria which will be used to review inpatient hospital admissions. Reimbursement for hospitalization is limited to proper and necessary care for an accepted condition. Failure to comply with these criteria may result in delayed or reduced reimbursement to the provider as allowed under RCW 51.48.060 and 51.48.080. Ward or semi-private accommodations will be paid, unless the worker's condition requires special care. ~~((Hospitalization solely for physical therapy, bed rest, and/or administration of injectable drugs will be paid only under the following circumstances:~~

~~(a) Acute back pain with objective findings of neurological deficit, e.g., foot drop, motor dysfunction or other symptoms indicative of a herniated disc;~~

~~(b) Chronic back pain, which has been treated for a minimum of ten days with home bed rest, traction, outpatient physical therapy, and~~

~~medication without improvement and where the worker has objective physical findings:))~~

(2) Discharge from the hospital shall be at the earliest date possible consistent with proper health care. If transfer to a convalescent center or nursing home is indicated, prior arrangements should be made with the department or self-insurer. See WAC 296-20-091 for further information. The department may designate those diagnostic and surgical procedures which will be reimbursed only if performed in an outpatient setting. When procedures so designated must be performed in an inpatient setting for reasons of medical necessity, prior authorization must be obtained.

#### AMENDATORY SECTION (Amending Order 87-18, filed 7/23/87)

WAC 296-23A-150 BILLING PROCEDURES. Bills for hospital services must be submitted on UB-82 bill forms, transmitted electronically on department provided software, or transmitted electronically using department file format specifications. Providers using the UB-82 bill form must follow the billing instructions provided by the Washington State Hospital Association. Providers using any of the electronic transfer options must follow department instructions for electronic billing in addition to instructions provided by the Washington State Hospital Association. ~~((The))~~ Self-insurers may accept other bill forms.

(1) The following information must appear on the UB-82 for hospital inpatient services:

- (a) Provider name;
  - (b) Patient control number;
  - (c) Type of bill;
  - (d) Department of labor and industries provider number;
  - (e) Patient name;
  - (f) Patient address;
  - (g) Birth date;
  - (h) Sex;
  - (i) Admission date;
  - (j) Patient status;
  - (k) Statement covers period;
  - (l) Date of injury;
  - (m) Description (include daily rate with room accommodation revenue code);
  - (n) Revenue code;
  - (o) Units;
  - (p) Total charges;
  - (q) Payer;
  - (r) Social Security number;
  - (s) Claim number;
  - (t) Employer name;
  - (u) Narrative of principal and other diagnoses;
  - (v) Principal and other ICD diagnosis code(s) when applicable;
  - (w) Narrative of principal and other procedure(s);
  - (x) Principal and other ICD procedure code(s) when applicable;
- ~~((and))~~

(y) Procedure date(s) for ICD procedure code(s) when applicable;

and  
(z) Treatment authorization number.

(2) The following information must appear on the UB-82 for hospital outpatient services:

- (a) Provider name;
- (b) Patient control number;
- (c) Type of bill;
- (d) Department of labor and industries provider number;
- (e) Patient name;
- (f) Patient address;
- (g) Birth date;
- (h) Sex;
- (i) Statement covers period;
- (j) Date of injury;
- (k) Description;
- (l) Revenue code when applicable;
- (m) Department of labor and industries procedure codes for radiology, pathology and laboratory, and physical therapy services;
- (n) Units;
- (o) Total charges;
- (p) Payer;
- (q) Social Security number;
- (r) Claim number;
- (s) Employer name;
- (t) Narrative of principal and other diagnoses with side of body; and

(u) Principal and other ICD diagnosis code(s) when applicable.

Summarize inpatient charges by revenue codes as specified in the UB-82 instructions.

(3) Supporting documentation for inpatient and outpatient services must be ~~((attached to the billings))~~ sent to the department or self-insurer. Place the claim number on the upper right hand corner of each attachment. ~~((a) through (j) of this subsection are needed for inpatient services, and (d) through (j) of this subsection are needed for outpatient services:))~~ The information to be sent includes, but is not limited to the following:

- (a) Admission history and physical examination;
- (b) Discharge summary for stays over forty-eight hours;
- (c) ~~((Itemized detail of summary charges;~~
- ~~(d) X-ray reports;~~
- ~~(e) Laboratory and pathology reports;~~
- ~~(f) Diagnostic studies reports;~~
- ~~(g))~~ Emergency room reports; and
- ~~((th))~~ (d) Operative reports(;
- ~~(i) Physical therapy notes; and~~
- ~~(j) Occupational therapy notes)).~~

Providers using any of the electronic transfer options provided by the department must send the department the required documentation normally associated with a bill, ~~((as outlined in subsection (3) of this section;))~~ within thirty calendar days of the date billing information was sent to the department on electronic mediums. Providers must comply with electronic billing instructions supplied by the department regarding the submission of hospital bill documentation. Place the claim number on the upper right hand corner of each supporting document submitted.

(4) For a bill to be considered for payment, it should be received by the department or self-insurer within ninety days from the date of service.

(5) The department or the self-insurer may reject bills for services rendered in violation of the medical aid rules and maximum fee schedules.

(6) Charges for ambulance services and for professional services provided by hospital staff physicians must be submitted on the Health Insurance Claim Form, HCFA-1500. Hospitals using any of the electronic transfer options must follow department instructions for completing the Health Insurance Claim Form, HCFA-1500. The emergency room will be considered the office for those physicians providing regular emergency room care to the hospital, and fees will be allowed on this basis.

(7) Call-back services between 6 p.m. and 8 a.m., of surgical staff not normally on duty during this period of time, should be billed using the appropriate revenue codes.

#### AMENDATORY SECTION (Amending Order 87-23, filed 11/30/87, effective 1/1/88)

WAC 296-23A-170 OUTLIERS. (1) Outlier payments are for cases with unusually high or low costs. Outlier status will be granted to qualified diagnosis related groups cases paid by the department.

(2) Qualification for high outlier status: To qualify as a high outlier under the diagnosis related groups payment system, the allowed charges (ACHGE) for the case minus a dollar threshold (\$threshold) must be greater than zero:

$$(\text{ACHGE} - \$\text{threshold}) > 0.$$

The dollar threshold is defined as the greater of two standard deviations above the state-wide diagnosis related group rate for each diagnosis related group paid by the department or \$9,000. The state-wide per case rates used to compute the standard deviations for the diagnosis related groups will be computed across all relevant cases in the historical data base excluding outliers.

(3) Payment: Outlier cases will be paid a hospital's diagnosis related group rate plus an add-on. The add-on will be calculated by first subtracting the dollar threshold from the allowed charges for the case. This product is then multiplied by that hospital's percent of allowed charges factor (F) and then by eighty percent:

$$(\text{ACHGE} - \$\text{threshold}) * F * 0.80 = \text{Add-on.}$$

The outlier payment will be as follows:

$$\text{Outlier payment} = \text{Hospital's DRG rate} + \text{add-on.}$$

(4) To have a bill considered for high outlier status, the hospital must enter "61" for the condition code, block 35 of the UB-82.

(5) Hospitals ~~((must))~~ may also be required to submit the following information ~~((with a bill, in addition to the information required in WAC 296-23A-150(3),))~~ when requesting a high outlier:

- (a) Physician's progress notes.
- (b) Physician's orders.
- (c) Nurse's notes.

(6) Qualification for low outlier status: To qualify as a low outlier, the allowed charges multiplied by that hospital's percent of allowed charges factor must be less than the greater of ten percent of the state-wide diagnosis related group rate or \$200. The state-wide diagnosis related group rate will be computed across all relevant cases in the historical data base excluding outliers. Low outlier cases will be paid that hospital's inpatient percent of allowed charges factor multiplied by the allowed charges for the case.

### WSR 89-23-120

#### PROPOSED RULES

### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 22, 1989, 3:58 p.m.]

#### Original Notice.

Title of Rule: WAC 392-109-117 State Board of Education—Election of members—Publishing of names.

Purpose: To update publishing requirement for state board elections by removing title of defined agency publication.

Statutory Authority for Adoption: RCW 28A.04.020.

Statute Being Implemented: RCW 28A.04.020.

Summary: See above.

Reasons Supporting Proposal: See above.

Name of Agency Personnel Responsible for Drafting: Richard M. Wilson, Old Capitol Building, (206) 753-2298; Implementation: Monica Schmidt, Old Capitol Building, (206) 753-6715; and Enforcement: Doyle Winter, Old Capitol Building, (206) 753-1880.

Name of Proponent: Superintendent of Public Instruction, governmental.

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

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

Proposal Changes the Following Existing Rules: See above.

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

Hearing Location: Wanamaker Conference Room, Old Capitol Building, Olympia, Washington 98589 [98504], on January 12, 1990, at 9:00 a.m.

Submit Written Comments to: Richard M. Wilson, by January 9, 1990.

Date of Intended Adoption: January 12, 1990.

November 22, 1989

Judith A. Billings

Superintendent of

Public Instruction

#### AMENDATORY SECTION (Amending Order 81-10, filed 8/7/81)

WAC 392-109-117 PUBLISHING OF NAMES. As soon as reasonably possible after each annual election the superintendent of public instruction shall publish the names of the directors and private schools who voted in the election ~~((in "Your Public Schools."))~~:

### WSR 89-23-121

#### PERMANENT RULES

### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Order 18—Filed November 22, 1989, 4:06 p.m.]

Date of Adoption: October 27, 1989.

Purpose: Defines annual procedures that the Superintendent of Public Instruction shall use to determine for each school district: The maximum dollar amount that may be levied for maintenance and operations and state matching to be allocated to eligible school districts.

Citation of Existing Rules Affected by this Order: Repealing WAC 392-139-240 and 392-139-650. Amending WAC 392-139-005, 392-139-007, 392-139-055, 392-139-105, 392-139-110, 392-139-115, 392-139-120, 392-139-122, 392-139-126, 392-139-128, 392-139-132, 392-139-134, 392-139-156, 392-139-162, 392-139-172, 392-139-205, 392-139-215, 392-139-225, 392-139-230, 392-139-245, 392-139-300, 392-139-310, 392-139-320, 392-139-330, 392-139-340, 392-139-605, 392-139-620, 392-139-660, 392-139-665, 392-139-670 and 392-139-900; and adding new sections WAC 392-139-129, 392-139-243, 392-139-297, 392-139-674 and 392-139-675.

Statutory Authority for Adoption: RCW 28A.41.170 and 84.52.0531(10).

Pursuant to notice filed as WSR 89-19-031 on September 14, 1989.

Effective Date of Rule: Thirty-one days after filing.  
November 22, 1989  
Judith A. Billings  
Superintendent of  
Public Instruction

#### AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-005 PURPOSES. The purposes of this chapter are to define the annual procedures that the superintendent of public instruction shall use to determine for each school district:

(1) ~~((To establish the exclusive means for fixing the maximum dollar amount which may be levied on behalf of any school district in calendar year 1988 for general fund maintenance and operation purposes pursuant to RCW 84.52.053 and 84.52.0531.~~

(2) To establish the exclusive means for fixing:

(a)) The maximum dollar amount which may be levied on its behalf ~~((of any school district in a given calendar year, beginning in calendar year 1989 and thereafter;))~~ for general fund maintenance and operation support pursuant to RCW 84.52.053 and 84.52.0531; and

~~((b) The maximum possible amount of state general fund moneys an eligible school district may receive in a given calendar year, beginning in 1989 and thereafter, as state matching moneys for excess levies pursuant to sections 102 and 212, chapter 2, Laws of 1987 1st ex. sess.; and~~

(3) ~~To establish the exclusive means for fixing the dollar amount of state general fund moneys that each eligible school district shall receive in a given calendar year, beginning in calendar year 1989 and thereafter, as~~

~~state matching moneys for excess levies pursuant to sections 102 and 212, chapter 2, Laws of 1987 1st ex. sess.)) (2) The local effort assistance to be allocated to it pursuant to RCW 28A.41.155.~~

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-007 ORGANIZATION OF THIS CHAPTER. This chapter contains rules for excess levy authority and state matching money for excess levies also known as local effort assistance. The general organization of the chapter is as follows:

Sections 001-099 General provisions and definitions.

Sections 100-299 Definitions for excess levy authority.

Sections 300-399 Determination of excess levy authority.

Sections 600-649 Definitions for local effort assistance.

Sections ((650)) 660-699 Determination of local effort assistance.

Section 900 Notification provisions.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-055 DEFINITION—CALENDAR YEAR. As used in this chapter(:

(+)), the term "calendar year" means the period commencing on January 1 ((through)) and ending on December 31.

~~((2) The term "calendar year" is synonymous with the statutory terms "tax collection year" and "levy collection year" as used in RCW 84.52.0531 and chapter 2, Laws of 1987 1st ex. sess.))~~

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-105 DEFINITION—EXCESS LEVY AUTHORITY. As used in this chapter, the term "excess levy authority" means the maximum allowed dollar amount of a school district's certified excess levy for a given calendar year as determined pursuant to this chapter.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-110 DEFINITION—REPORT 1191. As used in this chapter, "Report 1191" means the monthly report prepared and distributed by the superintendent of public instruction which includes the number of basic education allocation formula derived certificated and classified staff units, the compensation entitlement amounts for such staff, the basic education allocation provided for each average annual full-time equivalent student, the basic education allocation, and the amount of state-funded support for the school year for each school district. The amount of a school district's basic education allocation included in the excess levy base pursuant to WAC 392-139-310 (2)(a) is taken from this report.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-115 DEFINITION—BASIC EDUCATION ALLOCATION. As used in this chapter, "basic education allocation" means the amount of state moneys calculated by the superintendent of public instruction which is the basis for the superintendent's distribution of moneys to school districts for the operation of a basic program of education pursuant to RCW 28A.58.750, et seq., 28A.41.130, and 28A.41.140, chapter 392-121 WAC, and the Biennial Operating Appropriations Act. The amount of a school district's total guaranteed entitlement plus substitute teacher and skills center summer program funding as reported on the August Report 1191 is considered a school district's basic education allocation in determining the school district's excess levy base pursuant to WAC 392-139-310.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-120 DEFINITION—4121 EDUCATION OF HANDICAPPED CHILDREN. As used in this chapter, "4121 Education of handicapped children" means the school district general fund revenue account in which is recorded revenue for a program for education of handicapped children pursuant to chapter 28A.13 RCW, RCW 28A.41.053, chapter 392-171 WAC and the Biennial Operating Appropriations Act.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-122 DEFINITION—4155 ((REMEDICATION)) LEARNING ASSISTANCE PROGRAM. As used in this chapter, "4155 ((Remediation)) Learning assistance program" means the school district general fund revenue account in which is recorded revenue for a ((remedial)) learning assistance program pursuant to RCW ((28A.41.400 through 28A.41.414)) 28A.120.010 through 28A.120.026, chapter 392-162 WAC, and the Biennial Operating Appropriations Act.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-126 DEFINITION—4165 TRANSITIONAL BILINGUAL. As used in this chapter, "4165 Transitional bilingual" means the school district general fund revenue account in which is recorded revenue for a transitional bilingual instruction program pursuant to RCW 28A.58.800 and 28A.58.810, chapter 392-160 WAC, and the Biennial Operating Appropriations Act.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-128 DEFINITION—4174 ((GIFTED AND TALENTED)) HIGHLY CAPABLE. As used in this chapter, "4174 ((Gifted and talented)) Highly capable" means the school district general fund revenue account in which is recorded revenue for a program for ((gifted and talented)) highly capable students,

pursuant to chapter 28A.16 RCW, chapter 392-170 WAC, and the Biennial Operating Appropriations Act.

#### NEW SECTION

WAC 392-139-129 DEFINITION—4175 LOCAL EDUCATION PROGRAM ENHANCEMENT. As used in this chapter, "4175 Local education program enhancement" means the school district general fund revenue account in which is recorded revenue for local education program enhancement pursuant to chapter 392-140 WAC and the Biennial Operating Appropriations Act.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-132 DEFINITION—4199 TRANSPORTATION—OPERATIONS. As used in this chapter, "4199 Transportation—Operations" means the school district general fund revenue account in which is recorded revenue for reimbursement for operation of a student transportation program pursuant to RCW 28A.41.505, 28A.24.055, and 28A.24.100, chapter 392-141 WAC, and the Biennial Operating Appropriations Act.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-134 DEFINITION—4499 TRANSPORTATION REIMBURSEMENT—DEPRECIATION. As used in this chapter, "4499 Transportation reimbursement—Depreciation" means the school district transportation vehicle fund revenue account in which is recorded revenue for replacement or depreciation of transportation equipment pursuant to RCW 28A.41.540, chapter ~~((392-141))~~ 392-142 WAC, and the Biennial Operating Appropriations Act.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-156 DEFINITION—6127 HANDICAPPED, DEINSTITUTIONALIZED. As used in this chapter, "6127 Handicapped EHA, supplemental Part B" means the school district general fund ~~((school districts to assist them in providing a free and appropriate public education to all))~~ revenue account in which is recorded revenue from federal supplemental funds for deinstitutionalized children.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-162 DEFINITION—6151 REMEDIATION, ~~((ECIA))~~ ESSIA, CHAPTER 1. As used in this chapter, "6151 Remediation, ~~((ECIA))~~ ESSIA, chapter 1" means the school district general fund revenue account in which are recorded federal revenues authorized under chapter 1 of the Elementary and Secondary School Improvement Act (ESSIA) received through the apportionment process for the reimbursement of expenditure claims for expenditures for the educational needs of disadvantaged children pursuant to chapter 392-163 WAC.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-164 DEFINITION—6153 MIGRANT, ~~((ECIA))~~ ESSIA, CHAPTER 1. As used in this chapter, "6153 Migrant, ~~((ECIA))~~ ESSIA, chapter 1" means the school district general fund revenue account in which are recorded federal revenues authorized under chapter 1 of the Elementary and Secondary School Improvement Act (ESSIA) arising from claims filed for expenditures of educational remediation programs for the children of migratory agricultural workers or fishers pursuant to chapter 392-164 WAC.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-172 DEFINITION—6176 INSTRUCTIONAL AID, ~~((ECIA))~~ ESSIA, CHAPTER 2. As used in this chapter, "6176 Instructional aid, ~~((ECIA))~~ ESSIA, chapter 2" means the school district general fund revenue account in which are recorded federal revenues authorized under chapter 2 of the ~~((Education Consolidation and Improvement Act (ECIA)))~~ Elementary and Secondary School Improvement Act (ESSIA) and distributed by the superintendent of public instruction pursuant to chapter 392-165 WAC.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-205 DEFINITION—F-195. As used in this chapter, "F-195" means the annual school district budget document officially adopted by each school district pursuant to chapter 28A.65 RCW for each year's operations. This document includes estimates of revenues to be received from federal sources during the school year. The ~~((amount of))~~ federal revenues reported on a school district's F-195 for the prior school year are included in the district's excess levy base pursuant to WAC 392-139-310 if they qualify for inclusion and are not reported on Report 1197. The accounts included in the levy base and reported on the F-195 are listed in WAC 392-139-310 (4)(b).

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-215 DEFINITION—P-223H. As used in this chapter, "P-223H" means the form ~~((entitled monthly report of school district's handicapped enrollment. P-223H forms are))~~ printed ~~((and distributed annually))~~ by the superintendent of public instruction and distributed annually to all school districts for reporting of handicapped students pursuant to chapter 28A.13 RCW. ~~((School districts used the P-223H to report nonresident enrollments of handicapped students in programs approved pursuant to chapter 392-135 WAC as interdistrict cooperative programs. Enrollments reported on the P-223H are used in calculating excess levy authority transfers pursuant to WAC 392-139-330 and 392-139-340 when the reporting district is not required to complete form 1067.))~~

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-225 DEFINITION—FORM 1067. As used in this chapter, "Form 1067" means the form entitled special education interdistrict cooperative enrollment (~~(, annual average full-time equivalent enrollment)~~). Form 1067 is printed and distributed annually by the superintendent of public instruction to school districts that have special education cooperatives. School districts use form 1067 to report AAFTE students residing in another school district and enrolled in a program for education of handicapped children established as an interdistrict cooperative program pursuant to chapter 392-135 WAC. Enrollments from this report are used in calculating excess levy authority transfers pursuant to WAC 392-139-330 and 392-139-340.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-230 DEFINITION—P-213. As used in this chapter, "P-213" means the form entitled report of students residing in nonhigh school districts enrolled in high school districts. P-213 forms are printed and distributed annually by the superintendent of public instruction to high school districts educating students from nonhigh school districts. School districts use the P-213 to report enrollment of students residing in a non-high school district and enrolled in a high school district pursuant to chapter 28A.44 RCW and chapter 392-132 WAC. Enrollments reported on this form are used in calculating excess levy authority transfers from high school districts to nonhigh school districts pursuant to WAC 392-139-340.

NEW SECTION

WAC 392-139-243 DEFINITION—LEVY REDUCTION FUNDS—CALENDAR YEAR 1989. Notwithstanding the definition of levy reduction funds in WAC 392-139-245, as used in this chapter, "levy reduction funds" as applied to calendar year 1989 means the basic education allocation for the 1988-89 school year of certificated instructional staff salaries, benefits, and nonemployee related costs for one additional certificated instructional staff unit for each one thousand AAFTE students in kindergarten through third grade.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-245 DEFINITION—LEVY REDUCTION FUNDS. As used in this chapter, "levy reduction funds" means the increases in state allocations to a school district (~~(determined as follows)~~) from the prior school year for programs included under WAC 392-139-310:

(1) (~~For calendar year 1988, the following basic education allocations for the 1987-88 school year calculated pursuant to section 503, chapter 7, Laws of 1987 1st ex. sess. shall be recognized as levy reduction funds:~~

~~(a) Salaries and benefits for one additional certificated instructional staff unit for each one thousand AAFTE students in kindergarten through third grade; and~~

~~(b) Nonemployee related costs for two additional certificated instructional staff units for each one thousand AAFTE students in kindergarten through third grade.~~

~~(2) For calendar year 1989, the following basic education allocations for the 1988-89 school year calculated pursuant to section 503, chapter 7, Laws of 1987 1st ex. sess. shall be recognized as levy reduction funds: Salaries, benefits, and nonemployee related costs for one additional certificated instructional staff unit for each one thousand AAFTE students in kindergarten through third grade.)~~ That are not attributable to enrollment changes,

compensation increases, or inflationary adjustments; and  
(2) That are or were specifically identified as levy reduction funds in the Biennial Operating Appropriations Act in effect at the time of calculations performed pursuant to this chapter.

NEW SECTION

WAC 392-139-297 GENERAL PROCEDURES. All processes, calculations, and procedures used by the superintendent of public instruction in the administration of this chapter shall be conditioned on the following:

(1) Only data collected and approved by the superintendent of public instruction shall be used.

(2) All calculations, except those related to levy reduction funds, that are dependent on data which are not final at the time the calculation is performed shall be based on estimates prepared by the superintendent of public instruction.

(3) The calculation of levy reduction funds dependent on data that is not final at the time of the calculation will be calculated using prior school year data.

(4) The following rounding procedures shall be used:

(a) Dollars to the nearest whole;

(b) Student enrollments to the nearest two decimal places;

(c) Percentages to the nearest two decimal places;

(d) Ratios to the nearest three decimal places; and

(e) Levy rates to the nearest six decimal places.

(5) The superintendent of public instruction shall provide each school district by August 31st of each year with the appropriate procedures for all calculations performed in this chapter.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-300 ESTABLISHMENT OF EXCESS LEVY AUTHORITY FOR SCHOOL DISTRICTS—GENERAL. (~~Notwithstanding such larger dollar amount as may be approved by the electorate of a school district pursuant to RCW 84.52.053;~~) The maximum dollar amount of any school district's certified excess levy for any given calendar year ((beginning with 1988)) shall equal the excess levy authority established by the superintendent of public instruction ((in accordance with the following procedures)) as follows:

(1) (~~Only figures and data gathered and approved by the superintendent of public instruction shall be used:~~

~~(2) Each district's excess levy authority shall be determined as follows:~~

~~(a)) Multiply the school district's excess levy base determined pursuant to WAC 392-139-310 by the school district's maximum excess levy percentage determined pursuant to WAC 392-139-320;~~

~~((b)) (2) Adjust the result obtained in subsection (1) of this section by the amount of the school district's excess levy authority ((for)) transfers determined pursuant to WAC 392-139-330 and 392-139-340; and~~

~~((c)) (3) Subtract the school district's maximum local effort assistance determined pursuant to WAC 392-139-660.~~

~~((3) If excess levy authority calculations made pursuant to this chapter are dependent on factors which are not finalized at the time of the calculations, the superintendent of public instruction shall base the calculations on estimates at the time of the calculations.~~

~~(4) In calculations of excess levy authority performed pursuant to this chapter, dollars shall be rounded to the nearest whole dollar, student enrollments shall be rounded to two decimal places, ratios shall be rounded to four decimal places, and percentages shall be rounded to two decimal places.~~

~~(5) The superintendent of public instruction shall annually provide all districts with the appropriate calculation procedures for the purposes of this chapter.)~~

#### AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-310 DETERMINATION OF EXCESS LEVY BASE. ~~((In calendar year 1987 and each year thereafter,))~~ The superintendent of public instruction shall calculate each school district's excess levy base ~~((to be used in establishing the district's excess levy authority for the next calendar year.))~~ as follows:

~~(1) ((The dollar amount of each school district's excess levy base equals the sum of))~~ Sum the following state and federal allocations ~~((identified in subsection (2) of this section increased by the percentage increase per full-time equivalent student in the state basic education appropriation between the prior school year and the current school year.~~

~~(2) Each district's excess levy base includes the following state and federal allocations for the district))~~ for the prior school year:

~~(a) The ((district's)) basic education allocation as defined in WAC 392-139-115 and as reported on the August Report 1191;~~

~~(b) The ((district's)) state and federal categorical allocations for the following ((programs)):~~

~~(i) Pupil transportation. Allocations for pupil transportation include allocations for ((programs identified by)) the following accounts:~~

- 4199 Transportation - operations; and
- 4499 Transportation reimbursement - depreciation.

~~(ii) Handicapped education. Allocations for handicapped education include allocations for ((programs identified by)) the following accounts:~~

- 4121 Education of handicapped children;

6124 Handicapped supplemental, EHA, Part B; and

6127 Handicapped deinstitutionalized.

~~(iii) Education of highly capable students. Allocations for education of highly capable students include allocations ((for program)) identified by account 4174 ((Gifted and talented)) Highly capable.~~

~~(iv) Compensatory education((, including but not limited to learning assistance, migrant education, Indian education, refugee programs, and bilingual education)). Allocations for compensatory education include allocations ((for programs)) identified by the following accounts:~~

4155 ~~((Remediation))~~ Learning assistance program;

4165 Transitional bilingual;

6151 Remediation, ~~((ECIA))~~ ESSIA, chapter 1;

6153 Migrant, ~~((ECIA))~~ ESSIA, chapter 1;

6162 Refugee programs;

6164 Bilingual, Title VII, P.L. 95-561 (SPI);

6167 Indian education, JOM;

6264 Bilingual, Title VII, P.L. 95-561 (direct); and

6268 Indian education, P.L. 92-318.

~~(v) Food services. Allocations for food services include allocations ((for programs)) identified by the following accounts:~~

4198 School food services (state);

6198 School food services (federal); and

6998 USDA commodities.

~~(vi) State-wide block grant programs. Allocations for state-wide block grant programs include allocations ((for programs)) identified ((as)) by the following accounts:~~

4175 Local education program enhancement; and

6176 Instructional aid, ((ECIA)) ESSIA, chapter 2.

~~(c) ((The district's federal))~~ General federal programs. Allocations for general federal programs identified by the following accounts:

5200 General purpose direct grants, unassigned;

6100 Special purpose, SPI, unassigned;

6138 Secondary vocational education, P.L. 98-524;

6146 Skills center;

6177 Mathematics and science;

6200 Direct special purpose grants; and

6246 Skills center, direct federal grant.

~~(2) Increase the result obtained in subsection (1) of this section by the percentage increase per full-time equivalent student in the state basic education appropriation between the prior school year and the current school year.~~

~~(3) Revenue accounts referenced in subsection ((2)) (1) of this section are from the September ((1986)) 1989 accounting manual for public school districts in the state of Washington ((as revised September 1987. Revenues for programs identified by these account numbers~~

~~and titles shall continue to qualify for inclusion in the excess levy base regardless of changes in account numbers or titles).~~

(4) ~~((For the purpose of administration of this chapter;))~~ The dollar amount of revenues for ((programs)) state and federal categorical allocations identified in ((subsection (2)(b) and (c) of)) this section shall ((be derived)) come from the following sources:

(a) ~~((Program revenues which are reported on the August Report 1197 for the prior school year are taken from that report. The amount of revenue included in the levy base equals the amount of the annual allotment due (Report 1197, column A:))~~ The following state and federal categorical allocations are taken from the Report 1197 ((include the following)) Column A (Annual Allotment Due):

- 4121 Education of handicapped children;
- 4155 ~~((Remediation))~~ Learning assistance program;
- 4165 Transitional bilingual;
- 4174 ~~((Gifted and talented))~~ Highly capable;
- 4175 Local education program enhancement;
- 4198 School food services (state);
- 4199 Transportation - operations;
- 4499 Transportation reimbursement - depreciation;
- 6124 Handicapped supplemental, EHA, part B;
- 6127 Handicapped deinstitutionalized;
- 6138 Secondary vocational education, P.L. 98-524;
- 6146 Skills center;
- 6151 Remediation, ~~((ECHA))~~ ESSIA, chapter 1;
- 6153 Migrant, ~~((ECHA))~~ ESSIA, chapter 1;
- 6162 Refugee programs;
- 6176 Instructional aid, ~~((ECHA))~~ ESSIA, chapter 2;
- 6177 Mathematics and science; and
- 6198 School food services (federal).

(b) ~~((Program revenues which are not reported on the August Report 1197 of the prior school year are taken from the F-195, school district budget, for the prior school year. Allocations))~~ The following state and federal allocations are taken from the F-195 ((include the following)):

- 5200 General purpose direct grants, unassigned;
- 6100 Special purpose, SPI, unassigned;
- 6164 Bilingual, Title VII, P.L. 95-561 (SPI);
- 6167 Indian education, JOM;
- 6200 Direct special purpose grants;
- 6246 Skills center, direct federal grant;
- 6264 Bilingual, Title VII, P.L. 95-561 (direct);
- 6268 Indian education, P.L. 92-318; and
- 6998 USDA commodities.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-320 DETERMINATION OF MAXIMUM EXCESS LEVY PERCENTAGE. ~~((In calendar year 1987 and each year thereafter;))~~ The superintendent of public instruction shall calculate each school district's maximum excess levy percentage for the next calendar year as ((provided in this section:

(1) ~~For excess levy collections in calendar year 1988 each district's maximum excess levy percentage shall be the greater of twenty percent or the percentage calculated as follows:~~

(a) ~~Multiply the district's excess levy base determined pursuant to WAC 392-139-310 by the district's base year levy percentage determined pursuant to WAC 392-139-240;~~

(b) ~~Subtract the district's levy reduction funds for the calendar year of the levy pursuant to WAC 392-139-245; and~~

(c) ~~Divide the result by the district's excess levy base.~~

(2) ~~For excess levy collections in calendar year 1989 and thereafter each district's maximum excess levy percentage shall be)) the greater of twenty percent or the percentage calculated as follows:~~

~~((a))~~ (1) Multiply the district's excess levy base determined pursuant to WAC 392-139-310((:)) by

~~((b) The lesser of thirty percent or))~~ the school district's maximum excess levy percentage for the current calendar year;

~~((c))~~ (2) Subtract from the result obtained in subsection (1) of this section the school district's levy reduction funds for the year of the levy ((determined pursuant to WAC 392-139-245)); and

~~((d))~~ (3) Divide the result obtained in subsection (2) of this section by the school district's excess levy base.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-330 DETERMINATION OF EXCESS LEVY AUTHORITY TRANSFERS FOR INTERDISTRICT COOPERATION PROGRAMS. ~~((In calendar year 1987 and each year thereafter;))~~ The superintendent of public instruction shall calculate the amount of levy authority transfers for the next calendar year for interdistrict cooperation programs as provided in this section. For students who during the prior school year resided in one school district (the sending district) but attended school in another school district (the serving district) pursuant to an interdistrict cooperation agreement authorized pursuant to RCW 28A.58.075 or 28A.58.245 and chapter 392-135 WAC, the serving district's excess levy authority for the next calendar year shall be reduced and the sending district's excess levy authority for the next calendar year shall be increased by the same amount which shall be determined as follows:

(1) Determine the serving district's excess levy authority for the next calendar year after adjustment for levy reduction funding but prior to adjustment for transfers of excess levy authority pursuant to this section and WAC 392-139-340;

(2) Divide the result by the total AAFTE students enrolled in the serving district in the prior school year as reported on the district's August Report 1191; and

(3) Multiply the result by the AAFTE students residing in the sending district and enrolled in the serving district in the prior school year pursuant to an interdistrict cooperation agreement as reported on forms P-223NR, and P-223H or 1067.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-340 DETERMINATION OF EXCESS LEVY AUTHORITY TRANSFERS FROM HIGH SCHOOL DISTRICTS TO NONHIGH SCHOOL DISTRICTS. (~~In calendar year 1987 and each year thereafter,~~) The superintendent of public instruction shall determine the amount of excess levy authority transfers for the next calendar year from high school districts to nonhigh school districts as provided in this section. For students residing in a nonhigh school district but enrolled in a high school district pursuant to chapter 28A.44 RCW and chapter 392-132 WAC, the high school district's excess levy authority shall be reduced and the nonhigh school district's excess levy authority shall be increased by the same amount. The amount of the excess levy authority transfer shall equal the estimated excess levy authority transfer for the current school year calculated pursuant to subsection (1) of this section adjusted by the amount of the nonhigh billing adjustment for the prior school year calculated pursuant to subsection (2) of this section.

(1) The estimated excess levy authority transfer for the current school year is determined as follows:

(a) Calculate the high school district's excess levy authority for the next calendar year after adjustment for levy reduction funding but prior to adjustments for transfers of excess levy authority pursuant to this section and WAC 392-139-330;

(b) Divide the result by the estimated total AAFTE students enrolled in the high school district in the current school year as reported to the superintendent of public instruction on form P-213; and

(c) Multiply the result by the estimated AAFTE students residing in the nonhigh school district and enrolled in the high school district for the current school year pursuant to chapter 28A.44 RCW as reported on form P-213.

(2) The amount of the nonhigh billing adjustment for the prior school year is determined as follows:

(a) Determine the high school district's certified excess levy for the current calendar year;

(b) Divide the result by the high school district's AAFTE resident enrollment for the prior school year determined pursuant to WAC 392-139-235 using AAFTE student enrollments reported on the August Report 1191 and forms P-213, P-223NR, and P-223H or 1067; and

(c) Multiply the result by the number of AAFTE students determined as follows:

(i) Determine the actual AAFTE students residing in the nonhigh school district and enrolled in the high

school district in the prior school year pursuant to chapter 28A.44 RCW as reported in the current calendar year on form P-213; and

(ii) Subtract the estimated AAFTE students from the nonhigh school district enrolled in the high school district in the prior school year pursuant to chapter 28A.44 RCW as reported on form P-213 for the prior calendar year.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-605 DEFINITION—DISTRICT TEN PERCENT LEVY AMOUNT. As used in this chapter, "district ten percent levy amount" means the dollar amount determined for each school district as follows:

(1) Perform the calculations pursuant to WAC 392-139-300 (1) and (2) (~~((a) and (b))~~) to arrive at the school district excess levy authority after excess levy authority transfers but before subtracting maximum local effort assistance;

(2) Divide the result by the school district maximum excess levy percentage calculated pursuant to WAC 392-139-320; and

(3) Multiply the result by ten percent.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-620 DEFINITION—ELIGIBLE DISTRICT. As used in this chapter, "eligible school district" means a school district whose ten percent levy rate exceeds the state-wide average ten percent levy rate.

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-660 DETERMINATION OF MAXIMUM LOCAL EFFORT ASSISTANCE. (~~In calendar year 1988 and each year thereafter,~~) The superintendent of public instruction shall calculate maximum local effort assistance for each eligible school district for the next calendar year (~~as provided in this section~~) as follows:

(1) (~~Maximum local effort assistance shall be calculated as follows:~~

(a)) Subtract the state-wide average ten percent levy rate for the next calendar year from the district ten percent levy rate for the next calendar year;

((b)) (2) Divide the result obtained in subsection (1) of this section by the district ten percent levy rate for the next calendar year; and

((c)) (3) Multiply the result obtained in subsection (2) of this section by the district ten percent levy amount for the next calendar year.

((2) Notwithstanding subsection (1) of this section maximum local effort assistance for calendar year 1989 is reduced to reflect partial funding of local effort assistance by the legislature pursuant to section 212, chapter 2, Laws of 1987 1st ex. sess. Maximum local effort assistance for 1989 calculated pursuant to this subsection

shall be based on the superintendent of public instruction's September estimate of the percentage of full funding for local effort assistance in 1989. Maximum local effort assistance calculated pursuant to this subsection shall be for the purpose of reducing excess levy authority determined pursuant to this chapter and shall not be construed to limit the actual amount of a district's local effort assistance allocations determined pursuant to WAC 392-139-670. Maximum local effort assistance for each eligible district for calendar year 1989 shall be determined as follows:

(a) Calculate fifty-five percent of the district's maximum local effort assistance pursuant to subsection (1) of this section;

(b) Multiply the result by the proration percentage determined as follows:

(i) Divide five million dollars by;

(ii) Fifty-five percent of the estimated total amount of local effort assistance allocations to all eligible school districts for calendar year 1989 using the superintendent of public instruction's estimate of certified excess levies for 1989 based on voter approved excess levies and excess levies planned for 1989; and

(c) Add to the result of subsection (2)(b) of this section an amount equal to forty-five percent of the district's maximum local effort assistance calculated pursuant to subsection (1) of this section.))

#### AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-665 REPORTING OF CERTIFIED EXCESS LEVY AMOUNTS. No later than the third Wednesday in December of ((1988 and)) each year ((thereafter)), each educational service district shall report to the superintendent of public instruction the certified excess levies for the next calendar for school districts in the educational service district. Such report shall include copies of the documents used to certify excess levies to the board or boards of county commissioners pursuant to RCW 84.52.020.

#### AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-670 LOCAL EFFORT ASSISTANCE ALLOCATIONS. ((In calendar year 1989 and each year thereafter;)) The superintendent of public instruction shall ((allocate)) calculate each eligible school district's local effort assistance ((to each eligible district as provided in this section;)) entitlement as the lesser of the following amounts:

(1) ((The dollar amount of local effort assistance allocated to each eligible district for the calendar year shall equal the lesser of the following amounts:

(a)) The school district's certified excess levy for the calendar year as reported to the superintendent of public instruction pursuant to WAC 392-139-665 times the school district's state matching ratio for the calendar year calculated pursuant to WAC 392-139-625; or

((b)) (2) The school district's maximum local effort assistance for the calendar year calculated pursuant to WAC 392-139-660((+)).

((2) The superintendent of public instruction shall allocate local effort assistance due to each eligible district fifty-five percent on or before June 30 and the remaining forty-five percent on or before December 31. Allocations shall be made through monthly apportionment payments according to the following schedule:

January	10.5%	
February	10.5%	
March	10.5%	
April	10.5%	
May	6.5%	
June	6.5%	First six months 55%
July	8.5%	
August	8.5%	
September	7.5%	
October	7.5%	
November	5.5%	
December	7.5%	Second six months 45%
Total	100.0%	

(3) Notwithstanding subsections (1) and (2) of this section, the first six payments of local effort assistance in calendar year 1989 shall be reduced to reflect partial funding of local effort assistance by the legislature pursuant to section 212, chapter 2, Laws of 1987 1st sess. The first six local effort assistance payments to each eligible school district in calendar year 1989 shall equal the amount determined as follows:

(a) Calculate a proration percentage as follows:

(i) Divide five million dollars by;

(ii) Fifty-five percent of the total amount of local effort assistance allocations to all eligible districts for calendar year 1989 as determined pursuant to WAC 392-139-300 through 392-139-660 and subsection (1) of this section assuming full funding of local effort assistance and using certified excess levy amounts known at the time of the calculation;

(b) Determine the amount that the district would receive for local effort assistance pursuant to WAC 392-139-300 through 392-139-660 and subsection (1) of this section assuming full funding of local effort assistance and using certified excess levy amounts at the time of the calculation;

(c) Multiply the result of (b) of this subsection by the percentage of local effort assistance due for the month as shown on the schedule in subsection (2) of this section; and

(d) Multiply the result of (c) of this subsection by the proration percentage calculated in subsection (a) of this subsection.))

#### NEW SECTION

WAC 392-139-674 ALLOCATION OF LOCAL EFFORT ASSISTANCE FOR CALENDAR YEAR 1989. Notwithstanding WAC 392-139-675 the superintendent of public instruction shall reduce the first six monthly payments of each eligible school district's local effort assistance entitlement for calendar year 1989 by multiplying the payments determined pursuant to WAC 392-139-675 by the following percentage:

(1) Divide five million dollars by;

(2) Fifty-five percent of the total local effort assistance entitlement for all eligible school districts for calendar year 1989.

#### NEW SECTION

WAC 392-139-675 ALLOCATION OF LOCAL EFFORT ASSISTANCE. The superintendent of public instruction shall allocate to each eligible school district its entitlement to local effort assistance according to the following schedule:

January	10.5%
February	10.5%
March	10.5%
April	10.5%
May	6.5%
June	6.5%
July	8.5%
August	8.5%
September	7.5%
October	7.5%
November	5.5%
December	7.5%

AMENDATORY SECTION (Amending Order 88-6, filed 1/8/88)

WAC 392-139-900 NOTIFICATION OF AMOUNTS CALCULATED. The superintendent of public instruction shall ~~((notify school districts))~~ provide notice of amounts calculated pursuant to this chapter as ~~((provided in this section:))~~ follows:

(1) ~~Prior to ((October 7, 1987, the superintendent of public instruction shall notify each school district, and the county assessor, and chairman of the board of county commissioners of the county in which the district is headquartered of the results of calculations made for the district pursuant to this chapter for the 1988 calendar year including the following:~~

- ~~(a) Excess levy authority; and~~
- ~~(b) Maximum excess levy percentage.~~

~~(2) Prior to the first Wednesday following the first Monday in October of each year beginning in 1988)) November 1 of each year, the superintendent of public instruction shall notify each school district ((and the county assessor and chairman of the board of county commissioners of the county in which the district is headquartered)) of the results of calculations made for the school district ((pursuant to this chapter)) for the next calendar year including the following:~~

- ~~(a) Excess levy authority;~~
- ~~(b) Maximum excess levy percentage;~~
- ~~(c) Eligibility for local effort assistance; and~~
- ~~(d) If eligible for local effort assistance:~~
  - ~~(i) Maximum local effort assistance;~~
  - ~~(ii) State matching ratio;~~
  - ~~(iii) Certified excess levy necessary to qualify for maximum local effort assistance; and~~
  - ~~(iv) Projected local effort assistance allocation based on the superintendent of public instruction's estimate of certified excess levies for the next calendar year at the time of the notice.~~

(2) Prior to November 15 of each year, the superintendent of public instruction shall notify the county assessor and chairman of the board of county commissioners of each county of excess levy authority for the next calendar year for those school districts headquartered in the county.

(3) At the time of the January apportionment payment ~~((in calendar year 1989 and))~~ each year ~~((thereafter))~~, the superintendent of public instruction shall notify each eligible school district of the amount of the school district's local effort assistance allocations for the year ~~((determined pursuant to WAC 392-139-670)).~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-139-240 DEFINITION—BASE YEAR LEVY PERCENTAGE.

WAC 392-139-650 DETERMINATION OF LOCAL EFFORT ASSISTANCE—GENERAL.

#### **WSR 89-23-122**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF FISHERIES**

[Order 89-144—Filed November 22, 1989, 4:12 p.m.]

Date of Adoption: November 22, 1989.

Purpose: Delay opening of coastal crab season, and disallow landings at coastal ports.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-046.

Statutory Authority for Adoption: RCW 75.08.080.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The coastal crab stocks have not recovered from seasonal molting, and attempted harvest at this time would result in wastage. In order to protect local crab stocks, in the interest of the food supply of the people of the state of Washington, no landings of Dungeness crab in coastal or Columbia River ports will be allowed during the period of the closure.

Effective Date of Rule: Immediately.

November 22, 1989

Joseph R. Blum

Director

#### NEW SECTION

WAC 220-52-04600T CRAB FISHERY—SEASONS AND AREAS. Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice it is unlawful to fish for or possess Dungeness crab taken for commercial purposes from waters of the Columbia River, the Pacific Ocean, Grays Harbor, or Willapa Harbor, and it is unlawful to land any

*Dungeness crab in Washington coastal ports or ports on the Columbia River.*

**WSR 89-23-123**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**  
 [Filed November 22, 1989, 4:20 p.m.]

Original Notice.

Title of Rule: New section WAC 308-67-010 Petition fee—Vehicle dealers and manufacturer franchise disputes.

Purpose: To establish a petition filing fee which will defray the department costs of administering the franchise dispute hearing program as required by statute.

Statutory Authority for Adoption: Section 4, 11(6), 18(4) and 19, chapter 415, Laws of 1989.

Statute Being Implemented: Section 19, chapter 415, Laws of 1989.

Summary: Section 19, chapter 415, Laws of 1989, requires the department to set the petition filing fee for a franchise dispute hearing petition to defray the department costs of administering the franchise dispute hearing program.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Heather Hamilton, Olympia, 234-6924 scan, 753-6924.

Name of Proponent: Department of Licensing, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule specifies the filing fee for a petitioner requesting a franchise dispute hearing. The department is required to determine and establish the amount of this fee on or after July 23, 1989, to defray the costs of administering franchise dispute hearings. Petitioners requesting a franchise dispute hearing will pay this fee at the time of petition filing.

Proposal does not change existing rules.

Small Business Economic Impact Statement: [No material was supplied by agency.]

Hearing Location: Highways-Licenses Building, 4th Floor Conference Room #1, on January 3, 1990, at 9:30.

Submit Written Comments to: Cal Sanders, Department of Licensing, Highways-Licenses Building, Olympia, Washington 98504, by January 3, 1990.

Date of Intended Adoption: January 5, 1989 [1990].

November 22, 1989

Kathy Friedt  
 Deputy Director

Chapter 308-67 WAC  
 VEHICLE DEALER MANUFACTURER FRANCHISE DIS-  
 PUTES

WAC  
 308-67-010 Petition fee—Vehicle manufacturers and dealers.

NEW SECTION

WAC 308-67-010 PETITION FEE—VEHICLE MANUFACTURERS AND DEALERS. The filing fee for petitioning the department of licensing concerning franchise disputes pursuant to sections 4, 11(6), and 18(4), chapter 415, Laws of 1989, shall be \$500.00.

**WSR 89-23-124**  
**EMERGENCY RULES**  
**DEPARTMENT OF LICENSING**  
 [Filed November 22, 1989, 4:22 p.m.]

Date of Adoption: November 22, 1989.

Purpose: To establish a petition filing fee which will defray the department costs of administering the franchise dispute hearing program.

Statutory Authority for Adoption: Section 4, 11(6), 18(4) and 19, chapter 415, Laws of 1989.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Rules need to be filed to ensure department authority to defray the department costs of administering the franchise dispute hearing program when a petition for a hearing is filed.

Effective Date of Rule: Immediately.

November 22, 1989

Kathy Friedt  
 Deputy Director

Chapter 308-67 WAC  
 VEHICLE DEALER MANUFACTURER FRAN-  
 CHISE DISPUTES

WAC  
 308-67-010 Petition fee—Vehicle manufacturers  
 and dealers.

NEW SECTION

WAC 308-67-010 PETITION FEE—VEHICLE MANUFACTURERS AND DEALERS. The filing fee for petitioning the department of licensing concerning franchise disputes pursuant to sections 4, 11(6), and 18(4), chapter 415, Laws of 1989, shall be \$500.00.

**WSR 89-23-125**  
**PROPOSED RULES**  
**DEPARTMENT OF ECOLOGY**  
 [Order 89-60—Filed November 22, 1989, 4:27 p.m.]

Original Notice.

Title of Rule: WAC 173-18-090, Clallam County streams; and 173-18-200, Jefferson County, streams.

Purpose: Amendments to chapter 173-18 WAC, Shoreline Management Act—Streams and rivers constituting shorelines of the state.

Statutory Authority for Adoption: RCW 90.58.200.  
 Statute Being Implemented: Chapter 90.58 RCW,  
 Shoreline Management Act of 1971.

Summary: To consider classifying the Bogachiel River by rule as a shoreline of statewide significance from Bear Creek upstream to the Olympic National Park boundary. The river is currently so classified from its mouth to Bear Creek.

Reasons Supporting Proposal: The department has determined that the Bogachiel River from its mouth to Hemp Hill Creek in Jefferson County meets the criteria for a shoreline of statewide significance as defined in the Shoreline Management Act. A joint petition has been filed by the Northwest Indian Fisheries Commission and the Quileute Tribe under RCW 34.05.330. The petition seeks a determination as to whether the section of the river between Hemp Hill Creek and the national park boundary also qualifies as a shoreline of statewide significance.

Name of Agency Personnel Responsible for Drafting: Kathleen Ryan, DOE, Mailstop PV-11, Olympia, Washington 98504, (206) 459-6776; Implementation and Enforcement: D. Rodney Mack, DOE, Mailstop PV-11, Olympia, Washington 98504, (206) 459-6777.

Name of Proponent: These rule changes represent a consolidation of a joint petition by the Northwest Indian Fisheries Commission, 6730 Martin Way East, Lacey, WA 98506, and the Quileute Tribe, P.O. Box 279, La Push, Washington 98350, public; and a related proposal by the Department of Ecology, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The intent of the revisions is to extend shoreline of statewide significance status for the purposes of the Shoreline Management Act to the length of the Bogachiel River from its mouth to the Olympic National Forest boundary. This status may affect developments and other activities permitted along this shoreline.

Proposal Changes the Following Existing Rules: Amends WAC 173-18-090 Clallam County streams; and 173-18-200 Jefferson County streams, to establish the Bogachiel River as a shoreline of statewide significance from its mouth upstream to the Olympic National Park boundary.

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

Hearing Location: Two hearings will be held. The first at 7:00 p.m., on Tuesday, January 16, 1990, in the County Commissioners Meeting Room, Clallam County Courthouse, Room 160, 223 East Fourth, Port Angeles, WA 98362; the second at 2:00 p.m., on Thursday, January 18, 1990, in the Energy Facility Site Evaluation Council, EFSEC, Meeting Room, 4224 Sixth Avenue Southeast, Building #1, Lacey, WA 98504.

Submit Written Comments to: Kathleen Ryan, Shorelands and Coastal Zone Management Program, DOE, Mailstop PV-11, Olympia, Washington 98504, by January 25, 1990.

Date of Intended Adoption: February 20, 1990.

November 21, 1989

Fred Olson

Deputy Director

AMENDATORY SECTION (Amending Order DE 76-14, filed 5/3/76)

WAC 173-18-090 CLALLAM COUNTY. Streams

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(1) Big River	<u>Lake Pleasant</u> 15	From the confluence of Big River and unnamed creek (Sec.16,T31N,R14W) downstream to mouth on Lake Ozette (Sec.10,T30N, R15W).
(2) Bear Creek	<u>Forks</u> 15	From the confluence of Bear Creek and unnamed creek (Sec.24,T28N,R13W) downstream to mouth at Bogachiel River (Sec.35, T28N,R13W).
(3) Bear Creek	<u>Pysht</u> 15	From the Olympic National Forest boundary (Sec.25, T30N,R12W) downstream to mouth at Soleduck River (Sec.27, same township).
(4) Beaver Creek	<u>Lake Pleasant</u> 15	From the Olympic National Forest boundary (Sec.20, T30N,R12W) downstream to mouth at Soleduck River (Sec.30,T30N,R12W).
(5) Bockman Creek	<u>Lake Pleasant</u> 15	From the Olympic National Forest boundary (Sec.1, T29N,R13W) downstream to mouth at Soleduck River (same section).
(6) Boga-chiel River (Cont.)*	<del>((Forks * 15 La Push 15))</del> <u>Reade Hill 7 1/2</u> <u>Forks 7 1/2</u> <u>Quillayute</u> <u>Prairie 7 1/2</u>	From the Jefferson County line (Sec.35,T28N,R13W) downstream to mouth at Quillayute River (Sec.20, T28N,R14W). <del>((The 1,000 cfs MAF point begins at mouth of Bear Creek (Sec.35, T28N,R13W).))</del> <u>The flow exceeds 1,000 cfs MAF at Jefferson County line.</u>
(7) Calawah River*	<u>Forks * 15</u>	From confluence of North and South Forks of Calawah River (Sec.35,T29N,R13W) downstream to mouth at Bogachiel River (Sec.13, T28N,R14W). The 1,000 cfs MAF point begins at confluence of North and South Forks.
(8) Calawah River (S. Fork)	<u>Forks</u> 15	From the Olympic National Forest boundary (Sec.1, T28N,R13W) downstream to mouth at Calawah River (Sec.35,T29N,R13W).
(9) Calawah River (N. Fork)	<u>Pysht</u> 15 <u>Lake Pleasant</u> 15 <u>Forks</u> 15	From the North section line (Sec.15, T29N,R11W) to mouth at Calawah River (Sec.35, T29N,R13W). Exclude federal lands.
(10) Clallam River	<u>Lake Pleasant</u> 15 <u>Pysht</u> 15 <u>Clallam Bay</u> 15	From the confluence of Clallam River and unnamed creek (Sec.12,T31N,R13W) downstream to mouth at Clallam Bay (Sec.20,T32N, R12W).

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>	<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(11) Colby Creek	<u>La Push</u> 15	From the intersection of private road and Colby Creek (Sec.8,T28N,R14W) downstream to mouth at Dickey River (Sec.6,T28N,R14W).	(23) Herman Creek	<u>Lake Pleasant</u> 15	From the confluence of North Branch Herman Creek and Herman Creek (Sec.28, T31N,R13W) downstream to mouth at Hoko River (Sec. 30, same township).
(12) Coal Creek	<u>La Push</u> 15	From the confluence of Coal Creek and unnamed creek (Sec.1,T28N,R15W) downstream to mouth at Dickey River (Sec.12, same township).	(24) Hoko River	<u>Lake Pleasant</u> 15 <u>Clallam Bay</u> 15	From the confluence of Hoko River and unnamed creek (Sec.16,T30N,R13W) downstream to mouth at Strait of Juan de Fuca (Sec.10,T32N,R13W).
(13) Crooked Creek	<u>Ozette Lake</u> 15	From the confluence of the North Fork and the South Fork (Sec.19,T30N,R14W) downstream to mouth at Ozette Lake (Sec.15,T30N,R15W).	(25) Indian Creek	<u>Joyce</u> 15	From the confluence of Indian Creek and unnamed creek (Sec.23,T30N,R8W) downstream to mouth at Lake Aldwell (Sec.28,T30N,R7W).
(14) Dickey River	<u>La Push</u> 15	From the confluence of East and West Forks of Dickey River (Sec.30, T29N,R14W) downstream to Olympic National Park boundary (Sec.22,T28N,R15W).	(26) Little Hoko River	<u>Lake Pleasant</u> 15 <u>Clallam Bay</u> 15	From the confluence of Little Hoko River and Lamb Creek (Sec.3,T31N,R13W) downstream to mouth at Hoko River (Sec.22,T32N,R13W).
(15) Dickey River (W. Fork)	<u>La Push</u> 15 <u>Ozette Lake</u> 15	From the outlet of Lake Dickey (Sec.16,T30N,R14W) downstream to mouth at Dickey River (Sec.30,T29N,R14W).	(27) Little River (S. Br.)	<u>Joyce</u> 15	From the Olympic National Forest boundary (Sec.25, T30N,R7W) downstream to mouth at Elwha River (Sec. 28, same township). Excluding federal lands.
(16) Dickey River (E. Fork)	<u>Lake Pleasant</u> 15 <u>Ozette Lake</u> 15	From the confluence of the East Fork Dickey River and unnamed creek (Sec.19,T30N,R13W) downstream to mouth at Dickey River (Sec.30, T29N,R14W).	(28) Lyre River	<u>Lake Crescent</u> 15	From the Olympic National Forest boundary (Sec.10, T30N,R9W) downstream to mouth at Strait of Juan de Fuca (Sec.22,T31N,R9W).
(17) Dickey River (M. Fork)	<u>Lake Pleasant</u> 15	From the confluence of the Middle Fork Dickey River and unnamed creek (Sec.14, T30N,R14W) downstream to mouth at West Fork Dickey River (Sec.21, same township).	(29) Maxfield Creek	<u>Forks</u> 15	From the confluence of Maxfield Creek and South Fork Maxfield Creek (Sec. 27,T28N,R14W) downstream to mouth at Bogachiel River (Sec.28, same township).
(18) Deep Creek	<u>Pysht</u> 15	From the Olympic National Forest boundary (Sec.36, T31N,R11W) downstream to mouth at Strait of Juan de Fuca (Sec.20,T31N,R10W).	(30) McDonald Creek	<u>Carlsborg</u> 7 1/2 <u>Dungeness</u> 7 1/2	From the confluence of McDonald Creek and unnamed creek (Sec.6,T29N,R4W) downstream to mouth at Strait of Juan de Fuca (Sec.5,T30N,R4W).
(19) Dungeness River	<u>Tyler Peak</u> 15 <u>Carlsborg</u> 7 1/2 <u>Dungeness</u> 7 1/2	From the Olympic National Forest boundary (Sec.24, T29N,R4W) downstream to mouth at Dungeness Bay (Sec.25,T31N,R4W).	(31) Murphy Creek	<u>La Push</u> 15	From the confluence of Murphy Creek and unnamed creek (Sec.33,T28N,R14W) downstream to mouth at Bogachiel River (Sec.29, same township).
(20) East Twin River	<u>Lake Crescent</u> 15	From the confluence of East Twin River and unnamed creek at Olympic National Forest boundary (Sec.36,T31N,R10W) downstream to mouth at Strait of Juan de Fuca (Sec.23, same township).	(32) Pilchuck Creek	<u>Ozette Lake</u> 15	From a point (SW1/4 of NE1/4 Sec.33,T32N,R15W) downstream to mouth at Sooes River (Sec.28, same township).
(21) Elk Creek	<u>Forks</u> 15	From a point approximately 1000' west of the Olympic National Forest boundary (Sec.12,T28N,R13W) downstream to mouth at Calawah River (Sec.3, same township).	(33) Morse Creek	<u>Morse Creek</u> 7 1/2	From Olympic National Park boundary (Sec.8,T29N,R5W) downstream to mouth at Port Angeles Harbor (Sec. 5,T30N,R5W).
(22) Elwha River*	<u>Joyce</u> * 15	From the center of (Sec. 28,T30N,R7W) downstream to mouth at Freshwater Bay (Sec.27,T31N,R7W). The 1,000 cfs MAF point begins at center of (Sec.28,T30N,R7W).	(34) Ponds Creek	<u>Lake Pleasant</u> 15	From the confluence of Ponds Creek and unnamed creek on the south section line (Sec.34,T31N,R14W) downstream to mouth at Dickey Lake (Sec.9,T30N,R14W).

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>	<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(35) Pysht River	<u>Pysht 15</u>	From the Olympic National Forest boundary (Sec.34, T31N,R12W) downstream to mouth at Strait of Juan de Fuca near Pysht (Sec.9, T31N,R11W).	(46) Sooes River	<u>Ozette Lake 15</u> <u>Cape Flattery 15</u>	From the confluence of Snag Creek and Sooes River (Sec.30,T32N,R14W) downstream to Indian Reservation boundary (Sec.16,T32N,R15W).
(36) Pysht River (S. Fk.)	<u>Pysht 15</u>	From the confluence of the South Fork Pysht River and Middle Creek (Sec.28,T31N, R11W) downstream to mouth at Pysht River (Sec.13,T31N, R12W).	(47) Thunder Creek	<u>Lake Pleasant 15</u>	From the confluence of Thunder Creek and unnamed creek (Sec.11,T29N,R14W) downstream to mouth at East Fork Dickey River (Sec.23, same township).
(37) Quillayute River*	<u>La Push * 15</u>	From confluence of Soleduck and Bogachiel rivers (Sec. 20,T28N,R14W) downstream to Olympic National Park boundary (Sec.24,T28N,R15W). The 1,000 cfs MAF point begins at confluence of Soleduck River and Bogachiel River.	(48) Umbrella Creek	<u>Ozette Lake 15</u>	From the confluence of Umbrella Creek and unnamed creek (Sec.23,T31N,R15W) downstream to mouth at Umbrella Point on Lake Ozette (Sec.4,T30N,R15W).
(38) Salt Creek	<u>Joyce 15</u>	From the confluence of Salt Creek and unnamed creek (SE1/4, SE1/4 of Sec. 34,T31N,R8W) downstream to mouth at Crescent Bay on Strait of Juan de Fuca (Sec.21, same township).	(49) West Twin River	<u>Lake Crescent 15</u>	From the Olympic National Forest boundary (Sec.34, T31N,R10W) downstream to mouth at Strait of Juan de Fuca (Sec.23,T31N,R10W).
(39) Sekiu River (S. Fk.)	<u>Lake Pleasant 15</u>	From the confluence of the South Fork Sekiu River and unnamed creek (Sec.26,T32N, R14W) downstream to mouth at Sekiu River (Sec.15, same township).	<b>AMENDATORY SECTION</b> (Amending Order DE 76-14, filed 5/3/76)		
(40) Sekiu River (N. Fk.)	<u>Cape Flattery 15</u>	From the confluence of North Fork Sekiu River and unnamed creek (Sec.7, T32N,R14W) downstream to mouth at Sekiu River (Sec. 15, same township).	WAC 173-18-200 JEFFERSON COUNTY. Streams		
(41) Sekiu River	<u>Clallam Bay 15</u>	From confluence of North and South Forks of Sekiu River (Sec.15,T32N,R14W) downstream to mouth on Strait of Juan de Fuca (Sec.8,T32N,R13W).	<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(42) Shuwah Creek	<u>Lake Pleasant 15</u>	From the confluence of Shuwah Creek and unnamed creek (NW1/4 SW1/4 of Sec. 15,T29N,R13W) downstream to mouth at Soleduck River (Sec.22, same township).	(1) Big Quilcene River	<u>Mt. Walker 7 1/2</u> <u>Quilcene 7 1/2</u>	From the Olympic National Forest boundary (Sec.27, T27N,R2W) downstream to mouth at Quilcene Bay (Sec.19,T27N,R1W).
(43) Skunk Creek	<u>Lake Pleasant 15</u>	From the confluence of Skunk Creek and unnamed creek (Sec.29,T30N,R13W) downstream to mouth at the Dickey River (Sec.31,T39N, R13W).	(2) Bogachiel River*	<del>((Spruce Mt. 15 Forks 15))</del> <u>Indian Pass* 7 1/2</u> <u>Anderson Creek 7 1/2</u> <u>Reade Hill 7 1/2</u>	From the Olympic National Forest boundary (Sec.4, T27N,R12W) downstream to the Clallam County line (Sec.2,T27N,R13W). <u>The flow exceeds 1,000 cfs MAF at Olympic National Park boundary.</u>
(44) Snag Creek	<u>Ozette Lake 15</u>	From the confluence of Snag Creek and unnamed creek (Sec.6,T31N,R14W) downstream to mouth at Sooes River (Sec.30,T32N, R14W).	(3) Cedar Creek	<u>Destruction Island 15</u>	From the confluence of Cedar Creek and the South Fork of Cedar Creek (Sec. 34,T26N,R13W) downstream to the Olympic National Park boundary (Sec.33, T26N,R13W).
(45) Soleduck River*	<u>Pysht 15</u> <u>Lake Pleasant* 15</u> <u>Forks 15</u> <u>La Push 15</u>	From the Olympic National Forest boundary (Sec.35, T30N,R10W) downstream to mouth at Quillayute River (Sec.20,T28N,R14W). The 1,000 cfs MAF point begins at mouth of Bockman Creek (Sec.1,T29N,R13W). Excludes federal lands.	(4) Chimacum Creek	<u>Port Townsend S. 7 1/2</u>	From the confluence of Chimacum Creek and unnamed creek in Chimacum Valley (Sec.11,T29N,R1W) downstream to mouth at Bay of Port Townsend (Sec. 35,T30N,R1W) near Irontdale.
			(5) Christ-mas Creek	<u>Salmon River 15</u>	From an approximate point near the center of (NE1/4 of Sec.2,T25N,R12W) downstream to mouth at Clearwater River (Sec.22, T25N,R12W).
			(6) Clear-water River*	<u>Kloochmon Rock 15</u> <u>Salmon River* 15</u> <u>Destruction Island 15</u>	From the confluence of Clearwater River and unnamed creek (Sec.25, T26N,R10W) downstream (excluding federal lands) to Quinault Indian Reservation (Sec.29,T24N,R12W). The 1,000 cfs MAF point begins at mouth of Miller Creek (Sec.27,T25N,R12W).

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>	<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(7) Dose-wallips River	<u>Brinnon</u> 7 1/2	From the Olympic National Forest boundary between (Sec.25,T26N,R3W) and (Sec.30,T26N,R2W) downstream to mouth at Dabob Bay near Brinnon (Sec.2,T25N,R2W).	(19) Miller Creek (E. Fk.)	<u>Salmon River</u> 15	From the confluence of the East Fork Miller Creek and unnamed creek (Sec. 15,T25N,R12W) downstream to mouth at Miller Creek (Sec.27,T25N,R12W).
(8) Ducka-bush River	<u>Brinnon</u> 7 1/2	From the Olympic National Forest boundary between (Sec.17 & 18,T25N,R2W) downstream to mouth at Hood Canal (Sec.21,T25N,R2W).	(20) Minter Creek	<u>Forks</u> 15	From the intersection of the north line of (Sec.30, T27N,R13W) and Minter Creek, downstream to Goodman Creek (Sec.24, T27N,R14W).
(9) Fulton Creek	<u>Brinnon</u> 7 1/2 <u>Holly</u> 7 1/2	From the confluence of Fulton Creek and the South Fork of Fulton Creek (Sec. 30,T25N,R2W) downstream to mouth at Hood Canal (Sec.31,T25N,R2W).	(21) Mosquito Creek	<u>Forks</u> 15	From the intersection of north line of (Sec.5, T26N,R13W) and Mosquito Creek, downstream to Olympic National Park boundary (Sec.36,T27N, R14W).
(10) Goodman Creek	<u>Forks</u> 15 <u>LaPush</u> 15	From the confluence of Goodman Creek and unnamed creek (Sec.23,T27N,R13W) downstream to Olympic National Park boundary (Sec.23,T27N,R14W).	(22) Nolan Creek	<u>Destruction Island</u> 15 <u>Forks</u> 15	From an approximate point on the north line of (NE1/4 of SW1/4 of Sec.21,T26N, R12W) downstream to mouth at Hoh River (Sec.23,T26N, R13W).
(11) Hoh River*	<u>Spruce Mt.</u> * 15 <u>Forks</u> 15 <u>Destruction Island</u> 15	From the Olympic National Park boundary (Sec.29, T27N,R10W) downstream to Hoh Indian Reservation boundary (Sec.20,T26N, R13W). The 1,000 cfs MAF point starts at the Olympic National Park boundary.	(23) Owl Creek	<u>Spruce Mt.</u> 15.	From an approximate point near the center of the north line of (SW1/4 of NE1/4 of Sec.8,T26N,R10W) downstream to mouth at Hoh River (Sec.35,T27N,R11W).
(12) Hoh River (S. Fk.)	<u>Mt. Tom</u> 15	From the Olympic National Park boundary (Sec.2,T26N, R10W) downstream to the Olympic National Forest boundary (Sec.29,T27N, R10W).	(24) Salmon River	<u>Salmon River</u> 15	From the Olympic National Forest boundary (Sec.36, T24N,R11W) downstream back to said boundary (Sec.35) coming out of Indian Reservation (Sec.36,T24N, R12W) returning to Indian Reservation and coming out again (Sec.35,T24N,R12W) downstream to Olympic National Forest boundary (same section).
(13) Hurst Creek	<u>Destruction Island</u> 15	From an approximate point near the north line of (SE1/4 of NW1/4 of NE1/4 of Sec.17,T24N,R12W) downstream to mouth at the Clearwater River (Sec.19,T24N,R12W).	(25) Shale Creek	<u>Salmon River</u> 15 <u>Destruction Island</u> 15	From an approximate point near the NE corner of the (SE1/4 of SW1/4 of Sec.26, T25N,R12W) downstream to mouth at Clearwater River (Sec.28,T25N,R12W).
(14) Kalaloch Creek	<u>Destruction Island</u> 15	From the confluence of Kalaloch Creek and West Fork Kalaloch Creek (Sec.17, T25N,R13W) downstream to the Olympic National Park boundary (Sec.3,T24N, R13W).	(26) Snahapish River	<u>Salmon River</u> 15	From the intersection of Snahapish River and unimproved road (Sec.21, T26N,R11W) downstream to mouth at Clearwater River (Sec.19,T25N,R11W).
(15) Little Quilcene River	<u>Mt. Walker</u> 7 1/2 <u>Quilcene</u> 7 1/2	From the Olympic National Forest boundary (Sec.33, T28N,R2W) downstream to mouth at Quilcene Bay (Sec.18,T27N,R1W).	(27) Snow Creek	<u>Uncas</u> 7 1/2	From the confluence of Snow Creek and unnamed creek from Crocker Lake (Sec.2,T28N,R2W) downstream to mouth at Port Discovery (Sec.24, T29N,R2W).
(16) Maple Creek	<u>Spruce Mt.</u> 15	From the confluence of Maple Creek and Dry Creek (Sec.3,T26N,R11W) downstream to Hoh River (Sec.35,T27N,R11W).	(28) Solleks River	<u>Kloochman Rock</u> 15 <u>Salmon River</u> 15	From the confluence of Solleks River and unnamed creek (Sec.2,T25N,R10W) downstream to mouth at Clearwater River (Sec.10, T25N,R11W).
(17) Matheny Creek	<u>Salmon River</u> 15	From the Olympic National Forest boundary (Sec.24, T24N,R11W) downstream to the Olympic National Park boundary (Sec.22,T24N, R11W).	(29) Stequaleho Creek	<u>Salmon River</u> 15	From the confluence of the Stequaleho Creek and unnamed creek (Sec.19, T25N,R10W) downstream to mouth at Clearwater River (Sec.16,T25N,R11W).
(18) Miller Creek	<u>Destruction Island</u> 15 <u>Salmon River</u> 15	From the confluence of Miller Creek and unnamed creek (Sec.17,T25N,R12W) downstream to mouth at Clearwater River (Sec.27, T25N,R12W).			

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(30) Winfield Creek	<u>Spruce Mt. 15</u>	From the confluence of Winfield Creek and unnamed creek (Sec.1,T26N,R12W) downstream to mouth at the Hoh River (Sec.27,T27N, R12W).
(31) Quinault River*	<u>Mt. Christie * 15</u> <u>Kloochman Rock 15</u>	From east section line (Sec.33,T24N,R8W) downstream to Jefferson/Grays Harbor County line (Sec.1,T23N, R9W). Exclude federal land. The flow is over 1000 cfs MAF at east section line (Sec.33, T24N,R8W).

Hearing Location: Room 154, Abbott Raphael Hall, Saint Martin's College Campus, Lacey, Washington. If more room is required, the hearing will be moved to the Criminal Justice Training Center, Saint Martin's College Campus, Lacey, Washington, on December 6, 1989, at 2:00 p.m.

Submit Written Comments to: Master Program Coordinator, Department of Ecology, Shorelands and Coastal Zone Management Program, Mailstop PV-11, Olympia, Washington 98504, by December 13, 1989.

Date of Intended Adoption: January 2, 1990.  
November 21, 1989  
Fred Olson  
Deputy Director

**WSR 89-23-126**  
**PROPOSED RULES**  
**DEPARTMENT OF ECOLOGY**  
[Order 89-59—Filed November 22, 1989, 4:32 p.m.]

Continuance of WSR 89-22-136.  
Title of Rule: WAC 173-19-2505, Bothell, city of.  
Purpose: Adoption of revised shoreline master program into state master program, chapter 173-19 WAC.  
Other Identifying Information: This notice continues the adoption date from December 19, 1989, to January 2, 1990.  
Statutory Authority for Adoption: RCW 90.58.200.  
Statute Being Implemented: Chapter 90.58 RCW, Shoreline Management Act of 1971.

Summary: This filing is procedural only and is being filed in accordance with the State Shoreline Hearings Board stipulation and Order No. 89-48.

Reasons Supporting Proposal: This master program amendment was approved by the State Shoreline Hearings Board on November 15, 1989, as consistent with the policy of the State Shorelines Management Act of 1971, RCW 90.58.020, and applicable guidelines.

Name of Agency Personnel Responsible for Implementation and Enforcement: D. Rodney Mack, DOE, Mailstop PV-11, Olympia, Washington 98504, (206) 459-6777.

Name of Proponent: Department of Ecology, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The text of this rule as adopted will be identical to that contained in SHB Order No. 89-48 which amends the Bothell shoreline master program to include a "Urban-Special Management Overlay Designation." Said designation fosters reasonable and appropriate uses while protecting against adverse effects to the environment.

Proposal Changes the Following Existing Rules: The proposal changes the city of Bothell shoreline master program, WAC 173-19-2505, to comply with SHB Order No. 89-48.

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

**WSR 89-23-127**  
**PERMANENT RULES**  
**DEPARTMENT OF ECOLOGY**  
[Order 89-55—Filed November 22, 1989, 4:36 p.m.]

Date of Adoption: November 21, 1989.  
Purpose: Adoption of revised shoreline master program into state master program, chapter 173-19 WAC.  
Citation of Existing Rules Affected by this Order: Amending WAC 173-19-4501, Bellingham, city of.  
Statutory Authority for Adoption: RCW 90.58.200.  
Pursuant to notice filed as WSR 89-17-155 on August 23, 1989.

Effective Date of Rule: Thirty-one days after filing.  
November 21, 1989  
Fred Olson  
Deputy Director

**AMENDATORY SECTION** (Amending Order DE 84-11, filed 3/29/84)

WAC 173-19-4501 BELLINGHAM, CITY OF. City of Bellingham master program approved September 30, 1974. Revision approved March 29, 1984. Revision approved November 21, 1989.

**WSR 89-23-128**  
**PROPOSED RULES**  
**DEPARTMENT OF ECOLOGY**  
[Order 89-14—Filed November 22, 1989, 4:55 p.m.]

Original Notice.  
Title of Rule: Amending chapter 173-400 WAC, General regulations for air pollution sources; chapter 173-405 WAC, Kraft pulping mills; chapter 173-410 WAC, Sulfite pulping mills; chapter 173-415 WAC, Primary aluminum plants; and chapter 173-490 WAC, Emission standards and controls for sources emitting volatile compounds, VOC. Repealing chapter 173-403 WAC, Implementation of regulations for air contaminant sources.

Purpose: To establish technically feasible and reasonably attainable standards and to establish rules generally

applicable to the control and/or prevention of the emission of air contaminants.

Statutory Authority for Adoption: RCW 70.94.331.

Statute Being Implemented: Chapter 70.94 RCW.

Summary: These changes incorporate housekeeping amendments. Requirements of previous chapter 173-403 WAC are incorporated into chapter 173-400 WAC. These amendments improve clarity, internal consistency, completeness and enforceability.

Reasons Supporting Proposal: The proposed revisions are intended to improve clarity, internal consistency, completeness and enforceability.

Name of Agency Personnel Responsible for Drafting: Daniel A. Radonski, PV-11, R6 #4, (206) 438-7608; Implementation: Michael J. Landon, PV-11, R6 #4, (206) 459-6247; and Enforcement: Stuart A. Clark, PV-11, R6 #4, (206) 459-6256.

Name of Proponent: Ecology, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These rules are enacted under the provisions of the Washington Clean Air Act as amended, RCW 70.94-.395. The purpose of each of these rules is to establish technically feasible and reasonably attainable standards as new information and better technology are developed and become available. It is the purpose of chapters 173-405, 173-410, 173-415 and 173-490 WAC to assume state jurisdiction over emissions from those sources to provide for the systematic control of air pollution in those industries and for the proper development of the state's natural resources.

Proposal Changes the Following Existing Rules: Housekeeping changes; clarification of rules; removes obsolete sections of rules; makes rules consistent; consolidates definitions into chapter 173-400 WAC; requires monitoring results to be reported within 15 days instead of 30 days in chapters 173-405 and 173-410 WAC; removes old compliance date schedules and removes "grandfather" clauses.

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

#### Small Business Economic Impact Statement

##### Proposed Adoption of

Chapter 173-400 WAC General regulations for air pollution sources

Chapter 173-405 WAC Kraft pulping mills

Chapter 173-410 WAC Sulfite pulping mills

Chapter 173-415 WAC Primary aluminum plants

Chapter 173-490 WAC Emission standard and controls for sources emitting volatile compounds (VOC)

##### Proposed Repeal of

Chapter 173-403 WAC Implementation of regulations for air contaminant sources

The Washington Regulatory Fairness Act, chapter 19.85 RCW, requires that proposed rules which have an economic impact on more than 20 percent of all industries or more than ten percent of any one industry shall

be reviewed to determine if the cost of coming into compliance with the proposed agency rules will create a disproportionately higher economic burden on small business in comparison with the cost of compliance for large business. The act defines a small business as an employer with fifty or fewer employees.

The purpose of amending the air rules is to improve clarity, internal consistency, completeness and enforceability, and to comply with federal requirements. Most changes proposed are editorial. Large businesses bear most of the burden of the air rules, however small businesses do bear some of the costs. The air rules proposed for change have been reviewed. While most of the changes proposed have a negligible impact some changes are proposed as mitigation. Despite the mitigation proposed the overall impact of the rule changes is negligible.

The Department of Ecology determination of negligible impact is on file at Air Programs Department of Ecology, PV-11, Lacey, Washington 98504. This detailed statement covers each proposed change.

Hearing Location: EFSEC Hearing Room, Lacey, Washington, on January 9, 1990; and at Spokane County Health Department Auditorium, Spokane, Washington, on January 11, 1990, at 7-9 p.m., both locations.

Submit Written Comments to: Daniel A. Radonski, PV-11, R6 #4, Lacey, Washington 98504, by January 19, 1990.

Date of Intended Adoption: March 30, 1990.

November 22, 1989

Fred Olson

Deputy Director

#### Chapter 173-400 WAC

#### GENERAL REGULATIONS FOR AIR POLLUTION SOURCES

##### WAC

173-400-010	Policy and purpose.
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AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-400-010 POLICY AND PURPOSE. (1) It is the policy of the department of ecology (ecology) under the authority vested in it by chapter 43.21A RCW to provide for the systematic control of air pollution from air contaminant sources and (~~progressive reduction where needed~~) for the proper development of the state's natural resources.

(2) It is the purpose of this chapter to establish (~~standards deemed to be~~) technically feasible and reasonably attainable standards and (~~revise such standards as new information and better technology are developed and become available~~) to establish rules generally applicable to the control and/or prevention of the emission of air contaminants.

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-400-020 APPLICABILITY. (1) The provisions of this chapter shall apply state-wide.

(2) An (~~activated air pollution control~~) authority may enforce this chapter and may (~~in addition~~) also adopt standards or requirements (~~which are equivalent to or more stringent than~~). These standards or requirements (~~on the same subject matter established by this chapter. This regulation is applicable to all sources of air contaminants except~~) may not be less stringent than the current state air quality rules. Unless properly delegated by ecology, authorities do not have jurisdiction over the following sources:

((+)) (a) Specific source categories over which the state, by separate regulation, has assumed or hereafter does assume jurisdiction.

((+)) (b) Automobiles, trucks, aircraft.

((+)) (c) Those sources under the jurisdiction of the energy facility site evaluation council.

~~(The requirements of chapter 173-403 WAC shall apply to all sources that are subject to the requirements of chapter 173-400 WAC.)~~

AMENDATORY SECTION (Amending Order 84-48, filed 3/6/85)

WAC 173-400-030 DEFINITIONS. The following definitions will apply unless a different meaning is clearly required by context (~~words and phrases used in this chapter shall have the following meanings; general terms common with other chapters as defined in chapter 173-403 WAC, and terms specific to this chapter only as defined below~~):

(1) "Actual emissions" relating to a particular date means the average rate, in weight per unit time (with air pollution controls applied if required), of emitted pollutant during the immediately preceding two-year period of normal operation. Ecology or the authority may allow or require the use of an alternative time period if it is more representative of normal operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or burned during the selected time period.

Ecology or the authority may presume that source-specific allowable emissions, which incorporate limits on hours of operation or production rate, are equivalent to the actual emissions of the unit.

(2) "Administrator" shall refer to ecology or the authority or the USEPA administrator unless specifically defined otherwise.

(3) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with (a) times of visitor use of the Federal Class I area, and (b) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.

(4) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorless substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

(5) "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.

(6) "Allowable emissions" means the emission rate calculated using the maximum rated capacity of the source (unless the source is limited in production rate or hours of operation, or both, by an applicable regulatory order) and the most stringent of (a), (b), or (c) of this subsection. Physical and process limitations must be considered in determining maximum rated capacity.

(a) Standards as set forth in 40 CFR Part 60 and Part 61, if applicable to the source; or

(b) The applicable state implementation plan emission limitation; or

(c) The emission rate specified by an applicable regulatory order.

(7) "Ambient air" means the surrounding outside air.

(8) "Ambient air quality standard" means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air which shall not be exceeded.

(9) "Authority" means an air pollution control authority activated pursuant to chapter 70.94 RCW that has jurisdiction over the subject source. (This may be delegated by ecology.)

(10) "Best available control technology (BACT)" means technology which will result in an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each air pollutant subject to this regulation which would be emitted from any proposed new or modified source which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such sources or modification through application of production processes, available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air pollutant. In no event shall application of the best available technology result in emissions of any air pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 and Part 61. If the reviewing agency determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard, or combination thereof, to meet the requirement of BACT. 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 which achieve equivalent results. The requirement of RCW 70.94.152 that a new source will provide "all known available and reasonable methods of emission control" is interpreted to mean the same as best available control technology.

(11) "Best available retrofit technology (BART)" means any emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by source. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. If an emission limitation is not feasible, a design, equipment, work practice, operational standard, or combination thereof, may be required. Such standards shall, to the degree possible, set forth the emission reductions achieved and provide for compliance by prescribing appropriate conditions in a regulatory order.

(12) "Bubble" means a set of emission limits which allows an increase in emissions from a given emissions unit(s) in exchange for a decrease in emissions from another emissions unit(s), pursuant to RCW 70.94.155 and WAC 173-400-120.

(13) "Capacity factor" means the ratio of the average load on ((a machine or)) equipment or a machine for the period of time considered, to the manufacturer's capacity rating of the machine or equipment.

((+)) (14) "Class I area" means any federal, state, or Indian land which is classified Class I.

(15) "Combustion and incineration sources" means sources using combustion for waste disposal, steam production, chemical recovery or other process requirements; but excludes open burning.

((+)) (16) "Commenced construction" means that the owner or operator has all the necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(17) "Concealment" means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

~~((4))~~ "Excess emissions" means emissions of an air pollutant in excess of an emission standard.

~~((5))~~ (18) "Director" means director of the Washington state department of ecology or duly authorized representative.

(19) "Dispersion technique" means a method which attempts to affect the concentration of a pollutant in the ambient air, other than by the use of pollution abatement equipment or integral process pollution controls.

(20) "Ecology" means the Washington state department of ecology.

(21) "Emission" means a release of air contaminants into the ambient air.

(22) "Emission reduction credit (ERC)" means a credit granted to a source for a voluntary reduction in actual emissions.

(23) "Emission standard" means an allowable rate of emissions, level of opacity, or prescribing equipment or operating conditions or maintenance procedures as set forth in a regulation or regulatory order.

(24) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation.

(25) "Excess stack height" means that portion of a stack which exceeds the greater of sixty-five meters or the calculated stack height described in WAC 173-400-200(2).

(26) "Fossil fuel-fired steam generator" means a device, furnace, or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

~~((6))~~ (27) "Fugitive dust" means a ~~((type of))~~ particulate emission made airborne by forces of wind, man's activity, or both ~~((, such as))~~: Unpaved roads, construction sites, ~~((or))~~ and tilled land are examples of areas that originate fugitive dust. ~~((Two major categories are anthropogenic sources (those which result directly from and during human activities) and wind erosion sources (those resulting from erosion of soil by wind):))~~ Fugitive dust is a type of fugitive emission.

~~((7))~~ (28) "Fugitive emissions" means emissions which do not pass and which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(29) "General process unit" means an emissions unit using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

~~((8))~~ (30) "Good engineering practice (GEP)" refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2)(a)(ii).

(31) "Incinerator" means a furnace used primarily for the thermal destruction of waste.

~~((9))~~ (32) "In operation" means engaged in activity related to the primary design function of the source.

(33) "Integral vista" means a view perceived from within the Class I area of a specific landmark or panorama located outside the boundary of the Class I area.

(34) "Land manager" means the secretary of the federal department or head of the state department or Indian governing body with authority over the Class I area.

(35) "Lowest achievable emission rate (LAER)" means for any source that rate of emissions which reflects:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed new or modified source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

(36) "Major emissions unit" means any emissions unit which has actual or allowable emissions of one hundred tons per year or more of any pollutant regulated by state or federal law.

(37) "Major modification" means (a), or (b), or (c) of this subsection:

(a) Any physical change or change in the method of operation of a major source that would result in a net significant emissions increase for any pollutant regulated by state or federal law. Any net emissions increase that is significant for volatile organic compounds (VOCs) shall be considered significant for ozone. A net significant emissions increase for any one of the following reasons shall not, in itself, cause the change to be a major modification:

(i) Use of an alternative fuel or raw material by reason of an order under Sections 2 (a) and (b) of the Federal Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act; or

(ii) Use of an alternative fuel by reason of an order or rule under Section 125 of the Federal Clean Air Act; or

(iii) Use of an alternative fuel or raw material that the source is capable of accommodating and was capable of accommodating prior to December 21, 1976, unless such change in fuel or raw material use is prohibited by a regulatory order; or

(iv) Use of an alternative fuel at a steam-generating unit to the extent that the fuel is generated from municipal solid waste; or

(v) An increase in the hours of operation or the production rate unless such increases are prohibited by a regulatory order; or

(vi) Any change of ownership.

(b) Any physical change or change in the method of operation of a major source that would cause the allowable emissions to be exceeded.

(c) Any reconstruction of a major source, or any reconstruction of an emissions unit that is located in an area that is not in attainment for the pollutant under consideration or located in an area that is not in attainment for ozone and the pollutant under consideration is VOCs, for which reconstruction the fixed capital cost of the new components exceeds fifty percent of the fixed capital cost of a comparable entirely new source or emissions unit.

(38) "Major source" means any source which emits or has the potential to emit one hundred tons per year or more of any pollutant regulated by state or federal law.

(39) "Masking" means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor ~~((, usually to a less offensive odor))~~.

~~((10))~~ (40) "Materials handling" means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant chemical or physical alteration ~~((of the chemical or physical properties of the material))~~.

~~((11))~~ (41) "National Emission Standards for Hazardous Air Pollutants (NESHAPS)" means the federal regulations set forth in 40 CFR Part 61, as in effect on July 1, 1988.

(42) "Natural conditions" include naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(43) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(a) Any increase in actual emissions of a pollutant resulting from a physical change or change in method of operation of a specific emission unit in a source; and

(b) Any other increases or decreases in actual emissions of the same pollutant from the source: PROVIDED, That

(i) Said other increases or decreases occur at the same time or within one year prior to the change, or if any decrease(s) have been documented by an emission reduction credit; and

(ii) The other decreases in emissions are creditable only to the extent that the old level of actual emissions or the old level of allowable emissions, whichever is the lesser, exceeds the new level of allowable emissions; and

(iii) The other decreases in emissions are not creditable if the specific emissions unit is a major emissions unit and is located (A) in an area that is not in attainment for the pollutant or (B) in an area that is not in attainment for ozone and the pollutant is VOCs; and

(iv) The determination of net emissions increase shall be valid only after a regulatory order has been issued which establishes that the new emissions from every emissions unit involved in the determination are less than or equal to the new allowable emissions expressed as weight of the pollutant per unit time.

(44) "New source" means a source which commences construction after the effective date of this chapter. Any addition to, enlargement, modification, replacement, restart after a period of five years of non-operation, or any alteration of any process or source which may increase emissions or ambient air concentrations of any contaminant for

which federal or state ambient or emission standards have been established shall be construed as construction or installation or establishment of a new source.

(45) "New source performance standards (NSPS)" means the federal regulations set forth in 40 CFR Part 60, as in effect on July 1, 1988.

(46) "Nonattainment area" means a clearly delineated geographic area which has been designated by EPA promulgation as exceeding a national ambient air quality standard or standards for one or more of the criteria pollutants.

(47) "Notice of construction" means a written application to permit construction of a new source or modification of an existing source.

(48) "Opacity" means the degree to which an object seen through a plume is obscured, stated as a percentage.

(49) "Open burning" means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. Wood waste disposal in wigwam burners is not considered open burning.

((+2)) (50) "Particulate matter" or "particulates" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

(51) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Part 60 or by a test method specified in the Washington state implementation plan.

(52) "Parts per million (ppm)" means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

(53) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

(54) "PM-10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

(55) "PM-10 emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 CFR Part 60 or by a test method specified in the Washington state implementation plan.

(56) "Prevention of significant deterioration (PSD)" has the same meaning as that set forth in 40 CFR Subpart 52.21 as modified by WAC 173-400-141.

(57) "Projected width" means that dimension of a structure determined from the frontal area of the structure, projected onto a plane perpendicular to a line between the center of the stack and the center of the building.

(58) "Reasonably attributable" means attributable by visual observation or any other technique the state deems appropriate.

(59) "Reasonably available control technology (RACT)" means the lowest emission limit 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. RACT 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.

RACT requirements for any source or source category may be adopted as an order or regulation after public involvement per WAC 173-400-171.

(60) "Regulatory order" means an order issued by ecology or an authority to an air contaminant source which approves a notice of construction and/or limits emissions and/or establishes other air pollution control requirements. Ecology could limit emissions to zero.

(61) "Significant emission" means a rate of emission equal to or greater than any one of the following rates:

Pollutant	Tons/Year	Pounds/Day	Pounds/Hour
Carbon monoxide	100		
Nitrogen oxides	40		
Sulfur dioxide	40	800	80
Volatile organic compounds	40		
Particulate matter	25	500	50
PM-10	15		

Pollutant	Tons/Year	Pounds/Day	Pounds/Hour
Lead			.6
Total reduced sulfur (as H <sub>2</sub> S)	10		
Total fluoride			3

(62) "Significant visibility impairment" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of visitor visual experience of the Class I area. The determination must be made on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairment, and how these factors correlate with the time of visitor use of the Class I area and frequency and timing of natural conditions that reduce visibility.

(63) "Source" means all of the emissions unit(s) including quantifiable fugitive emissions, which are located on one or more contiguous or adjacent properties under the control of the same person(s) and those activities that are secondary to the production of a single product or functionally related group of products.

(64) "Source category" means all sources of the same type or classification.

(65) "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

(66) "Stack height" means the height of an emission point measured from the ground-level elevation at the base of the stack.

(67) "Standard conditions" means a temperature of 20°C (68°F) and a pressure of 760mm (29.92 inches) of mercury.

(68) "Sulfuric acid plant" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge.

(69) "Total reduced sulfur, (TRS)" means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA method 16 or an approved equivalent method and expressed as hydrogen sulfide.

(70) "Total suspended particulate" means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B as in effect on July 1, 1988.

(71) "United States Environmental Protection Agency, (USEPA)" shall be referred to as EPA.

(72) "Visibility impairment" means any perceptible degradation in visibility (visual range, contrast, coloration) not caused by natural conditions.

(73) "Visibility impairment of Class I areas" means visibility impairment within the area and visibility impairment of any formally designated integral vista associated with the area.

(74) "Volatile organic compound, (VOC)" means any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the USEPA administrator designates as having negligible photochemical reactivity. VOC may be measured by a reference method, an equivalent method, an alternative method or by procedures specified under 40 CFR Part 60. A reference method, an equivalent method, or an alternative method, however, may also measure nonreactive organic compounds. In such cases, an owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard. This reactivity policy exempts the following compounds per the Federal Register: Methane, ethane, trichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, trichlorotrifluoroethane, dichlorotetrafluoroethane, chloropentafluoroethane, methylene chloride, and 1,1,1-trichloroethane (methyl chloroform).

**AMENDATORY SECTION** (Amending Order DE 83-13, filed 4/15/83)

WAC 173-400-040 GENERAL STANDARDS FOR MAXIMUM EMISSIONS. All sources and emissions units are required to meet the emission standards of this chapter. When two or more emissions units are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual emissions units, and the relative contributions of the individual emissions units to the common discharge are not readily distinguishable, then the emissions of the common stack must meet the most restrictive standard of any of the connected emissions units. Further, all emissions units are required to use reasonably available control technology (RACT) which may be determined for some sources or source categories to be more stringent than the emission limitations of ((this)) any chapter of Title 173 WAC. ((In cases)) Where current controls

are determined to be less than ~~((reasonably available control technology-))~~ RACT~~((s))~~, ecology or the ((department or cognizant local)) authority shall, on a case-by-case basis, define RACT for each source or source category and issue a regulatory order to the source or sources for installation of RACT.

(1) Visible emissions. No person shall cause or permit the emission for more than three minutes, in any one hour, of an air contaminant from any emissions unit which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity except:

(a) When the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to permit the soot blowing and grate cleaning necessary to the operation of boiler facilities. ~~((As such,))~~ This practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and ecology or the ((department or cognizant local)) authority be advised of the schedule.

(b) When the owner or operator of a source supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed twenty percent.

(c) When two or more sources are connected to a common stack, ~~((an adjusted time limit may be allowed at the discretion of the department or cognizant local authority))~~ ecology or the authority may allow or require the use of an alternate time period if it is more representative of normal operations.

(d) When an alternate opacity has been established per RCW 70-.94.331 (2)(c).

(2) ~~((Preventing particulate matter from being deposited))~~ Fallout. No person shall cause or permit the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner(s) or operator(s) of the source in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.

(3) Fugitive emissions. The owner or operator of any emissions unit ~~((involving))~~ engaging in materials handling, construction, demolition or any other operation which is a source of fugitive emission:

(a) If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.

(b) If the emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, shall be required to use ~~((reasonably))~~ best available control technology (BACT) to control emissions of the contaminants for which nonattainment has been designated. Significance will be determined by EPA interpretive ruling for PSD and offsets on file with ~~((the department))~~ ecology.

(4) Odors. Any person who shall cause or allow the generation of any odor from any source which may unreasonably interfere with any other property owner's use and enjoyment of his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

(5) Emissions ~~((of air contaminants))~~ detrimental to persons or property. No person shall cause or permit the emission of any air contaminant from any source, including ~~((any air contaminant whose emission is not otherwise prohibited by this chapter, if the air contaminant causes detriment))~~ water droplets, if it is detrimental to the health, safety, or welfare of any person, plant or animal, or causes damage to property or business.

(6) Sulfur dioxide.

No person shall cause or permit the emission of a gas containing sulfur dioxide from any emissions unit in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen for combustion sources, and based on the average of any period of sixty consecutive minutes, except ~~((as follows))~~:

~~((a))~~ When the owner or operator of an emissions unit supplies emission data and can demonstrate to ecology or the ((department or cognizant local)) authority that there is no feasible method of reducing the concentration to less than one thousand ppm (on a dry basis, corrected to seven percent oxygen for combustion sources) and that the state and federal ambient air quality and PSD incremental standards for sulfur dioxide will not be exceeded. In such cases, ecology or the ((department or)) authority may require specific ambient air monitoring stations be established, operated, and maintained by the owner or operator ((to equip, operate, and maintain continuous ambient air monitoring stations)) at mutually approved locations ((approved by the

department or authority and using equipment approved by the department or authority)). All sampling results will be made available upon request and a monthly summary will be submitted to ecology or the ((department or)) authority.

~~((b))~~ When a source limits such emission by a combination of constant emission controls and dispersion techniques approved by the ~~department or cognizant local authority, as permitted by WAC 173-403-140.)~~

(7) Concealment and masking. No person shall cause or permit the installation or use of any means which conceals or masks an emission of an air contaminant which would otherwise violate any provisions of this chapter.

(8) Fugitive dust sources.

(a) The owner or operator of a source of fugitive dust shall take reasonable precautions to prevent fugitive dust from becoming airborne and shall maintain and operate the source to minimize emissions.

(b) The owner(s) or operator(s) of any existing source(s) of fugitive dust that has been identified as a significant contributor to ~~((the non-attainment status of a designated nonattainment))~~ a Category I PM-10 area shall be required to use ~~((reasonably available control technology))~~ BACT to control emissions. Significance will be determined by an EPA interpretive ruling for PSD and offsets ~~((as))~~ on file with ~~((the department))~~ ecology.

#### AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-400-050 ~~((MINIMUM))~~ EMISSION STANDARDS FOR COMBUSTION AND INCINERATION UNITS. (1) Combustion and incineration emissions units must meet all requirements of WAC 173-400-040 and, in addition, no person shall cause or permit emissions of particulate matter in excess of 0.23 gram per dry cubic meter at standard conditions (0.1 grain/dscf), except, for an emissions unit ~~((utilizing the combustion of wood))~~ combusting wood derived fuels for the production of steam((s)). No person shall allow or permit the emission of particulate matter in excess of 0.46 gram per dry cubic meter at standard conditions (0.2 grain/dscf), as measured by EPA method 5 or by procedures on file at ((the department)) ecology.

(2) For any incinerator, no person shall cause or permit emissions in excess of one hundred ppm of total carbonyls as measured by applicable EPA methods or acceptable procedures contained in "Source Test Manual - Procedures for Compliance Testing," state of Washington, department of ecology, on file at ~~((the department))~~ ecology. Incinerators shall be operated only during daylight hours unless written permission to operate at other times is received from ecology or the ((department or cognizant local)) authority.

(3) Measured concentrations for combustion and incineration sources shall be adjusted for volumes corrected to seven percent oxygen, except when ecology or the ((department or cognizant local)) authority ((may)) determines that an alternate oxygen correction factor is ((appropriate)) more representative of normal operations.

#### AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-400-060 ~~((MINIMUM))~~ EMISSION STANDARDS FOR GENERAL PROCESS ~~((EMISSIONS))~~ UNITS. General process units shall be required to meet all applicable provisions of WAC 173-400-040 ~~((above))~~ and ~~((in addition))~~, no person shall cause or permit the emission of particulate material from any general process operation in excess of 0.23 grams per dry cubic meter at standard conditions (0.1 grain/dscf) of exhaust gas. Appropriate EPA test methods or approved test procedures on file with ecology in the "Source Test Manual - Procedures For Compliance Testing," will be used to determine compliance.

#### AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-400-070 ~~((MINIMUM))~~ EMISSION STANDARDS FOR CERTAIN SOURCE CATEGORIES. ~~((The department))~~ Ecology finds that the reasonable regulation of sources within certain categories requires separate standards applicable to such categories. The standards set forth in this section shall be the ~~((minimum))~~ maximum allowable standards for emissions units within the categories listed. Except as specifically provided in this section, such emissions units shall not be required to meet the provisions of WAC 173-400-040, 173-400-050 and 173-400-060.

## (1) Wigwam burners.

(a) All wigwam burners shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), and (7).

(b) All wigwam burners shall use ~~((reasonably available control technology))~~ RACT. All emissions units shall be operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by ecology or the ~~((department or cognizant local))~~ authority.

(c) It shall be unlawful to install or increase the existing use of any burner that does not meet all requirements for new sources including those requirements specified in WAC 173-400-040 and 173-400-050, except operating hours.

(d) ~~((The department))~~ Ecology may establish additional requirements for wigwam burners located ~~((or proposed for location))~~ in sensitive areas as defined by chapter ~~((18-06))~~ 173-440 WAC. These requirements may include but shall not be limited to:

(i) A requirement to meet all provisions of WAC 173-400-040 and 173-400-050. Wigwam burners will be considered to be in compliance ~~((with WAC 173-400-040(1)))~~ if they meet the requirements contained ~~((therein except during))~~ in WAC 173-400-040(1). An exception is made for a startup period not to exceed thirty minutes in any eight consecutive hours.

(ii) A requirement to apply ~~((best available control technology))~~ BACT.

(iii) A requirement to reduce or eliminate emissions if ~~((the department))~~ ecology establishes that such emissions unreasonably interfere with the use and enjoyment of the property of others or are a cause of violation of ambient air standards.

## (2) Hog fuel boilers.

(a) Hog fuel boilers shall meet all provisions of WAC 173-400-040 and 173-400-050(1), except that emissions may exceed twenty percent opacity for up to fifteen consecutive minutes once in any eight hours. The intent of this provision is to permit the soot blowing and grate cleaning necessary to the operation of these units. ~~((As such;))~~ This practice is to be scheduled for the same specific times each day and ecology or the ~~((department or cognizant local))~~ authority shall be notified ~~((as to))~~ of the schedule or any changes.

(b) All hog fuel boilers shall utilize ~~((reasonably available control technology. All emissions units))~~ RACT and shall be operated and maintained to minimize emissions.

## (3) Orchard heating.

(a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.

(b) It ~~((shall be))~~ is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity, except during the first thirty minutes after such device or material is ignited.

## (4) Grain elevators.

Any grain elevator which is primarily classified as a materials handling operation shall meet all the provisions of WAC 173-400-040 (2), (3), (4), and (5).

## (5) Catalytic cracking units.

(a) All existing catalytic cracking units shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), and (7) and ~~((in addition))~~:

(i) No person shall cause or permit the emission for more than three minutes, in any one hour, of an air contaminant from any catalytic cracking unit which at the emission point, or within a reasonable distance of the emission point, exceeds forty percent opacity.

(ii) No person shall cause or permit the emission of particulate material in excess of 0.46 grams per dry cubic meter at standard conditions (0.20 grains/dscf) of exhaust gas.

(b) All new catalytic cracking units shall meet all provisions of WAC 173-400-115.

## (6) Other wood waste burners.

(a) Wood waste burners not specifically provided for in this section shall meet all provisions of WAC 173-400-040.

(b) Such wood waste burners shall utilize ~~((reasonably available control technology. All emissions units))~~ RACT and shall be operated and maintained to minimize emissions.

## (7) Sulfuric acid plants.

No person shall cause to be discharged into the atmosphere from a sulfuric acid plant, any gases which contain acid mist, expressed as H<sub>2</sub>SO<sub>4</sub>, in excess of 0.15 pounds per ton of acid produced ~~((, the))~~. Sulfuric acid production ((being)) shall be expressed as one hundred percent H<sub>2</sub>SO<sub>4</sub>.

## AMENDATORY SECTION (Amending Order 84-48, filed 3/6/85)

WAC 173-400-075 EMISSION STANDARDS FOR SOURCES EMITTING HAZARDOUS AIR POLLUTANTS. (1) The emission standards for ~~((asbestos, benzene from fugitive emission sources, beryllium, beryllium rocket motor firing, mercury and vinyl chloride))~~ hazardous air pollutants promulgated by the United States Environmental Protection Agency (EPA) prior to ~~((October 1, 1984))~~ July 1, 1989, as contained in Title 40, Code of Federal Regulations, Part 61, are ~~((by this reference adopted and incorporated herein. For the purpose of state administration of the federal regulations))~~ adopted by reference ~~((hereby, the term "administrator" as used therein shall refer to the department or cognizant local authority))~~.

(2) ~~((The department or cognizant local authority, at any time after the effective date of this section;))~~ Ecology or the authority may conduct source tests and require access to records, books, files and other information specific to the control, recovery or release of ~~((asbestos, benzene from fugitive emission sources, beryllium, mercury, or vinyl chloride))~~ those pollutants applicable to 40 CFR Part 61 in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

(3) Source testing, monitoring and analytical methods for sources ~~((of))~~ such as: Asbestos, benzene from fugitive emission sources, beryllium, mercury, or vinyl chloride shall conform with the requirements of Title 40, Code of Federal Regulations, Part 61, as promulgated prior to ~~((October 1, 1984))~~ July 1, 1989.

(4) This section shall not apply to any source operating pursuant to a waiver granted by ~~((the United States Environmental Protection Agency))~~ EPA or an exemption granted by the president of the United States during the effective life of such waiver or exemption.

~~((5))~~ Arsenic standards:

~~((a))~~ The owner or operator of any source which emits five tons or more of arsenic per year shall:

(i) Use best available technology (BAT) to control fugitive emissions of arsenic, so that community exposure standards are not exceeded outside of the property controlled by the owner or operator of the source:

As used herein BAT means the best controls and work practices available considering economic, energy and environmental impacts. The level of control that represents BAT may be different for new and existing sources within a source category because of higher costs associated with retrofitting controls on existing sources, or differences in control technology for new vs. existing sources:

(ii) Establish and operate monitoring facilities for arsenic at sites approved by the department or cognizant local authority. Such sites shall be representative of areas of potential maximum concentrations to which the public may be exposed:

(iii) Report as soon as possible but within thirty days, or in accordance with an approved work plan, to the department or cognizant local authority any exceedance of the following interim community exposure standards at any arsenic monitoring site:

Maximum 24-hour concentration = 2.0 micrograms arsenic (expressed as As) per cubic meter.

Maximum annual arithmetic mean = 0.3 micrograms arsenic (expressed as As) per cubic meter.

(iv) Maintain daily logs and records of the time and nature of activities that may release fugitive emissions of arsenic:

(v) Complete an evaluation of the cause of such exceedance within thirty days of the report of such exceedance:

(vi) Submit a work plan to the department for the identification and evaluation of fugitive arsenic emissions that is satisfactory to the department or cognizant local authority. The plan is required within thirty days after the effective date of this regulation. The work plan shall include but not be limited to an identification and evaluation of fugitive emission sources, including operating and maintenance procedures, siting of arsenic monitoring stations, a description of sampling equipment, analytical techniques, quality assurance, schedules of sampling, a program to record meteorological conditions at time of sampling, techniques used to evaluate and determine causes of exceedances, and quarterly reports of progress toward implementing the plan. For the arsenic manufacturing process as a whole, this shall include an evaluation of the feasibility of producing As<sub>2</sub>O<sub>3</sub> through a chemical leaching process rather than roasting. The work plan shall be implemented within one year. Subparagraphs (ii), (iii), (iv), and (v) shall not impose additional requirements on the source to the extent that such requirements are included in the work plan.

~~(b) The standards set forth in (a)(iii) of this subsection are intended as interim community exposure standards. As more information becomes available it is anticipated that these standards will be reviewed.~~

~~(c) During this interim period the department shall periodically review all monitoring records and plant logs to determine the need for and practicability of additional emission controls, monitoring stations or adjustment to the above standards. Whenever the cause of any exceedance can be attributed to a specific source, process, operation or work practice, the owner or operator thereof shall install or adopt corrective measures which constitute best available technology as soon as possible, to prevent a recurrence. The department or cognizant local authority shall determine if additional measures can be taken to control fugitive emissions of arsenic, and if so shall establish additional BAT requirements and a compliance program. Thereafter the department shall establish such final standards as appropriate to require, monitor and regulate the application of BAT for fugitive emissions of arsenic.~~

~~(d) Failure of a source to comply with any provision of subsection (5) of this section or any order issued by the department or cognizant local authority pursuant to WAC 173-400-075, shall constitute cause for enforcement action per WAC 173-403-170 or 173-403-180.~~

~~(e) Nothing in these regulations shall relieve the owner or operator of any source to which any part of these regulations may apply from complying with any other rule, regulation, order, statute, or ordinance to which said source may be subject.))~~

#### AMENDATORY SECTION (Amending Order 84-48, filed 3/6/85)

WAC 173-400-100 REGISTRATION. The owner or operator of each source within the following source categories shall register the source with ~~((the department unless source registration is required by the cognizant local))~~ ecology or an authority:

- (1) Agricultural drying and dehydrating operations;
- (2) Asphalt plants;
- (3) Beverage can surface coating operations;
- (4) Bulk gasoline terminals;
- (5) Cattle feedlots with facilities for one thousand or more cattle;
- (6) Chemical plants;
- (7) Ferrous foundries;
- (8) Fertilizer plants;
- (9) Flexible vinyl and urethane coating and printing operations;
- (10) Grain handling, seed processing, pea and lentil processing facilities;
- (11) Metallic mineral processing plants;
- (12) Mineralogical processing plants;
- (13) Nonferrous foundries;
- (14) Other metallurgical processing plants;
- (15) Petroleum refineries;
- (16) Power boilers using coal, hog fuel, oil, or other solid or liquid fuel;
- (17) Pressure sensitive tape and label surface coating operations;
- (18) Rendering plants;
- (19) Scrap metal operations;
- (20) Synthetic organic chemical manufacturing industries;
- (21) Sulfuric acid plants;
- (22) Synthetic fiber production facilities;
- (23) Veneer dryers;
- (24) Wood waste incinerators including wigwam burners;
- (25) Other incinerators designed for a capacity of one hundred pounds per hour or more;
- (26) Stationary internal combustion engines rated at five hundred horse power or more;
- (27) Sawmills, including processing for lumber, plywood, shake, shingle, pulpwood insulating board, or any combination thereof;
- (28) Any category of stationary sources to which a federal standard of performance (NSPS) applies;
- (29) Any source which emits a contaminant subject to a National Emission Standard for Hazardous Air Pollutants (NESHAPS);
- (30) Any major source or major emissions unit;
- (31) Any source emitting toxic air pollutants.

Registration shall be on forms to be supplied by ~~((the department or local))~~ ecology or the authority within the time specified ~~((thereon))~~ on the form.

A report of closure shall be filed ~~((with the department whenever))~~ within ninety days with ecology when operations producing emissions ~~((are))~~ permanently ((ceased)) cease at any source within the above categories.

#### AMENDATORY SECTION (Amending Order 87-12, filed 9/30/87)

WAC 173-400-105 RECORDS, MONITORING, AND REPORTING. ~~((H))~~ The owner or operator of a stationary source ~~((listed in a source category of WAC 173-400-100))~~ shall upon notification by the director of ecology, maintain records on the type and quantity of emissions from the source and other information deemed necessary ~~((by the director))~~ to determine whether the source is in compliance with applicable emission limitations and control measures.

~~((2))~~ The information recorded pursuant to subsection (1) of this section shall be reported to the department as directed:

(3) When the director determines that recordkeeping and reporting of emission data from any stationary source not listed in WAC 173-400-100 is needed for the investigation or control of air pollution or otherwise necessary to effectuate the purposes of the Washington Clean Air Act (chapter 70.94 RCW), the director shall notify the owner or operator of the source. This notification shall constitute an order to maintain records and submit reports on emissions as set forth in subsections (1) and (2) of this section.))

(1) Emission inventory. The owner(s) or operator(s) of any air contaminant source shall submit an inventory of emissions from the source each year. The inventory may include stack and fugitive emissions of particulate matter, PM-10, sulfur dioxide, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, VOCs, and other contaminants, and shall be submitted (when required) no later than one hundred five days after the end of the calendar year.

(2) Monitoring. Ecology shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants.

As a part of this program, the director of ecology or an authorized representative may require any source under the jurisdiction of ecology to conduct stack and/or ambient air monitoring and to report the results to ecology.

(3) Investigation of conditions. Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, personnel from ecology or an authority shall have the power to enter at reasonable times upon any private or public property, excepting non-multiple unit private dwellings housing one or two families.

(4) Source testing. To demonstrate compliance, ecology may conduct or require that a test be conducted of the source using approved EPA methods which are adopted by reference, or approved procedures contained in "Source Test Manual - Procedures for Compliance Testing," state of Washington, department of ecology, on file at ecology. The operator of a source may be required to provide the necessary platform and sampling ports for ecology personnel or others to perform a test of an emissions unit. Ecology shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

(5) Report of startup, shutdown, breakdown or upset condition(s). If a startup, shutdown, breakdown or upset condition occurs which could result in an emissions violation or a violation of an ambient air quality standard, the owner(s) or operator(s) of the source(s) shall take the following actions as applicable:

(a) For a planned condition, such as a startup or shutdown, the condition shall be reported to ecology or the authority in advance of its occurrence.

(b) For an unplanned condition, such as a breakdown or upset, the condition shall be reported to ecology or the authority as soon as possible.

Upon request by ecology or the authority, the owner(s) or operator(s) of the source(s) shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

Compliance with the requirements of WAC 173-400-105(5) does not relieve the owner or operator of the source from the responsibility to maintain continuous compliance with all the requirements of this chapter or an applicable chapter nor from the resulting liabilities for failure to comply.

(6) Continuous monitoring and recording. Owners and operators of the following categories of sources shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

(a) Fossil fuel-fired steam generators.

(i) Opacity, except where:

(A) Steam generator capacity is less than two hundred fifty million BTU per hour heat input; or

(B) Only gaseous fuel is burned; or

(C) Only oil or a mixture of oil and gas is burned and opacity and particulate regulations can be met without using particulate collection equipment; and, the source has never, through any administrative or judicial procedure, been found in violation of any visible emission standard.

(ii) Sulfur dioxide, except where:

(A) Steam generator capacity is less than two hundred fifty million BTU per hour heat input, or

(B) Sulfur dioxide control equipment has not been installed.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to ecology or the authority by the owner(s) or operator(s).

(b) Sulfuric acid plants.

Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries.

Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fuel-fired steam generators.

(i) Opacity, except where steam generator capacity is less than one hundred million BTU per hour heat input.

(ii) Continuous monitoring equipment. The requirements of WAC 173-400-105 (6)(e) do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by WAC 173-400-105 (6)(d) shall be subject to approval by ecology.

(e) Owners and operators of those sources required to install continuous monitoring equipment under this chapter shall demonstrate to ecology or the authority compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Sections 3, 4 and 5, promulgated October 6, 1975, which is adopted by reference.

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, ecology determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels.

(g) Exemptions. This subsection (6) does not apply to any source which is:

(i) Subject to a new source performance standard. These sources will be governed by WAC 173-400-115.

(ii) Not subject to an applicable emission standard.

(h) Monitoring system malfunctions. A source may be temporarily exempted from the monitoring and reporting requirements of this chapter during periods of monitoring system malfunctions provided that the source owner(s) or operator(s) shows to the satisfaction of ecology or the authority that the malfunction was unavoidable and is being repaired as expeditiously as practicable.

(7) Change in raw materials or fuels. Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by WAC 173-400-105(1) shall require the submittal of sufficient information to ecology or the authority to determine the effect of the increase upon ambient concentrations of sulfur dioxide. Ecology or the authority may issue regulatory orders requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average annual sulfur content over the initial inventory shall not require such notice.

**AMENDATORY SECTION** (Amending Order DE 83-13, filed 4/15/83)

WAC 173-400-110 NEW SOURCE REVIEW (NSR). ((Construction shall not commence, on any new source that is required to

register per WAC 173-400-100, until a notice of construction has been approved per WAC 173-403-050.))

(1) Applicability.

(a) A notice of construction must be approved by ecology or the authority prior to the construction, installation, or establishment of a new source or emissions unit which is required to register per WAC 173-400-100.

(b) Ecology or the authority may require a notice of construction prior to the construction, installation, or establishment of any other new source, other than a single family or duplex dwelling.

(c) The notice of construction and new source review shall apply only to the emission unit(s) affected and the contaminants involved.

(d) The owner(s) or operator(s) of any source that is required to register per WAC 173-400-100 shall notify ((the department or cognizant local)) ecology or the authority prior to replacement of air pollution control equipment or process equipment other than identical replacement for routine maintenance and repair. ((The department or)) ecology or the authority may determine that a notice of construction is required.

(2) Additional information. Within thirty days of receipt of a notice of construction, ecology or the authority may require the submission of additional plans, specifications, and other information necessary for the review of the proposed new or modified source.

(3) Requirements for nonattainment areas. If the proposed new source is located in an area that is not in attainment for any air contaminant that would be emitted by the source, or if the source is located in an area that is not in attainment for ozone and the source would emit VOCs, ecology or the authority shall review notice(s) of construction, plans, specifications, and other associated information to determine that:

(a) The new source will be in accord with applicable federal and state rules and regulations, including NSPS and NESHAPS; and

(b) The new source will use BACT for emissions control; and

(c) If the new source is a major source or the proposed change is a major modification, it will comply with lowest achievable emission rate (LAER) for emissions of the contaminants for which nonattainment has been designated; and

(d) If the source is a major source and is located in an area that is not in attainment for carbon monoxide or ozone and the source will emit carbon monoxide or VOCs, it is required that there be an analysis of alternative sites, sizes, and production processes and environmental control techniques for the proposed new source which demonstrates that benefits of the proposed new source significantly outweigh the environmental and social costs imposed as a result of its location, construction, and modification. This analysis is the responsibility of the applicant, who may use an environmental impact statement prepared under the State Environmental Policy Act (SEPA) or the National Environmental Policy Act (NEPA) as a source of information; and

(e) The proposed new source will not violate the requirements for reasonable further progress established by the state implementation plan. If the source is a major source or the project is a major modification, the total new actual emissions from all sources existing at the time of application for notice of construction plus proposed allowable emissions for the new source, of the contaminants for which nonattainment has been designated, shall be no greater than the total actual emissions from existing sources, except that: (i) Ecology or the authority may require that new total actual emissions be reduced to less than existing total actual emissions, as necessary to achieve air quality attainment goals stated in an approved plan of attainment, and (ii) the emissions from the proposed new source may be approved without an offsetting reduction from existing sources if an adequate emissions growth allowance is included in an approved plan of attainment. The above requirements must be met by reducing actual emissions from existing source(s). Arrangements for such offsetting reduction(s) of actual emissions must be made by the owner(s) or operator(s) of the proposed new source. The proposed new source may be constructed only after the issuance of a regulatory order(s) to the proposed new source and to all the source(s) that provided the offset. The said orders shall include new allowable emissions limits for all the affected sources; and

(f) If the source is a major source or the project is a major modification, the owner(s) or operator(s) shall demonstrate that all major sources owned or operated by such person (or persons under common control with such person) in the state which are subject to emission limitations are in compliance or on a schedule for compliance with applicable emission limitations and standards under the Federal Clean Air Act; and

(g) In a locality that does not meet national ambient air quality standards and has not been designated a nonattainment area, a proposed new major source or major modification must reduce the impact of its emissions upon air quality by obtaining sufficient emissions reductions to, at a minimum, compensate for its adverse ambient impact. An ecology approved air quality model shall be used to demonstrate a net air quality benefit where the source would otherwise cause or contribute to a violation of any national ambient air quality standard.

(4) Requirements for attainment areas. If the proposed new source is located in an area that is in attainment for all contaminants that would be emitted by the source and the source is located in an ozone attainment area if the source would emit VOCs, ecology or the authority shall review notice(s) of construction, plans, specifications, and other associated information to determine that:

(a) The new source will be in accord with applicable federal and state regulations, including PSD, NSPS, and NESHAPS.

(b) The project will use BACT for emissions control.

(c) The allowable emissions from the proposed new source will not delay the attainment date for an area not in attainment nor cause or contribute to a violation of any national ambient air quality standard. This requirement will be considered to be met if the impact at any location within a nonattainment area or a locality exceeding the applicable standard does not exceed the following levels:

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
CO	-	-	0.5 mg/m <sup>3</sup>	-	2 mg/m <sup>3</sup>
TSP	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>	-	-	-
SO <sub>2</sub>	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>	-	25 ug/m <sup>3</sup>	30 ug/m <sup>3</sup>
PM-10	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>	-	-	-
NO <sub>2</sub>	1.0 ug/m <sup>3</sup>	-	-	-	-

(d) The proposed new source will not cause a violation of any ambient air quality standard.

(e) An offsetting emissions reduction that satisfies the requirements of WAC 173-400-110 (3)(e) may be used to satisfy the requirements of WAC 173-400-110 (4)(c) and (d) and (9) if required.

(5) Preliminary determination. Within thirty days after receipt of all information required, ecology or the authority shall:

(a) Make preliminary determinations on the matters set forth in subsection (3), (4), or (9) of this section whichever is applicable; and

(b) Initiate compliance with the provisions of WAC 173-400-171 relating to public notice and public comment, as applicable.

(6) Final determination. If, after review of all information received including public comment, ecology or the authority finds that all the conditions in subsection (3), (4), or (9) of this section are satisfied, whichever is applicable, the authority will issue a regulatory order to approve the notice of construction for the proposed new source or modification.

(7) Portable sources. For portable sources which locate temporarily at particular sites, the owner(s) or operator(s) shall be allowed to operate at the temporary location without filing a notice of construction, providing that the owner(s) or operator(s) notifies ecology or the authority of intent to operate at the new location at least thirty days prior to starting the operation, and supplies sufficient information to enable ecology or the authority to determine that the operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards and, if in a non-attainment area, will not interfere with scheduled attainment of ambient standards. The permission to operate shall be for a limited period of time (one year or less) and ecology or the authority may set specific conditions for operation during that period. A temporary source shall be required to comply with all applicable emission standards.

(8) Commencement of construction. The owner(s) or operator(s) of the new source shall not commence construction until the applicable notice of construction has been approved.

(9) Visibility requirements. Any new major source or new major modification shall evaluate the visibility impairment per 40 CFR 52.21(e) for all Class I areas in Washington and neighboring states. The evaluation shall comply with the following:

(a) When the land manager has officially designated visibility to be an important attribute, the owner(s) or operator(s) of the new source shall demonstrate that the potential emissions in combination with emissions from all other sources permitted after January 1, 1982, shall not cause or contribute to a significant visibility impairment.

(b) Ecology shall upon receipt of an application for a notice of construction notify the land managers of potentially affected areas. Notification shall be in writing and include a copy of all information relevant to the application including the information developed for this section. This information shall be transmitted to the land manager within thirty days of receipt of the application and at least sixty days prior to public hearing on the application for permit to construct.

(c) All evaluations of visibility impairment required under this section shall use the models on file with ecology or equivalent models approved by ecology or EPA.

(d) The results of the evaluation shall be sent to the land manager of the affected areas for review and recommendation. The review shall consider the degree of visibility impairment, duration, geographic extent, frequency, and time. The recommendation of the land managers concerning adverse impact on visibility shall be sent to ecology within thirty days of receipt of the evaluation results.

(e) Should ecology concur with the recommendation of the land manager, the notice of construction shall be approved or disapproved according to the recommendation. Ecology may find the review of a land manager inadequate and make its own determination. A finding of significant visibility impairment shall require a disapproval of the notice of construction, unless sufficient mitigating measures are developed.

(f) Ecology or land managers may demonstrate that the new source would cause impairment of an integral vista officially designated at least six months before the new source submitted a complete application. The protection of an integral vista by controls on the source shall consider the time necessary for compliance, the energy and nonair quality environmental effects of compliance and the productive life of the source.

(g) Ecology may require visibility monitoring at the site of the new source or potentially affected areas as a part of the applicable regulatory order. The monitoring period may be before or after construction or both.

**AMENDATORY SECTION** (Amending Order 84-48, filed 3/6/85)

WAC 173-400-115 STANDARDS OF PERFORMANCE FOR NEW SOURCES. Title 40, Code of Federal Regulations, Part 60 (standards of performance for new sources), as promulgated prior to ~~((October 1, 1984))~~ July 1, 1989, is adopted by ~~((this))~~ reference ~~((adopted and incorporated herein with the exception of))~~ except for sections 60.5 (determination of construction or modification) and 60.6 (review of plans). ~~((For the purpose of state administration of the federal regulations adopted by reference hereby, the term "administrator" as used therein shall refer to the department or cognizant local authority.))~~

(1) Sections 60.5 and 60.6 of Title 40, Code of Federal Regulations, are not incorporated herein because they provide for preconstruction review of new sources only on request. ~~((By virtue of WAC 173-403-050;))~~ Such review under the state program is mandatory and an order of approval is required ~~((before the))~~ prior to construction, installation or establishment of a new source ~~((may commence))~~.

(2) As of ~~((October 1, 1984))~~ July 1, 1989, the federal regulations adopted by reference hereby set standards of performance affecting facilities for the following described subparts of 40 CFR Part 60:

- Subpart D Fossil fuel fired steam generators for which construction commenced after August 17, 1971, and prior to September 19, 1978, which have a heat input greater than 73 megawatts but not greater than 250 megawatts
- Subpart Da Electric utility steam generating units for which construction commenced after September 18, 1978, which have a heat input greater than 73 megawatts but not greater than 250 megawatts
- Subpart Db Industrial-commercial-institutional steam generating units for which construction commenced after June 19, 1984, and prior to June 19, 1986, which have a heat input greater than 29 megawatts but less than 73 megawatts
- Subpart E Incinerators
- Subpart F Portland cement plants
- Subpart G Nitric acid plants
- Subpart H Sulfuric acid plants
- Subpart I Asphalt concrete plants
- Subpart J Petroleum refineries which produce less than 25,000 barrels per day of refined products

Subpart K	Storage vessels for petroleum liquid constructed after June 11, 1973, and prior to May 19, 1978, which have a capacity greater than 40,000 gallons
Subpart Ka	Storage vessels for petroleum liquids constructed after May 18, 1978, which have a capacity greater than 40,000 gallons
Subpart Kb	<u>Volatile organic liquid storage vessels (including petroleum liquid storage vessels) constructed, reconstructed, or modified after July 23, 1984</u>
Subpart L	Secondary lead smelters
Subpart M	Brass and bronze ingot production plants
Subpart N	Iron and steel plants
Subpart O	Sewage treatment plants
<del>Subpart P</del>	<del>Primary copper smelters</del>
<del>Subpart Q</del>	<del>Primary zinc smelters</del>
<del>Subpart R</del>	<del>Primary lead smelters</del>
Subpart S	<u>Primary aluminum reduction plants</u>
Subpart T	Phosphate fertilizer industry: Wet process phosphoric acid plants
Subpart U	Phosphate fertilizer industry: Superphosphoric acid plants
Subpart V	Phosphate fertilizer industry: Diammonium phosphate plants
Subpart W	Phosphate fertilizer industry: Triple superphosphate plants
Subpart X	Phosphate fertilizer industry: Granular triple superphosphate storage facilities
Subpart Y	Coal preparation plants
Subpart Z	Ferroalloy production facilities
Subpart AA	Steel plants: Electric arc furnaces
Subpart BB	<u>Kraft pulp mills</u>
Subpart CC	Glass manufacturing plants
Subpart DD	Grain elevators
Subpart EE	Industrial surface coating: Metal furniture
Subpart GG	Stationary gas turbines
Subpart HH	Lime manufacturing plants
Subpart KK	Lead acid batteries
Subpart LL	Metallic mineral processing plants
Subpart MM	Automobile and light duty truck surface coating operations
Subpart NN	Phosphate rock plants
Subpart PP	Ammonium sulfate manufacture
Subpart QQ	Publication rotogravure printing
Subpart RR	Pressure sensitive tape and label surface coating operations
Subpart SS	Industrial surface coating: Large appliances
Subpart TT	Industrial surface coating: Metal coils
Subpart UU	Asphalt processing and asphalt roofing manufacture
Subpart VV	SOCMI equipment leaks (VOC)
Subpart WW	Beverage can surface coating operations
Subpart XX	Bulk gasoline terminals
Subpart AAA	New residential wood heaters
Subpart FFF	Flexible vinyl and urethane coating and printing
Subpart GGG	Petroleum refineries - compressors and fugitive emission sources
Subpart HHH	Synthetic fiber production facilities
Subpart JJJ	<u>Petroleum dry cleaners</u>
Subpart PPP	<u>Wool fiberglass insulation manufacturing plants</u>

Compliance with the standards for affected facilities within these source categories shall be determined by performance tests and visual observations of opacity as set forth in the regulations adopted by reference ((hereby)).

**AMENDATORY SECTION (Amending Order 88-39, filed 1/3/89)**

~~WAC 173-400-120 ((MONITORING AND SPECIAL REPORT)) BUBBLE RULES. ((1) Monitoring. The department shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants.~~

~~As a part of this program, the director or his authorized representative may require any source under the jurisdiction of the department to conduct stack and/or ambient air monitoring and to report the results to the department.~~

~~(2) Investigation of conditions. Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the~~

~~control, recovery, or release of air contaminants into the atmosphere, the director or authorized personnel from a cognizant local authority shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing one or two families:~~

~~(3) Source testing. In order to demonstrate compliance with this chapter, the department may require that a test be made of the source using procedures contained in "Source Test Manual - Procedures for Compliance Testing," state of Washington, department of ecology, on file at the department. The operator of a source may be required to provide the necessary platform and sampling ports for the department personnel to perform a test of an emissions unit. The department shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.~~

~~(4) Report of startup, shutdown, breakdown or upset condition. If a startup, shutdown, breakdown or upset condition occurs which could result in an emissions violation or a violation of an ambient air quality standard, the owner or operator of the source shall take the following actions as applicable:~~

~~(a) For a planned condition, such as a startup or shutdown, the condition shall be reported to the department or cognizant local authority in advance of its occurrence.~~

~~(b) For an unplanned condition, such as a breakdown or upset, the condition shall be reported to the department or cognizant local authority as soon as possible.~~

~~Upon request of the department or cognizant local authority, the owner or operator of the source shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.~~

~~Compliance with the requirements of WAC 173-400-120(4) does not relieve the owner or operator of the source from the responsibility to maintain continuous compliance with all the requirements of this chapter nor from the resulting liabilities for failure to comply.~~

~~(5) Continuous monitoring and recording. Owners and operators of the following categories of sources shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified:~~

~~(a) Fossil fuel-fired steam generators:~~

~~(i) Opacity, except where:~~

~~(A) Steam generator capacity is less than two hundred fifty million BTU per hour heat input; or~~

~~(B) Only gaseous fuel is burned; or~~

~~(C) Only oil or a mixture of oil and gas is burned and opacity and particulate regulations can be met without using particulate collection equipment; and, the source has never, through any administrative or judicial procedure, been found in violation of any visible emission standard:~~

~~(ii) Sulfur dioxide, except where:~~

~~(A) Steam generator capacity is less than two hundred fifty million BTU per hour heat input; or~~

~~(B) Sulfur dioxide control equipment has not been installed.~~

~~(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data:~~

~~(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to the department or cognizant local authority by the owner or operator.~~

~~(b) Sulfuric acid plants:~~

~~Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.~~

~~(c) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries:~~

~~Opacity where fresh feed capacity is more than twenty thousand barrels per day:~~

~~(d) Wood residue fuel-fired steam generators:~~

~~(i) Opacity, except where:~~

~~Steam generator capacity is less than one hundred million BTU per hour heat input:~~

~~(ii) Continuous monitoring equipment. The requirements of WAC 173-400-120 (5)(c) do not apply to wood residue fuel-fired steam~~

generators, but continuous monitoring equipment required by WAC 173-400-120(5)(d) shall be subject to approval by the department.

(c) Owners and operators of those sources required to install continuous monitoring equipment under this chapter shall demonstrate to the department or cognizant local authority compliance with the equipment and performance specifications and observe the reporting requirements contained in Title 40, Code of Federal Regulations, Part 51, Appendix P, Sections 3, 4 and 5, promulgated on October 6, 1975, which is by this reference adopted and incorporated herein:

(f) All sources subject to this chapter shall procure and install equipment and commence monitoring and recording activities no later than eighteen months after adoption of this chapter by the department. Any extension to this time requirement shall be negotiated through the variance procedure of WAC 173-400-150.

(g) Special considerations. If for reason of physical plant limitations or extreme economic situations, the department determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels.

(h) Exemptions. This subsection (5) does not apply to any source which is:

(i) Subject to a new source performance standard. These sources will be governed by WAC 173-400-115.

(ii) Not subject to an applicable emission standard.

(iii) Scheduled for retirement within five years after inclusion of monitoring equipment requirements in this chapter, provided that adequate evidence and guarantees are provided that clearly show that the source will cease operations prior to that date.

(i) Monitoring system malfunctions. A source may be temporarily exempted from the monitoring and reporting requirements of this chapter during periods of monitoring system malfunctions provided that the source owner or operator shows to the satisfaction of the department or cognizant local authority that the malfunction was unavoidable and is being repaired as expeditiously as practicable.

(6) Emission inventory. The owner or operator of any air contaminant source shall submit an inventory of emissions from the source each year upon a form and according to instructions received from the department of ecology or cognizant local authority. The inventory may include stack and fugitive emissions of particulate matter, PM-10, sulfur dioxide, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, volatile organic compounds, and other contaminants, and shall be submitted when required no later than one hundred five days after the end of the calendar year. The inventory shall include total emissions for the year in tons per year and an estimate of the percentage of the total emitted each quarter. An estimate shall be made of the one hour and twenty-four hour emissions while operating at maximum capacity. The report shall include the average sulfur content of any fuel or raw material used which will result in emissions of more than twenty-five tons per year of sulfur dioxide.

(7) Change in raw materials or fuels. Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by WAC 173-400-120(6) shall require the submittal of sufficient information to the department or authority to determine the effect of the increase upon ambient concentrations of sulfur dioxide. The department or cognizant local authority may issue regulatory orders requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average annual sulfur content over the initial inventory shall not require such notice.)

(1) Applicability. The owner(s) or operator(s) of any source(s) may apply for a bubble for any contaminant regulated by state or federal law for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emissions units involved.

(2) Conditions. A bubble may be authorized provided the following conditions have been demonstrated to the satisfaction of ecology or the authority.

(a) The contaminants exchanged must be of the same type, that is, particulates for particulates, sulfur dioxide for sulfur dioxide, etc.

(b) The bubble will not interfere with the attainment and maintenance of air quality standards.

(c) The bubble will not result in a delay in compliance by any source, nor a delay in any existing enforcement action.

(d) The bubble will not supersede NSPS, NESHAPS, BACT, or LAER. The emissions of hazardous (NESHAPS) contaminants shall not be increased.

(e) The bubble will not result in an increase in the sum of actual emission rates of the contaminant involved from the emissions units involved.

(f) A bubble may not be authorized only for opacity limits. However, if the emission limit for particulates for a given emissions unit is increased as part of a bubble, the opacity limit for the given emissions unit may be increased subject to the following limitations:

(i) The new opacity limit shall be specific for the given emissions unit;

(ii) The new opacity limit shall be consistent with the new particulates limit;

(iii) An opacity greater than sixty percent shall never be authorized;

(iv) If the given emissions unit is a major emissions unit, the opacity shall be monitored continuously.

(g) The emission limits of the bubble are equivalent to existing limits in enforceability.

(h) Concurrently with or prior to the authorization of a bubble, each affected source shall receive (have received) a regulatory order that establishes total allowable emissions from the source of the contaminant being bubbled, expressed as weight of the contaminant per unit time. The new total allowable emissions shall be considered RACT.

(i) There will be no net adverse impact upon air quality from the establishment of new emission requirements for a specific source or emissions unit. Determination of net adverse impact shall include but not be limited to public perception of opacity and public perception of odorous contaminants.

(j) Specific situations may require additional demonstration as requested by ecology or the authority.

(3) Jurisdiction. Whenever a bubble application involves emissions units, some of which are under the jurisdiction of ecology and some of which are under the jurisdiction of an authority, approval will require concurrence by both authorities. The new emission limits for each emissions unit will be enforced by the authority of original jurisdiction.

(4) Additional information. Within thirty days, after the receipt of a bubble application and all supporting data and documentation, ecology or the authority may require the submission of additional information needed to review the application.

(5) Approval. Within thirty days after all the required information has been received, ecology or the authority shall approve or deny the application, based on a finding that conditions in subsection (2)(a) through (j) of this section have been satisfied or not. If the application is approved, a regulatory order or equivalent document shall be issued which includes new allowable emissions expressed in weight of pollutant per unit time for each emissions unit involved in the application. The order or equivalent document must include all requirements necessary to assure that conditions in subsection (2)(a) through (j) of this section will be satisfied. If the bubble depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit the operation of the affected equipment.

## NEW SECTION

WAC 173-400-131 ISSUANCE OF EMISSION REDUCTION CREDITS. (1) Applicability. The owner(s) or operator(s) of any source(s) may apply to ecology or the authority for an emission reduction credit (ERC) if the source proposes to reduce its actual emissions rate for any contaminant regulated by state or federal law for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emissions unit(s) involved.

(2) Time of application. The application for an ERC must be made prior to or within one hundred eighty days after the emission reduction has been accomplished.

(3) Conditions. An ERC may be authorized provided the following conditions have been demonstrated to the satisfaction of ecology or the authority.

(a) The quantity of emissions in the ERC shall be less than or equal to the old allowable emissions rate or the old actual emissions rate, whichever is the lesser, minus the new allowable emissions rate.

(b) The ERC application must include a description of all the changes that are required to accomplish the claimed emissions reduction, such as, new control equipment, process modifications, limitation of hours of operation, permanent shutdown of equipment, specified control practices, etc.

(c) The ERC must be large enough to be readily quantifiable relative to the source strength of the emissions unit(s) involved, but in no case shall the ERC be for less than one ton per year.

(d) No part of the emission reductions claimed for credit shall have been used as part of a determination of net emission increase, nor as part of an offsetting transaction under WAC 173-400-110 (3)(e), nor as part of a bubble transaction under WAC 173-400-120, nor to satisfy NSPS, BACT, or LAER.

(e) Concurrently with or prior to the authorization of an ERC, the applicant shall receive (have received) a regulatory order that establishes total allowable emissions from the source of the contaminant for which the ERC is requested, expressed as weight of contaminant per unit time. The new allowable emissions shall be considered RACT.

(f) The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

(4) Additional information. Within thirty days after the receipt of an ERC application and all supporting data and documentation, ecology or the authority may require the submission of additional information needed to review the application.

(5) Approval. Within thirty days after all the required information has been received, ecology or the authority shall approve or deny the application, based on a finding that conditions in subsection (3)(a) through (e) of this section have been satisfied or not. If the ERC application has not been approved or denied within thirty days, the ERC will be automatically approved. If the application is approved, ecology or the authority shall:

(a) Issue a regulatory order or equivalent document to assure that the emissions from the source will not exceed the proposed new allowable emission rate(s) claimed in the ERC application, expressed as weight of pollutant per unit time. The regulatory order or equivalent document must include all requirements that are necessary to provide such assurance. If the ERC depends in whole or in part upon the shut-down of equipment, the regulatory order or equivalent document must prohibit the startup of the affected equipment; and,

(b) Issue a certificate of emission reduction credit. The certificate shall specify the issue date, the contaminant(s) involved, the nonattainment area involved, if applicable, and the person to whom the certificate is issued.

#### NEW SECTION

WAC 173-400-136 USE OF EMISSION REDUCTION CREDITS. (1) Permissible use. An ERC may be used to satisfy the requirements for authorization of a bubble under WAC 173-400-120, as a part of a determination of "net emissions increase," as an offsetting reduction to satisfy the requirements for new source review per WAC 173-400-110 (3)(e), to satisfy requirements for PSD review per WAC 173-400-110 (4)(c), or to satisfy requirements for visibility review per WAC 173-400-110 (4)(e).

(2) Surrender of ERC certificate. When an ERC is used under subsection (1) of this section, the certificate for the ERC must be surrendered to the issuing authority. If only a portion of the ERC is used, the amended certificate will be returned to the owner.

(3) Conditions of use. An ERC may be used only for the contaminant(s) for which it was issued. Ecology or the authority may impose additional conditions of use to account for temporal and spatial differences between the emissions unit(s) that generated the ERC and the emissions unit(s) that use the ERC.

(4) Sale of an ERC. An ERC may be sold or otherwise transferred to a person other than the person to whom it was originally issued. Within thirty days after the transfer of ownership, the certificate must be surrendered to the issuing authority. After receiving the certificate, the issuing authority shall reissue the certificate to the new owner.

(5) Time of use. An unused ERC and any unused portion thereof shall expire ten years after date of original issue.

(6) Discount due to change in SIP. If reductions in emissions beyond those identified in the state implementation plan are required to meet an ambient air quality standard, if the standard cannot be met through controls on operating sources, and if the plan must be revised, an ERC may be discounted by ecology or the authority after public involvement per WAC 173-400-171. Any such discount shall not exceed the percentage of additional emission reduction needed to reach attainment.

#### NEW SECTION

WAC 173-400-141 PREVENTION OF SIGNIFICANT DETE-RIORATION (PSD). Section 40 CFR 52.21, Subparts (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (r), (t), (v), and

(w), Prevention of Significant Deterioration of Air Quality, as in effect on July 1, 1989, are incorporated by reference with the following additions and modifications:

(1) Construction of "administrator." In 40 CFR 52.21 (b)(17), federally enforceable, (f)(1)(v), (f)(3), and (f)(4)(i), exclusions from increment consumption, (g), redesignation, (l) and (2), air quality models, (p)(2), federal land manager, and (t), disputed permits or redesignations, the word "administrator" shall be construed in its original meaning. In 40 CFR 52.21 (b)(3)(iii) administrator shall mean both the administrator of EPA and the director of ecology.

(2) Contemporaneous. Subpart 40 CFR 52.21 (b)(3)(ii) is changed to read: "An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs at the same time or within ten years prior to the change. If a decrease occurred more than one year prior to the change it can only be credited if the decrease has been documented by an emission reduction credit."

(3) Public participation. Subpart 40 CFR 51.166(q) public participation, as in effect July 1, 1988, is hereby incorporated by reference, with the following modifications:

(a) In 40 CFR 51.166 (q)(2)(iv), the word "administrator" shall be construed in its original meaning.

(b) In 40 CFR 51.166 (q)(2)(iv), the phrase "specified time period" shall mean thirty days.

(4) Section 40 CFR 51.166 Subpart (p)(1) Sources Impacting Federal Class I areas - additional requirements - Notice to EPA, as in effect on July 1, 1989, is herein incorporated by reference.

(5) Secondary emissions. Subpart 40 CFR 52.21 (b)(18) is changed to read:

Emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships or trains coming to or from the new or modified stationary source; and

(b) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(6) List of Class I areas. The following areas are the Class I areas in Washington state as of January 1, 1989:

Mount Rainier National Park  
North Cascade National Park  
Olympic National Park  
Alpine Lakes Wilderness Area  
Glacier Peak Wilderness Area  
Goat Rocks Wilderness Area  
Mount Adams Wilderness Area  
Pasayten Wilderness Area.

#### NEW SECTION

WAC 173-400-151 RETROFIT REQUIREMENTS FOR VISIBILITY PROTECTION. (1) Determination of best available retrofit technology (BART). Ecology shall identify and analyze each source which may reasonably be anticipated to cause or contribute to impairment of visibility in any mandatory Class I area in Washington and any adjacent state and to determine BART for the contaminant of concern and those additional air pollution control technologies that are to be required to reduce impairment from the source.

(2) Initially defined BART. The owner(s) or operator(s) of any source(s) to which significant visibility impairment of a mandatory Class I area is reasonably attributable shall apply BART for each contaminant contributing to visibility impairment that is emitted at more than 250 tons per year. Each source for which BART is required must install and operate BART as expeditiously as possible, but in no case later than five years after the conditions are included in a regulatory order.

(3) Future definitions of BART. The owner(s) or operator(s) of any source(s) to which significant visibility impairment of a mandatory Class I area is reasonably attributable shall apply BART as new technology becomes available for a contaminant if:

(a) The source emits more than 250 tons per year of the contaminant; and,

(b) The controls representing BART have not previously been required in this section.

(4) Appeal. Any source owner or operator required by this section to install, operate, and maintain BART, may apply to ecology for an exception from that requirement pursuant to 40 CFR 51.303.

#### NEW SECTION

WAC 173-400-161 COMPLIANCE SCHEDULES. (1) Issuance. Whenever a source is found to be in violation of an emission standard or other provision of this chapter, ecology or the authority may issue a regulatory order requiring that the source be brought into compliance within a specified time. The order shall contain a schedule for installation, with intermediate benchmark dates and a final completion date, and shall constitute a compliance schedule. Requirements for public involvement (WAC 173-400-171) must be met.

(2) Effect. A source shall be considered to be in compliance with this chapter if all the provisions of its individual compliance schedule included with a regulatory order are being met. A source is not considered to be in compliance with the state implementation plan (SIP) until the schedule is submitted to and approved by EPA as a SIP revision.

(3) Penalties for delayed compliance. Sources on a compliance schedule but not meeting emissions standards may be subject to penalties as provided in the Federal Clean Air Act.

#### NEW SECTION

WAC 173-400-171 PUBLIC INVOLVEMENT. (1) Applicability. Ecology or the authority shall provide public notice prior to the approval or denial of any of the following types of applications or other actions:

(a) Notice of construction for any new or modified source or emissions unit, if a net significant emissions increase for any pollutant regulated by state or federal law would result; or

(b) Any application or other proposed action for which a public hearing is required by EPA PSD rules; or

(c) Any order to determine RACT; or

(d) An order to establish a compliance schedule or a variance; or

(e) The establishment or disestablishment of a nonattainment area, or the changing of the boundaries thereof; or

(f) An order to demonstrate the creditable height of a stack which exceeds the GEP formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation; or

(g) An order to authorize a bubble; or

(h) Any application or other proposed action made pursuant to this chapter in which there is a substantial public interest according to the discretion of ecology or the authority.

(2) Public notice. Public notice shall be made only after all information required by ecology or the authority has been submitted and after applicable preliminary determinations, if any, have been made. The cost of providing public notice shall be borne by the applicant or other initiator of the action. Public notice shall include:

(a) Availability for public inspection in at least one location near the proposed project, of the nonproprietary information submitted by the applicant and of any applicable preliminary determinations, including analyses of the effect(s) on air quality.

(b) Publication in a newspaper of general circulation in the area of the proposed project of notice:

(i) Giving a brief description of the proposal;

(ii) Advising of the location of the documents made available for public inspection;

(iii) Advising of a thirty-day period for submitting written comment to ecology or the authority;

(iv) Advising that a public hearing may be held if ecology or the authority determines within a thirty-day period that significant public interest exists.

(3) Public comment. No final decision on any application or action of any of the types described in subsection (1) of this section, shall be made until the public comment period has ended and any comments received have been considered. Unless a public hearing is held, the public comment period shall be the thirty-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 and thereafter for such period, if any, as the notice of public hearing may specify.

(4) Public hearings. The applicant, any interested governmental entity, any group or any person may request a public hearing within the

thirty-day period published as above. Any such request shall indicate the interest of the entity filing it and why a hearing is warranted. Ecology or the authority may, in 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(s) and place(s) as ecology or the authority deems reasonable.

(5) Other requirements of law. Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, such procedures may be used in lieu of the provisions of this section.

(6) Public information. Copies of notices of construction, orders, and modifications thereof, not declared confidential by the applicant, which are issued hereunder shall be available for public inspection on request at ecology or the authority.

#### NEW SECTION

WAC 173-400-180 VARIANCE. Any person who owns or is in control of a plant, building, structure, establishment, process, or equipment may apply to ecology for a variance from provisions of this chapter governing the quality, nature, duration, or extent of discharges of air contaminants in accordance with the provisions of RCW 70.94.181.

(1) Jurisdiction. Sources in any area over which a local air pollution control authority has jurisdiction shall make application to that authority rather than ecology. Ecology or the authority may grant such variance, but only after public involvement per WAC 173-400-171.

(2) Full faith and credit. Variances granted by an authority for sources under their jurisdiction will be accepted as variances to this regulation if in compliance with state and federal laws.

(3) EPA concurrence. No variance or renewal shall be construed to set aside or delay any requirements of the Federal Clean Air Act except with the approval and written concurrence of the USEPA.

#### NEW SECTION

WAC 173-400-190 REQUIREMENTS FOR NONATTAINMENT AREAS. The development of specific requirements for nonattainment areas shall include consultation with local government in the area and shall include public involvement per WAC 173-400-171.

#### NEW SECTION

WAC 173-400-200 CREDITABLE STACK HEIGHT AND DISPERSION TECHNIQUES. (1) Applicability. These provisions shall apply to all stationary sources except:

(a) Stacks for which construction had commenced on or before December 31, 1970, except where pollutants are being emitted from such stacks used by sources which were constructed, or reconstructed, or for which major modifications were carried out after December 31, 1970;

(b) Coal-fired steam electric generating units subject to the provisions of Section 118 of the Federal Clean Air Act, which commenced operation before July 1, 1957, and for whose stacks construction commenced before February 8, 1974;

(c) Flares;

(d) Open burning for agricultural or silvicultural purposes as covered under the smoke management plan;

(e) Residential wood combustion and open burning for which episodic restrictions apply.

These provisions shall not be construed to limit the actual stack height.

(2) Prohibitions. No source may use dispersion techniques or excess stack height to meet ambient air quality standards or PSD increment limitations.

(a) Excess stack height. Excess stack height is that portion of a stack which exceeds the greater of:

(i) Sixty-five meters, measured from the ground level elevation at the base of the stack; or

(ii)  $H_g = H + 1.5L$

where:  $H_g$  = "good engineering practice" (GEP) stack height, measured from the ground level elevation at the base of the stack,

$H$  = height of nearby structure(s) measured from the ground level elevation at the base of the stack,

$L$  = lesser dimension, height or projected width, of nearby structure(s), subject to the proviso below.

"Nearby," as used in this subsection for purposes of applying the GEP formula means that distance up to five times the lesser of the

height or the width dimension of a structure, but not greater than 0.8 kilometer (1/2 mile).

Proviso: EPA, ecology, or an authority may require the use of a field study or fluid model to verify the creditable stack height for the source. This also applies to a source seeking credit after the effective date of this rule for an increase in existing stack height up to that established by the GEP formula. A fluid model or field study shall be performed according to the procedures described in the EPA Guideline for Determination of Good Engineering Practice Height (Technical Support Document of the Stack Height Regulations). The creditable height demonstrated by a fluid model or field study shall ensure that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

"Nearby," as used in this proviso for conducting a field study or fluid model, means not greater than 0.8 km, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten times the maximum height of the feature, not to exceed two miles if such feature achieves a height 0.8 km from the stack that is at least forty percent of the GEP stack height or twenty-six meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

"Excessive concentration" is defined for the purpose of determining creditable stack height under this subsection and means a maximum ground-level concentration owing to a significant downwash effect which contributes to excursion over an ambient air quality standard. For sources subject to PSD review (WAC 173-400-141 and 40 CFR 52.21) an excessive concentration alternatively means a maximum ground-level concentration owing to a significant downwash effect which contributes to excursion over a PSD increment. The emission rate used in this demonstration shall be the emission rate specified in the state implementation plan, or in the absence of such, the actual emission rate of the source. "Significant downwash effect" means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(b) Dispersion techniques. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This does not include:

(i) The reheating of a gas stream, following the use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) The merging of gas streams where:

(A) The source was originally designed and constructed with such merged gas streams, as demonstrated by the source owner(s) or operator(s).

(B) Such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion shall apply only to the emission limitation for the pollutant affected by such change in operation.

(C) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons, and not primarily motivated by an intent to gain emissions credit for greater dispersion.

#### NEW SECTION

WAC 173-400-205 ADJUSTMENT FOR ATMOSPHERIC CONDITIONS. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant is prohibited, except as directed according to air pollution episode regulations.

#### NEW SECTION

WAC 173-400-210 EMISSION REQUIREMENTS OF PRIOR JURISDICTIONS. Any emissions unit that was under the jurisdiction

of an authority and now is under the jurisdiction of ecology, shall meet all emission requirements that were applicable prior to transfer of jurisdiction if those standards are more stringent than the standards of this chapter.

#### NEW SECTION

WAC 173-400-220 REQUIREMENTS FOR BOARD MEMBERS. (1) Public interest. A majority of the members of any authority board shall represent the public interest. A majority of the members of such boards, shall not derive any significant portion of their income from persons subject to enforcement orders pursuant to the state and federal clean air acts. An elected public official and the board shall be presumed to represent the public interest. In the event that a member derives a significant portion of his/her income from persons subject to enforcement orders, he/she shall delegate sole responsibility for administration of any part of the program which involves these persons to an assistant.

(2) Disclosure. Each member of any local board shall adequately disclose any potential conflict of interest in any matter prior to any action or consideration thereon, and the member shall remove himself/herself from participation as a board member in any action or voting on such matter.

(3) Define significant income. For the purposes of this section, "significant portion of income" shall mean twenty percent of gross personal income for a calendar year. In the case of a retired person, "significant portion of income" shall mean fifty percent of income in the form of pension or retirement benefits from a single source other than Social Security. Income derived from employment with local or state government shall not be considered in the determination of "significant portion of income."

#### NEW SECTION

WAC 173-400-230 REGULATORY ACTIONS. Ecology may take any of the following regulatory actions to enforce this chapter.

(1) Notice of violation. Whenever ecology has reason to believe that any provision of this chapter has been violated, it may cause written notice to be served on the alleged violator or violators. The notice shall specify the provision of this chapter alleged to be violated and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time.

(2) Civil penalty. Any person who violates any of the provisions of this chapter, shall be subject to a penalty in the form of a fine in an amount not to exceed one thousand dollars per day for each violation. Each such violation shall be separate and distinct and, for a continuing violation, each day's continuance shall be a separate and distinct violation. The penalty shall be imposed by a notice in writing from personnel of ecology or an authority, describing the violation with reasonable detail. Further, the person is subject to a fine of up to five thousand dollars to be levied by the director if requested by the board of a local authority or if the director determines that the penalty is needed for effective enforcement of this chapter. The maximum daily fine imposed for violation of standards by a specific emissions unit is five thousand dollars. Upon written application submitted to ecology within fifteen days after notice has been received the director may remit or mitigate the penalty upon such terms as the director deems proper and when deemed in the best interest to carry out the purpose of this chapter. The mitigation shall not affect or reduce the penalty imposed by the local board. The maximum daily fine that may be imposed upon any emissions unit for violation of any opacity standard is four hundred dollars.

(3) Assurance of discontinuance. Personnel of ecology or an authority may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter. Any such assurance shall specify a time limit during which discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter which make the alleged act or practice unlawful for the purpose of securing an injunction or other relief from the superior court.

(4) Restraining orders, injunctions. Whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, the director, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

(5) Emergency episodes. Ecology may issue such orders as authorized by chapter 173-435 WAC via chapter 70.94 RCW, whenever an air pollution episode forecast is declared.

(6) Compliance orders. Ecology may issue a compliance order in conjunction with a notice of violation. The order shall require the recipient of the notice of violation either to take necessary corrective action or to submit a plan for corrective action and a date when such action will be initiated.

#### NEW SECTION

WAC 173-400-240 CRIMINAL PENALTIES. Persons in violation of Title 173 WAC may be subject to the provisions of RCW 70.94.430.

#### NEW SECTION

WAC 173-400-250 APPEALS. Decisions and orders of ecology or an authority may be appealed to the pollution control hearings board pursuant to chapter 43.21B RCW and chapter 371-08 WAC.

AMENDATORY SECTION (Amending Order DE 80-15, filed 8/20/80)

WAC 173-405-012 STATEMENT OF PURPOSE. These rules are enacted under the provisions of the Washington Clean Air Act as amended (RCW 70.94.395) to:

(1) Assume state jurisdiction over emissions from kraft pulping mills ~~((in order))~~ to provide for the systematic ~~((reduction and))~~ control of air pollution in ~~((the kraft pulping))~~ this industry and for the proper development of the state's natural resources; and

(2) Establish ~~((standards deemed to be))~~ technically feasible and reasonably attainable standards and revise such standards as new information and better technology are developed and become available.

AMENDATORY SECTION (Amending Order 84-50, filed 3/6/85)

WAC 173-405-021 DEFINITIONS. The definitions of terms contained in chapter 173-400 are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter shall have the following meanings ~~((; general terms common with other chapters as defined in chapter 173-403 WAC, and terms specific to kraft pulping mills as defined below:))~~:

(1) "Kraft mill" means any manufacturing facility which uses an alkaline solution containing sodium hydroxide and/or sodium sulfide, and any other chemical pulping facility, except those covered by chapter 173-410 WAC, to produce pulp and/or paper products from wood fibers. For the purposes of this regulation "kraft mill" is equivalent to "source."

(2) ~~((("New source" means a source which commences construction after September 24, 1976. Addition to, enlargement, modification, replacement, or any alteration of any process or source which may increase emissions or ambient air concentrations of any contaminant for which federal or state ambient or emissions standards have been established shall be construed as construction or installation or establishment of a new source. In addition every major modification (as defined in WAC 173-403-030) shall be construed as construction or installation or establishment of a new source.))~~

~~((3))~~ "Noncondensibles" means gases and vapors from the digestion and evaporation processes of a mill that are not condensed with the equipment used in those processes.

~~((4))~~ (3) "Recovery furnace stack" means the stack from which the products of combustion from the recovery furnace are emitted to the ambient air.

~~((5))~~ "Total reduced sulfur, (TRS)" means hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides present, expressed as hydrogen sulfide:))

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-405-033 STANDARDS OF PERFORMANCE. ~~((For kraft mills which commenced construction after September 24, 1976, Title 40, Code of Federal Regulations Part 60, subparts A, and BB and appendix A, B, C and D as promulgated prior to December 1, 1982, is by this reference adopted and incorporated herein with the~~

~~exception of sections 60.5 (determination of construction or modification) and 60.6 (review of plans). For the purpose of state administration of the federal regulations adopted by reference hereby, the term "administrator" as used therein shall refer to the department of ecology:)) All the provisions of WAC 173-400-115 "Standards of performance for new sources" shall apply to all sources to which this chapter is applicable.~~

AMENDATORY SECTION (Amending Order DE 83-22, filed 8/26/83)

WAC 173-405-035 EMISSION STANDARDS FOR SOURCES EMITTING HAZARDOUS AIR POLLUTANTS. ~~((The national emissions standards for hazardous air pollutants (NESHAPS) are by this reference adopted and incorporated herein:~~

~~((2) The department, at any time after the effective date of this section, may conduct source tests and require access to records, books, files, and other information specific to the control, recovery, or release of asbestos, beryllium, mercury, or vinyl chloride in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities. Source testing, monitoring, and analytical methods for sources of the above-named contaminants shall conform with the requirements of NESHAPS:~~

~~((3) This section shall not apply to any source operating pursuant to a waiver granted by the United States Environmental Protection Agency or an exemption granted by the president of the United States during the effective life of such waiver or exemption:)) All the provisions of WAC 173-400-075 "Emission standards for sources emitting hazardous air pollutants" shall apply to all sources to which this chapter is applicable.~~

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-405-040 EMISSION STANDARDS. In addition to the general applicability of chapter 173-400 WAC to all emission sources; no kraft pulp mill shall cause or permit air contaminant emissions in excess of the limits ~~((described in this section, as modified by chapter 173-403 WAC if applicable. Further, all kraft pulp mills are required to use reasonably available control technology which may be determined for some mills to be more stringent than the emission limitations of this chapter. In cases where current controls are determined to be less than reasonably available control technology (RACT), the department shall, on a case-by-case basis, define RACT for each source and issue a regulatory order to the mill for installation of RACT. The order will contain a schedule for installation, with intermediate benchmark dates and a final completion date and shall constitute a compliance schedule)) listed below.~~

(1) Recovery furnaces.

(a) The particulate emissions from each recovery furnace stack shall not exceed 0.23 grams of particulate per dry cubic meter at standard conditions (0.10 grains/dscf) corrected to eight percent oxygen.

(b) The TRS emissions from each recovery furnace stack constructed before January 1, 1970, and for recovery furnaces that have direct contact evaporators, shall not exceed 17.5 ppm corrected to eight percent oxygen for a daily average.

(c) The TRS emissions from each recovery furnace constructed after January 1, 1970, which does not have a contact evaporator, shall not exceed 5.0 ppm corrected to eight percent oxygen for a daily average.

(2) Smelt dissolver tank vent. The particulate emissions from smelt dissolver tank vents shall not exceed 0.15 grams per kilogram (0.30 pounds per ton) of solids fired at the associated recovery furnace.

(3) Lime kilns.

(a) The particulate emission from each lime kiln stack shall not exceed 0.30 grams of particulate per dry cubic meter (0.13 grains/dscf) at standard conditions corrected to ten percent oxygen.

(b) The TRS emissions from any lime kiln stack shall not exceed eighty ppm expressed as hydrogen sulfide for more than two consecutive hours in any one day.

(c) The average daily emission of TRS from any lime kiln stack shall not exceed fifty ppm. After January 1, 1985, TRS emissions from each lime kiln stack shall not exceed twenty ppm corrected to ten percent oxygen for a daily average.

(4) Other TRS emissions units. Noncondensibles from digesters, multiple-effect evaporators and condensate stripper system shall at all times be treated to reduce the emissions of TRS equal to the reduction achieved by thermal oxidation in a lime kiln. ~~((After January 1,~~

+982;)) A backup treatment system or equivalent approved by ((the department)) ecology must be installed to assure continual treatment.

(5) Other particulate emissions units. The emission of particulates from emissions units other than kraft recovery furnaces, lime kilns, or smelt dissolving tank vents, shall not exceed the following maximums:

(a) 0.46 grams per dry cubic meter at standard conditions (0.2 grains/dscf) corrected to seven percent oxygen, for units which combust wood and wood by-products to produce steam and which commenced construction prior to January 1, 1983.

(b) 0.12 grams per dry cubic meter at standard conditions (0.05 grains/dscf) corrected to seven percent oxygen, for units which combust fuel other than wood and wood by-products to produce steam, and which commenced construction after January 1, 1983.

(c) 0.23 grams per dry cubic meter at standard conditions (0.1 grains/dscf) corrected to seven percent oxygen in the case of combustion units, for units not classified under (a) or (b) of this subsection.

(6) ((Fugitive emissions. Each kraft mill shall take reasonable precautions to prevent fugitive emissions.

(7) Masking. No kraft mill shall cause or permit the installation or use of any device, or the use of any means which, without resulting in a reduction in the total amount of air contaminant emitted, conceals an emission of an air contaminant which would otherwise violate any provisions of this chapter.

(8) Fallout. No kraft mill shall cause or permit the emission of particulate matter from any emissions unit which becomes deposited beyond the property under direct control of the owner or operator of the kraft mill in such quantities or of such character or duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or will interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.

(9) Other contaminants. No kraft mill shall cause or permit the emission of an air contaminant or water droplets including an air contaminant whose emission is not otherwise prohibited by this chapter, in such quantities or of such characteristics or duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with use or enjoyment of property.

((+9)) No person shall cause or allow the emission of a plume from any kraft recovery furnace, smelt dissolver tank, or lime kiln, which has an average opacity greater than thirty-five percent for more than six consecutive minutes in any sixty minute period, except as described in WAC 173-405-040((+9)) (7).

No person shall cause or allow the emission of a plume, from any emissions unit other than a kraft recovery furnace, smelt dissolver tank, or lime kiln, which has an average opacity greater than twenty percent for more than six consecutive minutes in any sixty minute period, except that these provisions do not apply when the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to permit soot blowing and grate cleaning necessary to the operation of the boiler facility. As such, this practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and ((the department)) ecology shall be advised of the schedule.

There shall be no more than one violation notice issued in any sixty minute period.

These provisions shall not apply when the presence of uncombined water is the only reason for the opacity of the plume to exceed the applicable maximum.

((+7)) (7) Each mill may petition for, and ((the department)) ecology may establish by regulatory order, other opacity limits for a specific kraft recovery furnace or lime kiln, providing:

(a) Compliance with all other applicable emission limits can be demonstrated; and

(b) Best practicable operation and maintenance procedures, as approved by ((the department)) ecology, are continuously employed.

((+7)) (8) Any person electing to apply for exceptions per the provisions of WAC 173-405-040((+7)) (7) shall submit a program acceptable to ((the department of)) ecology. The program shall include the following information: The amount and concentration of suspended particulate material emitted during best practicable operating procedures, opacity recorded at such emission level, the type of equipment and procedures which will be used to demonstrate compliance and the time required for installation of the equipment.

((+7)) (9) The opacity provisions of this chapter shall apply until an application is received by ((the department)) ecology petitioning for a revised limit as allowed by WAC 173-405-040((+7)) (7). After a

petition is received, enforcement of the opacity provisions will be stayed until the application is rejected or a new limit is established.

((+4)) Odors. No kraft pulping mill shall cause or permit the emission of odors in such quantities or of such duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with the use or enjoyment of property.

((+5)) (10) Operation and maintenance. At all times, including periods of abnormal operation and upset conditions, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to ((the department)) ecology which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

((+6)) (11) SO<sub>2</sub>.

(a) The emission of sulfur dioxide from any recovery furnace or lime kiln shall not exceed five hundred ppm for an hourly average, corrected to eight percent oxygen for a recovery furnace or to ten percent oxygen for a lime kiln.

(b) The emission of sulfur dioxide from any emissions unit other than a recovery furnace or lime kiln shall not exceed one thousand ppm for an hourly average, corrected to seven percent oxygen for combustion units.

((+7)) (12) Source testing. ((In order)) To demonstrate compliance with this chapter, ((the department may require that a test be made of any emissions unit using procedures contained in Source Test Manual - Procedures for Compliance Testing, state of Washington, department of ecology, on file at the department. The operator of a source may be required to provide the necessary platform and sampling ports for the department personnel to perform a test of an emissions unit. The department shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time)) refer to WAC 173-400-105.

AMENDATORY SECTION (Amending Order 87-50, filed 12/16/87)

WAC 173-405-045 CREDITABLE STACK HEIGHT AND DISPERSION TECHNIQUES. The conditions of WAC ((+73-403-141 and 173-403-145)) 173-400-200 shall apply to all sources covered by this chapter.

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-405-061 MORE RESTRICTIVE EMISSION STANDARDS. ((The department)) Ecology may establish more restrictive emission standards for new mills or for mills expanding existing facilities pursuant to WAC ((+73-403-050)) 173-400-110.

AMENDATORY SECTION (Amending Order DE 80-15, filed 8/20/80)

WAC 173-405-072 MONITORING REQUIREMENTS. Each ((kraft)) mill shall conduct routine monitoring of emissions in accordance with a program that has been approved by ((the department)) ecology. Results of the monitoring shall be reported within ((thirty)) fifteen days of the end of each calendar month and shall include data as follows:

(1) Particulate((-)); The results of particulate measurements made on each source during the month.

(2) TRS((-));

(a) The average TRS concentration expressed in units of the standard for each recovery furnace and lime kiln stack.

(b) The date, time and concentration of TRS for each TRS emissions violation and the total numbers of hours that exceed the standard.

(3) Opacity or other continuous monitor((-));

(a) The date and time of opacity in excess of the standard.

(b) If equipment for continuous monitoring of opacity is not available, continuous monitoring of operating parameters may be required by a regulatory order as an alternate. If an alternate is approved, the date and time of each occurrence in excess of the regulatory order must be reported.

(4) Production((-):) The average daily production of air-dried unbleached pulp.

(5) Other data((-):) Each kraft mill shall furnish, upon request of ((the department)) ecology, such other pertinent data ((as the department may require)) required to evaluate the mill's emissions or emission control program.

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-405-077 REPORT OF STARTUP, SHUTDOWN, BREAKDOWN OR UPSET CONDITIONS. ~~((If a startup, shutdown, breakdown or upset condition occurs which could result in an emission violation or a violation of an ambient air quality standard, the owner or operator of the source shall take the following actions as applicable:~~

~~(1) For a planned condition, such as a startup or shutdown, the condition shall be reported to the department, or its delegated authority, in advance of its occurrence.~~

~~(2) For an unplanned condition, such as a breakdown or upset, the condition shall be reported to the department, or its delegated authority as soon as possible.~~

~~Upon request of the department or its delegated authority, the owner or operator of the source shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the change of recurrence.~~

~~Compliance with the requirements of WAC 173-405-077, does not relieve the owner or operator of the source from the responsibility to maintain continuous compliance with all the requirements of chapter 173-405 WAC nor from the resulting liabilities for failure to comply.) To determine compliance with this chapter, refer to WAC 173-400-105(5).~~

AMENDATORY SECTION (Amending Order 88-39, filed 1/3/89)

WAC 173-405-078 EMISSION INVENTORY. ~~((The owner or operator of any kraft pulp mill shall submit an inventory of emissions from the source each year upon a form and according to instructions received from the department of ecology. The inventory may include stack and fugitive emissions of particulate matter, PM-10, sulfur dioxide, carbon monoxide, volatile organic compounds, TRS, and other contaminants, and shall be submitted when required no later than one hundred five days after the end of the calendar year. The inventory shall include total emissions for the year in tons per year and an estimate of the percentage of the total emitted each quarter. An estimate shall be made of the one hour and twenty-four hour emissions while operating at capacity. The report shall include the average sulfur content of any fossil fuel used which will result in emissions of more than twenty-five tons per year of sulfur dioxide.)) To determine compliance with this chapter, refer to WAC 173-400-105(1).~~

AMENDATORY SECTION (Amending Order DE 80-7 [DE 83-13], filed 3/21/80 [4/15/83])

WAC 173-405-086 NEW SOURCE REVIEW (NSR). ~~((Construction shall not commence on any new source until a notice of construction has been approved by the department pursuant to WAC 173-403-050. The owner or operator of any source shall notify the department prior to replacement of air pollution control equipment or process equipment other than replacement for routine maintenance and repair. The department may determine that a notice of construction is required.)) The conditions of WAC 173-400-110 shall apply to all new major sources and major modifications covered by this chapter.~~

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

AMENDATORY SECTION (Amending Order 87-50, filed 12/16/87)

WAC 173-405-087 PREVENTION OF SIGNIFICANT DETERIORATION (PSD). The conditions of WAC ~~((173-403-080))~~ 173-400-141 shall apply to all new ~~((and modified))~~ major sources and major modifications covered by this chapter.

AMENDATORY SECTION (Amending Order DE 76-35, filed 12/28/76)

WAC 173-405-091 SPECIAL STUDIES. ~~((The department))~~ Ecology may require such additional special studies relevant to process emissions and establish completion dates as it determines necessary.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-405-041 EMISSION REQUIREMENTS OF PRIOR JURISDICTIONS.

AMENDATORY SECTION (Amending Order DE 80-16, filed 8/20/80)

WAC 173-410-012 STATEMENT OF PURPOSE. These rules are enacted under the provisions of the Washington Clean Air Act as amended (RCW 70.94.395) to:

(1) Assume state jurisdiction over emissions from sulfite pulping mills ~~((in order))~~ to provide for the systematic ~~((reduction and))~~ control of air pollution in ~~((the sulfite pulping))~~ this industry and for the proper development of the state's natural resources; and

(2) Establish ~~((standards deemed to be))~~ technically feasible and reasonably attainable standards and revise such standards as new information and better technology are developed and become available.

AMENDATORY SECTION (Amending Order 84-50, filed 3/6/85)

WAC 173-410-021 DEFINITIONS. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter, shall have the following meanings((; general terms common with other chapters as defined in chapter 173-403 WAC, and terms specific to sulfite pulping mills as defined below:)):

(1) "Acid plant" means the facility in which the cooking liquor is either manufactured or fortified when not associated with a recovery system.

(2) "Average daily emission" means total weight of an air contaminant emitted in each month, divided by the number of days of production that month.

(3) "Average daily production" means air dried tons of unbleached pulp produced in a month, divided by the number of days of production in that month.

(4) "Blow system" includes the storage chest, tank or pit to which the digester pulp is discharged following the cook.

(5) ~~((New source" means a source which commences construction after January 1972. Addition to, enlargement, modification, replacement, or any alteration of any process or source which may increase emissions or ambient air concentrations of any contaminant for which federal or state ambient or emissions standards have been established shall be construed as construction or installation or establishment of a new source. In addition every major modification (as defined in WAC 173-403-030) shall be construed as construction or installation or establishment of a new source.~~

~~((6))~~ "Recovery system" means the process by which all or part of the cooking chemicals may be recovered, and cooking liquor regenerated from spent cooking liquor, including evaporation, combustion, dissolving, fortification, storage facilities, and emission control equipment associated with the recovery cycle.

~~((7))~~ (6) "Sulfite pulping mill" means any manufacturing facility which uses a cooking liquor consisting of sulfuric acid, a sulfite or bisulfite salt alone or in any combination, with or without additional mechanical refining or delignification to produce pulp, pulp products or cellulose from wood fibers. For the purposes of this regulation "sulfite pulping mill" is equivalent to "source."

~~((8))~~ "Total reduced sulfur (TRS)" means hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and other organic sulfides present, expressed as hydrogen sulfide.))

AMENDATORY SECTION (Amending Order DE 83-22, filed 8/26/83)

WAC 173-410-035 EMISSION STANDARDS FOR SOURCES EMITTING HAZARDOUS AIR POLLUTANTS. ~~((+))~~ The national emissions standards for hazardous air pollutants (NESHAPS) are by this reference adopted and incorporated herein.

(2) The department, at any time after the effective date of this section, may conduct source tests and require access to records, books, files, and other information specific to the control, recovery, or release of asbestos, beryllium, mercury, or vinyl chloride in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities. Source testing, monitoring, and analytical methods for sources of the above-named contaminants shall conform with the requirements of NESHAPS.

(3) This section shall not apply to any source operating pursuant to a waiver granted by the United States Environmental Protection Agency or an exemption granted by the president of the United States during the effective life of such waiver or exemption. All the provisions of WAC 173-400-075 "Emission standards for sources emitting hazardous air pollutants" shall apply to all sources to which this chapter is applicable.

**AMENDATORY SECTION** (Amending Order DE 83-13, filed 4/15/83)

WAC 173-410-040 EMISSION STANDARDS. In addition to the general applicability of chapter 173-400 WAC to all emission sources; no sulfite pulping mill shall cause or permit air contaminant emissions in excess of the limits listed below. ((All sulfite pulping mills are required to meet the emission standards of this chapter, as modified by chapter 173-403 WAC if applicable. Further, all point sources are required to use reasonably available control technology which may be determined for some sources or source categories to be more stringent than the emission limits of this chapter. In cases where current controls are determined to be less than reasonably available control technology (RACT), the department shall, on a case-by-case basis, define RACT for each source or source category and issue a regulatory order to the operator of the source defining RACT. The order will contain a schedule for installation, with intermediate benchmark dates, and a final completion date and shall constitute a compliance schedule.))

(1) Sulfur dioxide.

(a) The total average daily emissions from a sulfite pulping mill, or a portion of a sulfite pulping mill which practices incineration of the spent sulfite liquor, shall not exceed ten grams of sulfur dioxide per kilogram (twenty pounds per ton) of air dried, unbleached pulp produced.

(b) The total average daily emissions from a sulfite pulping mill, or a portion of a sulfite pulping mill that does not incinerate the spent sulfite liquor, shall not exceed two grams of sulfur dioxide per kilogram (four pounds per ton) of air dried, unbleached pulp produced.

(c) The blow system emissions shall not exceed 0.1 grams of sulfur dioxide per minute, on a fifteen minute average, per kilogram (0.2 pounds per ton) of air dried, unbleached pulp discharged from the digester.

(d) Emissions from the recovery system and acid plant shall not exceed 800 ppm of sulfur dioxide for any hourly average.

(e) Emissions from recovery systems constructed after January 24, 1972, shall not exceed 300 ppm of sulfur dioxide for any hourly average.

((((Emissions from any emissions unit, other than a recovery system, a blow system or an acid plant, shall not exceed 1000 ppm of sulfur dioxide, corrected to seven percent oxygen in the case of combustion unit, for any hourly average.))

(2) Particulate.

(a) Emissions of particulate from recovery systems constructed before January 24, 1972, shall not exceed 0.23 grams per dry cubic meter of exhaust at standard conditions (0.10 grains/dscf) corrected to eight percent oxygen.

(b) Emissions of particulate matter from recovery systems constructed after January 24, 1972, shall not exceed 0.14 grams per dry cubic meter of exhaust at standard conditions (0.06 grains/dscf) corrected to eight percent oxygen.

(c) The emission of particulates from emissions units other than acid plants or recovery systems shall not exceed the following maximums:

(i) 0.46 grams per dry cubic meter at standard conditions (0.2 grains/dscf) corrected to seven percent oxygen, for units which combust wood to produce steam and which commenced construction prior to January 1, 1983.

(ii) 0.12 grams per dry cubic meter at standard conditions (0.05 grains/dscf) corrected to seven percent oxygen, for units which combust fuel other than wood to produce steam, and which commenced construction after January 1, 1983.

(iii) 0.23 grams per dry cubic meter at standard conditions (0.1 grains/dscf) corrected to seven percent oxygen in the case of combustion units, for units not classified under ((subsections)) (c) (i) or (ii) of this ((section)) subsection.

(3) ((Each sulfite mill shall take reasonable precautions to prevent fugitive emissions from becoming airborne and if located in a nonattainment area shall be required to use reasonably available control technology (RACT) to control fugitive emissions of nonattainment contaminants.

(4) Masking. No sulfite mill shall cause or permit the installation or use of any device, or the use of any means which, without resulting in a reduction in the total amount of air contaminant emitted, conceals an emission of an air contaminant which would otherwise violate any provisions of this chapter.

(5) Fallout. No sulfite mill shall cause or permit the emission of particulate matter to be deposited beyond the property under direct control of the owner or operator of the sulfite mill in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material was deposited.

(6) Other contaminants. No sulfite mill shall cause or permit the emission of an air contaminant or water droplets, including an air contaminant whose emission is not otherwise prohibited by this chapter, in such quantities or of such characteristics or 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 or property.

(7)) Opacity. No person shall cause or allow the emission of a plume from a recovery system or acid plant which has an average opacity greater than thirty-five percent, for more than six consecutive minutes in any sixty minute period, except as ((described in WAC 173-410-040(9))) allowed per RCW 70.94.331 (2)(c).

((No person shall cause or allow the emissions of a plume, from any emissions unit other than a recovery system or an acid plant, which has an average opacity greater than twenty percent for more than six consecutive minutes in any sixty-minute period, except that these provisions do not apply when the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to permit soot blowing and grate cleaning necessary to the operation of the boiler facility. As such, this practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and the department be advised of the schedule. There shall be no more than one violation for any sixty-minute period.

(8) The provisions of WAC 173-410-040(7) shall not apply when the presence of uncombined water is the only reason for the opacity of the plume to exceed the applicable maximum.

(9) Each mill may petition for, and the department may establish by regulatory order, other opacity limits for a specific recovery system or acid plant providing:

(a) Compliance with all other applicable emission limits can be demonstrated; and

(b) Best practicable operation and maintenance procedures, as approved by the department, are continuously employed.

(10) Any person electing to apply for exceptions per the provisions of WAC 173-410-040(9) shall submit a program acceptable to the department. The program shall include the following information: The amount and concentration of suspended particulate material emitted during best practicable operating procedures, opacity recorded at such emission level, the type of equipment and procedures which will be used to demonstrate compliance and the time required for installation of the equipment.

(11) The opacity provisions of this chapter shall apply until an application is received by the department petitioning for a revised limit as allowed by WAC 173-410-040(9).

After a petition is received, enforcement of the opacity provisions will be stayed until the application is rejected or a new limit is established.

(12) Odors. No sulfite pulping mill shall cause or permit the emission of odors in such quantities or of such characteristics or duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property.

((3)) (4) Operation and maintenance. At all times, including periods of abnormal operations and upset conditions, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice. Determination

of whether acceptable operating and maintenance procedures are being used will be based on information available to ~~((the department))~~ ecology which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

~~((14))~~ (5) No recovery system shall emit total reduced sulfur (TRS) gases in excess of 17.5 ppm for a daily average.

~~((15))~~ (6) More restrictive limits. ~~((Notwithstanding the specific emission limits set forth in this chapter, the department may, after notice and hearing, establish more restrictive emission limits if the department has))~~ Ecology may set more restrictive emissions limits than the specific limits set in this chapter ~~(after public involvement and hearing)~~, if there is reason to believe that the emission(s) from ~~((the))~~ a source is a cause of public nuisance or a cause of violation of ambient air quality standards. The source shall, within ninety days from notification of such occurrence, achieve operation that will prevent further recurrence of the nuisance or violation.

~~((16))~~ (7) Source testing. ~~((In order))~~ To demonstrate compliance with this chapter, ~~((the department may require that a test be made of the source using procedures contained in Source Test Manual - Procedures for Compliance Testing, state of Washington, department of ecology, on file at the department. The operator of a source may be required to provide the necessary platform and sampling ports for the department personnel to perform a test of the source. The department shall be allowed to obtain a sample from any source. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time))~~ refer to WAC 173-400-105.

#### AMENDATORY SECTION (Amending Order 87-50, filed 12/16/87)

WAC 173-410-045 CREDITABLE STACK HEIGHT AND DISPERSION TECHNIQUES. The conditions of WAC ~~((173-403-141 and 173-403-145))~~ 173-400-200 shall apply to all sources covered by this chapter.

#### AMENDATORY SECTION (Amending Order DE 80-16, filed 8/20/80)

WAC 173-410-062 MONITORING REQUIREMENTS. ~~((1))~~ Each mill shall conduct routine monitoring of emissions in accordance with a program that has been approved by ~~((the department))~~ ecology. Results of monitoring shall be reported within ~~((thirty))~~ fifteen days of the end of each calendar month and shall include data as follows:

~~((1a))~~ (1) For the recovery system and acid plant:  
~~((1a))~~ (a) The average daily emissions of sulfur dioxide expressed as grams SO<sub>2</sub> per kilogram of air dried, unbleached pulp produced and the kilograms of SO<sub>2</sub> per day.

~~((1b))~~ (b) Daily average concentration of sulfur dioxide.  
~~((1c))~~ (c) The date, time and concentration for each sulfur dioxide emission violation and the total number of hours that exceed the standard.

~~((1d))~~ (d) The results of particulate tests conducted during the month.

~~((1e))~~ (2) For the blow system(~~;~~):  
(a) The grams of sulfur dioxide per minute, on a fifteen minute average, per kilogram of air dried, unbleached pulp discharged from the digester.

~~((1f))~~ (b) The average daily production of air dried, unbleached pulp.

~~((1g))~~ (3) Each mill shall furnish, upon request of ~~((the department))~~ ecology, such other pertinent data ~~((as the department may require))~~ required to evaluate the mill's emission control program.

~~((1h))~~ (4) All measurements shall be made in accordance with ~~((techniques approved by the department))~~ WAC 173-400-105.

~~((1i))~~ (5) Each mill shall be required to establish a program approved by ~~((the department))~~ ecology for continuous opacity monitoring to demonstrate compliance with WAC 173-410-040~~((7))~~ (3) and to report the results to ~~((the department))~~ ecology in a format and on a schedule set by regulatory order. If equipment for continuous monitoring of opacity is not available, continuous monitoring of operating parameters may be required as an alternate until continuous opacity monitoring equipment is available.

#### AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-410-067 REPORT OF STARTUP, SHUTDOWN, BREAKDOWN OR UPSET CONDITIONS. ~~((If a startup, shutdown, breakdown or upset condition occurs which could result in an emission violation or a violation of an ambient air quality standard, the owner or operator of the source shall take the following actions as applicable:~~

(1) For a planned condition, such as a startup or shutdown, the condition shall be reported to the department, or its delegated authority, in advance of its occurrence.

(2) For an unplanned condition, such as a breakdown or upset, the condition shall be reported to the department, or its delegated authority as soon as possible.

Upon request of the department or its delegated authority, the owner or operator of the source shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

Compliance with the requirements of WAC 173-410-067, does not relieve the owner or operator of the source from the responsibility to maintain continuous compliance with all the requirements of chapter 173-410 WAC nor from the resulting liabilities for failure to comply.) To demonstrate compliance with this chapter, refer to WAC 173-400-105(5).

#### AMENDATORY SECTION (Amending Order 88-39, filed 1/3/89)

WAC 173-410-071 EMISSION INVENTORY. ~~((The owner or operator of any sulfite pulping mill shall submit an inventory of emissions from the source each year upon a form and according to instructions received from the department of ecology. The inventory may include stack and fugitive emissions of particulate matter, PM-10, sulfur dioxide, carbon monoxide, volatile organic compounds, TRS, and other contaminants, and shall be submitted when required no later than one hundred five days after the end of the calendar year. The inventory shall include total emissions for the year in tons per year and an estimate of the percentage of the total emitted each quarter. An estimate shall be made of the one hour and twenty-four hour emissions while operating at capacity. The report shall include the average sulfur content of any fossil fuel which will result in emissions of more than twenty-five tons per year of sulfur dioxide.))~~ To demonstrate compliance with this chapter, refer to WAC 173-400-105(1).

#### AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-410-086 NEW SOURCE REVIEW (NSR). ~~((Construction shall not commence on any new source until a notice of construction has been approved by the department pursuant to WAC 173-403-050. The owner or operator of any source shall notify the department prior to replacement of air pollution control equipment or process equipment other than replacement for routine maintenance and repair. The department may determine that a notice of construction is required.))~~ The conditions of WAC 173-400-110 shall apply to all new major sources and major modifications covered by this chapter.

#### AMENDATORY SECTION (Amending Order 87-50, filed 12/16/87)

WAC 173-410-087 PREVENTION OF SIGNIFICANT DETERIORATION (PSD). The conditions of WAC ~~((173-403-080))~~ 173-400-141 shall apply to all new ~~((and modified))~~ major sources and major modifications covered by this chapter.

#### NEW SECTION

WAC 173-410-100 SPECIAL STUDIES. Ecology may require such additional special studies relevant to process emissions and establish completion dates as it finds necessary.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-410-042 EMISSION REQUIREMENTS OF PRIOR JURISDICTIONS.

Chapter 173-415 WAC  
PRIMARY ALUMINUM PLANTS

## WAC

173-415-010	Statement of purpose.
173-415-020	Definitions.
173-415-030	Emission standards.
173-415-040	Standards of performance.
173-415-045	Creditable stack height and dispersion techniques.
173-415-050	New source review (NSR).
173-415-051	Prevention of significant deterioration (PSD).
173-415-060	Monitoring and reporting.
173-415-070	Report of startup, shutdown, breakdown or upset conditions.
173-415-080	Emission inventory.

AMENDATORY SECTION (Amending Order DE 80-17, filed 8/14/80)

WAC 173-415-010 STATEMENT OF PURPOSE. These rules are enacted under the provisions of ~~((the 1969 amendments to))~~ the Washington Clean Air Act as amended (RCW 70.94.395) to:

(1) Assume state jurisdiction over emissions from primary aluminum reduction plants ~~((in order))~~ to provide for the systematic ~~((reduction and))~~ control of air pollution in ~~((the primary aluminum reduction))~~ this industry and for the proper development of the state's natural resources; and

(2) Establish ~~((standards deemed to be))~~ technically feasible and reasonably attainable standards and revise such standards as new information and better technology are developed and become available.

AMENDATORY SECTION (Amending Order 84-50, filed 3/6/85)

WAC 173-415-020 DEFINITIONS. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter, shall have the following meanings ~~((; general terms common with other chapters as defined in chapter 173-403 WAC, and terms specific to primary aluminum mills as defined below:))~~:

(1) "Fluorides" means compounds of the element fluorine.

(2) "Forage" means grasses, pasture and other vegetation that is normally consumed or is intended to be consumed by livestock.

(3) ~~(("New source" means a source which commences construction after June 17, 1970. Addition to, enlargement, modification, replacement, or any alteration of any process or source which may increase emissions or ambient air concentrations of any contaminant for which federal or state ambient or emissions standards have been established shall be construed as construction or installation or establishment of a new source. In addition every major modification (as defined in WAC 173-403-030) shall be construed as construction or installation or establishment of a new source.))~~

~~((4))~~ "Primary aluminum plant" or "primary aluminum reduction plant" or "primary aluminum mill" means a plant which produces aluminum metal from aluminum oxide (alumina). For the purposes of this regulation "primary aluminum plant" is equivalent to "source."

~~((5))~~ (4) "Potline primary emission control system" means the equipment and procedures designed to collect and remove contaminants from the exhaust gases which are captured at the pot.

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-415-030 EMISSION STANDARDS. ~~((+))~~ In addition to the general applicability of chapter 173-400 WAC to all emission sources; all primary aluminum plants are required to meet the emission standards of this chapter ~~((; as modified by chapter 173-403 WAC if applicable. Further, all primary aluminum plants are required to use reasonably available control technology which may be determined for some primary aluminum plants to be more stringent than the emission limitations of this chapter. In cases where current controls are determined to be less than reasonably available control technology (RACT), the department shall, on a case-by-case basis, define RACT for each plant and issue a regulatory order to the primary aluminum plant for installation of RACT. The order will contain a schedule for installation, with intermediate benchmark dates and a final completion date and shall constitute a compliance schedule.))~~.

~~((2))~~ (1) Fluoride.

(a) The emission of gaseous ~~((fluorides))~~ and particulate fluorides for all emissions units within a primary aluminum plant shall be restricted so that the plant's emissions will not cause ambient air and forage standards for fluorides established by chapter ~~((+48))~~ 173-481 WAC ~~((are not))~~ to be exceeded outside the property controlled by the aluminum plant owner(s) or operator(s).

(b) ~~((By January 1, 1984, the))~~ Each potline primary emission control system ~~((for each potline))~~ shall be designed so that the control of fluoride emissions will be equivalent to a total fluoride collection efficiency of: (i) Eighty percent for vertical stud soderberg and side worked prebake pots, (ii) eighty-five percent for horizontal stud soderberg pots, and (iii) ninety-five percent for center worked prebake pots ~~((and))~~. A primary emission control system with a design removal efficiency of at least ninety-five percent of the fluoride collected is required. ~~((A potline near the end of its useful life and scheduled for replacement or shutdown in a reasonable time period may not be required to retrofit provided ambient fluoride standards are being met.))~~

~~((3))~~ (2) Particulate. The total emission of particulate matter to the atmosphere from the reduction process (potlines) shall be reduced to the lowest level consistent with reasonably available control technology (RACT) for primary aluminum plants ~~((; but in no case shall))~~. The emission of solid particulate shall not exceed 7.5 grams per kilogram (fifteen pounds per ton) of aluminum produced on a daily basis. ~~((Compliance shall be determined by measurement methods contained in the Source Test Manual - Procedures for Compliance Testing on file with the department of ecology.))~~

~~((4))~~ (3) Visible emissions. Visible emissions from any emissions unit in a primary aluminum plant shall not exceed an average twenty percent opacity for more than six consecutive minutes in any sixty minute period. This provision shall not apply:

(a) When the presence of uncombined water is the only reason for the opacity of the plume to exceed twenty percent; or

(b) When an alternate opacity limit has been established under RCW 70.94.331 (2)(c).

~~((5))~~ ~~((Fallout. No primary aluminum plant shall cause or permit the emission of particulate matter to be deposited beyond the property under direct control of the owner or operator of the plant in such quantity or of such character or duration as is or is likely to be injurious to human health, plant or animal life, or property or will interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.))~~

(6) Other contaminants. No primary aluminum plant shall cause or permit the emission of any air contaminant or water droplets, including any air contaminant whose emission is not otherwise regulated by this chapter, 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 or property.

~~((7))~~ (4) Fugitive emissions. Each primary aluminum plant shall use ~~((reasonably available control technology))~~ RACT to prevent fugitive emissions.

~~((8))~~ (5) Sulfur dioxide.

(a) Total emissions of sulfur dioxide from all emissions units shall not exceed thirty grams of sulfur dioxide per kilogram of aluminum produced on a monthly average (sixty pounds per ton). Those primary aluminum plants which were in excess of the above sulfur dioxide limit on January 1, 1978, will be allowed to emit at the January 1, 1978, level of emissions provided that the owners or operators did demonstrate to ~~((the department))~~ ecology by July 1, 1981, by use of modeling and ambient measurements, that the emissions will not cause the ambient standard to be exceeded.

(b) In no case shall any plant cause or permit the emission of a gas containing sulfur dioxide in excess of one thousand parts per million corrected to dry standard conditions. A lower limit may be established by an order defining RACT for a specific emissions unit or process.

~~((9))~~ Odors. Any owner or operator of a primary aluminum plant who shall cause or allow the generation of any odor from any emissions unit which may unreasonably interfere with any person's use and enjoyment of his property must use recognized good practice and procedure to reduce these odors to a reasonable minimum.

~~((10))~~ (6) Operation and maintenance. At all times, including periods of abnormal operation and upset, owners and operators shall, to the extent practicable, maintain an affected facility, and operate and maintain air pollution control equipment associated with such facility in a manner consistent with good air pollution control practice. A plant may elect to establish a program, subject to the approval of ~~((the department))~~ ecology, for monitoring each potroom in order to demonstrate good operation and maintenance.

~~((H)) (7) Source testing. ((In order)) To demonstrate compliance with this chapter, ((the department may require that a test be made of the plant using procedures contained in Source Test Manual—Procedures for Compliance Testing, state of Washington, department of ecology, on file at the department. The operator of the plant may be required to provide the necessary platform and sampling ports for the department personnel to perform a test of the emissions unit. The department shall be allowed to obtain a sample from any emissions unit. The operator of the plant shall be given an opportunity to observe the sampling and to obtain a sample at the same time)) refer to WAC 173-400-105.~~

AMENDATORY SECTION (Amending Order DE 82-21, filed 7/27/82)

~~WAC 173-415-040 STANDARDS OF PERFORMANCE. ((For primary aluminum plants which commenced construction after September 24, 1976, Title 40, the Code of Federal Regulations, Part 60, subparts A and S and appendix A, B, C and D (standards of performance for new stationary sources) as promulgated prior to July 1, 1982, is by this reference adopted and incorporated herein with the exception of sections 60.5 (determination of construction or modification) and 60.6 (review of plans). For the purpose of state administration of the federal regulations adopted by reference hereby, the term "administrator" as used therein shall refer to the department of ecology.) All the provisions of WAC 173-400-115 "Standards of performance for new sources" shall apply to all sources to which this chapter is applicable.~~

AMENDATORY SECTION (Amending Order 87-50, filed 12/16/87)

~~WAC 173-415-045 CREDITABLE STACK HEIGHT AND DISPERSION TECHNIQUES. The conditions of WAC ((173-403-141 and 173-403-145)) 173-400-200 shall apply to all sources covered by this chapter.~~

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

~~WAC 173-415-050 NEW SOURCE REVIEW (NSR). ((Construction shall not commence on any new source until a notice of construction has been approved by the department pursuant to WAC 173-403-050. This owner or operator of any source shall notify the department prior to replacement of air pollution control equipment or process equipment other than replacement for routine maintenance and repair. The department may determine that a notice of construction is required.) The conditions of WAC 173-400-110 shall apply to all new major sources and major modifications covered by this chapter.~~

AMENDATORY SECTION (Amending Order 87-50, filed 12/16/87)

~~WAC 173-415-051 PREVENTION OF SIGNIFICANT DETRIORATION (PSD). The ((conditions)) requirements of WAC ((173-403-080)) 173-400-141 shall apply to all new and modified sources covered by this chapter.~~

AMENDATORY SECTION (Amending Order DE 80-17, filed 8/14/80)

~~WAC 173-415-060 MONITORING AND REPORTING. (1) Each primary aluminum plant shall conduct routine monitoring of emissions, ambient air, and forage in accordance with a program that has been approved by ((the department)) ecology. Results of monitoring shall be reported within thirty days of the end of each calendar month and shall include data as follows:~~

~~(a) Ambient air: Twenty-four hour concentrations of gaseous fluoride in the ambient air expressed in micrograms of hydrogen fluoride per cubic meter of ambient air.~~

~~(b) Forage: Concentrations of fluoride in forage expressed in parts per million of fluoride on a dried weight basis.~~

~~(c) Particulate emissions: Results of all emission sampling conducted during the month for particulates, expressed in grains per standard dry cubic foot, in pounds per day, and in pounds per ton of aluminum produced. The method of calculating pounds per ton shall be as specified in the approved monitoring programs. Particulate data shall be reported as total particulates and percentage of fluoride ion contained therein.~~

~~Compliance with WAC 173-415-030((H)) (2) shall be determined by measurements of emissions from the potline primary control system plus measurements of emissions from the roof monitor.~~

~~(d) Fluoride emissions: Results of all sampling conducted during the month for fluoride emissions. All results shall be expressed as hydrogen fluoride in parts per million on a volume basis and pounds per day of hydrogen fluoride.~~

~~(e) Other emission and ambient air data as specified in the approved monitoring program.~~

~~(2) Other data: For ecology to evaluate a plant's emissions or emission control program, each primary aluminum plant shall furnish((; upon request of the department, such)) other data ((as the department may require to evaluate the plant's emissions or emission control program)) requested by ecology.~~

~~(3) Change in raw materials or fuel: Any change or series of changes in raw material or fuel which results in a cumulative increase in emissions of sulfur dioxide of five hundred tons per year or more over that stated in the 1979 inventory required by WAC 173-415-080 shall require the submittal of sufficient information to ((the department to determine)) ecology so that the effect ((of the increase)) upon ambient concentrations of sulfur dioxide can be determined. ((The department)) Ecology may issue regulatory orders requiring controls to reduce the effect of such increases.~~

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

~~WAC 173-415-070 REPORT OF STARTUP, SHUTDOWN, BREAKDOWN OR UPSET CONDITIONS. ((If a startup, shutdown, breakdown or upset condition occurs which could result in an emission violation or a violation of an ambient air quality standard, the owner or operator of the source shall take the following actions as applicable:~~

~~(1) For a planned condition, such as a startup or shutdown, the condition shall be reported to the department, or its delegated authority, in advance of its occurrence.~~

~~(2) For an unplanned condition, such as a breakdown or upset, the condition shall be reported to the department, or its delegated authority as soon as possible.~~

~~Upon request of the department or its delegated authority, the owner or operator of the source shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.~~

~~Compliance with the requirements of WAC 173-415-070, does not relieve the owner or operator of the source from the responsibility to maintain continuous compliance with all the requirements of chapter 173-415 WAC nor from the resulting liabilities for failure to comply.) To demonstrate compliance with this chapter, refer to WAC 173-400-105(5).~~

AMENDATORY SECTION (Amending Order 88-39, filed 1/3/89)

~~WAC 173-415-080 EMISSION INVENTORY. ((The owner or operator of any primary aluminum plant shall submit an inventory of emissions from the source each year upon a form and according to instructions received from the department of ecology. The inventory may include stack and fugitive emissions of particulate matter, PM-10, sulfur dioxide, carbon monoxide, fluorides, volatile organic compounds, and other contaminants, and shall be submitted when required no later than one hundred five days after the end of the calendar year. The inventory shall include total emissions for the year in tons per year and an estimate of the percentage of the total emitted each quarter. An estimate shall be made of the one hour and twenty-four hour emissions while operating at capacity. The report shall include the average sulfur content of any fossil fuel or raw material used which will result in emissions of more than twenty-five tons per year of sulfur dioxide.) To demonstrate compliance with this chapter, refer to WAC 173-400-105(1).~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-415-041 EMISSION REQUIREMENTS OF PRIOR JURISDICTIONS.

AMENDATORY SECTION (Amending Order DE 80-18, filed 8/20/80)

WAC 173-490-010 POLICY AND PURPOSE. (~~The purpose of this chapter is to establish control requirements for sources emitting volatile organic compounds:~~) (1) It is the policy of the department of ecology (ecology) under the authority vested in it by chapter 43.21A RCW to provide for the systematic control of air pollution from air contaminant sources and for the proper development of the state's natural resources.

(2) It is the purpose of this chapter to establish technically feasible and reasonably attainable standards for sources emitting volatile organic compounds (VOCs) and revise such standards as new information and better technology are developed and become available.

AMENDATORY SECTION (Amending Order DE 82-22, filed 7/27/82)

WAC 173-490-020 DEFINITIONS. The (~~specific~~) definitions of terms contained in chapter 173-400 WAC are by this reference incorporated into this chapter (~~and all words and phrases there defined shall, when used in this chapter, carry the meanings set forth in chapter 173-400 WAC~~). Unless a different meaning is (~~indicated~~) clearly required by context, the following words and phrases, as used in this chapter, shall have the following meanings:

(1) "Bottom loading" means the filling of a tank through a (~~submerged~~) line entering the bottom of the tank.

(2) "Bulk gasoline plant" means a gasoline storage and transfer facility that receives more than ninety percent of its annual gasoline throughput by transport tank, and reloads gasoline into transport tanks.

(3) "Class II hardboard paneling finish" means finishes which meet the specifications of Voluntary Product Standard PS-59-73 as approved by the American National Standards Institute.

(4) "Closed refinery system" means a system that will process or dispose of those VOCs collected from another system. The mass quantity of collected VOCs emitted to the ambient air from the closed refinery system shall (~~by comparison~~) not exceed that required for a disposal system.

(5) "Condensate" means hydrocarbon liquid separated from (~~natural~~) a gas stream which condenses due to changes in the temperature or pressure and remains liquid at standard conditions.

(6) "Condenser" means a device for cooling a gas stream to a temperature where specific (~~volatile organic compounds~~) VOCs become liquid and are removed.

(7) "Control system" means one or more control devices, including condensers, that are designed and operated to reduce the quantity of VOCs emitted to the atmosphere.

(8) "Crude oil" means a naturally occurring mixture which consists of hydrocarbons and sulfur, nitrogen or oxygen derivatives of hydrocarbons which is a liquid at standard conditions.

(9) "Cutback asphalt" means an asphalt that has been blended with petroleum distillates to reduce the viscosity for ease of handling and lower application temperature. An inverted emulsified asphalt shall be considered a cutback asphalt when the continuous phase of the emulsion is a cutback asphalt.

(10) (~~"Demonstrate" means a presentation of the necessary data and calculations to support the required conclusion. The material is recorded for each event and made a part of air quality records or reports required by the state.~~)

(~~11~~) "Disposal system" means a process or device that reduces the mass quantity of the VOC that would have been emitted to the ambient air by at least ninety percent prior to their actual emission.

(~~12~~) (11) "Dry cleaning facility" means a facility engaged in the cleaning of fabrics in an essentially (~~nonaqueous~~) nonaqueous solvent by means of one or more washes in solvent, extraction of excess solvent by spinning, and drying by tumbling in an airstream. The facility includes, but is not limited to, any washer, dryer, filter and purification system(s), waste disposal system(s), holding tank(s), pump(s) and attendant piping and valve(s).

(~~13~~) (12) "External floating roof" means a storage vessel cover in an open top tank consisting of a double deck or pontoon single deck which rests upon and is supported by the (~~petroleum~~) liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank wall.

(~~14~~) (13) "Flexographic printing" means the application of words, designs and pictures to a substrate by means of a roll printing

technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

(~~15~~) "Gas service" means equipment that processes, transfers or contains a volatile organic compound or mixture of volatile organic compounds in the gaseous phase.

(~~16~~) (14) "Gasoline" means a petroleum distillate (~~having~~) which is a liquid at standard conditions and has a true vapor pressure greater than 200 mm of Hg (4 psia) at 20°C, (~~that is a liquid at standard conditions of 760 mm of Hg and 20°C~~), and is used as a fuel for internal combustion engines.

(~~17~~) (15) "Gasoline dispensing facility" means any site dispensing gasoline into motor vehicle fuel tanks from stationary storage tanks.

(~~18~~) (16) "Gasoline loading terminal" means a gasoline transfer facility that receives more than ten percent of its annual gasoline throughput solely or in combination by pipeline, ship or barge, and loads gasoline into transport tanks.

(~~19~~) (17) "Hardboard" means a panel manufactured primarily from interfelted lignocellulosic fibers which are consolidated under heat and pressure in a hot press.

(~~20~~) "Hardboard" (18) "Hardwood plywood" means plywood whose surface layer is a veneer of hardwood.

(~~21~~) (19) "Lease custody transfer" means the transfer of produced crude oil or condensate, after processing or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(~~22~~) (20) "Liquid-mounted seal" means a primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof (~~around the circumference of the tank~~).

(~~23~~) (21) "Liquid service" means equipment that processes, transfers or contains a (~~volatile organic compound or mixture of volatile organic compounds~~) VOC or VOCs in the liquid phase.

(~~24~~) (22) "Low organic solvent coating" refers to coatings which contain less organic solvent than the conventional coatings used by the industry. Low organic solvent coatings include water-borne, higher solids, electrodeposition and powder coatings.

(23) "Natural finish hardwood plywood panels" means panels whose original grain pattern is enhanced by essentially transparent finishes frequently supplemented by fillers and toners.

(~~25~~) (24) "Packaging rotogravure printing" means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels for articles to be sold.

(~~26~~) (25) "Petroleum liquids" means crude oil, condensate, and any finished or intermediate products manufactured or extracted in a petroleum refinery, excluding No. 2 through 6 fuel oils (ASTM D396-~~69~~) 78, No. 2GT through 4 GT gas turbine fuel oils (ASTM D2880-~~77~~) 78 or No. 2D and 4D diesel fuel oils (ASTM D975-~~68~~) 78).

(~~27~~) (26) "Petroleum refinery" means a facility engaged in producing gasoline, aromatics, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products by distilling crude oils or redistilling, cracking, extracting or reforming unfinished petroleum derivatives. Not included are facilities re-refining used motor oils or waste chemicals, processing finished petroleum products, separating blended products, or air blowing asphalt.

(27) "Prime coat" means the first of two or more films of coating applied in an operation.

(28) "Printed interior panels" means panels whose grain or natural surface is obscured by fillers and basecoats upon which a simulated grain or decorative pattern is printed.

(29) "Proper attachment fittings" means hardware for the attachment of gasoline transfer or vapor collection lines that meet or exceed industrial standards or specifications and the standards of other agencies or institutions responsible for safety and health.

(30) "Publication rotogravure printing" means rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, and other types of printed materials.

(31) (~~"Reactor" means a vessel that may be jacketed for temperature control in which to conduct chemical reactions.~~)

(~~32~~) "Refinery unit" means a set of components that are a part of a basic process operation, such as distillation, hydrotreating, cracking or reforming of hydrocarbons.

~~((33))~~ (32) "Roll printing" means the application of words, designs, and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

~~((34))~~ (33) "Rotogravure printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique which involves ~~((an-intaglio))~~ intaglio or recessed image areas in the form of cells.

~~((35))~~ "Separation operation" means a process that separates a mixture of compounds and solvents into two or more components. Specific mechanisms include extraction, centrifugation, filtration, and crystallization.

~~((36))~~ (34) "Single coat" means only one film of coating is applied to the metal substrate.

(35) "Submerged fill line" means a pipe, tube, fitting or other hardware for loading liquids into a tank with either a discharge opening flush with the tank bottom; or with a discharge opening ~~((entirely))~~ below the lowest normal operating drawoff level or that level determined by a liquid depth two and one half times the fill line diameter when measured in the main portion of the tank, but not in sumps or similar protrusions.

~~((37))~~ (36) "Submerged loading" means the filling of a tank with a submerged fill line descending nearly to the bottom.

~~((38))~~ (37) "Suitable closure or cover" means a door, hatch, cover, lid, pipe cap, pipe blind, valve or similar device that prevents the accidental spilling or emitting of VOC. Pressure relief valves, aspirator vents or other devices specifically required for safety and fire protection are not included.

~~((39))~~ (38) "Thin particleboard" means a manufactured board one-quarter inch or less in thickness made of individual wood particles which have been coated with a binder and ~~((former))~~ formed into flat sheets by pressure.

~~((40))~~ (39) "Tileboard" means ~~((paneling))~~ paneling that has a colored waterproof surface coating.

(40) "Topcoat" means the final film or series of films of coating applied in a two-coat (or more) operation.

(41) "Transport tank" means a container having a usable liquid volume greater than one thousand liters (260 gallons) used for shipping gasoline on land ~~((including but not limited to, tank trucks, tank trailers, railroad tank cars, and metallic or nonmetallic tanks or cells conveyed on any vehicle))~~.

(42) "True vapor pressure" means the equilibrium partial pressure of a petroleum liquid as determined with methods described in American Petroleum Institute Bulletin 2517, 1980.

(43) "Unit turnaround" means the procedure of shutting down, repairing, inspecting, and restarting a unit.

(44) "Valves not externally regulated" means valves that have no external controls, such as in-line check valves.

~~((44))~~ (45) "Vapor collection system" means a closed system to conduct vapors displaced from a tank being filled into the tank being emptied, a vapor holding tank, or a vapor control system.

~~((45))~~ (46) "Vapor control system" means a system designed and operated to reduce or limit the emission of VOCs, or to recover the VOCs to prevent their emission into the ambient air.

~~((46))~~ (47) "Vapor-mounted seal" means a primary seal mounted so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof.

~~((47))~~ (48) "Volatile organic compound (VOC)" means ~~((a hydrocarbon or derivative of hydrocarbon that has a vapor pressure greater than 0.1 mm of Hg (millimeters of mercury) at a temperature of 20°C. Excluded compounds are methane, ethane, trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (CFC-22), trifluoromethane (FC-23), trichlorotrifluoroethane (CFC-113), dichlorotetrafluoroethane (CFC-114), chloropentafluoroethane (CFC-115), methylene chloride and 1, 1, 1-trichloroethane (methyl chloroform)))~~ any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the administrator designates as having negligible photochemical reactivity. VOC may be measured by a reference method, an equivalent method, an alternative method or by procedures specified under 40 CFR Part 60. A reference method, an equivalent method, or an alternative method, however, may also measure nonreactive organic compounds. In such cases, an owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard.

~~((48))~~ (49) "Waxy, heavy pour crude oil" means a crude oil with a pour point of 50°F or higher as determined by the American Society

for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

#### AMENDATORY SECTION (Amending Order DE 82-22, filed 7/27/82)

WAC 173-490-025 GENERAL APPLICABILITY. In addition to the general applicability of chapter 173-400 WAC to all emission sources:

(1) This chapter shall apply to the specified emission sources of ~~((volatile organic compounds))~~ VOCs located in or operating within designated ozone nonattainment areas of the state of Washington.

(2) ~~((Sources of volatile organic compound emissions may be exempted, by the director, from any or all requirements to control or reduce the emission of volatile organic compounds if the source will be permanently shutdown by January 1, 1983 and the owner or operator of the source complies with a phase-out schedule approved by the director. The phase-out schedule shall contain specific actions and dates necessary to the orderly termination of the source's activities. The operation of the emission source after January 1, 1983 shall be permitted only when done in full compliance with all other applicable requirements of this chapter.~~

~~((3))~~ This chapter does not apply to those sources under the jurisdiction of the energy facility site evaluation council (EFSEC).

~~((4))~~ (3) A source of ~~((volatile organic compound))~~ VOC emissions not belonging to any of the categories listed in WAC 173-490-030 nor specifically identified in any section, but which is located on the same or adjacent property and owned or operated by the same person as a regulated emission source, shall not be required to comply with the regulations of this chapter.

~~((5))~~ (4) Sources of ~~((volatile organic compound))~~ VOC emissions may be exempted, by the director, from any or all requirements to control or reduce the emissions of ~~((volatile organic compounds))~~ VOCs when:

(a) The source is a development operation and the equipment is used exclusively for research, laboratory analysis or determination of product quality and commercial acceptance, provided emissions of ~~((volatile organic compounds))~~ VOCs from such operations do not exceed 300 kg (660 lbs) per month; or

(b) The source has emissions of VOCs which do not exceed 18 kg (40 lbs) per month and registration is not required under WAC 173-490-030; or

(c) The source is a spray booth which is used solely for maintenance and utility activities and whose emissions do not exceed 18 kg (40 lbs) per month.

(5) Sources of VOCs may be granted exemptions from emissions standards for a period not to exceed thirty days if the source is a newly permitted source which is to replace a similar permitted source and the new source is intended to utilize the existing emission control system. This provision is intended to apply to a break-in period prior to the shutdown and removal of the existing source.

#### AMENDATORY SECTION (Amending Order DE 80-18, filed 8/20/80)

WAC 173-490-030 REGISTRATION AND REPORTING. (1) The owner or operator of a stationary emission source of ~~((volatile organic compounds))~~ VOCs in the following source categories and located in a designated ozone nonattainment area shall register the source with ~~((the department))~~ ecology unless registration is required by an ~~((air pollution control))~~ authority ~~((with jurisdiction over the source or the source is under the jurisdiction of))~~ or the energy facility site evaluation council (EFSEC).

- (a) Petroleum refineries.
- (b) Petroleum liquid storage tanks.
- (c) Gasoline loading terminals.
- (d) Bulk gasoline plants.
- (e) Gasoline dispensing facilities.
- (f) Surface coaters.
- (g) Open top vapor degreasers.
- (h) Conveyorized degreasers.
- (i) Gasoline transport tanks.
- (j) Vapor collection systems.
- (k) Perchloroethylene dry cleaning systems.
- (l) Graphic arts systems.
- (m) Surface coaters of miscellaneous metal parts and products.
- (n) Synthesized pharmaceutical manufacturing facilities.
- (o) Flatwood panel manufacturers and surface finishing facilities.

(2) ~~((The owner or operator of a registered stationary emission source of volatile organic compounds shall furnish, upon request of the director, such data as the director may require to calculate the emissions of the source and evaluate the emission control program. The data shall be supplied in a form and according to instructions received from the director or local air pollution control authority. When required, the data shall be submitted not later than sixty days following the request.~~

~~((3))~~ A new emission source of ~~((volatile organic compounds))~~ VOCs that must comply with any requirements in WAC 173-490-040, 173-490-200, 173-490-201, 173-490-202, 173-490-203, 173-490-204, 173-490-205, 173-490-206 and 173-490-207, shall comply with the requirements of WAC 173-400-100 and shall register with ~~((the department or))~~ ecology or an authority prior to operation of the new source, and shall submit sufficient information to demonstrate that the new source is capable of complying with the requirements in this chapter. An opportunity shall be provided for an inspection of the new source by ecology or local authority inspectors prior to its operation.

AMENDATORY SECTION (Amending Order DE 82-22, filed 7/27/82)

WAC 173-490-040 REQUIREMENTS. ~~((Sources shall))~~ To demonstrate compliance with this chapter ~~((using the sampling procedures on file with and approved by the director)),~~ refer to WAC 173-400-105.

(1) Petroleum refineries.

~~((a))~~ This chapter shall apply to all petroleum refineries with a crude oil or feed stock capacity greater than one million ~~((five))~~ four hundred thirty thousand liters (9,000 bbl) per day.

~~((b))~~ A petroleum refinery with a crude oil or feed stock capacity of eight million three hundred twenty-eight thousand liters (50,000 bbl) per day or less and which is owned or controlled by a refiner with a total combined crude oil or feed stock capacity of twenty-three million liters (137,500 bbl) per day or less shall be classified as a small refinery.

~~((c))~~ (a) Vacuum producing system.

(i) Noncondensable VOC from vacuum producing systems shall be piped to an appropriate firebox, incinerator or to a closed refinery system.

(ii) Hot wells associated with contact condensers shall be tightly covered and the collected VOC introduced into a closed refinery system.

~~((d))~~ (b) Wastewater separator.

(i) Wastewater separators with demonstrated VOC emissions less than twenty-five tons annually shall be exempt from the requirements of WAC 173-490-040 (1)~~((d))~~ (b)(ii) and (iii).

(ii) Wastewater separator forebays shall incorporate a floating pontoon or fixed solid cover with all openings sealed, totally enclosing the compartmented liquid contents, or a floating pontoon or a double deck-type cover equipped with closure seals between the cover edge and compartment wall.

(iii) Accesses for gauging and sampling shall be designed to minimize VOC emissions during actual use. All access points shall be closed with suitable covers when not in use.

~~((e))~~ (c) Process unit turnaround.

(i) The VOC contained in a process unit to be depressurized for turnaround shall be introduced to a closed refinery system, combusted by a flare, or vented to a disposal system.

(ii) The pressure in a process unit following depressurization for turnaround shall be less than five psig before venting to the ambient air.

(iii) Venting or depressurization to the ambient air of a process unit for turnaround at a pressure greater than five psig shall be allowed if the owner demonstrates the actual emission of VOC to the ambient air is less than permitted by WAC 173-490-040 (1)~~((e))~~ (c)(ii).

~~((f))~~ (d) Maintenance and operation of emission control equipment. Equipment for the reduction, collection or disposal of VOC shall be maintained and operated in a manner ~~((commensurate))~~ consistent with the level of maintenance and housekeeping of the overall plant.

(2) Petroleum liquid storage tanks.

(a) All fixed-roof tanks (except as noted in subparagraph (d) of this subsection) storing volatile organic petroleum liquids with a true vapor pressure as stored greater than 78 mm of Hg (1.5 psi), but less than 570 mm of Hg (11.1 psi) at actual monthly average storage temperatures and having a capacity greater than one hundred fifty thousand liters (40,000 gallons) shall comply with one of the following:

(i) Meet the equipment specifications and maintenance requirements of the federal standards of performance for new stationary sources - Storage Vessels for Petroleum Liquids (40 CFR 60, subpart K)~~((:))~~; or

(ii) Be retrofitted with a floating roof or internal floating cover using a metallic seal or a nonmetallic resilient seal at least meeting the equipment specifications of the federal standards referred to in WAC 173-490-040 (2)(a)(i) or its equivalent~~((:))~~; or

(iii) Be fitted with a floating roof or internal floating cover meeting the manufacturer's ~~((equipment))~~ specifications in effect when ~~((it was))~~ installed.

(b) All seals used in WAC 173-490-040 (2)(a)(ii) and (iii) are to be maintained in good operating condition and the seal fabric shall contain no visible holes, tears or other openings.

(c) All openings not related to safety are to be sealed with suitable closures.

(d) Tanks used for the storage of gasoline in bulk gasoline plants and equipped with vapor balance systems as required in WAC 173-490-040 (4)(b) shall be exempt from the requirements of WAC 173-490-040(2).

(3) Gasoline loading terminals.

(a) This chapter shall apply to all gasoline loading terminals with an average annual daily gasoline throughput greater than seventy-five thousand liters (20,000 gallons).

(b) Loading facilities. Facilities for the purpose of loading gasoline into any transport tank shall be equipped with a vapor recovery system (VRS) as described in WAC 173-490-040 (3)(c) and comply with the following conditions:

(i) The loading facility shall employ submerged ~~((loading))~~ or bottom loading for all transport tanks.

(ii) The VRS shall be connected to the transport tank being loaded and ~~((operating))~~ shall operate during the entire loading of every transport tank loaded at the facility.

(iii) The loading of all transport tanks shall be performed such that ninety percent by weight of the gasoline vapors displaced during filling are prevented from being released to the ambient air. Emissions from pressure relief valves shall not be included in the controlled emissions when the back pressure in the VRS collection lines is lower than the relief pressure setting of the transport tank's relief valves.

(iv) All loading lines and vapor lines shall be equipped to close automatically upon disconnect. The point of closure shall be on the tank side of any hose or intermediate connecting line.

(c) Vapor recovery system (VRS). The VRS shall be designed and built according to accepted industrial practices and meet the following conditions:

(i) The VRS shall prevent at least ninety percent by weight of the gasoline vapors displaced during loading of each transport tank from entering the ambient air and in no case shall the gasoline vapors emitted to the ambient air exceed eighty milligrams per liter of gasoline loaded.

(ii) The VRS shall be equipped with a signal device to alert personnel when the system is not operating or unintentionally shuts down.

(iii) The back pressure in the VRS collection lines shall not exceed the transport tank's pressure relief settings.

(d) Alternative loading facility. The loading of transport tanks by other means and using other vapor control systems shall require the facility owner to demonstrate that the emission of gasoline vapors to the ambient air is less than eighty milligrams per liter of gasoline loaded.

(4) Bulk gasoline plants.

(a) This chapter shall apply to all bulk gasoline plants with an annual average daily gasoline throughput greater than fifteen thousand liters (4,000 gallons).

(b) Storage tanks. All storage tanks with a capacity greater than two thousand one hundred liters (550 gallons) and used for the storage of gasoline shall comply with the following conditions:

(i) Each storage tank shall be equipped with a submerged fill line.

(ii) Each storage tank shall be equipped for vapor balancing of gasoline vapors with transport tanks during gasoline transfer operations.

(iii) The vapor line fittings on the storage tank side of break points with the transport tank vapor connection pipe or hose shall be equipped to close automatically upon planned or unintentional disconnect.

(iv) The pressure relief valves on storage tanks shall be set at the highest possible pressure consistent with local and state codes for fire and safety.

(c) Transport tanks. All transport tanks, except those meeting the conditions in WAC 173-490-040 (4)(d), transferring gasoline with

storage tanks in a bulk gasoline plant shall comply with the following conditions:

(i) The transport tank shall be equipped with the proper attachment fittings to make vapor tight connections for vapor balancing with storage tanks.

(ii) The vapor line fittings on the transport tank side of break points with the storage tank connection pipe or hose shall be equipped to close automatically upon planned or unintentional disconnect.

(iii) The pressure relief valves on transport tanks shall be set at the highest possible pressure consistent with local and state codes for fire and safety.

(d) Transport tanks used for gasoline and meeting all of the following conditions shall be exempt from the requirement to be equipped with any attachment fitting for vapor balance lines:

(i) The transport tank is used exclusively for the delivery of gasoline into storage tanks of a facility exempt from the vapor balance requirements of WAC 173-490-040(5); and

(ii) The transport tank has a total capacity less than fifteen thousand liters (4,000 gallons) and is of a compartmented design and construction requiring the installation of four or more separate vapor balance fittings.

(e) Gasoline transfer operations. No owner or operator of a bulk gasoline plant or transport tank shall allow the transfer of gasoline between a transport tank and a storage tank except under the following conditions:

(i) All tanks shall be submerged filled or bottom loaded.

(ii) The loading of all tanks, except those exempted under WAC 173-490-040 (4)(d) shall be performed such that ninety percent by weight of the gasoline vapors displaced during filling are prevented from being released into the ambient air. Emissions from pressure relief valves shall not be included in the controlled emissions.

(f) Equipment or system failures. Failures or leaks in the vapor balance system shall be limited by the following conditions:

(i) During the months of June, July, August and September, failures of the vapor balance system to comply with this chapter shall require ~~((the discontinuation of))~~ that gasoline transfer operations stop for the failed part of the system. ~~Other transfer points that can ((continue to))~~ operate in compliance may be used.

(ii) ~~((The))~~ Loading or unloading of the transport tank connected to the failed part of the vapor balance system may be completed.

(iii) Breakdowns and upset conditions during all months of the year shall also comply with the ~~((additional))~~ provisions of WAC ~~((173-400-120(4)))~~ 173-400-105(5).

(g) The owner or operator of a bulk gasoline plant or transport tank shall take all reasonable necessary measures to prevent the spilling, discarding in sewers, storing in open containers or handling of gasoline in a manner on the plant site that will result in evaporation to the ambient air.

(5) Gasoline dispensing facilities (Stage I).

(a) This chapter shall apply to all gasoline dispensing facilities with a total annual gasoline output greater than seven hundred fifty-seven thousand liters (200,000 gallons) or sixty-three thousand one hundred liters (16,670 gallons) per month and total gasoline storage capacity greater than thirty-eight thousand liters (10,000 gallons).

(b) All gasoline storage tanks of the facilities defined in WAC 173-490-040 (5)(a) shall be equipped with submerged or bottom fill lines and fittings for vapor balancing gasoline vapors with the delivery transport tank. Storage tanks required to comply are:

(i) All tanks with a capacity greater than seven thousand ~~((five))~~ six hundred liters (2,000 gallons) installed before January 1, 1979, except as provided for in WAC 173-490-040 (5)(c).

(ii) All tanks with a capacity greater than ~~((one thousand))~~ nine hundred forty liters ~~((260))~~ 250 gallons installed on or after January 1, 1979.

(c) Gasoline storage tanks with offset fill lines shall be exempt from the requirement of WAC 173-490-040 (5)(b) if installed prior to January 1, 1979.

(d) The vapor balance system (for the purpose of measuring compliance with the emission control efficiency) shall consist of the transport tank, gasoline vapor transfer lines, storage tank and all tank vents. The vapor balance system shall prevent at least ninety percent of the displaced gasoline vapors from entering the ambient air. A vapor balance system that is designed, built and operated according to accepted industrial practices will satisfy this requirement.

(e) The owner or operator of a gasoline dispensing facility shall not permit the loading of gasoline into a storage tank equipped with vapor

balance fittings unless the vapor balance system is attached to the transport tank and operated satisfactorily.

(6) Surface coaters.

The operation of a coater and dryer, that may serve one or more process lines, shall comply with the following emission limits if the uncontrolled emissions of VOC from the coater, flashoff areas, and dryer would be greater than 18 kg (40 pounds) in any given twenty-four hour period. The emission limits and uncontrolled emission quantity shall include the additional quantity of emissions from the dryer during the twelve hour period after application of the coating.

Process Can Coating	Limitation Grams/Liter of Coating (Excluding Water)	lb/Gal. of Coating (Excluding Water)
Sheet basecoat and overvarnish; two-piece can exterior	340	2.8
Two and three piece can interior body spray, two piece can exterior end	510	4.2
Side-seam spray	660	5.5
End sealing compound	440	3.7
Coil coating	310	2.6
Fabric coating	350	2.9
Vinyl coating	450	3.8
Paper coating	350	2.9
Auto and light duty truck coating		
Prime	230	1.9
Topcoat	340	2.8
Repair	580	4.8
Metal furniture coating	360	3.0
Magnet wire coating	200	1.7
Large appliance coating	340	2.8

(7) Open top vapor degreasers.

(a) All open top vapor degreasers shall ~~((comply with the following equipment specifications))~~:

(i) ~~((Be equipped with))~~ Have a cover that may be readily opened and closed. When a degreaser is equipped with a lip exhaust, the cover shall be located below the lip exhaust. When a degreaser has a freeboard ratio equal to or greater than 0.75 and the opening is greater than one square meter (10 square feet) the cover shall be power operated.

(ii) Have one of the following:

(A) A freeboard ratio equal to or greater than 0.75~~((:));~~ or

(B) A freeboard chiller~~((:));~~ or

(C) A closed design such that the cover opens only when the part enters or exits the degreaser.

(iii) Be equipped with at least the following three safety switches:

(A) Condenser-flow switch and thermostat (shuts off sump heat if coolant is either not circulating or too warm)~~((:));~~ and

(B) Spray safety switch (shuts off spray pump if the vapor level drops excessively~~((:));~~ and

(C) Vapor level control thermostat (shuts off sump heat when vapor level rises too high).

(iv) Post a permanent and conspicuous pictograph or instructions clearly explaining the following work practices:

(A) Do not degrease porous or absorbent materials such as cloth, leather, wood or rope.

(B) The cover of the degreaser should be closed at all times except when processing workloads.

(C) When the cover is open the lip of the degreaser should not be exposed to steady drafts greater than 15.3 meters per minute (50 feet per minute).

(D) Rack parts so as to facilitate solvent drainage from the parts.

(E) Workloads should not occupy more than one-half of the vapor-air interface area.

(F) When using a powered hoist, the vertical speed of parts in and out of the vapor zone should be less than 3.35 meters per minute (11 feet per minute).

(G) Decrease the workload in the vapor zone until condensation ceases.

(H) Spraying operations should be done within the vapor layer.

(I) Hold parts in the degreaser until visually dry.

(J) When equipped with a lip exhaust, the fan should be turned off when the cover is closed.

(K) The condenser water shall be turned on before the sump heater when starting up a cold vapor degreaser. The sump heater shall be turned off and the solvent vapor layer allowed to collapse before closing the condenser water when shutting down a hot vapor degreaser.

(L) Water shall not be visible in the solvent stream from the water separator.

(b) A routine inspection and maintenance program shall be implemented for the purpose of preventing and correcting solvent losses(;  
~~as~~). For example, leaks from ~~((dripping))~~ drain taps, cracked gaskets, and malfunctioning equipment(~~((Leaks))~~) must be repaired immediately.

(c) Sump drainage and transfer of hot or warm solvent shall be carried out using threaded or other leakproof couplings.

(d) Still and sump bottoms shall be kept in closed containers.

(e) Waste solvent shall be stored in covered containers and returned to the supplier or ~~((a disposal firm handling))~~ to a firm which processes solvents for ((final) disposal.

(8) Conveyorized degreasers.

(a) The owner or operator of conveyorized cold cleaners and conveyorized vapor degreasers shall comply with the following operating requirements:

(i) Exhaust ventilation shall not exceed twenty cubic meters per minute ~~((of))~~ per square meter (65 cfm per ft.<sup>2</sup>) of degreaser opening, unless necessary to meet OSHA requirements.

(ii) Post in the immediate work area a permanent and conspicuous pictograph or instructions clearly explaining the following work practices:

(A) Rack parts for best drainage.

(B) Maintain vertical speed of ~~((conveyored))~~ conveyed parts to less than 3.35 meters per minute (11 feet per minute).

(C) The condenser water shall be turned on before the sump heater when starting up a cold vapor degreaser. The sump heater shall be turned off and the solvent vapor layer allowed to collapse before closing the condenser water when shutting down a hot vapor degreaser.

(D) Water shall not be visible in the solvent stream from the water separator.

(iii) Vapor degreasers shall be equipped with at least the following three safety switches:

(A) Condenser flow switch and thermostat (shuts off sump heat if coolant is either not circulating or too warm)~~((:)); and~~

(B) Spray safety switch (shuts off spray pump if the vapor level drops excessively)~~((:)); and~~

(C) Vapor level control thermostat (shuts off sump heat when vapor level rises too high).

(b) A routine inspection and maintenance program shall be implemented for the purpose of preventing and correcting solvent losses(;  
~~as~~). For example, leaks from ~~((dripping))~~ drain taps, cracked gaskets, and malfunctioning equipment(~~((Leaks))~~) must be repaired immediately.

(c) Sump drainage and transfer of hot or warm solvent shall be carried out using threaded or other leakproof couplings.

(d) Still and sump bottoms shall be kept in closed containers.

(e) Waste solvent shall be stored in covered containers and returned to the supplier or ~~((a disposal firm handling))~~ to a firm which processes solvents for ((final) disposal.

(f) All conveyorized cold cleaners and conveyorized vapor degreasers with air/vapor interfaces of 2.0 m<sup>2</sup> or greater shall have ~~((one of the following major control devices installed and operating after April 1, 1982:~~

~~((i)) a carbon adsorption system, exhausting less than 25 ppm of solvent averaged over a complete adsorption cycle (based on exhaust ventilation of 15 ((m<sup>2</sup>/)) m<sup>3</sup> per min per m<sup>2</sup> of air/vapor area, when downtime covers are open), or~~

~~((ii)) Refrigerated chiller with control effectiveness equal to or better than WAC 173-490-040 (8)(f)(i), or~~

~~((iii)) a system with control effectiveness equal to or better than ((WAC 173-490-040 (8)(f)(i))) a carbon adsorption system.~~

(9) Cutback asphalt paving.

(a) ~~((After June 1, 1981))~~ All paving applications of cutback asphalts are prohibited during the months of June, July, August and September, except as provided for in WAC 173-490-040 (9)(b).

(b) The following paving uses and applications of cutback asphalts are permitted during all months of the year.

(i) As a penetrating prime coat on aggregate bases prior to paving.

(ii) The manufacture of patching mixes used exclusively for pavement maintenance and needed to be stockpiled for times longer than one month.

(iii) All paving uses when the temperature during application is below 10°C (50°F). Any person using cutback asphalt for paving shall demonstrate that the ambient air temperature at 8 a.m. (PST) is below 50°F. The paving application of cutback asphalt when the ambient air temperature is 50°F or higher is in violation of this chapter.

(10) Cold cleaners.

(a) The owners or operators of all cold cleaners shall comply with the following equipment specifications:

(i) Be equipped with a cover that is readily opened and closed.

(ii) Be equipped with a ~~((drainrack))~~ drain rack that returns the drained solvent to the solvent bath.

(iii) Have a freeboard ratio of at least 0.5.

(iv) Have a visible fill line.

(b) An owner or operator of a cold cleaner shall be responsible for following the required operating parameters and work practices. The owner shall post and maintain in the work area of each cold cleaner a pictograph or instructions clearly explaining the following work practices:

(i) The solvent level shall not be above the fill line.

(ii) The spraying of parts to be cleaned shall be performed only within the confines of the cold cleaner.

(iii) The cover of the cold cleaner shall be closed when not in use or when parts are being soaked or cleaned by solvent agitation.

(iv) Solvent-cleaned parts shall be rotated to drain cavities or blind holes and then set to drain until dripping has stopped.

(v) Waste solvent shall be stored in covered containers and returned to the supplier or ~~((a disposal firm handling))~~ to a firm which processes solvents for ((final) disposal.

(c) The owner or operator shall maintain cold cleaners in good working condition and free of solvent leaks.

(d) If the solvent has a vapor pressure greater than 2.0 kPa (0.3 psi) measured at 38°C (100°F), or if the solvent is agitated or heated, then the cover must be designed so that it can be easily operated with one hand.

(e) If the solvent has a vapor pressure greater than 4.3 kPa (0.6 psi) measured at 38°C (100°F), then the drainage facility must be internal, so that parts are enclosed under the cover while draining. The drainage facility may be external for applications where an internal type cannot fit into the cleaning system.

(f) If the solvent has a vapor pressure greater than 4.3 kPa (0.6 psi) measured at 38°C (100°F), or if the solvent is heated above 50°C (120°F), ~~((then))~~ one of the following solvent vapor control systems must be used:

(i) The freeboard ratio must be equal to or greater than 0.70; or

(ii) Water must be kept over the solvent(~~((which))~~). The solvent must be more dense and insoluble in ((and heavier than)) water(~~((or~~

~~((iii)) Other systems of equivalent control, such as a refrigerated chiller).~~

#### AMENDATORY SECTION (Amending Order DE 82-22, filed 7/27/82)

WAC 173-490-080 EXCEPTIONS. Exceptions to volatile organic compound emission standards and requirements(~~((:));~~

(1) Other emission reduction methods may be ~~((employed))~~ used if the source operator demonstrates to ~~((the department))~~ ecology that they are at least as effective as the required methods(~~((:)); and~~

(2) The operation of a natural gas-fired incinerator and associated capture system installed for the purpose of complying with this chapter shall be required only during the months of June, July, August and September, unless the operation of such devices is required for purposes of occupational health or safety, or for the control of toxic substances, malodors, or other regulated pollutants.

#### AMENDATORY SECTION (Amending Order DE 78-23, filed 5/8/79)

WAC 173-490-090 NEW SOURCE REVIEW. ~~((Any new source of VOC emissions with a potential emission rate of one hundred tons per year is required to meet the new source review provisions of~~

~~WAC 173-400-110~~) The conditions of WAC 173-400-110 shall apply to all new major sources and major modifications covered by this chapter.

**AMENDATORY SECTION** (Amending Order DE 80-18, filed 8/20/80)

**WAC 173-490-200 PETROLEUM REFINERY EQUIPMENT LEAKS.** (1) Specific applicability. This section shall apply to all petroleum refineries as qualified in WAC 173-490-025.

(2) Provisions for specific processes.

(a) The owner(s) or operator(s) of a petroleum refinery shall:

(i) Develop and conduct a monitoring program consistent with the provisions in WAC 173-490-200(3), 173-490-200(4), 173-490-200(5), and 173-400-105;

(ii) ~~((Conduct a monitoring program consistent with the provisions in WAC 173-490-200(5);~~

(iii) Record all leaking components which have a VOC concentration greater than 10,000 ppm when tested according to the provisions in WAC 173-490-200((4)) (3) and place an identification tag on each component consistent with the provisions of WAC 173-490-200((5)) (4)(c);

(iv) (iii) Correct and retest the leaking component, as defined in WAC 173-490-200 (2)(a)((iii)) (ii), as soon as practicable, but not later than fifteen days after the leak is recorded. If a leak continues after all reasonable corrective actions have been taken, then the component shall be repaired or replaced on the next scheduled turnaround.

(v) (iv) Identify all leaking components, as defined in WAC 173-490-200 (2)(a)((iii)) (ii), that cannot be corrected until the refinery unit is shut down for turnaround.

(b) The owner or operator of a petroleum refinery shall not install or operate a valve at the end of a pipe or line containing VOC unless the pipe or line is sealed with a second suitable closure. Exceptions to this requirement are the ends of a pipe or line connected to pressure relief valves, aspirator vents or other devices specifically required to be open for safety protection. The sealing device may be removed only when a sample is being taken or during maintenance operations.

(3) ~~((Schedule of control dates:~~

(a) ~~The owner or operator of a petroleum refinery shall meet the increments of progress contained in the following schedules or an approved alternative schedule of control dates as stipulated in WAC 173-490-071.~~

(b) ~~Submit to the director a monitoring program by July 1, 1981. This program shall contain, at a minimum, a list of the refinery units and the quarter in which they will be monitored, a copy of the log book format, and the make and model of the monitoring equipment to be used. In no case shall a monitoring contract relieve the owner or operator of a petroleum refinery of the responsibility for compliance with this chapter.~~

(c) ~~The first quarter of monitoring shall be completed by December 15, 1981.~~

(4) ~~((Testing procedures. ((Testing and calibration procedures to determine)) To demonstrate compliance with this chapter ((shall be consistent with the procedures on file with and approved by the director)), refer to WAC 173-400-105(5).~~

(5) ~~((4) Monitoring.~~

(a) The owner or operator of a petroleum refinery shall conduct a monitoring program consistent with the following provisions:

(i) Monitor yearly by the methods referenced in WAC 173-490-200((4)) (3) all pump seals, pipeline valves in liquid service and process drains;

(ii) Monitor quarterly by the methods referenced in WAC 173-490-200((4)) (3) all compressor seals, pipeline valves in gaseous service and pressure relief valves in gaseous service;

(iii) Monitor weekly by visual methods all pump seals;

(iv) Monitor immediately any pump seal from which liquids are observed ~~((dripping))~~ leaking;

(v) Monitor any relief valve within twenty-four hours after it has vented to the atmosphere; and

(vi) ~~((Monitor immediately after repair any component that was found leaking:))~~ After a leaking component is repaired, monitor for leaks prior to return to service.

(b) Pressure relief devices that are connected to an operating flare header, vapor recovery device, inaccessible valves, storage tank valves, and valves that are not externally regulated are exempt from the monitoring requirements in WAC 173-490-200 ((5)) (4)(a).

(c) The owner or operator of a petroleum refinery, upon the detection of a leaking component, as defined in WAC 173-490-200

(2)(a)((iii)) (ii), shall affix a weatherproof and readily visible tag, bearing an identification number and the date the leak is located, to the leaking component. This tag shall remain in place until the leak is corrected.

~~((6))~~ (5) Recordkeeping.

(a) The owner or operator of a petroleum refinery shall maintain a leaking component's monitoring log as specified in WAC 173-490-200 (2)(a)((iii)) (ii) that shall contain, at a minimum, the following data:

(i) The name of the process unit where the component is located.

(ii) The type of component (e.g., valve, seal).

(iii) The tag number of the component.

(iv) The date on which a leaking component is discovered.

(v) The date on which a leaking component is repaired.

(vi) The date and instrument reading of the recheck procedure after a leaking component is repaired.

(vii) A record of the calibration of the monitoring instrument.

(viii) Those leaks that cannot be repaired until turnaround.

(ix) The total number of components checked and the total number of components found leaking.

(b) Copies of the monitoring log shall be retained by the owner or operator for a minimum of two years after the date on which the record was made or the report prepared.

(c) Copies of the monitoring log shall immediately be made available to ~~((the department))~~ ecology, upon verbal or written request, at any reasonable time.

~~((7))~~ (6) Reporting. The owner or operator of a petroleum refinery shall notify ~~((the director))~~ ecology in writing within forty-five days following each quarterly or annual inspection for component leaks when:

(a) The number of discovered leaks has increased by more than ten percent above the number recorded during the last inspection of the same components;

(b) The number of leaking components has increased for two consecutive quarterly or annual inspections;

(c) The number of leaks not corrected within fifteen days exceeds five percent of the leaks detected;

(d) The next scheduled process unit turnaround needed to repair an uncorrectable leak is more than twelve months away.

~~((8))~~ (7) Petition for alternative monitoring.

(a) After two complete liquid service inspections and five complete gaseous service inspections, the owner or operator of a petroleum refinery may petition the director for alternative monitoring procedures or a reduction in monitoring frequency.

(b) A petition for alternative monitoring procedures shall contain:

(i) The name and address of the company and the name and telephone number of the responsible person over whose signature the petition is submitted;

(ii) A detailed description of the problems encountered under WAC 173-490-200((5)) (4); and

(iii) A detailed description of the alternative monitoring procedures and how this alternative procedure will solve or reduce the problems encountered under WAC 173-490-200((5)) (4).

(c) A petition for a reduction in monitoring frequency shall contain:

(i) The information requested in WAC 173-490-200 ((8)) (7)(b)(i);

(ii) A detailed description of the proposed component-monitoring schedule;

(iii) A demonstration by the owner or operator that the facility is currently operating with a low level of component leaks and is committed to a maintenance program that will assure a frequency and severity of component leaks as good as that attainable under WAC 173-490-200(2).

(d) An approved petition for a reduction in monitoring frequency shall begin with the next quarterly inspection and shall be valid for a period of twelve quarters (three years). At the time of the last inspection in the twelve quarters, a new submittal of the information required in WAC 173-490-200 ((8)) (7)(c) shall be made if the reduced frequency of monitoring is to continue.

(e) ~~((The department))~~ Ecology may approve a part or all of a petition for alternative monitoring requested under WAC 173-490-200 ((8)) (7)(b) or (c). Approval or disapproval will be in writing and within forty-five calendar days of receipt of the petition by ~~((the department))~~ ecology. A failure to approve or disapprove a new petition or petition for renewal within the stated time limit shall be taken as an approval.

AMENDATORY SECTION (Amending Order DE 80-18, filed 8/20/80)

## WAC 173-490-201 PETROLEUM LIQUID STORAGE IN EXTERNAL FLOATING ROOF TANKS. (1) Specific applicability.

(a) This section shall apply to all petroleum liquid storage vessels equipped with external floating roofs, having capacities greater than 150,000 liters (40,000 gallons), and as qualified in WAC 173-490-025.

(b) This section does not apply to petroleum liquid storage vessels that:

- (i) Are used to store waxy, heavy pour crude oil; or
- (ii) Have capacities less than 1,600,000 liters (420,000 gallons) and are used to store produced crude oil and condensate prior to lease custody transfer; or
- (iii) Contain a petroleum liquid with a true vapor pressure of less than 10.5 kPa (1.5 psia); or
- (iv) Contain a petroleum liquid with a true vapor pressure less than 27.6 kPa (4.0 psia); are of welded construction; and presently possess a metallic-type shoe seal, a liquid-mounted foam seal, a liquid-mounted liquid filled type seal, or other closure device of demonstrated equivalence approved by ~~((the director))~~ ecology; or
- (v) Are of welded construction, equipped with a metallic-type shoe primary seal and have secondary seal from the top of the shoe seal to the tank wall (shoe-mounted secondary seal).

(2) Provisions for specific processes.

(a) No owner(s) or operator(s) of a petroleum liquid storage vessel shall store a petroleum liquid in that vessel unless:

- (i) The vessel has been fitted with:
  - (A) A continuous secondary seal extending from the floating roof to the tank wall (rim-mounted secondary seal); or
  - (B) A closure or other device which controls VOC emissions with an effectiveness equal to or greater than a seal required under WAC 173-490-201 (2)(a)(i)(A) and approved by ~~((the director))~~ ecology.
- (ii) All seal closure devices meet the following requirements:
  - (A) There are no visible holes, tears, or other openings in the seal or seal fabric;
  - (B) The seal is intact and uniformly in place around the circumference of the floating roof between the floating roof and the tank wall; and
  - (C) For vapor mounted primary seals, the accumulated area of gaps exceeding 0.32 cm (1/8 inch) in width between the secondary seal and the tank wall shall not exceed 21.2 cm<sup>2</sup> per meter of tank diameter (1.0 in.<sup>2</sup> per foot of tank diameter), as determined by the method in WAC 173-490-201 ~~((+))~~ (3).

(iii) All openings in the external floating roof, except for automatic bleeder vents, rim space vents, and leg sleeves, are:

- (A) Equipped with covers, seals, or lids in the closed position except when the openings are in actual use; and
- (B) Equipped with projections into the tank which remain below the liquid surface at all times.
- (iv) Automatic bleeder vents are closed at all times except when the roof is floated off or landed on the roof leg supports;
- (v) Rim vents are set to open when the roof is being floated off the leg supports or at the manufacturer's recommended setting; and
- (vi) Emergency roof drains are provided with slotted membrane fabric covers or equivalent covers which cover at least ninety percent of the area of the opening.

(b) The owner(s) or operator(s) of a petroleum liquid storage vessel with an external floating roof subject to this chapter shall:

- (i) Perform routine inspections annually in order to insure compliance with WAC 173-490-201 (2)(a) and the inspection shall include a visual inspection of the secondary seal gap;
- (ii) Measure the secondary seal gap annually in accordance with WAC 173-490-201 ~~((+))~~ (3) when the floating roof is equipped with a vapor-mounted primary seal; and
- (iii) Maintain records of the types of volatile petroleum liquids stored, the maximum true vapor pressure of the liquid as stored, and the results of the inspections performed in WAC 173-490-201 (2)(b)(i) and (ii).

(c) The owner(s) or operator(s) of a petroleum liquid storage vessel with an external floating roof exempted from this chapter by WAC 173-490-201 (1)(b)(iii), but containing a petroleum liquid with a true vapor pressure greater than 7.0 kPa (1.0 psi), shall maintain records of the average monthly storage temperature, the type of liquid, and the maximum true vapor pressure for all petroleum liquids with a true vapor pressure greater than 7.0 kPa.

(d) Copies of all records under WAC 173-490-201 (2)(b) and (c) shall be retained by the owner(s) or operator(s) for a minimum of two years after the date on which the record was made.

(e) Copies of all records required under WAC 173-490-201 shall immediately be made available to the director, upon verbal or written request, at any reasonable time.

(3) ~~((Schedule of control dates.~~

~~(a) The owner or operator of a petroleum liquid storage vessel shall meet the increments of progress contained in the following schedule or an approved alternative schedule of control dates as stipulated in WAC 173-490-071.~~

~~(i) Submit final plans for the emission control system before March 1, 1981;~~

~~(ii) Award contracts for the emission control system before May 1, 1981;~~

~~(iii) Initiate on-site construction or installation of the emission control equipment before July 1, 1981;~~

~~(iv) Complete on-site construction or installation of the emission control equipment before November 1, 1981; and~~

~~(v) Achieve final compliance with subsection (2) of this section before January 1, 1982.~~

~~(b) The owner or operator of a source of VOC emissions subject to a schedule of control dates shall certify to the director within ten calendar days after the deadline for each increment of progress, whether the required increment of progress has been met.~~

~~(+)) Testing and monitoring.~~

(a) The owner or operator of a storage vessel covered under WAC 173-490-201 shall demonstrate compliance by the methods of this subsection or an alternative method approved by ~~((the director))~~ ecology.

(b) A person proposing to measure the seal fit of a storage vessel in order to comply with this section shall notify ~~((the director))~~ ecology of the intent to measure not less than five working days before the measurement so the director or a representative may ~~((at his option))~~ observe the measurement if desired.

(c) Compliance with WAC 173-490-201 (2)(a)(ii)(C) shall be determined by physically measuring the length and width of all gaps around the ~~((entire))~~ circumference of the secondary seal in each place where a 0.32 cm (1/8 in.) ~~((uniform))~~ diameter probe passes freely (without forcing or binding against the seal) between the seal and the tank wall and summing the area of the individual gaps.

AMENDATORY SECTION (Amending Order DE 80-18, filed 8/20/80)

## WAC 173-490-202 LEAKS FROM GASOLINE TRANSPORT TANKS AND VAPOR COLLECTION SYSTEMS. (1) Specific applicability.

This section shall apply to all gasoline transport tanks equipped for gasoline vapor collection and all vapor collection systems at gasoline loading terminals, bulk gasoline plants and gasoline dispensing facilities as qualified in WAC 173-490-025 and 173-490-040.

(2) Provisions for specific processes.

(a) The owner(s) or operator(s) of a gasoline loading or unloading facility shall only allow the transfer of gasoline between the facility and a transport tank when a current leak test certification for the transport tank is on file with the facility or a valid inspection sticker is displayed on the vehicle.

(b) The owner(s) or operator(s) of a transport tank shall not make any connection to the tank for the purpose of loading or unloading gasoline, except in the case of an emergency, unless the gasoline transport tank:

(i) Is tested annually according to the test procedure referenced in WAC 173-490-202 ~~((+))~~ (3)(c);

(ii) Sustains a pressure change of no more than 0.75 kilopascals (3 inches of water) in five minutes when pressurized to a gauge pressure of 4.5 kilopascals (18 inches of water) or evacuated to a gauge pressure of 1.5 kilopascals (6 inches of water) during the testing required in WAC 173-490-202 (2)(b)(i);

(iii) Is repaired by the owner(s) or operator(s) and retested within fifteen days of testing if it does not meet the criteria of WAC 173-490-202 (2)(b)(ii);

(c) The owner(s) or operator(s) of a transport tank shall:

(i) Have a current leak test certification for the transport tank on file with each gasoline loading or unloading facility ~~((at which))~~ where gasoline is transferred ~~((a current leak test certification for the transport tank));~~ or

(ii) Display a sticker near the department of transportation certification plate required by 49 CFR 178.340-10b which:

(A) Shows the date that the gasoline tank truck last passed the test required in WAC 173-490-202 (2)(b)(i) and (ii);

(B) Shows the identification number of the gasoline tank truck tank; and

(C) Expires not more than one year from the date of the leak tight test.

(d) The owner(s) or operator(s) of a vapor collection system shall: (i) Operate the vapor collection system and the gasoline loading equipment during all loadings and unloadings of transport tanks equipped for emission control such that:

(A) A gauge reading of tank pressure will not exceed 4.5 kilopascals (18 inches of water) or vacuum 1.5 kilopascals (6 inches of water);

(B) The concentration of gasoline vapors is below the lower explosive limit (LEL, measured as propane) at all points a distance of 2.5 cm (1 inch) from potential leak sources when measured by the method in WAC 173-490-202((+)) (3); and

(C) There are no visible liquid leaks.

(ii) Repair and retest a vapor collection system that exceeds the limits of WAC 173-490-202 (2)(d)(i) within fifteen days.

(e) ((The department)) Ecology may, at any time, monitor a gasoline transport tank and vapor collection system during loading or unloading operations by the procedure in WAC 173-490-202 ((+)) (3)(d) to confirm continuing compliance with WAC 173-490-202 (2)(b) or (d).

(3) ((Schedule of control dates:

(a) ~~The owner or operator of a gasoline transport tank shall meet the increments of progress contained in the following schedule or an approved alternative schedule of control dates as stipulated in WAC 173-490-071;~~

~~(i) Submit plans to the department for operating and maintenance procedures to implement WAC 173-490-202 (2) and (4) before March 1, 1981;~~

~~(ii) Issue purchase orders or contracts for all needed test equipment before May 1, 1981;~~

~~(iii) Commence certification of vapor collection systems before January 1, 1982; and~~

~~(iv) Complete initial certification of all vapor collection systems before July 1, 1982.~~

~~(b) The owner or operator of a vapor collection system subject to this schedule of control dates shall certify to the department within ten calendar days after the deadline for each increment of progress, whether the required increment of progress has been met.~~

~~(4)) Testing and monitoring.~~

(a) The owner(s) or operator(s) of a gasoline transport tank or vapor collection system shall, at his own expense, demonstrate compliance with WAC 173-490-202 (2)(a) and (b), respectively. All tests shall be made by, or under the direction of, a person qualified to perform the tests ((and approved by the department)).

(b) The owner(s) or operator(s) of a gasoline transport tank shall notify ((the department)) ecology in writing of the date and location of a certification test at least ten calendar days before the anticipated test date.

(c) ((Testing procedures to determine)) To demonstrate compliance with ((WAC 173-490-202 shall be consistent with the procedures on file with and approved by the department)) this chapter, refer to WAC 173-400-105.

(d) Monitoring to confirm the continuing existence of leak tight conditions shall be consistent with the procedures on file with and approved by ((the department)) ecology.

((+)) (4) Recordkeeping.

(a) The owner(s) or operator(s) of a gasoline transport tank or vapor collection system shall maintain records of all certification tests and repairs for at least two years after the test or repair is completed.

(b) The records of certification tests required by WAC 173-490-202 ((+)) (4)(a) shall, as a minimum, contain:

(i) The transport tank identification number;

(ii) The initial test pressure and the time of the reading;

(iii) The final test pressure and the time of the reading;

(iv) The initial test vacuum and the time of the reading;

(v) The final test vacuum and the time of the reading;

(vi) At the top of each report page, the company name, date and location of the tests on that page; and

(vii) Name and title of the person conducting the test.

(c) The owner(s) or operator(s) of a gasoline transport tank shall annually certify that the transport tank passed the required tests.

(d) Copies of all records required under WAC 173-490-202 shall immediately be made available to ((the department)) ecology, upon written request, at any reasonable time.

#### AMENDATORY SECTION (Amending Order DE 82-22, filed 7/27/82)

WAC 173-490-203 PERCHLOROETHYLENE DRY CLEANING SYSTEMS. (1) Specific applicability. This section shall apply to all dry cleaning systems using perchloroethylene cleaning solvent and as qualified in WAC 173-490-203 (1)(a) and (b) and 173-490-025.

(a) The following dry cleaning systems are exempt from the requirements of WAC 173-490-203 (2)(a)(i) and (ii):

(i) Coin-operated systems;

(ii) Systems located in a facility with inadequate space to accommodate an adsorber;

(iii) Systems with an average monthly loss less than twenty-five gallons (2 tons per year); and

(iv) Systems with insufficient steam capacity to desorb adsorbers.

(b) An exemption for the conditions stated in WAC 173-490-203 (2)(a)(i) and (ii) may be granted by ((the director)) ecology when sufficient evidence is submitted by the owner(s) or operator(s) of the dry cleaning system to justify the exemption.

(c) A material balance will be used to determine VOC losses.

(2) Provisions for specific processes.

(a) The owner(s) or operator(s) of a perchloroethylene dry cleaning facility subject to this chapter shall:

(i) Vent the entire dryer exhaust through a properly functioning carbon ((absorption)) adsorption system or equally effective control device;

(ii) Emit not more than 100 ppmv when ((determined)) demonstrated in accordance with WAC 173-490-203 ((+)) (3)(c)(i), of ((volatile organic compounds)) VOCs from the dryer control device before dilution;

(iii) Immediately repair all components found to be leaking liquid ((volatile organic compounds)) VOCs;

(iv) Cook or treat all diatomaceous earth filters so that the residue contains 25 kg or less of ((volatile organic compounds)) VOCs per 100 kg of wet waste material;

(v) Reduce the ((volatile organic compounds)) VOCs from all solvent stills to 60 kg or less per 100 kg of wet waste material;

(vi) Drain all filtration cartridges, in the filter housing or other enclosed container, for at least twenty-four hours before discarding the cartridges; and

(vii) When possible, dry all drained cartridges without emitting ((volatile organic compounds)) VOCs to the atmosphere.

(3) ((Schedule of control dates:

~~(a) The owner or operator of a perchloroethylene dry cleaning facility subject to WAC 173-490-203 (2)(a)(i) and (ii) shall meet the applicable increments of progress in the following schedule or a schedule approved under WAC 173-490-071:~~

~~(i) Award contracts, issue purchase orders, or otherwise order the emission control system and process equipment, before July 1, 1981;~~

~~(ii) Complete installation of the emission control and process equipment before July 1, 1982;~~

~~(iii) Achieve final compliance, determined in accordance with WAC 173-490-203(4) before July 1, 1982;~~

~~(iv) In the event that equipment cannot be delivered prior to May 1, 1982, and the owner or operator placed the order prior to July 1, 1981, the final compliance date shall be sixty days following delivery of the equipment;~~

~~(b) The owner or operator of a perchloroethylene dry cleaning facility subject to this chapter shall comply with the operational and maintenance provisions of WAC 173-490-203 (2)(a)(iii) through (vii) by July 1, 1981.~~

~~((+)) Testing and monitoring.~~

(a) Compliance with WAC 173-490-203 (2)(a)(i), (vi), and (vii) shall be determined by means of visual inspection.

(b) Compliance with WAC 173-490-203 (2)(a)(iii) shall be determined by means of visual inspection of the following components:

(i) Hose connections, unions, couplings and valves;

(ii) Machine door gaskets and seatings;

(iii) Filter head gasket and seating;

(iv) Pumps;

(v) Base tanks and storage containers;

(vi) Water separators;

(vii) Filter sludge recovery;

(viii) Distillation unit;

- (ix) Diverter valves;
  - (x) Saturated lint from lint basket; and
  - (xi) Cartridge filters.
- (c) Compliance with WAC 173-490-203 (2)(a)(ii) shall be ~~((determined))~~ demonstrated by:
- (i) A test consistent with the procedures on file with and approved by ~~((the department))~~ ecology; or
  - (ii) The proper installation, operation, and maintenance of equipment that has been demonstrated by the owner(s) or operator(s) to adequately meet the emission limits in WAC 173-490-203 (2)(a)(ii).
  - (d) Compliance with WAC 173-490-203 (2)(a)(iv) and (v) shall be ~~((determined))~~ demonstrated by tests consistent with the procedures on file with and approved by ~~((the department))~~ ecology.

**AMENDATORY SECTION** (Amending Order DE 82-22, filed 7/27/82)

WAC 173-490-204 GRAPHIC ARTS SYSTEMS. (1) Specific applicability.

(a) This section shall apply to all packaging rotogravure, publication rotogravure, specialty printing operations, and flexographic printing facilities that use more than 90 megagrams (100 tons) per year of ~~((volatile organic compounds))~~ VOCs as a component of ink, for the thinning of ink, cleaning of presses, press components and equipment; and are covered by WAC 173-490-025.

(b) Machines that have both coating units (apply a uniform layer of material across the entire width of a web) and printing units (forming words, designs, and pictures) shall be included under WAC 173-490-204 rather than WAC 173-490-040(6), Surface coaters.

(2) Provisions for specific processes.

(a) No owner(s) or operator(s) of a packaging rotogravure, publication rotogravure or flexographic printing subject to this regulation and employing solvent containing ink may operate, cause, allow or permit the operation of the facility unless:

(i) The volatile fraction of ink, as it is applied to the substrate, contains twenty-five percent by volume or less of organic solvent and seventy-five percent by volume or more of water;

(ii) The ink as it is applied to the substrate, less water, contains sixty percent by volume or more nonvolatile material; or

(iii) The owner(s) or operator(s) installs and operates:

(A) A carbon adsorption system which reduces the volatile organic emissions from the capture system by at least ninety percent by weight;

(B) An incineration system which oxidizes at least ninety percent of the nonmethane ~~((volatile organic compounds))~~ VOCs (VOC measured as total combustible carbon) to carbon dioxide and water; or

(C) An alternative ~~((volatile organic compound))~~ VOC emission reduction system demonstrated to have at least a ninety percent reduction efficiency, measured across the control system, and has been approved by ~~((the department))~~ ecology.

(b) A collection system shall be used with the emission controls of WAC 173-490-204 (2)(a)(iii). The design and operation of the collection system shall be consistent with good engineering practice, and shall provide an overall reduction in the emission of ~~((volatile organic compounds))~~ VOCs of at least:

(i) Seventy-five percent where a publication rotogravure process is used; or

(ii) Sixty-five percent where a packaging rotogravure process is used; or

(iii) Sixty percent where a flexographic process is used.

(3) ~~((Schedule of control dates:~~

~~((a) The owner or operator of a packaging rotogravure, publication rotogravure or flexographic printing facility subject to this chapter shall meet the applicable increments of progress in the following schedules or an approved alternative schedule of control dates as stipulated in WAC 173-490-071:~~

~~((i) For process equipment changes and add-on control devices, including incineration with heat recovery:~~

~~((A) Submit final plans for the emission control system or process equipment, or both, before April 1, 1981;~~

~~((B) Award contracts or purchase orders for the emission control system or process equipment, or both, before June 1, 1981;~~

~~((C) Initiate on-site construction or installation of the emission control or process equipment, or both, before December 1, 1981;~~

~~((D) Complete on-site construction or installation of the emission control or process equipment, or both, before December 1, 1982; and~~

~~((E) Achieve final compliance, determined in accordance with WAC 173-490-204(4), before January 1, 1983.~~

~~((ii) For incineration equipment without heat recovery or process modifications not requiring purchase orders:~~

~~((A) Submit final plans for the emission control system or process modifications, or both, before March 1, 1981;~~

~~((B) Award contracts for process modifications or for incineration equipment, or both, before May 1, 1981;~~

~~((C) Initiate on-site construction or installation of process modifications or emission control equipment, or both, before July 1, 1981;~~

~~((D) Complete on-site construction or installation of process modifications or incineration equipment, or both, before November 1, 1981; and~~

~~((E) Achieve final compliance, determined in accordance with WAC 173-490-204(4) before January 1, 1982.~~

~~((iii) For low solvent technology:~~

~~((A) Submit a plan for an extended schedule of control dates meeting the conditions in WAC 173-490-071;~~

~~((B) Achieve a final reduction in emissions greater than that which would have been attained from the controls specified in WAC 173-490-204(2);~~

~~((C) Commit to the installation of the controls in WAC 173-490-204(2) and achieving final compliance by January 1, 1987 should progress toward low solvent technology not meet expectations;~~

~~((D) Provide for a major reduction in emissions by January 1, 1983 as an increment of progress as required in WAC 173-490-071.~~

~~((b) The owner or operator of a volatile organic compound source subject to a compliance schedule of WAC 173-490-204 shall certify to the department within five days after the deadline for each increment of progress whether the required increment of progress has been met.~~

~~((4)) Testing and monitoring.~~

~~((a) ((Testing procedures to determine)) To demonstrate compliance with this chapter ((shall be on file with and approved by the department)), refer to WAC 173-400-105.~~

~~((b) When add-on control equipment is used, continuous monitors of the following parameters shall be installed, periodically calibrated, and operated at all times that the associated control equipment is operating:~~

~~((i) Exhaust gas temperature of all incinerators;~~

~~((ii) Temperature rise across a catalytic incinerator bed;~~

~~((iii) Breakthrough of VOC on a carbon adsorption unit; and~~

~~((iv) Any other continuous monitoring or recording device required by ((the department)) ecology.~~

~~((c) The owner or operator of a facility shall be responsible for all expenses of monitoring required by WAC 173-490-204 ((4)) (3)(b).~~

**AMENDATORY SECTION** (Amending Order DE 82-22, filed 7/27/82)

WAC 173-490-205 SURFACE COATING OF MISCELLANEOUS METAL PARTS AND PRODUCTS. (1) Specific applicability. This section shall apply to surface coating of miscellaneous metal parts and products in the following industries having VOC emissions greater than one hundred ~~((six))~~ seven kilograms (two hundred thirty-five pounds) per day and as qualified in WAC 173-490-205 (1)(b), (c), and (d), and 173-490-025.

(a) Miscellaneous metal parts and products shall include:

(i) Large farm machinery (harvesting, fertilizing and planting machines, tractors, combines, etc.);

(ii) Small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);

(iii) Small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);

(iv) Commercial machinery (office equipment, computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);

(v) Industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

(vi) Fabricated metal products (metal covered doors, frames, etc.); and

(vii) Any other industrial category which coats metal parts or products under the Standard Industrial Classification Code of Major Group 33 (primary metal industries), Major Group 34 (fabricated metal products), Major Group 35 (nonelectric machinery), Major Group 36 (electrical machinery), Major Group 37 (transportation equipment), Major Group 38 (miscellaneous instruments), ~~((and))~~ Major Group 39 (miscellaneous manufacturing industries), Major Group 40 (railroad transportation), and Major Group 41 (transit passenger transportation).

(b) This ~~((chapter))~~ section is not applicable to the surface coating of the following metal parts and products:

- (i) Automobiles and light-duty trucks;
- (ii) Metal cans;
- (iii) Flat metal sheets and strips in the form of rolls or coils;
- (iv) Magnet wire for use in electrical machinery;
- (v) Metal furniture;
- (vi) Large appliances;
- (vii) Airplanes;
- (viii) Automobile refinishing;
- (ix) Customized top coating of automobiles and trucks, if production is less than thirty-five vehicles per day; and
- (x) Exterior of marine vessels.

(c) This chapter applies to the application area, flashoff area, air and forced air drier, and oven used in the surface coating of the metal parts and products in WAC 173-490-205 (1)(a). This chapter also applies to prime coat, top coat, and single coat operations.

(d) The application of coatings whose formulations are controlled by federal specifications and the use of which is required by federal agencies shall be exempt from the emission limits in WAC 173-490-205 (2)(a).

(e) A case-by-case determination of the emission controls best representing RACT may be substituted for the requirements of WAC 173-490-205(2). Such a determination shall be approved by ~~((the department))~~ ecology.

(2) Provisions for specific processes.

(a) The owner or operator of a coating application system shall not emit a quantity of ~~((volatile organic compounds))~~ VOCs greater than those listed by specific coating, excluding water and as delivered to the application system:

(i) Clear coatings	0.52 kg/liter	(4.3 lb/gallon)
(ii) Extreme performance coatings	0.42 kg/liter	(3.5 lb/gallon)
(iii) Air dried coatings	0.42 kg/liter	(3.5 lb/gallon)
(iv) All others	0.36 kg/liter	(3.0 lb/gallon)
(v) Powder coatings	0.05 kg/liter	(0.4 lb/gallon)

(b) When more than one emission limitation listed in WAC 173-490-205 (2)(a) applies to a specific coating, the least stringent will apply.

(c) All VOC emissions from solvent washings shall be considered in the emission limitations in WAC 173-490-205 (2)(a), unless the solvent is directed into containers that prevent evaporation into the atmosphere.

(d) The emission limits set forth in WAC 173-490-205 (2)(a) shall be achieved by:

- (i) The application of low solvent coating technology; or
- (ii) An incineration system that oxidizes at least ninety percent of the ~~((volatile organic compounds))~~ VOCs (VOC measured as total combustible carbon) to carbon dioxide and water; or
- (iii) An equivalent means of VOC reduction certified by the owner(s) or operator(s) and approved by ~~((the department))~~ ecology.

(e) A collection system shall be used together with the incinerator of WAC 173-490-205 (2)(d)(ii). The design and operation of the collection system shall be consistent with good engineering practice and provide for an overall VOC emission reduction necessary to comply with the emission limits of WAC 173-490-205 (2)(a). The required VOC emission reduction shall be calculated on a unit volume of uncured solids basis.

(3) ~~((Schedule of control dates:~~

(a) ~~The owner or operator of a source shall meet the following applicable increments of progress, unless a source has an approved alternative schedule of control dates as stipulated in WAC 173-490-071:~~

- ~~(i) Sources using low solvent content coatings shall:~~
  - ~~(A) Submit final plans for the application of low solvent technology before April 1, 1981;~~
  - ~~(B) Complete evaluation of product quality and commercial acceptance before October 1, 1981;~~
  - ~~(C) Issue purchase orders or contracts for low solvent content coatings before December 1, 1981;~~
  - ~~(D) Initiate process modifications before January 1, 1982; and~~
  - ~~(E) Complete process modifications and begin use of low solvent content coatings before January 1, 1983.~~
- ~~(ii) Sources using process equipment changes or add-on control devices, including incineration with heat recovery, shall:~~
  - ~~(A) Submit final plans for the emission control system, or process equipment, or both, before April 1, 1981;~~
  - ~~(B) Award contracts or purchase orders for the emission control systems, or process equipment, or both, before June 1, 1981;~~

~~(C) Initiate on-site construction or installation of the emission control system, or process equipment, or both, before December 1, 1981;~~

~~(D) Complete on-site construction or installation of the emission control system or process equipment, or both, before December 1, 1982; and~~

~~(E) Achieve final compliance, determined in accordance with WAC 173-490-205(4) before January 1, 1983.~~

~~(iii) Sources using incineration without heat recovery or process modifications not requiring purchase orders shall:~~

~~(A) Submit final plans for the emission control system or process modification, or both, before March 1, 1981;~~

~~(B) Award contracts or purchase orders for the emission control system or process modification, or both, before May 1, 1981;~~

~~(C) Initiate on-site construction or installation of the emission control system or process modification, or both, before July 1, 1981;~~

~~(D) Complete on-site construction or installation of the emission control system or process modification, or both, before November 1, 1981; and~~

~~(E) Achieve final compliance, determined in accordance with WAC 173-490-205(4), before January 1, 1982.~~

~~(4)) Testing and monitoring.~~

(a) ~~((The department))~~ Ecology may require the owner(s) or operator(s) of a source to demonstrate at his/her own expense, compliance by the methods of WAC 173-490-205 ~~((4))~~ (3)(c).

(b) The owner(s) or operator(s) of a source shall notify ~~((the department))~~ ecology at least ten days before a proposed emission certification test so the director or a representative may ~~((at his option))~~ observe the test.

(c) ~~((Testing and calibration procedures to determine))~~ To demonstrate compliance with this chapter ((shall be consistent with the procedures on file with and approved by the department)), refer to WAC 173-400-105.

(d) ~~((The department))~~ Ecology may require monitoring of the following parameters:

- (i) Exhaust gas temperature of all incinerators;
- (ii) Temperature rise across a catalytic incinerator bed; and
- (iii) Breakthrough of VOC on a carbon adsorption unit.

AMENDATORY SECTION (Amending Order DE 80-18, filed 8/20/80)

WAC 173-490-207 SURFACE COATING OF FLATWOOD PANELING. (1) Specific applicability.

(a) This section shall apply to all flatwood panel manufacturers and surface finishing facilities as qualified in WAC 173-490-207 (1)(b) and (c) and 173-490-025.

(b) These chapters shall apply to all operations and equipment that is used to apply, convey and dry (including flashoff areas) a surface pattern or coating on the following products:

- (i) Printed interior panels made of hardwood plywood and thin ~~((particle board))~~ particleboard;
- (ii) Natural finish hardwood plywood panels; or
- (iii) Hardboard paneling with Class II finishes.

(c) These chapters do not apply to the manufacture of exterior siding, tileboard, or particleboard used as a furniture component.

(2) Provisions for specific processes.

(a) The owner(s) or operator(s) of a facility shall not emit ~~((volatile organic compounds))~~ VOCs from a coating application system in excess of:

(i) 2.9 kg per 100 square meters of coated finished product (6.0 lb/1,000 square feet) from printed interior panels, regardless of the number of coats applied;

(ii) ~~((5.8))~~ 5.9 kg per 100 square meters of coated finished product (12.0 lb/1,000 square feet) from natural finish hardwood plywood panels, regardless of the number of coats applied; and

(iii) ~~((4.8))~~ 4.9 kg per 100 square meters of coated finished product (10.0 lb/1,000 square feet) from Class II finishes on hardboard panels, regardless of the number of coats applied.

(b) The emission limits in WAC 173-490-207 (2)(a) shall be achieved by:

- (i) The application of low solvent content coating technology; or
- (ii) An incineration system which oxidizes at least ninety percent of the nonmethane ~~((volatile organic compounds))~~ VOCs entering the incinerator (VOC measured as total combustible carbon) to carbon dioxide and water; or

(iii) An equivalent means of VOC removal. The equivalent means must be certified by the owner(s) or operator(s) and approved by ~~((the department))~~ ecology.

(c) A capture system shall be used in conjunction with the emission control systems in WAC 173-490-207 (2)(b)(ii) and (iii). The design and operation of the capture system must be consistent with good engineering practice and shall be required to provide for an overall emission reduction sufficient to meet the emission limitation in WAC 173-490-207 (2)(a).

(3) ~~((Schedule of control dates:~~

~~(a) The owner or operator of a source shall meet the following applicable increments of progress, unless a source has an approved alternative schedule of control dates as stipulated in WAC 173-490-071:~~

~~(i) Sources using low solvent content coatings shall:~~

~~(A) Submit final plans for the application of low solvent technology before April 1, 1981;~~

~~(B) Complete evaluation of product quality and commercial acceptance before October 1, 1981;~~

~~(C) Issue purchase orders or contracts for low solvent content coatings before December 1, 1981;~~

~~(D) Initiate process modifications before January 1, 1982; and~~

~~(E) Complete process modifications and begin use of low solvent content coatings before January 1, 1983.~~

~~(ii) Sources utilizing process equipment changes or add-on control devices, including incineration with heat recovery, to comply with the emission limitations in WAC 173-490-207 (2)(a) shall:~~

~~(A) Submit final plans for the emission control system, or process equipment, or both, before April 1, 1981;~~

~~(B) Award contracts or purchase orders for the emission control systems, or process equipment, or both, before June 1, 1981;~~

~~(C) Initiate on-site construction or installation of the emission control system, or process equipment, or both, before December 1, 1981;~~

~~(D) Complete on-site construction or installation of the emission control system or process equipment, or both, before December 1, 1982; and~~

~~(E) Achieve final compliance, determined in accordance with WAC 173-490-207(4) before January 1, 1983.~~

~~(iii) Sources utilizing incineration without heat recovery or process modifications not requiring purchase orders to comply with the emission limitation in WAC 173-490-207 (2)(a) shall:~~

~~(A) Submit final plans for the emission control system or process modification, or both, before March 1, 1981;~~

~~(B) Award contracts or purchase orders for the emission control system or process modification, or both, before May 1, 1981;~~

~~(C) Initiate on-site construction or installation of the emission control system or process modification, or both, before July 1, 1981;~~

~~(D) Complete on-site construction or installation of the emission control system or process modification, or both, before November 1, 1981; and~~

~~(E) Achieve final compliance, determined in accordance with WAC 173-490-207(4), before January 1, 1982.~~

~~(4)) Testing and monitoring.~~

~~(a) ((The department)) Ecology may require the owner or operator of a facility to demonstrate at his/her own expense compliance by the methods of WAC 173-490-207 ((4)) (3)(c).~~

~~(b) The owner(s) or operator(s) of a facility shall notify ((the department)) ecology at least ten days before a proposed emission certification test so the ((department)) director or a representative may ((at his option)) observe the test.~~

~~(c) ((Testing and calibration procedures to determine)) To demonstrate compliance with this chapter ((shall be consistent with the procedure on file with and approved by the department)), refer to WAC 173-400-105.~~

~~(d) ((The department)) Ecology may require monitoring of the following parameters:~~

~~(i) Exhaust gas temperature of all incinerators;~~

~~(ii) Temperature rise across a catalytic incinerator bed; and~~

~~(iii) Breakthrough of VOC on a carbon adsorption unit.~~

**AMENDATORY SECTION** (Amending Order DE 82-22, filed 7/27/82)

WAC 173-490-208 AEROSPACE ASSEMBLY AND COMPONENT COATING OPERATIONS. (1) Specific applicability. This section shall apply to all aerospace component coating facilities that emit an annual average of eighteen kilograms (forty pounds) or more of ((volatile organic compounds)) VOCs per operating day and as qualified in WAC 173-490-025.

(2) It shall be unlawful for any person to cause or allow:

(a) The application of any primer or topcoat to aerospace components which contains in excess of:

(i) 650 grams of VOC per liter of primer, less water, as applied.

(ii) 600 grams of VOC per liter of topcoat, less water, as applied.

(b) The application of any temporary protective coating to aerospace components that contains more than 250 grams of VOC per liter of material, less water, as applied.

(c) The use of ((volatile organic compounds)) VOCs of composite vapor pressure of 10.4 kPa (1.5 psia) or greater at a temperature of 21.1°C (70°F) for surface preparation or cleanup, excluding paint removal.

(d) The use of ((volatile organic compounds)) VOCs for the cleanup of spray equipment used in aerospace component coating operations unless 85 percent of the ((volatile organic compounds)) VOCs by weight, are collected and disposed ((such)) so that they are not emitted to the atmosphere.

(e) The use of a stripper which contains more than 400 grams of VOC per liter or has a composite vapor pressure of ((volatile organic compounds)) VOCs more than 1.3 kPa (0.19 psia) at 21.1°C (70°F).

(3) The emission limits of paragraph (2) shall be achieved by:

(a) The application of reasonably available low solvent coating technology;

(b) A vapor collection and disposal system; or

(c) An equivalent method of VOC reduction certified by the owner(s) or operator(s) and approved by ((the director)) ecology.

(4) The provisions of WAC 173-490-208 (2)(a) and (2)(b) shall not apply to the following materials:

(a) Coatings for masking in chemical etching operations,

(b) Adhesive bonding primer,

(c) Flight test coatings,

(d) Space vehicle coatings, or

(e) Fuel tank coatings.

(5) Upon the submission of an alternative coating evaluation, ((the director)) ecology may determine that a reasonably available low solvent coating does exist for a given application and may exempt the coating from requirements of WAC 173-490-208. All alternative coating evaluations shall contain, as a minimum:

(a) Types of products to be coated,

(b) Types of coatings evaluated,

(c) Results of performance tests,

(d) Status of research into development of low VOC coatings for the application,

(e) Feasibility of installing control equipment,

(f) Mitigating measures that could be implemented to reduce VOC emissions.

~~((6) Any facility subject to this section shall submit a report to the department by January 1, 1983. This report shall include, as a minimum, a discussion of the advances in coating technology that have occurred since January 1, 1980, and a forecast of future technology improvements.~~

~~(7) Schedule of control dates:~~

~~(a) The owner or operator of a source shall meet the following applicable increments of progress:~~

~~(i) Submit final plans for the emission control system, process equipment or low solvent coatings substitution before September 1, 1982.~~

~~(ii) Award contracts or purchase orders for the emission control system, process equipment or low solvent coatings before January 1, 1983.~~

~~(iii) Initiate construction or process modifications before March 1, 1983.~~

~~(iv) Achieve final compliance before July 1, 1983.)~~

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 173-490-070	SCHEDULE OF CONTROL DATES.
WAC 173-490-071	ALTERNATIVE SCHEDULE OF CONTROL DATES.
WAC 173-490-120	COMPLIANCE SCHEDULES.
WAC 173-490-130	REGULATORY ACTIONS.
WAC 173-490-135	CRIMINAL PENALTIES.
WAC 173-490-140	APPEALS.
WAC 173-490-150	VARIANCE.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 173-403-010	POLICY AND PURPOSE.
WAC 173-403-020	APPLICABILITY.
WAC 173-403-030	DEFINITIONS.
WAC 173-403-050	NEW SOURCE REVIEW (NSR).
WAC 173-403-060	BUBBLE RULES.
WAC 173-403-070	ISSUANCE OF EMISSION REDUCTION CREDITS.
WAC 173-403-075	USE OF EMISSION REDUCTION CREDITS.
WAC 173-403-080	PREVENTION OF SIGNIFICANT DETE- RIORATION (PSD).
WAC 173-403-090	RETROFIT REQUIREMENTS FOR VISI- BILITY PROTECTION.
WAC 173-403-100	COMPLIANCE SCHEDULES.
WAC 173-403-110	PUBLIC INVOLVEMENT.
WAC 173-403-120	VARIANCE.
WAC 173-403-130	REQUIREMENTS FOR NONATTAIN- MENT AREAS.
WAC 173-403-141	CREDITABLE STACK HEIGHT AND DISPERSION TECHNIQUES.
WAC 173-403-145	ADJUSTMENT FOR ATMOSPHERIC CONDITIONS.
WAC 173-403-150	MAINTENANCE OF PAY.
WAC 173-403-160	REQUIREMENTS FOR BOARDS AND DIRECTOR.
WAC 173-403-170	REGULATORY ACTIONS.
WAC 173-403-180	CRIMINAL PENALTIES.
WAC 173-403-190	APPEALS.

**WSR 89-23-129****PROPOSED RULES****HIGHER EDUCATION COORDINATING BOARD**

[Filed November 22, 1989, 5:00 p.m.]

**Original Notice.**

Title of Rule: State need grant program.

Purpose: Implementing a revised state need grant program.

Statutory Authority for Adoption: RCW 28B.10.800 - [28B.10.]822.

Statute Being Implemented: RCW 28B.10.800 - [28B.10.]822.

Summary: These rules substantially redefine the method by which the eligible student is identified and served in the state need grant program.

Reasons Supporting Proposal: This is a Higher Education Coordinating Board approved revision of the program undertaken after extensive study and public input.

Name of Agency Personnel Responsible for Drafting and Implementation: John Klacik, GV-11, 586-1405; and Enforcement: Shirley Ort, GV-11, 586-6404.

Name of Proponent: Higher Education Coordinating Board, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Implements a revised state need grant program for 1990-91 academic year.

Proposal Changes the Following Existing Rules: All processes by which the eligible student is identified and served.

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

Hearing Location: Conference Room of the Higher Education Coordinating Board, at 917 Lakeridge Drive, Olympia, Washington, on January 4, 1990, at 9:30 a.m.

Submit Written Comments to: John Klacik, 917 Lakeridge Drive, GV-11, by January 11, 1990.

Date of Intended Adoption: January 17, 1990.

November 22, 1989

John Klacik

Associate Director, SFA

**AMENDATORY SECTION** (Amending Order 2/81, Resolution No. 81-67, filed 6/16/81)

WAC 250-20-001 **APPLICABILITY OF RULES.** Unless specified, the term "state need grant" applies to both the state need grant program and the federal program for state student incentive grants. Institutions participating in the state need grant program must comply with the regulations specified in chapter 250-20 WAC and conform to all requirements of the state student incentive grant program as specified in 34 Code of Federal Regulations, Part 692. ~~((A school which does not qualify as a "postsecondary institution" for state need grant purposes, but which meets the qualifications of the state student incentive grant program may participate in the latter program upon presentation of satisfactory evidence of the availability of local matching funds, and is also subject to compliance with WAC 250-20-001 through 250-20-091.))~~

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

**AMENDATORY SECTION** (Amending Order 2/87, Resolution No. 87-59, filed 7/29/87)

WAC 250-20-011 **STUDENT ELIGIBILITY.** ~~((+++))~~ For a student to be eligible for a state need grant he or she must:

~~((+))~~ (1) Be a "needy student" or "disadvantaged student" as determined by the higher education coordinating board in accordance with RCW 28B.10.802.

~~((b))~~ (2) Be a resident of the state of Washington.

~~((+))~~ (3) Be enrolled or accepted for enrollment as ~~((a full-time))~~ an undergraduate student at a participating postsecondary institution or be a student under an established program designed to qualify him or her for enrollment as a full-time student at a postsecondary institution in the state of Washington.

~~((+))~~ (a) For purposes of need grant eligibility, the student must be enrolled, at time of disbursement, in a course load of at least ~~((twelve))~~ six credits per quarter or semester or, in the case of institutions which do not use credit hours, ~~((24))~~ 12 clock hours per week ~~((unless it is documented that "full-time" for the particular course the student is pursuing is less than twelve credits per quarter or semester or 24 clock hours per week. Should a student be in such a course of study, he or she must be enrolled for the number of credit or clock hours accepted as full-time for that course of study)).~~

(b) A ~~((grant recipient))~~ student enrolled less than ~~((full-time))~~ half time may not receive this grant for the term in question, but is eligible for reinstatement or reapplication for a grant upon return to ~~((full-time))~~ at least a half-time status. ~~((If, on the written recommendation of a counselor or a professor, and in accordance with agreement by the financial aid officer, the student enrolls in a course load less than full time, the student will be allowed to retain his or her grant for that term.))~~ Correspondence courses may not ~~((be counted in the calculation of a full-time load))~~ comprise more than one-half of the student's minimum credit load for which aid is being considered.

~~((ii))~~ In addition to enrolling full-time, the student is also expected to satisfactorily complete twelve credit hours per quarter or semester or, in the case of institutions which do not use credit hours, 24 clock hours per week or the appropriate institutions which do not use credit hours, 24 clock hours per week or the appropriate number of hours as documented:

Each institution must submit to the higher education coordinating board for approval its policy for awarding financial aid to students who do not complete the required number of credit or clock hours. The financial aid office must have on record in each student's file justification for reawarding a need grant to any student who received a grant the

previous academic term and did not complete a full-time course load during that term:

~~((iii))~~ (iii) If the board is notified in writing that a need grant recipient will not attend the institution for a term during the academic year of the grant award, but plans to return that same academic year, a portion of the full year's grant may be awarded for those terms the student attends full-time:

~~((d))~~ (4) The state need grant recipient is expected to maintain satisfactory progress as defined in WAC 250-20-021(19).

(5) Not be pursuing a degree in theology.

~~((e))~~ (6) Not have received a state need grant for more than ~~((eight))~~ the equivalent of ten full-time semesters or ~~((twelve))~~ fifteen quarters or equivalent ~~((or a))~~ combination of these two. Upon receipt of a bachelor's degree, a student is no longer eligible. ~~((A fifth-year student in a program requiring five years for a bachelor's degree may receive a state need grant if he or she has not received a state need grant for the maximum number of quarters or semesters:))~~

~~((f))~~ (7) Have made a bona fide application for a Pell grant.

~~((g))~~ (8) Certify that he or she does not owe a refund on a state need grant, a Pell grant or a supplemental educational opportunity grant, and is not in default on a loan made, insured, or guaranteed under the ~~((Carl Perkins))~~ National Direct Student (Perkins) Loan or Guaranteed Student, and Income-Contingent Loan Programs.

~~((2))~~ An otherwise eligible student may not be awarded a state need grant if receipt of the need grant will result in a reduction of basic maintenance allowances provided by another state agency:))

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

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

#### AMENDATORY SECTION (Amending Order 2/87, Resolution No. 87-59, filed 7/29/87)

WAC 250-20-015 AGREEMENT TO PARTICIPATE. In order to participate in the program a postsecondary institution must annually file an "agreement to participate" supplying the following information as appropriate: Name and address of school (including central office and all campus sites), name and address of owner(s), or if a corporation the name and addresses of stockholders holding more than twenty-five percent of the stock and percentage of stock held, the date on which the school officially began instruction if in the last five years, type and date of last accreditation, enrollment information (unless reported to the state of Washington or in the ~~((higher education general information survey))~~ integrated postsecondary education data system) and such other information as may be required to assure proper administration of the program. Along with the "agreement," all institutions must submit, for approval, a copy of their refund/repayment policy, student budgets, gift equity packaging policy and their satisfactory progress policy for state need grant recipients. In addition the "agreement to participate" will also indicate the institution's agreement to abide by all program rules, regulations, and guidelines, to maintain and provide all pertinent information, records, and reports requested by the board, and to notify the board within thirty days of any change (other than student enrollment) to information reported on the agreement form.

#### AMENDATORY SECTION (Amending Order 2/88, Resolution No. 88-11, filed 4/21/88)

WAC 250-20-021 PROGRAM DEFINITIONS. (1) The term "needy student" shall mean a post-high school student of an institution of postsecondary education who demonstrates to the higher education coordinating board the financial inability, either parental, familial, or personal, to bear the total cost of education for any semester or quarter. The determination of need shall be made in accordance with federal needs analysis formulas and provisions as recognized and modified by the board.

(2) The term "disadvantaged student" shall mean a post-high school student who by reason of adverse cultural, educational, environmental, experiential or familial circumstance is unable to qualify for enrollment as a full-time student in a postsecondary institution, and who

otherwise qualifies as a needy student and who is attending a postsecondary educational institution under an established program designed to qualify him or her for enrollment as a full-time student.

(3) The term "postsecondary institution" shall mean any public university, college, community college, or vocational-technical institute operated by the state of Washington political subdivision thereof, or any other university, college, school or institute in the state of Washington offering instruction beyond the high school level which is a member institution of one of the following accrediting associations: The Northwest Association of Schools and Colleges, the Association of Independent Colleges and Schools, the Cosmetology Accrediting Commission, or the National Association of Trade and Technical Schools, and if such institution agrees to participate in the program in accordance with all applicable rules and regulations. Any institution, branch, extension or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of one of the above named accrediting associations.

(4) "Washington resident" shall be defined as an individual who satisfies the requirements of RCW 28B.15.011 through 28B.15.013 and board-adopted rules and regulations pertaining to the determination of residency.

(5) "Dependent student" shall mean any post-high school student who does not qualify as an independent student in accordance with WAC 250-20-021(6).

(6) "Independent student" shall mean any student who qualifies as an independent student for the receipt of federal aid. These qualifications include a student who has either:

(a) Reached his or her twenty-fourth birthday before January 1st of the aid year; or,

(b) Is a veteran of the U.S. Armed Forces; or,

(c) Is an orphan or ward of the court; or,

(d) Has legal dependents other than a spouse; or,

(e) Is a married student or a graduate/professional student and will not be claimed by parents as a U.S. income tax exemption in ~~((1988))~~ the aid year; or,

(f) Was not claimed by parents as a U.S. income tax exemption in either ~~((1986 or 1987))~~ of the two calendar years prior to the academic year for which aid is being considered and had a total income and benefits for those two years ~~((equal to or greater than \$4,000))~~ sufficient to support him or herself; or,

(g) Is determined to be independent for the receipt of federal aid on the basis of the professional judgment of the aid administrator.

(7) Definitions of "undergraduate students" will be in accord with definitions adopted for institutional use by the board.

(8) ~~((Budgetary cost))~~ Student budgets shall consist of that amount required to support an individual as a student for nine months and may take into consideration cost factors for maintaining the student's dependents. This should be the amount used to calculate the student's total need for all state and federal funds.

(9) "State need grant cost-of-attendance" is a standard average cost per sector, developed by the board, to determine the eligible students' exact award.

The higher education coordinating board will consult with appropriate advisory committees and the representative association of student financial aid administrators, to annually review and adjust ~~((budgets which will reflect the latest recognized cost levels for room and board, transportation, books, supplies, personal expenses and any other factors deemed necessary for consideration))~~ the costs-of-attendance. The adopted budgets will be published concurrent with annual guidelines for program administration.

~~((9))~~ ~~((Total))~~ (10) "State need grant family contribution" for dependent students shall mean the sum of the assumed parents' contribution, contribution from student (and spouse's) assets, and ~~((additional student resources))~~ income other than earnings. For independent students with dependent children, ~~((total))~~ state need grant family contribution shall mean the sum of contribution from students' (and spouse's) income from all sources and assets ~~((, and additional student resources))~~. For independent students without dependent children, the state need grant family contribution shall mean the sum of contributions from all the students' (and spouse's) assets and income, other than earnings.

~~((10))~~ (11) "Parents' contribution" shall mean the contribution toward college expenses expected from the student's parent(s) as related to the total financial strength of the parents.

~~((11))~~ "Student assets" are comprised of those funds other than the student's expected summer savings and additional student resources as

defined in WAC 250-20-021(13) to meet his or her educational expenses which were generated primarily through the student's own efforts. Examples of student assets are money in a savings account or in a trust fund.

(12) "Additional student resources" consist of those funds made available to the student primarily because of his or her student status such as G.I. Bill or veterans benefits. They also include financial support such as public assistance benefits, vocational rehabilitation funds, GEDA funds, spouses' academic year income, those portions of agency funds designated for expenses other than tuition and fees, etc.)

(12) Funds administered by the institution such as, Pell grants, BIA grants, those portions of agency funds designated for tuition and fees, (and student employment are to be used as matching funds and as such are not included as "additional student resources.") as well as funds available to the student because of his or her student status are to be used in calculating the student's overall need, but are not counted as part of the state need grant family contribution.

(13) "Maximum base grant" is a percentage of the state need grant costs-of-attendance. The percentage will be no less than fifteen percent and no more than twenty percent, dependent each year upon available funding.

(14) "Dependent care allowance" is a flat grant amount, to be determined by the board, which is in addition to the student's eligibility for the base grant. The allowance is awarded to those students who have dependents in need of care. The dependent must be someone (other than a spouse) living with the student. Care must be that assistance provided to the dependent which is paid to and provided by someone outside of the student's household.

(15) "State need (index) grant award" is the difference between the ((appropriate ranking factor as identified in the following table)) maximum base grant and the student's total state need grant family contribution((-Ranking factors: Students living with parents = 1970; single students living away from parents = 2770; married couple, one student = 4065; single parent with one child = 6750; married couple, both students = 5540. An additional 1000 may be added for the first dependent and 800 added for each subsequent dependent)), plus a dependent care allowance, if applicable.

((+4)) (16) "Academic year" is that ((nine-month)) period of time ((from September to June)) between July 1 and the following June 30 during which a full-time student would normally be expected to complete the equivalent of two semesters or three quarters of instruction.

((+5)) (17) "Clock hours" means a period of time which is the equivalent of either:

(a) A 50 to 60 minute class, lecture, or recitation, or

(b) A 50 to 60 minute period of faculty-supervised laboratory shop training or internship.

(18) "Gift equity packaging policy" is the institution's policy for assigning gift aid to all needy, eligible students.

(19) Satisfactory progress is the student's successful completion of a minimum number of credits for each term in which the grant was received. Each school's policy for measuring progress of state need grant recipients must define satisfactory as the student's completion of the minimum number of credits for which the aid was disbursed.

(a) The minimum satisfactory progress standard for full-time students is twelve credits per term or 300 clock hours per term. Satisfactory progress for three-quarter time students is nine credits per term or 225 clock hours per term. Satisfactory progress for half-time students is six credits per term or 150 clock hours per term.

(b) Each school's policy must deny further disbursements of the Need Grant at the conclusion of any term in which he or she fails to complete at least one-half (50%) of the minimum number of credits for which the aid was disbursed or otherwise fails to fulfill the conditions of the institution's satisfactory progress policy.

(c) The school may make disbursements to a student who is in a probationary status. Probation is defined as completion of at least one-half (50%), but less than all (100%) of the minimum number of credits for which the aid was calculated and disbursed. The school must have a probation policy, approved by the board, which limits the number of terms in which a student may receive the Need Grant while in a probationary status.

(d) The school's aid administrator may at any time, using professional judgment exercised on a case-by-case basis, reinstate a student back into a satisfactory progress status, in response to an individual student's extenuating circumstances.

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

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

AMENDATORY SECTION (Amending Order 2/88, Resolution No. 88-11, filed 4/21/88)

WAC 250-20-031 APPLICATION PROCEDURE. (1) Application for a state grant must be made each year.

(2) All applications will be ranked anew each year.

(3) Application for a state need grant is accomplished through a student's application for admission to, and financial aid from, the institution of his or her choice(~~(, and nomination to the board by that institution)~~).

(4) Financial data must be generated in accordance with the method set forth by the higher education coordinating board to assure that information will be consistent on a state-wide basis.

The Board shall each year develop criteria which shall be used to determine eligible need analysis processors in a multiple processor system. Further, the Board shall each year specify the student data elements essential for determining State Need Grant eligibility and shall authorize the forms and processes for collecting and analyzing such data.

(5) ((Student nominations will be transmitted by participating institutions to the board on forms designed and/or utilized and distributed by the board:

(6) A)) The burden of proof of a grant recipient's eligibility is with the institution. At a minimum:

(a) The institution must be able, on request of the board, to reconstruct the calculations and rationale for the student's grant eligibility and award amounts.

(b) The financial aid form or comparable financial status documents, ((and)) with the resulting financial need analysis must be on record in the financial aid office(s) for all ((nominations submitted to the board)) grant recipients.

(c) The institution must also have on record justification for rewarding a need grant to any student who failed to make satisfactory progress.

((7)) (6) The board shall establish annual ((application deadlines)) criteria by which the eligible student is to be identified, ranked, and awarded. That criteria shall include the state need grant cost-of-attendance for each sector, the maximum award, and the maximum state need grant family contribution.

((8) Unless institutions are notified otherwise by the board, nominations on all eligible state need grant recipients should be submitted throughout the academic year in progress:

(9) Grants made subsequent to the fall term awarding cycle will be funded from moneys made available from unexpended grant funds:

(+0)) (7) The institution shall examine the student's aid application to determine overall need and specific state need grant eligibility and the appropriate award, using the board approved criteria.

(8) The board will make available to all participating institutions, a list of all students who owe state need grant repayments or have otherwise exhausted their state need grant eligibility. It is the institutions's responsibility to ensure that no ineligible student receives a state need grant.

(9) The financial aid officer at each institution will be required to sign a statement attesting to the fact that all eligible financial aid applicants within state need grant parameters will be ((nominated)) identified and served to the extent funds are available and that financial information will be determined in strict adherence to program guidelines.

(10) No group of students, such as single parents or part-time students, may be advantaged or disadvantaged in its access to the state need grant by any institutional awarding policy.

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

NEW SECTION

WAC 250-20-037 RESERVE OF FUNDS. The board shall annually reserve funds for the body of students at each institution. The

percentage of state need grant funds to be reserved equals the proportion of grant dollars needed to fund the eligible students who are enrolled, as reported on the unit record report, at each school compared to the dollars needed to fund all state need grant eligible students enrolled in all participating schools.

**AMENDATORY SECTION** (Amending Order 2/87, Resolution No. 87-59, filed 7/29/87)

**WAC 250-20-041 AWARD PROCEDURE.** (1) ~~((The board shall annually determine recipients of Washington state need grants from among Washington residents who have applied for a state need grant by ranking them according to their state need indexes.))~~ The institution will offer grants to eligible students from funds reserved by the board. It is the institution's responsibility to ensure that the reserve is not over expended within each academic year.

~~(2) ((Grant receipt shall be determined by the inability of the student and family, if appropriate, to contribute to the postsecondary educational costs of the applicant as demonstrated by the state need index of the student.~~

~~(3) Maximum and minimum grant amounts will be established by the board each year.))~~ Each eligible student receiving a grant must receive the maximum grant award for which he or she is eligible.

(3) The maximum state need grant award should not exceed the student's:

(a) Overall need;

(b) The maximum base grant minus state need grant family contribution, plus a dependent care allowance if eligible; or

(c) Gift equity packaging policy as determined by the institution.

(4) Eligible students ((may)) shall receive ((the)) a prorated portion of their state need grant for any academic period in which they are enrolled ((full-time)) at least half time, as long as funds are available. Students enrolled at a three-quarter time rate, at the time of disbursement, will receive seventy-five percent of their full-time base grant. Half time students will receive fifty percent of their full-time base grant, at disbursement. Students eligible for a dependent care allowance, who are enrolled less than full time will receive fifty percent of the full-time allowance. Depending on the availability of funds, students may receive a need grant for summer session attendance.

(5) ((Upon determination of grant recipients, the board will notify the institution of the applicants who will receive a state need grant and the amounts of the grants.

~~((6))~~ The institution will be expected, insofar as possible, to match the state need grant with other funds sufficient to meet the student's need. Matching moneys may consist of student financial aid funds and/or student self-help.

~~((7))~~ (6) All financial resources available to a state need grant recipient, when combined, may not exceed the amount computed as necessary for the student to attend a postsecondary institution. The student will not be considered overawarded if((+)) He or she receives additional funds after the institution awards aid, and the total resources exceed his or her financial need by \$200 or less by the end of the academic year((,- or (2) the student earns more money from employment than the institution anticipated when it awarded the state need grant and the excess is treated in accordance with the method specified in the state need grant operational guidelines)).

~~((8))~~ (7) The institution will notify the student of receipt of the state need grant.

~~((9) Grant receipt for those students nominated after the initial closing date will be determined in the same manner as described in WAC 250-20-041 (1) and (2) above.))~~ (8) Any student who has received at least one disbursement and chooses to transfer to another participating institution within the same academic year, may apply to the board for funds to continue receipt of the grant at the receiving institution.

**AMENDATORY SECTION** (Amending Order 2/87, Resolution No. 87-59, filed 7/29/87)

**WAC 250-20-051 GRANTS DISBURSEMENT.** (1) At intervals designated by the executive director, financial aid ~~((officers))~~ administrators from participating independent colleges and proprietary institutions will submit the appropriate warrant order form to the higher education coordinating board for each state need grant recipient certifying ~~((full-time))~~ enrollment and grant eligibility. ~~((2))~~ (a) Upon receipt of the warrant order forms, the higher education coordinating board will forward warrants to the appropriate institution for each recipient.

~~((3))~~ (b) The student must acknowledge receipt for the state need grant each term agreeing to the conditions of award.

~~((4))~~ (c) All signed receipts for state need grants are to be returned to the board, along with all unclaimed warrants on or before the date specified by the board each term.

~~((5) Should a student recipient leave school by reason of failure or withdrawal at the end of the grading period, the unused portion of the grant will remain with the state.~~

~~((6))~~ (d) A student-by-student reconciliation must be completed by the institution at the end of each term.

(2) All other institutions may request funds as necessary to make disbursements to students.

(a) Progress reports must be filed with the board at the end of each term.

(b) A student-by-student reconciliation must be filed with the board at the end of each academic year.

(3) No institution may disburse nor claim more funds than that amount reserved by the board for the body of students at each institution.

(4) Should a student recipient withdraw from classes during the term in which he or she ((was awarded)) received a state need grant, he or she shall be required to repay the appropriate amount ((to the board)) according to the institution's approved repayment policy.

~~((a) Each institution must submit for board approval its policies and procedures for calculating the amount of state need grant funds to be returned to the board by students who withdraw from classes after having been awarded state need grants~~

~~(b) The amount of state need grant funds to be returned to the board shall be determined by the institution in accordance with its board-approved policies and procedures.~~

~~((c))~~ The institution shall advise the students and the board of amounts to be repaid.

(5) The Board reserves the right, if funds are available, to pay to public institutions an administrative expense allowance for the shared responsibility of administering the program on the Board's behalf. The allowance shall be calculated annually as a percentage of the Need Grant funds disbursed by the institution.

~~((d) The board will advise the institution when the student has repaid the amount due.))~~

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

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

**AMENDATORY SECTION** (Amending Order 2/87, Resolution No. 87-59, filed 7/29/87)

**WAC 250-20-071 APPEAL PROCESS.** ~~((1))~~ Should a student question his or her state need grant eligibility or ((nomination)) award, the following procedures should be followed:

~~((a))~~ (1) The student should direct questions and appeals to the financial aid officer at the institution he or she attends.

~~((b))~~ (2) If the student is not satisfied with the response of the ((institutional financial aid officer)) institution, he or she should assemble all relevant academic, financial, and personal data and forward it to the higher education coordinating board for review.

~~((c))~~ (3) The board's division of student financial aid will review all material submitted and, if possible, will resolve the problem, advising the student of his or her eligibility and generating an award or, if the student is not eligible for a state need grant, advising the student of the reason for denial.

~~((d))~~ (4) The higher education coordinating board will convene its review committee to consider the situation of any student whose state need grant eligibility is questionable, or upon the request of the student. If the committee finds the student eligible for state need grant receipt, it will advise the financial aid ((officer)) administrator at the institution the student attends and will recommend to the ((board)) school that the student's state need grant ((nomination)) award be processed immediately. If the review committee finds the student not eligible for state need grant receipt, it will advise the student of the reason for denial.

~~((e))~~ (5) If the student is not satisfied with the resolve by the review committee, the student's final recourse is submission of his or her case to the higher education coordinating board.

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

**Table of WAC Sections Affected**

**KEY TO TABLE**

**Symbols:**

- AMD = Amendment of existing section
- NEW = New section not previously codified
- OBJEC = Notice of objection by Joint Administrative Rules Review Committee
- PREP = Preproposal comments
- RE-AD = Readoption of existing section
- REP = Repeal of existing section
- REAFF = Order assuming and reaffirming rules
- REMOV = Removal of rule pursuant to RCW 34.04.050(5)
- RESCIND = Rescind previous emergency rule
- REVIEW = Review of previously adopted rule
- STMT = Statement regarding previously adopted rule

**Suffixes:**

- P = Proposed action
- C = Continuance of previous proposal
- E = Emergency action
- S = Supplemental notice
- W = Withdrawal of proposed action
- No suffix means permanent action

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.

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 show the sequence of the document within the issue.

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1-21-060	NEW-P	89-09-068	10-08-211	NEW-P	89-10-035	16-225-040	REP	89-11-092
1-21-060	NEW	89-12-028	10-08-211	NEW	89-13-036	16-225-050	REP-P	89-08-019
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1-21-070	NEW	89-12-028	10-08-215	NEW	89-13-036	16-228	AMD-C	89-06-006
1-21-080	NEW-P	89-09-068	10-08-230	NEW-P	89-10-035	16-228-010	AMD-P	89-20-067
1-21-080	NEW	89-12-028	10-08-230	NEW	89-13-036	16-228-115	AMD-P	89-20-067
1-21-090	NEW-P	89-09-068	10-08-250	NEW-P	89-10-035	16-228-116	NEW-P	89-20-067
1-21-090	NEW	89-12-028	10-08-250	NEW	89-13-036	16-228-117	NEW-P	89-18-081
1-21-100	NEW-P	89-09-068	10-08-251	NEW-P	89-10-035	16-228-117	NEW	89-22-074
1-21-100	NEW	89-12-028	10-08-251	NEW	89-13-036	16-228-143	NEW-P	89-20-067
1-21-110	NEW-P	89-09-068	10-08-252	NEW-P	89-10-035	16-228-145	AMD-P	89-20-067
1-21-110	NEW	89-12-028	10-08-252	NEW	89-13-036	16-228-155	AMD-P	89-20-067
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1-21-120	NEW	89-12-028	10-08-260	NEW	89-13-036	16-228-160	AMD-P	89-20-067
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1-21-130	NEW	89-12-028	10-08-261	NEW	89-13-036	16-228-164	NEW	89-07-006
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1-21-160	NEW	89-12-028	16-30-020	AMD	89-06-014	16-228-180	AMD-P	89-20-067
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10-08-120	AMD-P	89-10-035	16-156-050	AMD-E	89-23-068	16-228-660	NEW-E	89-12-046
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25-48-110	AMD-P	89-17-116	51-06-020	AMD-P	89-17-138	82-54-020	NEW-E	89-12-022
44-10-040	AMD-P	89-12-030	51-06-030	REP-P	89-17-138	82-54-020	NEW-P	89-15-016
44-10-040	AMD-E	89-12-031	51-06-040	REP-P	89-17-138	82-54-020	NEW	89-17-089
44-10-040	AMD	89-16-024	51-06-050	REP-P	89-17-138	98-08-150	AMD-P	89-05-054
44-10-050	AMD-P	89-12-030	51-06-060	REP-P	89-17-138	98-08-150	AMD	89-08-043
44-10-050	AMD-E	89-12-031	51-06-070	AMD-P	89-17-138	98-11-010	AMD-P	89-05-054
44-10-050	AMD	89-16-024	51-06-080	REP-P	89-17-138	98-11-010	AMD	89-08-043
44-10-055	REP-P	89-12-030	51-06-090	REP-P	89-17-138	98-12-010	REP-P	89-05-054
44-10-055	REP-E	89-12-031	51-06-100	REP-P	89-17-138	98-12-010	REP	89-08-043
44-10-055	REP	89-16-024	51-06-110	REP-P	89-17-138	98-12-050	NEW-P	89-05-054
44-10-060	AMD-P	89-12-030	51-06-120	AMD-P	89-17-138	98-14-090	AMD-P	89-05-054
44-10-060	AMD-E	89-12-031	51-08-010	AMD-P	89-17-138	98-14-090	AMD	89-08-043
44-10-060	AMD	89-16-024	51-10	AMD-P	89-17-138	98-14-100	NEW-P	89-05-054
44-10-100	AMD-P	89-12-030	51-12-102	AMD	89-04-043	98-14-100	NEW	89-08-043
44-10-100	AMD-E	89-12-031	51-12-206	AMD	89-04-043	98-16-020	AMD-P	89-05-054
44-10-100	AMD	89-16-024	51-12-219	AMD	89-04-043	98-16-020	AMD	89-08-043
44-10-110	AMD-P	89-12-030	51-12-220	AMD-P	89-17-138	98-20-010	REP-P	89-05-054
44-10-110	AMD-E	89-12-031	51-12-223	AMD	89-04-043	98-20-010	REP	89-08-043
44-10-110	AMD	89-16-024	51-12-305	AMD	89-04-043	98-20-020	AMD-P	89-05-054
44-10-120	AMD	89-06-026	51-12-402	AMD	89-04-043	98-20-020	AMD	89-08-043
44-10-130	AMD-P	89-12-030	51-12-403	AMD-P	89-17-138	98-40-020	AMD-P	89-05-054
44-10-130	AMD-E	89-12-031	51-12-404	AMD-P	89-17-138	98-40-020	AMD	89-08-043
44-10-130	AMD	89-16-024	51-12-411	AMD	89-04-043	98-40-030	AMD-P	89-05-054
44-10-140	AMD-P	89-12-030	51-12-426	AMD	89-04-043	98-40-030	AMD	89-08-043
44-10-140	AMD-E	89-12-031	51-12-426	AMD-P	89-17-138	98-40-040	AMD-P	89-05-054
44-10-140	AMD	89-16-024	51-12-503	AMD	89-04-043	98-40-040	AMD	89-08-043
44-10-150	AMD-P	89-12-030	51-12-601	AMD	89-04-043	98-40-050	AMD-P	89-05-054
44-10-150	AMD-E	89-12-031	51-12-601	AMD-P	89-17-138	98-40-050	AMD	89-08-043
44-10-150	AMD	89-16-024	51-12-602	AMD	89-04-043	98-40-070	AMD-P	89-05-054
44-10-160	AMD-P	89-12-030	51-12-605	AMD	89-04-043	98-40-070	AMD	89-08-043
44-10-160	AMD-E	89-12-031	51-12-608	AMD	89-04-043	98-40-080	AMD-P	89-05-054
44-10-160	AMD	89-16-024	51-12-608	AMD-P	89-17-138	98-40-080	AMD	89-08-043
44-10-170	AMD-P	89-12-030	51-16-030	AMD	89-11-081	98-70-010	AMD-P	89-03-032
44-10-170	AMD-E	89-12-031	51-16-030	AMD-P	89-17-138	98-70-010	AMD-E	89-03-033
44-10-170	AMD	89-16-024	51-16-050	AMD	89-11-081	98-70-010	AMD	89-06-074
44-10-180	AMD-P	89-12-030	51-16-050	AMD-P	89-17-138	100-100-070	AMD-E	89-21-089
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44-10-180	AMD	89-16-024	51-18-020	NEW-P	89-17-138	106-116-201	AMD-E	89-19-027
44-10-200	AMD-P	89-12-030	51-18-030	NEW-P	89-17-138	106-116-203	AMD-P	89-19-026
44-10-200	AMD-E	89-12-031	51-18-040	NEW-P	89-17-138	106-116-203	AMD-E	89-19-027
44-10-200	AMD	89-16-024	51-18-050	NEW-P	89-17-138	106-116-205	AMD-P	89-19-026
44-10-220	AMD-P	89-12-030	55-01-010	AMD	89-06-001	106-116-205	AMD-E	89-19-027
44-10-220	AMD-E	89-12-031	55-01-010	AMD-E	89-08-055	106-116-207	AMD-P	89-19-026
44-10-220	AMD	89-16-024	55-01-010	AMD-P	89-08-097	106-116-207	AMD-E	89-19-027
44-10-230	AMD-P	89-12-030	55-01-010	AMD	89-11-059	106-116-208	AMD-P	89-19-026
44-10-230	AMD-E	89-12-031	55-01-030	AMD	89-06-001	106-116-208	AMD-E	89-19-027
44-10-230	AMD	89-16-024	55-01-050	AMD	89-06-001	106-116-210	AMD-P	89-19-026
44-10-240	AMD-P	89-12-030	55-01-050	AMD-E	89-16-021	106-116-210	AMD-E	89-19-027
44-10-240	AMD-E	89-12-031	55-01-050	AMD-P	89-19-018	106-116-301	AMD-P	89-19-026
44-10-240	AMD	89-16-024	55-01-050	AMD	89-22-014	106-116-301	AMD-E	89-19-027
44-10-300	NEW	89-06-025	55-01-060	AMD	89-06-001	106-116-311	AMD-P	89-19-026
44-10-310	NEW	89-06-025	67-25-560	AMD-P	89-22-118	106-116-311	AMD-E	89-19-027
44-10-320	NEW	89-06-025	67-25-570	AMD-P	89-22-118	106-116-514	AMD-P	89-19-026
50-44-020	AMD-P	89-06-059	67-35-020	AMD-P	89-18-013	106-116-514	AMD-E	89-19-027
50-44-020	AMD	89-09-004	67-35-020	AMD	89-21-046	106-116-601	AMD-P	89-19-026
50-56-010	NEW-P	89-21-045	67-35-090	AMD-P	89-18-013	106-116-601	AMD-E	89-19-027
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50-56-040	NEW-P	89-21-045	67-35-120	AMD	89-21-046	113-12-104	NEW-P	89-12-083
50-56-050	NEW-P	89-21-045	67-35-310	AMD-P	89-18-013	113-12-195	AMD-P	89-12-083



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132D-10-365	REP	89-11-022	132D-18-090	REP-P	89-07-062	132D-20-160	REP	89-11-025
132D-10-368	REP-P	89-07-069	132D-18-090	REP	89-11-024	132D-20-170	REP-P	89-05-012
132D-10-368	REP	89-11-022	132D-18-100	REP-P	89-07-062	132D-20-170	REP-W	89-05-046
132D-10-371	REP-P	89-07-069	132D-18-100	REP	89-11-024	132D-20-170	REP-P	89-07-070
132D-10-371	REP	89-11-022	132D-18-110	REP-P	89-07-062	132D-20-170	REP	89-11-025
132D-10-374	REP-P	89-07-069	132D-18-110	REP	89-11-024	132D-20-180	REP-P	89-05-012
132D-10-374	REP	89-11-022	132D-18-120	REP-P	89-07-062	132D-20-180	REP-W	89-05-046
132D-10-377	REP-P	89-07-069	132D-18-120	REP	89-11-024	132D-20-180	REP-P	89-07-070
132D-10-377	REP	89-11-022	132D-18-130	REP-P	89-07-062	132D-20-180	REP	89-11-025
132D-10-380	REP-P	89-07-069	132D-18-130	REP	89-11-024	132D-20-190	REP-P	89-05-012
132D-10-380	REP	89-11-022	132D-18-140	REP-P	89-07-062	132D-20-190	REP-W	89-05-046
132D-10-383	REP-P	89-07-069	132D-18-140	REP	89-11-024	132D-20-190	REP-P	89-07-070
132D-10-383	REP	89-11-022	132D-18-150	REP-P	89-07-062	132D-20-190	REP	89-11-025
132D-10-386	REP-P	89-07-069	132D-18-150	REP	89-11-024	132D-20-200	REP-P	89-05-012
132D-10-386	REP	89-11-022	132D-20-010	REP-P	89-05-012	132D-20-200	REP-W	89-05-046
132D-10-389	REP-P	89-07-069	132D-20-010	REP-W	89-05-046	132D-20-200	REP-P	89-07-070
132D-10-389	REP	89-11-022	132D-20-010	REP-P	89-07-070	132D-20-200	REP	89-11-025
132D-10-392	REP-P	89-07-069	132D-20-010	REP	89-11-025	132D-20-210	REP-P	89-05-012
132D-10-392	REP	89-11-022	132D-20-020	REP-P	89-05-012	132D-20-210	REP-W	89-05-046
132D-10-395	REP-P	89-07-069	132D-20-020	REP-W	89-05-046	132D-20-210	REP-P	89-07-070
132D-10-395	REP	89-11-022	132D-20-020	REP-P	89-07-070	132D-20-210	REP	89-11-025
132D-10-398	REP-P	89-07-069	132D-20-020	REP	89-11-025	132D-20-220	REP-P	89-05-012
132D-10-398	REP	89-11-022	132D-20-030	REP-P	89-05-012	132D-20-220	REP-W	89-05-046
132D-10-401	REP-P	89-07-069	132D-20-030	REP-W	89-05-046	132D-20-220	REP-P	89-07-070
132D-10-401	REP	89-11-022	132D-20-030	REP-P	89-07-070	132D-20-220	REP	89-11-025
132D-10-404	REP-P	89-07-069	132D-20-030	REP	89-11-025	132D-20-230	REP-P	89-05-012
132D-10-404	REP	89-11-022	132D-20-040	REP-P	89-05-012	132D-20-230	REP-W	89-05-046
132D-10-407	REP-P	89-07-069	132D-20-040	REP-W	89-05-046	132D-20-230	REP-P	89-07-070
132D-10-407	REP	89-11-022	132D-20-040	REP-P	89-07-070	132D-20-230	REP	89-11-025
132D-10-408	REP-P	89-07-069	132D-20-040	REP	89-11-025	132D-20-240	REP-P	89-05-012
132D-10-408	REP	89-11-022	132D-20-050	REP-P	89-05-012	132D-20-240	REP-W	89-05-046
132D-10-410	REP-P	89-07-069	132D-20-050	REP-W	89-05-046	132D-20-240	REP-P	89-07-070
132D-10-410	REP	89-11-022	132D-20-050	REP-P	89-07-070	132D-20-240	REP	89-11-025
132D-10-413	REP-P	89-07-069	132D-20-050	REP	89-11-025	132D-20-250	REP-P	89-05-012
132D-10-413	REP	89-11-022	132D-20-060	REP-P	89-05-012	132D-20-250	REP-W	89-05-046
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132D-10-416	REP	89-11-022	132D-20-060	REP-P	89-07-070	132D-20-250	REP	89-11-025
132D-10-419	REP-P	89-07-069	132D-20-060	REP	89-11-025	132D-20-260	REP-P	89-05-012
132D-10-419	REP	89-11-022	132D-20-070	REP-P	89-05-012	132D-20-260	REP-W	89-05-046
132D-10-422	REP-P	89-07-069	132D-20-070	REP-W	89-05-046	132D-20-260	REP-P	89-07-070
132D-10-422	REP	89-11-022	132D-20-070	REP-P	89-07-070	132D-20-260	REP	89-11-025
132D-10-425	REP-P	89-07-069	132D-20-070	REP	89-11-025	132D-20-270	REP-P	89-05-012
132D-10-425	REP	89-11-022	132D-20-080	REP-P	89-05-012	132D-20-270	REP-W	89-05-046
132D-10-428	REP-P	89-07-069	132D-20-080	REP-W	89-05-046	132D-20-270	REP-P	89-07-070
132D-10-428	REP	89-11-022	132D-20-080	REP-P	89-07-070	132D-20-270	REP	89-11-025
132D-10-431	REP-P	89-07-069	132D-20-080	REP	89-11-025	132D-20-280	REP-P	89-05-012
132D-10-431	REP	89-11-022	132D-20-090	REP-P	89-05-012	132D-20-280	REP-W	89-05-046
132D-10-434	REP-P	89-07-069	132D-20-090	REP-W	89-05-046	132D-20-280	REP-P	89-07-070
132D-10-434	REP	89-11-022	132D-20-090	REP-P	89-07-070	132D-20-280	REP	89-11-025
132D-12-010	REP-P	89-05-012	132D-20-090	REP	89-11-025	132D-20-290	REP-P	89-05-012
132D-12-010	REP-W	89-05-046	132D-20-100	REP-P	89-05-012	132D-20-290	REP-W	89-05-046
132D-12-010	REP-P	89-05-047	132D-20-100	REP-W	89-05-046	132D-20-290	REP-P	89-07-070
132D-12-010	REP	89-09-038	132D-20-100	REP-P	89-07-070	132D-20-290	REP	89-11-025
132D-12-015	REP-P	89-05-012	132D-20-100	REP	89-11-025	132D-36-010	REP-P	89-05-048
132D-12-015	REP-W	89-05-046	132D-20-110	REP-P	89-05-012	132D-36-010	REP	89-09-042
132D-12-015	REP-P	89-05-047	132D-20-110	REP-W	89-05-046	132D-104-010	NEW-P	89-07-061
132D-12-015	REP	89-09-038	132D-20-110	REP-P	89-07-070	132D-104-010	NEW	89-11-023
132D-12-020	REP-P	89-05-012	132D-20-110	REP	89-11-025	132D-104-020	NEW-P	89-07-061
132D-12-020	REP-W	89-05-046	132D-20-120	REP-P	89-05-012	132D-104-020	NEW	89-11-023
132D-12-020	REP-P	89-05-047	132D-20-120	REP-W	89-05-046	132D-104-030	NEW-P	89-07-061
132D-12-020	REP	89-09-038	132D-20-120	REP-P	89-07-070	132D-104-030	NEW	89-11-023
132D-18-010	REP-P	89-07-062	132D-20-120	REP	89-11-025	132D-104-040	NEW-P	89-07-061
132D-18-010	REP	89-11-024	132D-20-130	REP-P	89-05-012	132D-104-040	NEW	89-11-023
132D-18-020	REP-P	89-07-062	132D-20-130	REP-W	89-05-046	132D-122-010	NEW-P	89-05-006
132D-18-020	REP	89-11-024	132D-20-130	REP-P	89-07-070	132D-122-010	NEW	89-09-039
132D-18-030	REP-P	89-07-062	132D-20-130	REP	89-11-025	132D-122-020	NEW-P	89-05-006
132D-18-030	REP	89-11-024	132D-20-140	REP-P	89-05-012	132D-122-020	NEW	89-09-039
132D-18-040	REP-P	89-07-062	132D-20-140	REP-W	89-05-046	132D-122-030	NEW-P	89-05-006
132D-18-040	REP	89-11-024	132D-20-140	REP-P	89-07-070	132D-122-030	NEW	89-09-039
132D-18-050	REP-P	89-07-062	132D-20-140	REP	89-11-025	132D-140-010	NEW	89-06-012
132D-18-050	REP	89-11-024	132D-20-150	REP-P	89-05-012	132D-140-020	NEW	89-06-012
132D-18-060	REP-P	89-07-062	132D-20-150	REP-W	89-05-046	132D-140-030	NEW	89-06-012
132D-18-060	REP	89-11-024	132D-20-150	REP-P	89-07-070	132D-140-040	NEW	89-06-012
132D-18-070	REP-P	89-07-062	132D-20-150	REP	89-11-025	132D-140-050	NEW	89-06-012
132D-18-070	REP	89-11-024	132D-20-160	REP-P	89-05-012	132D-140-060	NEW	89-06-012
132D-18-080	REP-P	89-07-062	132D-20-160	REP-W	89-05-046	132D-140-070	NEW	89-06-012

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132D-276-010	NEW	89-11-024	132I-136-030	REP	89-11-091	132R-17-170	REP-P	89-22-053
132D-276-020	NEW-P	89-07-062	132I-136-040	REP-P	89-08-015	132R-17-180	REP-P	89-22-053
132D-276-020	NEW	89-11-024	132I-136-040	REP	89-11-091	132R-17-190	REP-P	89-22-053
132D-276-030	NEW-P	89-07-062	132I-136-050	REP-P	89-08-015	132R-17-200	REP-P	89-22-053
132D-276-030	NEW	89-11-024	132I-136-050	REP	89-11-091	132R-17-210	REP-P	89-22-053
132D-276-040	NEW-P	89-07-062	132I-136-060	REP-P	89-08-015	132R-116-040	AMD-P	89-22-054
132D-276-040	NEW	89-11-024	132I-136-060	REP	89-11-091	132R-116-050	AMD-P	89-22-054
132D-276-050	NEW-P	89-07-062	132I-136-070	REP-P	89-08-015	132R-116-060	AMD-P	89-22-054
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132D-276-060	NEW	89-11-024	132I-136-080	REP	89-11-091	132R-116-090	AMD-P	89-22-054
132D-276-070	NEW-P	89-07-062	132I-136-100	NEW-P	89-08-015	132R-116-100	AMD-P	89-22-054
132D-276-070	NEW	89-11-024	132I-136-100	NEW	89-11-091	132R-116-110	AMD-P	89-22-054
132D-276-080	NEW-P	89-07-062	132I-136-110	NEW-P	89-08-015	132R-116-120	AMD-P	89-22-054
132D-276-080	NEW	89-11-024	132I-136-110	NEW	89-11-091	132R-116-130	AMD-P	89-22-054
132D-276-090	NEW-P	89-07-062	132I-136-120	NEW-P	89-08-015	132R-116-140	AMD-P	89-22-054
132D-276-090	NEW	89-11-024	132I-136-120	NEW	89-11-091	132R-116-150	AMD-P	89-22-054
132D-276-100	NEW-P	89-07-062	132I-136-130	NEW-P	89-08-015	132R-116-160	REP-P	89-22-054
132D-276-100	NEW	89-11-024	132I-136-130	NEW	89-11-091	132R-116-170	REP-P	89-22-054
132D-276-110	NEW-P	89-07-062	132I-136-140	NEW-P	89-08-015	132R-116-180	REP-P	89-22-054
132D-276-110	NEW	89-11-024	132I-136-140	NEW	89-11-091	132R-116-190	REP-P	89-22-054
132D-276-120	NEW-P	89-07-062	132I-136-150	NEW-P	89-08-015	132R-116-200	REP-P	89-22-054
132D-276-120	NEW	89-11-024	132I-136-150	NEW	89-11-091	132R-116-210	REP-P	89-22-054
132D-276-130	NEW-P	89-07-062	132I-136-160	NEW-P	89-08-015	132R-116-220	REP-P	89-22-054
132D-276-130	NEW	89-11-024	132I-136-160	NEW	89-11-091	132R-116-230	REP-P	89-22-054
132D-276-140	NEW-P	89-07-062	132I-136-170	NEW-P	89-08-015	132R-116-240	REP-P	89-22-054
132D-276-140	NEW	89-11-024	132I-136-170	NEW	89-11-091	132R-116-250	REP-P	89-22-054
132D-280-010	NEW-P	89-07-063	132N-276-070	AMD-P	89-04-035	132R-116-260	REP-P	89-22-054
132D-280-010	NEW	89-11-044	132N-276-070	AMD	89-12-024	132R-116-270	REP-P	89-22-054
132D-280-020	NEW-P	89-07-063	132N-276-080	AMD-P	89-04-035	132R-116-280	REP-P	89-22-054
132D-280-020	NEW	89-11-044	132N-276-080	AMD	89-12-024	132R-116-290	REP-P	89-22-054
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132D-280-025	NEW	89-11-044	132N-276-110	AMD	89-12-024	132R-118-020	AMD-P	89-22-054
132D-280-030	NEW-P	89-07-063	132N-276-130	AMD-P	89-04-035	132R-118-030	AMD-P	89-22-054
132D-280-030	NEW	89-11-044	132N-276-130	AMD	89-12-024	132R-118-040	AMD-P	89-22-054
132D-280-035	NEW-P	89-07-063	132N-276-150	AMD-P	89-04-035	132R-118-050	AMD-P	89-22-054
132D-280-035	NEW	89-11-044	132N-276-150	AMD	89-12-024	132R-118-060	REP-P	89-22-054
132D-280-040	NEW-P	89-07-063	132Q-04-035	AMD-C	89-04-018	132R-130-010	REP-P	89-22-053
132D-280-040	NEW	89-11-044	132Q-04-035	AMD-C	89-06-023	132R-132-010	REP-P	89-22-053
132D-300-010	NEW-P	89-07-058	132Q-04-035	AMD	89-07-068	132R-132-020	REP-P	89-22-053
132D-300-010	NEW	89-11-038	132R-01-010	NEW-P	89-22-052	132R-136-010	AMD-P	89-22-054
132D-300-020	NEW-P	89-07-058	132R-02-010	NEW-P	89-22-052	132R-136-020	AMD-P	89-22-054
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132D-325-010	NEW	89-09-042	132R-02-060	NEW-P	89-22-052	132R-140-020	REP-P	89-22-053
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132D-350-010	NEW	89-11-026	132R-02-080	NEW-P	89-22-052	132R-144-010	AMD-P	89-22-054
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132F-120-090	AMD	89-15-000	132R-08-080	REP-P	89-22-053	132R-158-060	REP-P	89-22-054
132I-120-315	AMD-P	89-04-039	132R-12-010	AMD-P	89-22-054	132R-158-070	REP-P	89-22-054
132I-120-315	AMD	89-08-016	132R-17-010	REP-P	89-22-053	132R-158-080	REP-P	89-22-054
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132I-120-410	AMD-P	89-04-039	132R-17-060	REP-P	89-22-053	132R-158-130	REP-P	89-22-054
132I-120-410	AMD	89-08-016	132R-17-070	REP-P	89-22-053	132R-158-140	REP-P	89-22-054
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132I-120-430	AMD	89-08-016	132R-17-110	REP-P	89-22-053	132R-158-180	REP-P	89-22-054
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132R-185-020	REP-P	89-22-053	132Y-320-050	NEW-P	89-08-022	137-56-060	AMD-C	89-07-083
132R-185-030	REP-P	89-22-053	132Y-320-050	NEW	89-12-057	137-56-070	AMD-P	89-02-058
132R-185-040	REP-P	89-22-053	132Y-320-060	NEW-P	89-08-022	137-56-070	AMD-C	89-07-083
132R-185-050	REP-P	89-22-053	132Y-320-060	NEW	89-12-057	137-56-080	AMD-P	89-02-058
132R-185-060	REP-P	89-22-053	132Y-320-070	NEW-P	89-08-022	137-56-080	AMD-C	89-07-083
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132T-104-090	REP-P	89-23-045	132Y-320-990	NEW-P	89-08-022	137-56-150	AMD-C	89-07-083
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132V-15-090	NEW	89-20-013	137-44-110	NEW-P	89-11-029	137-78-050	NEW	89-15-059
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154-12-080	AMD-P	89-07-090	162-08-013	RE-AD-P	89-17-098	162-08-212	REP	89-23-020
154-12-080	AMD-E	89-11-008	162-08-013	RE-AD	89-23-020	162-08-215	REP-P	89-17-098
154-12-080	AMD	89-11-010	162-08-015	RE-AD-P	89-17-098	162-08-215	REP	89-23-020
154-12-085	NEW-P	89-07-090	162-08-015	RE-AD	89-23-020	162-08-217	REP-P	89-17-098
154-12-085	NEW-E	89-11-008	162-08-017	RE-AD-P	89-17-098	162-08-217	REP	89-23-020
154-12-085	NEW	89-11-010	162-08-017	RE-AD	89-23-020	162-08-221	RE-AD-P	89-17-098
154-12-086	NEW-P	89-07-090	162-08-019	RE-AD-P	89-17-098	162-08-221	RE-AD	89-23-020
154-12-086	NEW-E	89-11-008	162-08-019	RE-AD	89-23-020	162-08-231	RE-AD-P	89-17-098
154-12-086	NEW	89-11-010	162-08-021	RE-AD-P	89-17-098	162-08-231	RE-AD	89-23-020
154-12-087	NEW-P	89-07-090	162-08-021	RE-AD	89-23-020	162-08-241	RE-AD-P	89-17-098
154-12-087	NEW-E	89-11-008	162-08-021	RE-AD-P	89-17-098	162-08-241	RE-AD	89-23-020
154-12-087	NEW	89-11-010	162-08-041	RE-AD	89-23-020	162-08-251	RE-AD-P	89-17-098
154-12-090	AMD-P	89-07-090	162-08-041	RE-AD	89-23-020	162-08-251	RE-AD	89-23-020
154-12-090	AMD-E	89-11-008	162-08-051	RE-AD-P	89-17-098	162-08-253	NEW-P	89-17-098
154-12-090	AMD	89-11-010	162-08-061	RE-AD-P	89-17-098	162-08-253	NEW	89-23-020
154-12-100	REP-P	89-07-090	162-08-061	RE-AD	89-23-020	162-08-255	NEW-P	89-17-098
154-12-100	REP-E	89-11-008	162-08-062	RE-AD-P	89-17-098	162-08-255	NEW	89-23-020
154-12-100	REP	89-11-010	162-08-062	RE-AD	89-23-020	162-08-261	RE-AD-P	89-17-098
154-12-107	NEW-P	89-07-090	162-08-071	RE-AD-P	89-17-098	162-08-261	RE-AD	89-23-020
154-12-107	NEW-E	89-11-008	162-08-071	RE-AD	89-23-020	162-08-263	NEW-P	89-17-098
154-12-107	NEW	89-11-010	162-08-072	RE-AD-P	89-17-098	162-08-263	NEW	89-23-020
154-12-110	AMD-P	89-07-090	162-08-072	RE-AD	89-23-020	162-08-265	RE-AD-P	89-17-098
154-12-110	AMD-E	89-11-008	162-08-081	RE-AD-P	89-17-098	162-08-265	RE-AD	89-23-020
154-12-110	AMD	89-11-010	162-08-081	RE-AD	89-23-020	162-08-268	RE-AD-P	89-17-098
154-16-010	REP-P	89-07-090	162-08-091	RE-AD-P	89-17-098	162-08-268	RE-AD	89-23-020
154-16-010	REP-E	89-11-008	162-08-091	RE-AD	89-23-020	162-08-271	RE-AD-P	89-17-098
154-16-010	REP	89-11-010	162-08-093	RE-AD-P	89-17-098	162-08-271	RE-AD	89-23-020
154-16-020	REP-P	89-07-090	162-08-093	RE-AD	89-23-020	162-08-275	REP-P	89-17-098
154-16-020	REP-E	89-11-008	162-08-094	RE-AD-P	89-17-098	162-08-275	REP	89-23-020
154-16-020	REP	89-11-010	162-08-094	RE-AD	89-23-020	162-08-278	REP-P	89-17-098
154-20-010	REP-P	89-07-090	162-08-09501	NEW-P	89-17-098	162-08-278	REP	89-23-020
154-20-010	REP-E	89-11-008	162-08-096	NEW	89-23-020	162-08-282	RE-AD-P	89-17-098
154-20-010	REP	89-11-010	162-08-096	RE-AD-P	89-17-098	162-08-282	RE-AD	89-23-020
154-20-020	REP-P	89-07-090	162-08-096	RE-AD	89-23-020	162-08-284	REP-P	89-17-098
154-20-020	REP-E	89-11-008	162-08-097	NEW-P	89-17-098	162-08-284	REP	89-23-020
154-20-020	REP	89-11-010	162-08-097	NEW	89-23-020	162-08-286	RE-AD-P	89-17-098
154-24-010	AMD-P	89-07-090	162-08-098	RE-AD-P	89-17-098	162-08-286	RE-AD	89-23-020
154-24-010	AMD-E	89-11-008	162-08-098	RE-AD	89-23-020	162-08-288	RE-AD-P	89-17-098
154-24-010	AMD	89-11-010	162-08-099	RE-AD-P	89-17-098	162-08-288	RE-AD	89-23-020
154-32-010	AMD-P	89-07-090	162-08-099	RE-AD	89-23-020	162-08-291	RE-AD-P	89-17-098
154-32-010	AMD-E	89-11-008	162-08-101	RE-AD-P	89-17-098	162-08-291	RE-AD	89-23-020
154-32-010	AMD	89-11-010	162-08-101	RE-AD	89-23-020	162-08-292	RE-AD-P	89-17-098
154-32-020	AMD-P	89-07-090	162-08-106	RE-AD-P	89-17-098	162-08-292	RE-AD	89-23-020
154-32-020	AMD-E	89-11-008	162-08-106	RE-AD	89-23-020	162-08-294	RE-AD-P	89-17-098
154-32-020	AMD	89-11-010	162-08-108	REP-P	89-17-098	162-08-294	RE-AD	89-23-020
154-68-020	AMD-P	89-07-090	162-08-108	REP	89-23-020	162-08-295	REP-P	89-17-098
154-68-020	AMD-E	89-11-008	162-08-109	RE-AD-P	89-17-098	162-08-295	REP	89-23-020
154-68-020	AMD	89-11-010	162-08-109	RE-AD	89-23-020	162-08-296	REP-P	89-17-098
154-120-015	AMD-P	89-07-089	162-08-111	REP-P	89-17-098	162-08-296	REP	89-23-020
154-120-015	AMD-E	89-11-009	162-08-111	REP	89-23-020	162-08-298	RE-AD-P	89-17-098

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162-08-301	RE-AD-P	89-17-098	173-50-100	NEW-P	89-04-052	173-223-050	REP-P	89-07-088
162-08-301	RE-AD	89-23-020	173-50-100	NEW	89-10-001	173-223-050	REP	89-12-027
162-08-305	RE-AD-P	89-17-098	173-50-110	NEW-P	89-04-052	173-223-060	REP-P	89-07-088
162-08-305	RE-AD	89-23-020	173-50-110	NEW	89-10-001	173-223-060	REP	89-12-027
162-08-311	RE-AD-P	89-17-098	173-50-120	NEW-P	89-04-052	173-223-070	AMD	89-05-026
162-08-311	RE-AD	89-23-020	173-50-120	NEW	89-10-001	173-223-070	AMD-E	89-06-053
162-08-600	RE-AD-P	89-17-098	173-50-130	NEW-P	89-04-052	173-223-070	REP-P	89-07-088
162-08-600	RE-AD	89-23-020	173-50-130	NEW	89-10-001	173-223-070	REP	89-12-027
162-08-610	RE-AD-P	89-17-098	173-50-140	NEW-P	89-04-052	173-223-080	REP-P	89-07-088
162-08-610	RE-AD	89-23-020	173-50-140	NEW	89-10-001	173-223-080	REP	89-12-027
162-08-621	REP-P	89-17-098	173-50-150	NEW-P	89-04-052	173-223-090	AMD	89-05-026
162-08-621	REP	89-23-020	173-50-150	NEW	89-10-001	173-223-090	AMD-E	89-06-053
162-08-700	RE-AD-P	89-17-098	173-50-160	NEW-P	89-04-052	173-223-090	REP-P	89-07-088
162-08-700	RE-AD	89-23-020	173-50-160	NEW	89-10-001	173-223-090	REP	89-12-027
173-06-030	AMD-E	89-04-013	173-50-170	NEW-P	89-04-052	173-223-100	REP-P	89-07-088
173-06-030	AMD-P	89-08-078	173-50-170	NEW	89-10-001	173-223-100	REP	89-12-027
173-06-030	AMD-E	89-08-079	173-50-180	NEW-P	89-04-052	173-223-110	REP-P	89-07-088
173-06-030	AMD	89-11-021	173-50-180	NEW	89-10-001	173-223-110	REP	89-12-027
173-18-090	AMD-P	89-23-125	173-50-190	NEW-P	89-04-052	173-224	NEW-C	89-12-016
173-18-200	AMD-P	89-23-125	173-50-190	NEW	89-10-001	173-224-015	NEW-P	89-07-088
173-19-110	AMD-W	89-03-012	173-50-200	NEW-P	89-04-052	173-224-015	NEW	89-12-027
173-19-1104	AMD-P	89-21-087	173-50-200	NEW	89-10-001	173-224-020	NEW-P	89-07-088
173-19-130	AMD-P	89-17-152	173-50-210	NEW-P	89-04-052	173-224-020	NEW	89-12-027
173-19-130	AMD	89-22-139	173-50-210	NEW	89-10-001	173-224-030	NEW-P	89-07-088
173-19-240	AMD	89-08-012	173-98-010	NEW-P	89-11-082	173-224-030	NEW	89-12-027
173-19-2401	AMD	89-08-035	173-98-010	NEW	89-18-019	173-224-040	NEW-P	89-07-088
173-19-2503	AMD-P	89-08-112	173-98-020	NEW-P	89-11-082	173-224-040	NEW	89-12-027
173-19-2503	AMD-C	89-12-087	173-98-020	NEW	89-18-019	173-224-050	NEW-P	89-07-088
173-19-2503	AMD-C	89-16-028	173-98-030	NEW-P	89-11-082	173-224-050	NEW	89-12-027
173-19-2503	AMD	89-20-016	173-98-030	NEW	89-18-019	173-224-060	NEW-P	89-07-088
173-19-2505	AMD-P	89-09-076	173-98-040	NEW-P	89-11-082	173-224-060	NEW	89-12-027
173-19-2505	AMD-W	89-14-128	173-98-040	NEW	89-18-019	173-224-070	NEW-P	89-07-088
173-19-2505	AMD-P	89-22-136	173-98-050	NEW-P	89-11-082	173-224-070	NEW	89-12-027
173-19-2505	AMD-C	89-23-126	173-98-050	NEW	89-18-019	173-224-080	NEW-P	89-07-088
173-19-2512	AMD	89-03-009	173-98-060	NEW-P	89-11-082	173-224-080	NEW	89-12-027
173-19-2512	AMD-P	89-17-153	173-98-060	NEW	89-18-019	173-224-090	NEW-P	89-07-088
173-19-2515	AMD	89-03-011	173-98-070	NEW-P	89-11-082	173-224-090	NEW	89-12-027
173-19-2519	AMD-P	89-09-075	173-98-070	NEW	89-18-019	173-224-100	NEW-P	89-07-088
173-19-2519	AMD-W	89-12-071	173-98-080	NEW-P	89-11-082	173-224-100	NEW	89-12-027
173-19-2519	AMD-P	89-21-086	173-98-080	NEW	89-18-019	173-224-110	NEW-P	89-07-088
173-19-3503	AMD-P	89-15-044	173-98-090	NEW-P	89-11-082	173-224-110	NEW	89-12-027
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173-19-390	AMD	89-07-026	173-98-100	NEW	89-18-019	173-303-040	AMD	89-02-059
173-19-390	AMD-P	89-08-114	173-98-110	NEW-P	89-11-082	173-303-045	AMD	89-02-059
173-19-390	AMD	89-14-130	173-98-110	NEW	89-18-019	173-303-070	AMD	89-02-059
173-19-3910	AMD-P	89-08-115	173-98-120	NEW-P	89-11-082	173-303-071	AMD	89-02-059
173-19-3910	AMD	89-14-131	173-98-120	NEW	89-18-019	173-303-080	AMD	89-02-059
173-19-4501	AMD-P	89-08-113	173-158-030	AMD-C	89-05-003	173-303-110	AMD	89-02-059
173-19-4501	AMD-C	89-14-129	173-158-030	AMD	89-07-022	173-303-161	AMD	89-02-059
173-19-4501	AMD-W	89-17-032	173-158-060	AMD-C	89-05-003	173-303-200	AMD	89-02-059
173-19-4501	AMD-P	89-17-033	173-158-060	AMD	89-07-022	173-303-202	NEW	89-02-059
173-19-4501	AMD-W	89-17-154	173-160-215	AMD-E	89-03-046	173-303-400	AMD	89-02-059
173-19-4501	AMD-P	89-17-155	173-160-215	AMD-P	89-12-058	173-303-505	AMD	89-02-059
173-19-4501	AMD-C	89-22-137	173-160-215	AMD	89-15-017	173-303-515	AMD	89-02-059
173-19-4501	AMD	89-23-127	173-201	PREP	89-21-059	173-303-550	AMD	89-02-059
173-19-4507	AMD	89-03-010	173-216-125	NEW-P	89-04-051	173-303-610	AMD	89-02-059
173-20-700	AMD-W	89-07-025	173-216-125	NEW-W	89-09-015	173-303-620	AMD	89-02-059
173-50	NEW-C	89-07-032	173-220-210	AMD-P	89-04-051	173-303-640	AMD	89-02-059
173-50-010	NEW-P	89-04-052	173-220-210	AMD-W	89-09-015	173-303-645	AMD	89-02-059
173-50-010	NEW	89-10-001	173-223	REP-C	89-12-016	173-303-805	AMD	89-02-059
173-50-020	NEW-P	89-04-052	173-223-015	AMD	89-05-026	173-303-806	AMD	89-02-059
173-50-020	NEW	89-10-001	173-223-015	AMD-E	89-06-053	173-303-830	AMD	89-02-059
173-50-030	NEW-P	89-04-052	173-223-015	REP-P	89-07-088	173-303-902	NEW-P	89-15-047
173-50-030	NEW	89-10-001	173-223-015	REP	89-12-027	173-303-902	NEW-E	89-19-030
173-50-040	NEW-P	89-04-052	173-223-020	REP-P	89-07-088	173-303-902	NEW	89-21-071
173-50-040	NEW	89-10-001	173-223-020	REP	89-12-027	173-303-9903	AMD	89-02-059
173-50-050	NEW-P	89-04-052	173-223-030	AMD	89-05-026	173-303-9904	AMD	89-02-059
173-50-050	NEW	89-10-001	173-223-030	AMD-E	89-06-053	173-303-9905	AMD	89-02-059
173-50-060	NEW-P	89-04-052	173-223-030	REP-P	89-07-088	173-306-010	NEW-P	89-19-069
173-50-060	NEW	89-10-001	173-223-030	REP	89-12-027	173-306-050	NEW-P	89-19-069
173-50-070	NEW-P	89-04-052	173-223-040	AMD	89-05-026	173-306-100	NEW-P	89-19-069
173-50-070	NEW	89-10-001	173-223-040	AMD-E	89-06-053	173-306-150	NEW-P	89-19-069
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173-50-080	NEW	89-10-001	173-223-040	REP	89-12-027	173-306-300	NEW-P	89-19-069
173-50-090	NEW-P	89-04-052	173-223-050	AMD	89-05-026	173-306-310	NEW-P	89-19-069

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173-306-330	NEW-P	89-19-069	173-318-010	NEW-E	89-09-005	173-340-550	NEW-P	89-20-059
173-306-340	NEW-P	89-19-069	173-318-010	NEW-P	89-12-065	173-340-560	NEW-P	89-20-059
173-306-345	NEW-P	89-19-069	173-318-010	NEW	89-18-070	173-340-600	NEW-P	89-20-059
173-306-350	NEW-P	89-19-069	173-318-020	NEW-E	89-09-005	173-340-610	NEW-P	89-20-059
173-306-400	NEW-P	89-19-069	173-318-020	NEW-P	89-12-065	173-340-700	NEW-P	89-20-059
173-306-405	NEW-P	89-19-069	173-318-020	NEW	89-18-070	173-340-800	NEW-P	89-20-059
173-306-410	NEW-P	89-19-069	173-318-030	NEW-E	89-09-005	173-340-810	NEW-P	89-20-059
173-306-440	NEW-P	89-19-069	173-318-030	NEW-P	89-12-065	173-340-820	NEW-P	89-20-059
173-306-450	NEW-P	89-19-069	173-318-030	NEW	89-18-070	173-340-830	NEW-P	89-20-059
173-306-470	NEW-P	89-19-069	173-318-040	NEW-E	89-09-005	173-340-840	NEW-P	89-20-059
173-306-480	NEW-P	89-19-069	173-318-040	NEW-P	89-12-065	173-340-850	NEW-P	89-20-059
173-306-490	NEW-P	89-19-069	173-318-040	NEW	89-18-070	173-340-860	NEW-P	89-20-059
173-306-495	NEW-P	89-19-069	173-318-050	NEW-E	89-09-005	173-340-870	NEW-P	89-20-059
173-306-500	NEW-P	89-19-069	173-318-050	NEW-P	89-12-065	173-340-880	NEW-P	89-20-059
173-306-900	NEW-P	89-19-069	173-318-050	NEW	89-18-070	173-340-890	NEW-P	89-20-059
173-306-9901	NEW-P	89-19-069	173-318-060	NEW-E	89-09-005	173-342-010	NEW-P	89-20-060
173-313-010	NEW-E	89-06-060	173-318-060	NEW-P	89-12-065	173-342-020	NEW-P	89-20-060
173-313-010	NEW-P	89-11-086	173-318-060	NEW	89-18-070	173-342-030	NEW-P	89-20-060
173-313-010	NEW-E	89-12-021	173-318-070	NEW-E	89-09-005	173-342-040	NEW-P	89-20-060
173-313-010	NEW	89-17-073	173-318-070	NEW-P	89-12-065	173-342-050	NEW-P	89-20-060
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173-313-020	NEW-E	89-12-021	173-318-080	NEW-P	89-12-065	173-400-030	AMD-P	89-23-128
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173-313-040	NEW	89-17-073	173-321-040	NEW	89-21-072	173-400-115	AMD-P	89-23-128
173-313-050	NEW-E	89-06-060	173-321-050	NEW-P	89-15-046	173-400-120	AMD	89-02-055
173-313-050	NEW-P	89-11-086	173-321-050	NEW	89-21-072	173-400-120	AMD-P	89-23-128
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173-313-050	NEW	89-17-073	173-321-060	NEW	89-21-072	173-400-136	NEW-P	89-23-128
173-314-010	NEW	89-03-047	173-321-070	NEW-P	89-15-046	173-400-141	NEW-P	89-23-128
173-314-100	NEW	89-03-047	173-321-070	NEW	89-21-072	173-400-151	NEW-P	89-23-128
173-314-200	NEW	89-03-047	173-321-080	NEW-P	89-15-046	173-400-161	NEW-P	89-23-128
173-314-210	NEW	89-03-047	173-321-080	NEW	89-21-072	173-400-171	NEW-P	89-23-128
173-314-220	NEW	89-03-047	173-336-010	REP-P	89-20-059	173-400-180	NEW-P	89-23-128
173-314-300	NEW	89-03-047	173-336-020	REP-P	89-20-059	173-400-190	NEW-P	89-23-128
173-314-310	NEW	89-03-047	173-336-030	REP-P	89-20-059	173-400-200	NEW-P	89-23-128
173-314-320	NEW	89-03-047	173-338-010	REP-P	89-20-059	173-400-205	NEW-P	89-23-128
173-314-330	NEW	89-03-047	173-338-020	REP-P	89-20-059	173-400-210	NEW-P	89-23-128
173-314-340	NEW	89-03-047	173-338-030	REP-P	89-20-059	173-400-220	NEW-P	89-23-128
173-315-010	NEW-E	89-06-061	173-338-040	REP-P	89-20-059	173-400-230	NEW-P	89-23-128
173-315-010	NEW-P	89-11-087	173-338-050	REP-P	89-20-059	173-400-240	NEW-P	89-23-128
173-315-010	NEW-E	89-12-020	173-340	AMD-P	89-20-059	173-400-250	NEW-P	89-23-128
173-315-010	NEW	89-17-072	173-340-010	REP-P	89-20-059	173-403-010	REP-P	89-23-128
173-315-020	NEW-E	89-06-061	173-340-020	REP-P	89-20-059	173-403-020	REP-P	89-23-128
173-315-020	NEW-P	89-11-087	173-340-030	REP-P	89-20-059	173-403-030	AMD	89-02-055
173-315-020	NEW-E	89-12-020	173-340-040	REP-P	89-20-059	173-403-030	REP-P	89-23-128
173-315-020	NEW	89-17-072	173-340-050	REP-P	89-20-059	173-403-050	AMD	89-02-055
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173-315-030	NEW	89-17-072	173-340-130	NEW-P	89-20-059	173-403-075	REP-P	89-23-128
173-315-040	NEW-E	89-06-061	173-340-140	NEW-P	89-20-059	173-403-080	AMD	89-02-055
173-315-040	NEW-P	89-11-087	173-340-200	NEW-P	89-20-059	173-403-080	REP-P	89-23-128
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173-405-045	AMD-P	89-23-128	173-490-030	AMD-P	89-23-128	174-128-070	REP-P	89-22-031
173-405-061	AMD-P	89-23-128	173-490-040	AMD-P	89-23-128	174-128-080	REP-P	89-22-031
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173-405-078	AMD-P	89-23-128	173-490-090	AMD-P	89-23-128	174-130-020	NEW-P	89-22-031
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173-410-071	AMD-P	89-23-128	173-490-208	AMD-P	89-23-128	174-132-110	REP-P	89-22-031
173-410-086	AMD-P	89-23-128	173-802-050	AMD-P	89-08-078	174-132-120	REP-P	89-22-031
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173-415-045	AMD-P	89-23-128	174-108-210	REP-P	89-22-031	174-136-014	REP-P	89-22-031
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173-415-060	AMD-P	89-23-128	174-108-240	REP-P	89-22-031	174-136-017	REP-P	89-22-031
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173-415-080	AMD-P	89-23-128	174-108-900	REP-P	89-22-031	174-136-02001	REP-P	89-22-031
173-422-020	AMD-P	89-21-075	174-108-90001	REP-P	89-22-031	174-136-021	REP-P	89-22-031
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173-422-060	AMD-P	89-21-075	174-112-130	REP-P	89-22-031	174-136-042	REP-P	89-22-031
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173-422-130	AMD-P	89-21-075	174-120-010	AMD	89-21-073	174-136-100	REP-P	89-22-031
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173-425-065	AMD	89-02-055	174-120-070	AMD-P	89-18-089	174-136-250	REP-P	89-22-031
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173-425-130	AMD	89-02-055	174-121-010	NEW-P	89-18-089	174-136-330	REP-P	89-22-031
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173-433-100	AMD	89-02-054	174-122-010	NEW-P	89-22-031	174-157-610	REP-P	89-22-031
173-433-120	AMD	89-02-054	174-122-020	NEW-P	89-22-031	174-157-620	REP-P	89-22-031
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173-434-200	AMD	89-02-055	174-126-020	REP-P	89-22-031	174-160-030	REP-P	89-22-031
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173-435-020	AMD	89-02-055	174-128-020	REP-P	89-22-031	174-162-015	REP-P	89-22-031
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174-276-100	NEW-P	89-22-031	180-59-035	NEW	89-09-044	180-75-035	RE-AD	89-22-010
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174-280-040	NEW-P	89-22-031	180-59-070	NEW	89-09-044	180-75-039	RE-AD-E	89-16-076
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180-27-015	AMD-P	89-21-080	180-75-018	RE-AD-P	89-17-107	180-75-050	RE-AD-E	89-16-076
180-27-017	NEW-P	89-21-080	180-75-018	REP-P	89-21-082	180-75-050	RE-AD-P	89-17-107
180-27-019	NEW-P	89-21-080	180-75-018	RE-AD	89-22-010	180-75-050	RE-AD	89-22-010
180-27-023	NEW-P	89-21-080	180-75-019	RE-AD-E	89-16-076	180-75-055	RE-AD-E	89-16-076
180-27-057	AMD-E	89-13-015	180-75-019	RE-AD-P	89-17-107	180-75-055	RE-AD-P	89-17-107
180-27-057	AMD-E	89-16-041	180-75-019	REP-P	89-21-082	180-75-055	RE-AD	89-22-010
180-27-057	AMD-P	89-17-101	180-75-019	RE-AD	89-22-010	180-75-060	RE-AD-E	89-16-076
180-27-057	AMD	89-22-007	180-75-020	RE-AD-E	89-16-076	180-75-060	RE-AD-P	89-17-107
180-27-115	AMD-P	89-21-080	180-75-020	RE-AD-P	89-17-107	180-75-060	RE-AD	89-22-010
180-27-400	NEW-P	89-21-080	180-75-020	REP-P	89-21-082	180-75-061	RE-AD-E	89-16-076
180-27-405	NEW-P	89-21-080	180-75-020	RE-AD	89-22-010	180-75-061	RE-AD-P	89-17-107
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180-27-415	NEW-P	89-21-080	180-75-025	RE-AD-P	89-17-107	180-75-065	RE-AD-E	89-16-076
180-27-420	NEW-P	89-21-080	180-75-025	REP-P	89-21-082	180-75-065	RE-AD-P	89-17-107
180-29-108	AMD-E	89-16-042	180-75-025	RE-AD	89-22-010	180-75-065	RE-AD	89-22-010
180-29-108	AMD-P	89-17-104	180-75-026	RE-AD-E	89-16-076	180-75-070	RE-AD-E	89-16-076
180-29-108	AMD	89-22-008	180-75-026	RE-AD-P	89-17-107	180-75-070	RE-AD-P	89-17-107
180-29-300	NEW-P	89-05-067	180-75-026	REP-P	89-21-082	180-75-070	RE-AD	89-22-010
180-29-300	NEW-E	89-06-019	180-75-026	RE-AD	89-22-010	180-75-080	RE-AD-E	89-16-076
180-29-300	NEW	89-08-087	180-75-027	RE-AD-E	89-16-076	180-75-080	RE-AD-P	89-17-107
180-29-300	AMD-E	89-13-014	180-75-027	RE-AD-P	89-17-107	180-75-080	RE-AD	89-22-010
180-29-300	AMD-E	89-16-043	180-75-027	REP-P	89-21-082	180-75-081	RE-AD-E	89-16-076
180-29-300	AMD-P	89-17-103	180-75-027	RE-AD	89-22-010	180-75-081	RE-AD-P	89-17-107
180-29-300	AMD	89-22-009	180-75-030	RE-AD-E	89-16-076	180-75-081	AMD-P	89-21-082
180-51-025	AMD-P	89-05-060	180-75-030	RE-AD-P	89-17-107	180-75-081	RE-AD	89-22-010
180-51-025	AMD-C	89-08-080	180-75-030	REP-P	89-21-082	180-75-082	RE-AD-E	89-16-076
180-51-025	AMD	89-12-061	180-75-030	RE-AD	89-22-010	180-75-082	RE-AD-P	89-17-107
180-53-025	AMD-P	89-21-081	180-75-033	RE-AD-E	89-16-076	180-75-082	RE-AD	89-22-010
180-53-050	AMD-P	89-21-081	180-75-033	RE-AD-P	89-17-107	180-75-083	RE-AD-E	89-16-076

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180-75-088	RE-AD-E 89-16-076	180-87-055	NEW-P 89-21-085	192-09-020	REP-P 89-19-079
180-75-088	RE-AD-P 89-17-107	180-87-060	NEW-P 89-21-085	192-09-030	AMD 89-03-070
180-75-088	RE-AD 89-22-010	180-87-065	NEW-P 89-21-085	192-09-030	REP-P 89-19-079
180-75-090	RE-AD-E 89-16-076	180-87-070	NEW-P 89-21-085	192-09-035	REP-P 89-17-086
180-75-090	RE-AD-P 89-17-107	180-87-080	NEW-P 89-21-085	192-09-035	REP-P 89-19-079
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180-75-092	RE-AD-P 89-17-107	180-115-010	AMD 89-22-012	192-09-060	REP-P 89-19-079
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180-75-100	RE-AD-P 89-17-107	180-115-020	AMD 89-22-012	192-09-063	REP-P 89-19-079
180-75-100	RE-AD 89-22-010	180-115-035	AMD-E 89-16-044	192-09-065	REP-P 89-19-079
180-75-199	RE-AD-E 89-16-076	180-115-035	AMD-P 89-17-105	192-09-070	REP-P 89-19-079
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180-78-193	REP-P 89-21-083	180-115-060	AMD-P 89-17-105	192-09-125	REP-P 89-19-079
180-78-194	REP-P 89-21-083	180-115-060	AMD 89-22-012	192-09-130	REP-P 89-19-079
180-78-195	REP-P 89-21-083	180-115-070	REP-E 89-16-044	192-09-135	REP-P 89-19-079
180-78-197	REP-P 89-21-083	180-115-070	REP-P 89-17-105	192-09-140	REP-P 89-19-079
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180-78-199	REP-P 89-21-083	180-115-081	NEW-E 89-16-044	192-09-150	REP-P 89-19-079
180-79-063	AMD-P 89-17-106	180-115-081	NEW-P 89-17-105	192-09-155	REP-P 89-19-079
180-79-063	AMD 89-22-011	180-115-081	NEW 89-22-012	192-09-160	REP-P 89-19-079
180-79-230	AMD-P 89-08-081	180-115-085	AMD-E 89-16-044	192-09-165	REP-P 89-19-079
180-79-230	AMD-E 89-08-083	180-115-085	AMD-P 89-17-105	192-09-170	REP-P 89-19-079
180-79-230	AMD 89-12-026	180-115-085	AMD 89-22-012	192-09-200	REP-P 89-19-079
180-86-003	NEW-P 89-21-084	180-115-090	AMD-E 89-16-044	192-09-205	REP-P 89-19-079
180-86-005	NEW-P 89-21-084	180-115-090	AMD-P 89-17-105	192-09-210	REP-P 89-19-079
180-86-010	NEW-P 89-21-084	180-115-090	AMD 89-22-012	192-09-215	REP-P 89-19-079
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180-86-050	NEW-P 89-21-084	182-08-190	AMD-P 89-08-005	192-09-300	REP-P 89-19-079
180-86-055	NEW-P 89-21-084	182-08-190	AMD-W 89-09-053	192-09-305	REP-P 89-19-079
180-86-065	NEW-P 89-21-084	182-12-115	AMD-P 89-09-054	192-09-310	REP-P 89-19-079
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180-86-075	NEW-P 89-21-084	182-12-127	AMD-P 89-08-005	192-09-315	REP-P 89-19-079
180-86-085	NEW-P 89-21-084	182-12-127	AMD-W 89-09-053	192-09-400	REP-P 89-19-079
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180-86-110	NEW-P 89-21-084	182-12-210	AMD-P 89-08-005	192-09-425	REP-P 89-19-079
180-86-115	NEW-P 89-21-084	182-12-210	AMD-W 89-09-053	192-09-430	REP-P 89-19-079
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192-12-182	AMD	89-03-069	204-65-050	AMD-E	89-09-023	204-91A-070	NEW	89-14-015
192-12-300	NEW-P	89-17-086	204-65-050	AMD-P	89-09-024	204-91A-070	AMD-P	89-18-080
192-12-300	NEW	89-20-064	204-65-050	AMD	89-12-018	204-91A-070	AMD	89-21-044
192-12-305	NEW-P	89-17-086	204-65-060	AMD-E	89-09-023	204-91A-080	NEW-P	89-10-029
192-12-305	NEW	89-20-064	204-65-060	AMD-P	89-09-024	204-91A-080	NEW	89-14-015
192-12-310	NEW-P	89-17-086	204-65-060	AMD	89-12-018	204-91A-090	NEW-P	89-10-029
192-12-310	NEW	89-20-064	204-76-99001	AMD-P	89-09-025	204-91A-090	NEW	89-14-015
192-12-320	NEW-P	89-17-086	204-76-99001	AMD	89-12-019	204-91A-100	NEW-P	89-10-029
192-12-320	NEW	89-20-064	204-76-99002	AMD-P	89-09-025	204-91A-100	NEW	89-14-015
192-12-330	NEW-P	89-17-086	204-76-99002	AMD	89-12-019	204-91A-110	NEW-P	89-10-029
192-12-330	NEW	89-20-064	204-82-010	REP-P	89-21-043	204-91A-110	NEW	89-14-015
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192-12-340	NEW	89-20-064	204-82-030	REP-P	89-21-043	204-91A-120	NEW	89-14-015
192-16-300	NEW-P	89-17-085	204-82-040	REP-P	89-21-043	204-91A-120	AMD-P	89-18-080
192-16-305	NEW-P	89-17-085	204-82-050	REP-P	89-21-043	204-91A-120	AMD	89-21-044
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192-28-135	NEW-P	89-12-084	204-82A-010	NEW-P	89-21-006	204-91A-130	NEW	89-14-015
192-28-135	NEW	89-20-065	204-82A-020	NEW-P	89-21-006	204-91A-140	NEW-P	89-10-029
192-40-020	AMD-P	89-19-079	204-82A-030	NEW-P	89-21-006	204-91A-140	NEW	89-14-015
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192-40-070	AMD-P	89-19-079	204-91-010	REP-P	89-10-029	204-91A-150	NEW	89-14-015
192-40-080	AMD-P	89-19-079	204-91-010	REP	89-14-015	204-91A-160	NEW-P	89-10-029
192-40-090	AMD-P	89-19-079	204-91-020	REP-P	89-10-029	204-91A-160	NEW	89-14-015
192-40-100	AMD-P	89-19-079	204-91-020	REP	89-14-015	204-91A-170	NEW-P	89-10-029
192-42-010	AMD-P	89-17-121	204-91-030	REP-P	89-10-029	204-91A-170	NEW	89-14-015
192-42-010	AMD-C	89-22-064	204-91-030	REP	89-14-015	204-91A-180	NEW-P	89-10-029
192-42-020	REP-P	89-17-121	204-91-040	REP-P	89-10-029	204-91A-180	NEW	89-14-015
192-42-020	REP-C	89-22-064	204-91-040	REP	89-14-015	204-91A-180	AMD-P	89-18-080
192-42-021	NEW-P	89-17-121	204-91-050	REP-P	89-10-029	204-91A-180	AMD	89-21-044
192-42-021	NEW-C	89-22-064	204-91-050	REP	89-14-015	212-17-140	AMD-P	89-13-019
192-42-030	AMD-P	89-17-121	204-91-060	REP-P	89-10-029	212-17-140	AMD-E	89-13-020
192-42-030	AMD-C	89-22-064	204-91-060	REP	89-14-015	212-17-140	AMD	89-17-024
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192-42-040	REP-P	89-17-121	204-91-070	REP	89-14-015	212-17-195	AMD-E	89-13-020
192-42-040	REP-C	89-22-064	204-91-080	REP-P	89-10-029	212-17-195	AMD	89-17-024
192-42-050	AMD-P	89-17-121	204-91-080	REP	89-14-015	220-12-010	AMD-P	89-10-068
192-42-050	REP-C	89-22-064	204-91-100	REP-P	89-10-029	220-12-010	AMD	89-14-010
192-42-055	NEW-P	89-17-121	204-91-100	REP	89-14-015	220-12-01000A	NEW-E	89-16-009
192-42-056	NEW-P	89-22-064	204-91-110	REP-P	89-10-029	220-16-410	NEW-P	89-12-006
192-42-057	NEW-P	89-22-064	204-91-110	REP	89-14-015	220-16-410	NEW	89-15-032
192-42-058	NEW-P	89-17-121	204-91-120	REP-P	89-10-029	220-16-410	AMD-P	89-23-114
192-42-058	NEW-C	89-22-064	204-91-120	REP	89-14-015	220-16-420	NEW-P	89-23-114
192-42-070	REP-P	89-17-121	204-91-130	REP-P	89-10-029	220-20-017	AMD-P	89-09-080
192-42-070	REP-C	89-22-064	204-91-130	REP	89-14-015	220-20-017	AMD	89-13-004
192-42-071	NEW-P	89-17-121	204-91-140	REP-P	89-10-029	220-20-055	AMD-P	89-06-033
192-42-080	REP-P	89-17-121	204-91-140	REP	89-14-015	220-20-055	AMD	89-09-052
192-42-080	REP-C	89-22-064	204-91-150	REP-P	89-10-029	220-22-020	AMD-P	89-23-114
192-42-081	NEW-P	89-17-121	204-91-150	REP	89-14-015	220-22-030	AMD-P	89-09-080
192-42-081	NEW-C	89-22-064	204-91-160	REP-P	89-10-029	220-22-030	AMD	89-13-004
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194-18-010	NEW	89-15-013	204-91-170	REP-P	89-10-029	220-24-02000D	REP-E	89-12-086
194-18-020	NEW-P	89-11-083	204-91-170	REP	89-14-015	220-24-02000E	NEW-E	89-12-086
194-18-020	NEW	89-15-013	204-91-180	REP-P	89-10-029	220-24-02000E	REP-E	89-13-022
194-18-030	NEW-P	89-11-083	204-91-180	REP	89-14-015	220-24-02000F	NEW-E	89-13-022
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196-16-007	AMD	89-05-021	204-91-190	REP	89-14-015	220-24-02000G	NEW-E	89-15-019
196-16-020	AMD	89-05-021	204-91-200	REP-P	89-10-029	220-24-02000G	REP-E	89-16-078
196-16-031	AMD	89-05-021	204-91-200	REP	89-14-015	220-24-02000H	NEW-E	89-16-078
196-24-080	AMD	89-05-021	204-91A-010	NEW-P	89-10-029	220-24-02000H	REP-E	89-17-061
196-24-085	AMD	89-05-021	204-91A-010	NEW	89-14-015	220-24-02000I	NEW-E	89-17-061
196-26-020	AMD-E	89-20-044	204-91A-020	NEW-P	89-10-029	220-24-02000I	REP-E	89-17-084
204-29-010	NEW-E	89-10-007	204-91A-020	NEW	89-14-015	220-24-02000J	NEW-E	89-17-084
204-29-010	NEW	89-10-016	204-91A-030	NEW-P	89-10-029	220-24-02000J	REP-E	89-17-143
204-65-010	AMD-E	89-09-023	204-91A-030	NEW	89-14-015	220-24-02000K	NEW-E	89-17-143
204-65-010	AMD-P	89-09-024	204-91A-030	AMD-P	89-18-080	220-24-02000K	REP-E	89-19-012
204-65-010	AMD	89-12-018	204-91A-030	AMD	89-21-044	220-32-05100P	NEW-E	89-04-046
204-65-020	AMD-E	89-09-023	204-91A-040	NEW-P	89-10-029	220-32-05100P	REP-E	89-07-080
204-65-020	AMD-P	89-09-024	204-91A-040	NEW	89-14-015	220-32-05100Q	NEW-E	89-07-080
204-65-020	AMD	89-12-018	204-91A-050	NEW-P	89-10-029	220-32-05100R	NEW-E	89-17-016
204-65-030	AMD-E	89-09-023	204-91A-050	NEW	89-14-015	220-32-05100R	REP-E	89-18-064
204-65-030	AMD-P	89-09-024	204-91A-060	NEW-P	89-10-029	220-32-05100S	NEW-E	89-18-064
204-65-030	AMD	89-12-018	204-91A-060	NEW	89-14-015	220-32-05100S	REP-E	89-19-049
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220-32-05100U	REP-E	89-20-025	220-40-027	NEW	89-16-056	220-47-526	REP-E	89-23-115
220-32-05100V	NEW-E	89-20-025	220-44-050	AMD-P	89-03-003	220-47-527	NEW-E	89-23-115
220-32-05100V	REP-E	89-21-017	220-44-050	AMD	89-06-030	220-48-015	AMD-P	89-10-068
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220-32-05700D	NEW-E	89-07-080	220-44-05000W	NEW-E	89-15-021	220-48-02900D	NEW-E	89-19-041
220-32-05900P	NEW-E	89-10-009	220-44-05000W	REP-E	89-16-038	220-48-062	AMD-P	89-10-068
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220-33-01000K	NEW-E	89-21-017	220-47-414	AMD-P	89-09-080	220-55-015	AMD	89-07-071
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220-36-02100C	NEW-E	89-15-033	220-47-510	NEW-E	89-18-041	220-55-060	AMD	89-07-071
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220-36-02100E	REP-E	89-19-050	220-47-512	REP-E	89-18-094	220-55-075	AMD	89-07-071
220-36-02100F	NEW-E	89-19-050	220-47-513	NEW-E	89-18-094	220-55-07500A	NEW-E	89-03-014
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220-36-02100G	REP-E	89-22-056	220-47-514	REP-E	89-19-039	220-55-086	AMD-P	89-23-114
220-36-02100H	NEW-E	89-22-056	220-47-515	NEW-E	89-19-039	220-55-08600A	NEW-E	89-03-014
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220-36-02100I	REP-E	89-23-012	220-47-516	REP-E	89-20-033	220-55-090	AMD-P	89-03-013
220-36-02100J	NEW-E	89-23-012	220-47-517	NEW-E	89-20-033	220-55-090	AMD	89-07-071
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220-40-02100R	NEW-E	89-19-029	220-47-523	REP-E	89-23-039	220-55-125	AMD-P	89-03-013
220-40-02100R	REP-E	89-22-042	220-47-524	NEW-E	89-23-039	220-55-125	AMD	89-07-071
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220-55-135	REP	89-07-071	220-56-245	AMD	89-07-060	220-57-14000M	NEW-E	89-21-022
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220-56-105	AMD-P	89-03-075	220-56-25500E	NEW-E	89-06-052	220-57-160	AMD-P	89-03-075
220-56-105	AMD-C	89-07-059	220-56-282	NEW-P	89-03-075	220-57-160	AMD-C	89-07-059
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220-56-116	AMD	89-10-032	220-56-28200A	NEW-E	89-08-074	220-57-160	AMD	89-15-022
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220-56-120	REP-C	89-07-059	220-56-295	AMD-C	89-07-059	220-57-16000A	REP-E	89-20-004
220-56-120	REP	89-07-060	220-56-295	AMD	89-07-060	220-57-16000B	NEW-E	89-19-040
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220-56-126	AMD	89-07-060	220-56-310	AMD	89-07-060	220-57-16000Y	NEW-E	89-13-003
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230-50-630	AMD-P	89-19-084	232-12-271	AMD-P	89-08-104	232-28-810	REP-P	89-06-083
230-50-630	AMD-E	89-21-068	232-12-271	AMD	89-12-044	232-28-810	REP-C	89-09-059
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230-50-810	PREP	89-17-136	232-28-20401	REP-P	89-14-108	236-48-003	AMD	89-17-094
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230-50-820	REP-P	89-19-084	232-28-217	REP-P	89-08-108	236-48-005	AMD	89-17-094
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236-48-141	AMD	89-17-094	248-08-060	REP-E	89-14-096	248-08-300	REP-P	89-22-103
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236-48-164	AMD	89-17-094	248-08-110	REP-P	89-22-103	248-08-370	REP-E	89-22-092
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236-48-240	AMD	89-17-094	248-08-150	REP-P	89-22-103	248-08-410	AMD-E	89-22-092
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248-08-452	NEW-P	89-22-103	248-08-710	REP-E	89-22-092	248-14-001	AMD-P	89-04-054
248-08-460	REP-E	89-14-096	248-08-710	REP-P	89-22-103	248-14-001	AMD	89-08-054
248-08-460	REP-E	89-22-092	248-08-715	REP-E	89-14-096	248-14-001	AMD-P	89-17-129
248-08-460	REP-P	89-22-103	248-08-715	REP-E	89-22-092	248-14-001	AMD	89-21-049
248-08-461	NEW-E	89-14-096	248-08-715	REP-P	89-22-103	248-14-010	AMD-P	89-15-051
248-08-461	NEW-E	89-22-092	248-08-720	REP-E	89-14-096	248-14-010	AMD	89-18-006
248-08-461	NEW-P	89-22-103	248-08-720	REP-E	89-22-092	248-14-070	AMD-E	89-14-098
248-08-464	NEW-E	89-14-096	248-08-720	REP-P	89-22-103	248-14-070	AMD-P	89-22-075
248-08-464	NEW-E	89-22-092	248-08-725	REP-E	89-14-096	248-14-070	AMD-E	89-22-089
248-08-464	NEW-P	89-22-103	248-08-725	REP-E	89-22-092	248-14-070	AMD-C	89-23-057
248-08-470	NEW-E	89-14-096	248-08-725	REP-P	89-22-103	248-14-090	AMD-P	89-04-054
248-08-470	REP-E	89-14-096	248-08-730	REP-E	89-14-096	248-14-090	AMD	89-08-054
248-08-470	AMD-E	89-22-092	248-08-730	REP-E	89-22-092	248-14-120	AMD-P	89-19-071
248-08-470	AMD-P	89-22-103	248-08-730	REP-P	89-22-103	248-14-120	AMD	89-22-129
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248-08-480	REP-E	89-22-092	248-08-735	REP-E	89-22-092	248-14-211	NEW	89-21-049
248-08-480	REP-P	89-22-103	248-08-735	REP-P	89-22-103	248-14-215	AMD-P	89-04-054
248-08-490	REP-E	89-14-096	248-08-740	REP-E	89-14-096	248-14-235	AMD	89-08-054
248-08-490	REP-E	89-22-092	248-08-740	REP-E	89-22-092	248-14-247	AMD-P	89-04-054
248-08-490	REP-P	89-22-103	248-08-740	REP-P	89-22-103	248-14-247	AMD	89-08-054
248-08-500	REP-E	89-14-096	248-08-750	REP-E	89-14-096	248-14-270	AMD	89-06-050
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248-08-520	REP-E	89-14-096	248-08-765	REP-E	89-14-096	248-14-300	AMD-P	89-04-054
248-08-520	REP-E	89-22-092	248-08-765	REP-E	89-22-092	248-14-300	AMD	89-08-054
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248-08-525	NEW-E	89-22-092	248-08-770	REP-E	89-22-092	248-15-110	AMD-E	89-14-095
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248-08-530	REP-P	89-22-103	248-08-775	REP-P	89-22-103	248-16-030	REP	89-09-034
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248-08-535	NEW-E	89-22-092	248-08-780	REP-E	89-22-092	248-16-031	AMD-E	89-14-095
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248-08-540	REP-E	89-22-092	248-08-785	REP-E	89-22-092	248-16-033	NEW	89-09-034
248-08-540	REP-P	89-22-103	248-08-785	REP-P	89-22-103	248-16-035	REP	89-09-034
248-08-545	NEW-E	89-14-096	248-08-790	REP-E	89-14-096	248-16-036	NEW	89-09-034
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248-08-570	REP-E	89-22-092	248-08-815	REP-E	89-22-092	248-16-090	AMD	89-09-034
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248-08-580	REP-E	89-22-092	248-08-825	REP-E	89-14-096	248-16-121	NEW	89-09-034
248-08-580	REP-P	89-22-103	248-08-825	REP-E	89-22-092	248-16-130	REP	89-09-034
248-08-590	REP-E	89-14-096	248-08-825	REP-P	89-22-103	248-16-131	NEW	89-09-034
248-08-590	REP-E	89-22-092	248-08-830	REP-E	89-14-096	248-16-140	REP	89-09-034
248-08-590	REP-P	89-22-103	248-08-830	REP-E	89-22-092	248-16-141	NEW	89-09-034
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248-08-700	REP-E	89-22-092	248-08-840	REP-E	89-14-096	248-16-190	AMD	89-09-034
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248-16-216	NEW	89-09-034	248-18-606	NEW	89-22-106	248-27-010	REP-P	89-07-023
248-16-222	AMD	89-09-034	248-18-607	REP-P	89-17-124	248-27-010	REP	89-12-077
248-16-223	AMD	89-09-034	248-18-607	REP	89-22-106	248-27-015	NEW-P	89-07-023
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248-16-229	NEW	89-09-034	248-18-615	REP	89-22-106	248-27-025	NEW-P	89-07-023
248-16-230	AMD	89-09-034	248-18-616	NEW-P	89-17-124	248-27-025	NEW	89-12-077
248-16-235	AMD	89-09-034	248-18-616	NEW	89-22-106	248-27-025	AMD-E	89-15-057
248-16-300	NEW	89-09-034	248-18-636	REP-P	89-17-124	248-27-025	AMD-E	89-22-091
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248-17-020	AMD-E	89-10-071	248-18-637	NEW	89-22-106	248-27-030	REP	89-12-077
248-17-020	AMD-E	89-16-070	248-18-655	REP-P	89-17-126	248-27-035	NEW-P	89-07-023
248-17-020	AMD-P	89-17-128	248-18-655	REP	89-22-109	248-27-035	NEW	89-12-077
248-17-020	AMD	89-22-108	248-18-656	NEW-P	89-17-126	248-27-035	AMD-E	89-15-057
248-17-020	AMD-E	89-23-028	248-18-656	NEW	89-22-109	248-27-035	AMD-E	89-22-091
248-17-060	AMD-E	89-14-095	248-18-710	REP-P	89-17-125	248-27-035	AMD-P	89-22-107
248-17-060	AMD-E	89-22-091	248-18-710	REP	89-22-105	248-27-040	REP-P	89-07-023
248-17-060	AMD-P	89-22-107	248-18-711	NEW-P	89-17-125	248-27-040	REP	89-12-077
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248-17-213	AMD-E	89-10-071	248-18-718	REP-P	89-17-125	248-27-045	NEW	89-12-077
248-17-213	AMD-E	89-16-070	248-18-718	REP	89-22-105	248-27-045	AMD-E	89-15-057
248-17-213	AMD-P	89-17-128	248-18-719	NEW-P	89-17-125	248-27-045	AMD-E	89-22-091
248-17-213	AMD	89-22-108	248-18-719	NEW	89-22-105	248-27-045	AMD-P	89-22-107
248-17-213	AMD-E	89-23-028	248-18-99902	AMD-P	89-17-125	248-27-050	REP-P	89-07-023
248-17-230	AMD-E	89-14-095	248-18-99902	AMD	89-22-105	248-27-050	REP	89-12-077
248-17-230	AMD-E	89-22-091	248-19-220	AMD-P	89-14-077	248-27-055	NEW-P	89-07-023
248-17-230	AMD-P	89-22-107	248-19-230	REP-P	89-14-077	248-27-055	NEW	89-12-077
248-17-260	AMD-P	89-10-069	248-19-230	REP-E	89-14-087	248-27-055	AMD-E	89-15-057
248-17-260	AMD-E	89-10-071	248-19-230	REP-P	89-19-043	248-27-055	AMD-E	89-22-091
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248-17-260	AMD-P	89-17-128	248-19-230	REP-C	89-23-097	248-27-060	REP-P	89-07-023
248-17-260	AMD	89-22-108	248-19-230	REP	89-23-098	248-27-060	REP	89-12-077
248-17-260	AMD-E	89-23-028	248-19-231	NEW-P	89-14-077	248-27-065	NEW-P	89-07-023
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248-17-261	NEW	89-22-108	248-19-231	NEW-E	89-19-044	248-27-070	REP	89-12-077
248-17-261	NEW-E	89-23-028	248-19-231	NEW-C	89-23-097	248-27-077	NEW-P	89-07-023
248-18-001	AMD-P	89-17-124	248-19-231	NEW	89-23-098	248-27-077	NEW	89-12-077
248-18-001	AMD	89-22-106	248-19-480	AMD-E	89-14-095	248-27-080	REP-P	89-07-023
248-18-015	AMD-E	89-14-095	248-19-480	AMD-E	89-22-091	248-27-080	REP	89-12-077
248-18-015	AMD-E	89-22-091	248-19-480	AMD-P	89-22-107	248-27-085	NEW-P	89-07-023
248-18-015	AMD-P	89-22-107	248-21-005	AMD-E	89-14-097	248-27-085	NEW	89-12-077
248-18-035	AMD-P	89-17-006	248-21-005	AMD-E	89-22-093	248-27-090	REP-P	89-07-023
248-18-035	AMD	89-21-039	248-21-005	AMD-E	89-23-091	248-27-090	REP	89-12-077
248-18-215	REP-P	89-17-124	248-21-005	AMD-P	89-23-102	248-27-095	NEW-P	89-07-023
248-18-215	REP	89-22-106	248-21-017	NEW-P	89-17-007	248-27-095	NEW	89-12-077
248-18-216	NEW-P	89-17-124	248-21-017	NEW	89-21-038	248-27-100	REP-P	89-07-023
248-18-216	NEW	89-22-106	248-22-005	AMD-E	89-14-095	248-27-100	REP	89-12-077
248-18-220	REP-P	89-17-124	248-22-005	AMD-E	89-22-091	248-27-105	NEW-P	89-07-023
248-18-220	REP	89-22-106	248-22-005	AMD-P	89-22-107	248-27-105	NEW	89-12-077
248-18-221	NEW-P	89-17-124	248-22-017	NEW-P	89-17-007	248-27-115	NEW-P	89-07-023
248-18-221	NEW	89-22-106	248-22-017	NEW	89-21-038	248-27-115	NEW	89-12-077
248-18-222	REP-P	89-17-124	248-23-010	AMD-E	89-14-095	248-27-120	REP-P	89-07-023
248-18-222	REP	89-22-106	248-23-010	AMD-E	89-22-091	248-27-120	REP	89-12-077
248-18-223	REP-P	89-17-124	248-23-010	AMD-P	89-22-107	248-27-125	NEW-P	89-07-023
248-18-223	REP	89-22-106	248-23-025	NEW-P	89-17-007	248-27-125	NEW	89-12-077
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248-18-224	NEW	89-22-106	248-25-010	AMD-E	89-14-095	248-27-135	NEW	89-12-077
248-18-310	REP-P	89-17-126	248-25-010	AMD-E	89-22-091	248-27-145	NEW-P	89-07-023
248-18-310	REP	89-22-109	248-25-010	AMD-P	89-22-107	248-27-145	NEW	89-12-077
248-18-311	NEW-P	89-17-126	248-25-025	NEW-P	89-17-007	248-27-155	NEW-P	89-07-023
248-18-311	NEW	89-22-109	248-25-025	NEW	89-21-038	248-27-155	NEW	89-12-077
248-18-515	AMD-P	89-17-125	248-26-020	AMD-E	89-14-095	248-27-165	NEW-P	89-07-023
248-18-515	AMD	89-22-105	248-26-020	AMD-E	89-22-091	248-27-165	NEW	89-12-077
248-18-539	REP-P	89-17-124	248-26-020	AMD-P	89-22-107	248-27-175	NEW-P	89-07-023
248-18-539	REP	89-22-106	248-26-035	NEW-P	89-17-007	248-27-175	NEW	89-12-077
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248-18-541	NEW	89-22-106	248-27	AMD-P	89-07-023	248-27-185	NEW	89-12-077
248-18-600	REP-P	89-17-124	248-27	AMD	89-12-077	248-29-020	AMD-E	89-14-095
248-18-600	REP	89-22-106	248-27-001	REP-P	89-07-023	248-29-020	AMD-E	89-22-091
248-18-601	NEW-P	89-17-124	248-27-001	REP	89-12-077	248-29-020	AMD-P	89-22-107
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248-18-605	REP-P	89-17-124	248-27-002	REP	89-12-077	248-29-045	NEW	89-21-038

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248-31-001	REP-P	89-07-023	248-31-155	NEW	89-12-077	248-52-040	NEW	89-20-020
248-31-001	REP	89-12-077	248-31-160	REP-P	89-07-023	248-52-050	NEW-P	89-16-103
248-31-002	REP-P	89-07-023	248-31-160	REP	89-12-077	248-52-050	NEW	89-20-020
248-31-002	REP	89-12-077	248-31-165	NEW-P	89-07-023	248-52-060	NEW-P	89-16-103
248-31-005	NEW-P	89-07-023	248-31-165	NEW	89-12-077	248-52-060	NEW	89-20-020
248-31-005	NEW	89-12-077	248-31-175	NEW-P	89-07-023	248-52-070	NEW-P	89-16-103
248-31-010	REP-P	89-07-023	248-31-175	NEW	89-12-077	248-52-070	NEW	89-20-020
248-31-010	REP	89-12-077	248-31-185	NEW-P	89-07-023	248-52-080	NEW-P	89-16-103
248-31-015	NEW-P	89-07-023	248-31-185	NEW	89-12-077	248-52-080	NEW	89-20-020
248-31-015	NEW	89-12-077	248-33-040	AMD-P	89-14-097	248-54	AMD-C	89-17-130
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248-31-020	REP	89-12-077	248-33-040	AMD-E	89-23-091	248-54-005	AMD	89-21-020
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248-31-025	NEW	89-12-077	248-33-060	REP-P	89-14-097	248-54-006	NEW	89-21-020
248-31-025	AMD-E	89-15-057	248-33-060	REP-E	89-22-093	248-54-015	AMD-P	89-14-079
248-31-025	AMD-E	89-22-091	248-33-060	REP-E	89-23-091	248-54-015	AMD	89-21-020
248-31-025	AMD-P	89-22-107	248-33-060	REP-P	89-23-102	248-54-025	AMD-P	89-14-079
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248-31-035	NEW-P	89-07-023	248-33-080	REP-E	89-23-091	248-54-035	AMD	89-21-020
248-31-035	NEW	89-12-077	248-33-080	REP-P	89-23-102	248-54-045	AMD-P	89-14-079
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296-400-045	AMD-P	89-07-079	308-40-105	AMD-P	89-10-072	308-52-415	AMD-P	89-09-067
296-400-045	AMD	89-12-004	308-40-105	AMD-E	89-10-074	308-52-415	AMD	89-12-053
308-12-025	AMD-P	89-13-049	308-40-105	AMD	89-13-052	308-52-590	AMD-E	89-14-008
308-12-025	AMD	89-17-038	308-40-106	NEW-P	89-10-072	308-52-590	AMD-P	89-14-030
308-12-031	AMD-P	89-13-049	308-40-106	NEW-E	89-10-074	308-52-590	AMD	89-18-037
308-12-031	AMD	89-17-038	308-40-106	NEW	89-13-052	308-52-620	NEW	89-06-076
308-12-040	AMD-P	89-06-067	308-40-125	AMD-E	89-21-041	308-52-630	NEW-P	89-09-067
308-12-040	AMD	89-12-052	308-40-130	NEW-E	89-22-094	308-52-630	NEW	89-13-002

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308-52-640	NEW-P	89-09-067	308-56A-630	NEW-E	89-16-075	308-100-100	NEW	89-18-003
308-52-640	NEW	89-13-002	308-56A-640	NEW-E	89-10-045	308-100-110	NEW-P	89-15-040
308-52-650	NEW-P	89-09-067	308-56A-640	NEW-P	89-11-019	308-100-110	NEW	89-18-003
308-52-650	NEW	89-13-002	308-56A-640	NEW	89-16-074	308-100-120	NEW-P	89-15-040
308-52-660	NEW-P	89-09-067	308-56A-640	NEW-E	89-16-075	308-100-120	NEW	89-18-003
308-52-660	NEW	89-13-002	308-56A-650	NEW-E	89-10-045	308-100-130	NEW-P	89-15-040
308-52-670	NEW-P	89-09-067	308-56A-650	NEW-P	89-11-019	308-100-130	NEW	89-18-003
308-52-670	NEW	89-13-002	308-56A-650	NEW	89-16-074	308-100-140	NEW-P	89-15-040
308-52-670	REP-P	89-16-097	308-56A-650	NEW-E	89-16-075	308-100-140	NEW	89-18-003
308-52-670	REP	89-20-023	308-56A-660	NEW-E	89-10-045	308-100-150	NEW-P	89-15-040
308-52-680	NEW-P	89-16-097	308-56A-660	NEW-P	89-11-019	308-100-150	NEW	89-18-003
308-52-680	NEW	89-20-023	308-56A-660	NEW	89-16-074	308-100-160	NEW-P	89-15-040
308-52-690	NEW-P	89-16-097	308-56A-660	NEW-E	89-16-075	308-100-160	NEW	89-18-003
308-52-690	NEW	89-20-023	308-56A-670	NEW-E	89-10-045	308-100-170	NEW-P	89-15-040
308-53-120	AMD-P	89-06-070	308-56A-670	NEW-P	89-11-019	308-100-170	NEW	89-18-003
308-53-120	AMD	89-10-030	308-56A-670	NEW	89-16-074	308-100-180	NEW-P	89-15-040
308-53-123	NEW-P	89-06-070	308-56A-670	NEW-E	89-16-075	308-100-180	NEW	89-18-003
308-53-123	NEW	89-10-030	308-56A-680	NEW-E	89-10-045	308-100-190	NEW-P	89-15-040
308-53-125	AMD-P	89-06-070	308-56A-680	NEW-P	89-11-019	308-100-190	NEW	89-18-003
308-53-125	AMD	89-10-030	308-56A-680	NEW	89-16-074	308-100-200	NEW-P	89-15-040
308-53-130	REP-P	89-06-070	308-56A-680	NEW-E	89-16-075	308-100-200	NEW	89-18-003
308-53-130	REP	89-10-030	308-56A-690	NEW-E	89-10-045	308-104-025	AMD-P	89-15-040
308-53-135	AMD-P	89-06-070	308-56A-690	NEW-P	89-11-019	308-104-025	AMD	89-18-003
308-53-135	AMD	89-10-030	308-56A-690	NEW	89-16-074	308-104-035	NEW-P	89-15-040
308-53-145	AMD-P	89-06-070	308-56A-690	NEW-E	89-16-075	308-104-035	NEW	89-18-003
308-53-145	AMD	89-10-030	308-61-108	AMD-P	89-20-010	308-104-100	AMD-P	89-15-040
308-53-146	AMD-P	89-06-070	308-61-108	AMD-E	89-20-011	308-104-100	AMD	89-18-003
308-53-146	AMD	89-10-030	308-61-135	AMD-P	89-20-010	308-104-105	AMD-P	89-15-040
308-53-150	AMD-P	89-06-070	308-61-135	AMD-E	89-20-011	308-104-105	AMD	89-18-003
308-53-150	AMD	89-10-030	308-61-185	AMD-P	89-20-010	308-106-010	NEW-P	89-19-052
308-53-151	AMD-P	89-06-070	308-61-185	AMD-E	89-20-011	308-106-010	NEW	89-22-030
308-53-151	AMD	89-10-030	308-61-190	AMD-P	89-20-010	308-106-020	NEW-P	89-19-052
308-53-165	AMD-P	89-06-070	308-61-190	AMD-E	89-20-011	308-106-020	NEW	89-22-030
308-53-165	AMD	89-10-030	308-61-230	AMD-P	89-20-010	308-106-030	NEW-P	89-19-052
308-53-170	AMD-P	89-06-070	308-61-230	AMD-E	89-20-011	308-106-030	NEW	89-22-030
308-53-170	AMD	89-10-030	308-67-010	NEW-P	89-23-123	308-115-065	NEW	89-16-037
308-53-175	NEW-P	89-06-070	308-67-010	NEW-E	89-23-124	308-115-260	NEW-P	89-10-077
308-53-175	NEW	89-10-030	308-77-030	AMD	89-03-005	308-115-260	NEW	89-14-092
308-53-180	AMD-P	89-06-070	308-77-034	AMD	89-03-005	308-115-270	NEW-P	89-10-077
308-53-180	AMD	89-10-030	308-77-040	AMD	89-03-005	308-115-270	NEW	89-14-092
308-53-330	NEW-P	89-13-062	308-77-042	NEW	89-03-034	308-115-280	NEW-P	89-10-077
308-53-330	NEW	89-17-040	308-77-044	NEW	89-03-034	308-115-280	NEW	89-14-092
308-53-340	NEW-P	89-13-062	308-77-060	AMD	89-03-005	308-115-290	NEW-P	89-10-077
308-53-340	NEW	89-17-040	308-89-040	AMD-P	89-08-091	308-115-290	NEW	89-14-092
308-53-350	NEW-P	89-18-083	308-89-040	AMD-E	89-08-094	308-115-310	NEW-P	89-10-077
308-53-350	NEW	89-22-102	308-90-080	AMD-E	89-14-091	308-115-310	NEW	89-14-092
308-53-400	NEW-C	89-06-066	308-90-080	AMD-P	89-15-049	308-115-320	NEW-P	89-10-077
308-53-400	NEW	89-09-027	308-90-080	AMD	89-18-028	308-115-320	NEW	89-14-092
308-55-035	NEW-P	89-10-077	308-91	AMD-P	89-02-063	308-115-330	NEW-P	89-10-077
308-55-035	NEW	89-14-092	308-91	AMD	89-07-035	308-115-330	NEW	89-14-092
308-55-045	NEW-P	89-10-077	308-91-030	AMD-P	89-02-062	308-115-340	NEW-P	89-10-077
308-55-045	NEW	89-14-092	308-91-030	AMD	89-07-036	308-115-340	NEW	89-14-092
308-55-055	NEW-P	89-10-077	308-91-040	AMD-P	89-02-063	308-115-350	NEW-P	89-10-077
308-55-055	NEW	89-14-092	308-91-040	AMD	89-07-035	308-115-350	NEW	89-14-092
308-55-065	NEW-P	89-10-077	308-91-050	AMD-P	89-02-063	308-115-405	AMD-P	89-05-018
308-55-065	NEW	89-14-092	308-91-050	AMD	89-07-035	308-115-405	AMD	89-08-008
308-55-075	NEW-P	89-10-077	308-91-140	AMD-P	89-02-063	308-117-080	AMD-P	89-06-071
308-55-075	NEW	89-14-092	308-91-140	AMD	89-07-035	308-117-080	AMD	89-10-075
308-55-085	NEW-P	89-10-077	308-96A-260	AMD-P	89-08-091	308-117-450	NEW-P	89-02-065
308-55-085	NEW	89-14-092	308-96A-260	AMD-E	89-08-094	308-117-460	NEW-P	89-02-065
308-55-095	NEW-P	89-10-077	308-99-025	AMD-P	89-17-065	308-117-460	NEW	89-07-005
308-55-095	NEW	89-14-092	308-99-025	AMD	89-20-043	308-117-470	NEW-P	89-02-065
308-55-105	NEW-P	89-10-077	308-99-050	NEW-P	89-17-065	308-117-470	NEW	89-07-005
308-55-105	NEW	89-14-092	308-99-050	NEW	89-20-043	308-117-480	NEW-P	89-02-065
308-55-115	NEW-P	89-10-077	308-100-010	AMD-P	89-15-040	308-117-480	NEW	89-07-005
308-55-115	NEW	89-14-092	308-100-010	AMD	89-18-003	308-120-165	AMD-P	89-22-104
308-56A-610	NEW-E	89-10-045	308-100-020	AMD-P	89-15-040	308-120-168	AMD-P	89-08-093
308-56A-610	NEW-P	89-11-019	308-100-020	AMD	89-18-003	308-120-168	AMD	89-12-032
308-56A-610	NEW	89-16-074	308-100-030	AMD-P	89-15-040	308-120-170	AMD-P	89-06-072
308-56A-610	NEW-E	89-16-075	308-100-030	AMD	89-18-003	308-120-170	AMD	89-12-033
308-56A-620	NEW-E	89-10-045	308-100-040	AMD-P	89-15-040	308-120-305	AMD-P	89-06-072
308-56A-620	NEW-P	89-11-019	308-100-040	AMD	89-18-003	308-120-305	AMD	89-12-033
308-56A-620	NEW	89-16-074	308-100-050	AMD-P	89-15-040	308-120-620	NEW-P	89-22-104
308-56A-620	NEW-E	89-16-075	308-100-050	AMD	89-18-003	308-120-810	NEW-P	89-06-072
308-56A-630	NEW-E	89-10-045	308-100-080	REP-P	89-15-040	308-120-810	NEW	89-12-033
308-56A-630	NEW-P	89-11-019	308-100-080	REP	89-18-003	308-122-211	NEW-P	89-08-092
308-56A-630	NEW	89-16-074	308-100-100	NEW-P	89-15-040	308-122-211	NEW	89-11-054

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308-122-360	AMD	89-19-053	308-128E-010	REP	89-07-077	308-177-130	AMD-E	89-14-009
308-122-370	AMD-P	89-14-090	308-128E-011	NEW-P	89-04-001	308-177-130	AMD-P	89-14-104
308-122-370	AMD	89-19-053	308-128E-011	NEW	89-07-077	308-177-130	AMD	89-17-071
308-122-380	AMD-P	89-14-090	308-130-320	NEW-P	89-10-077	308-177-140	NEW	89-03-035
308-122-380	AMD	89-19-053	308-130-320	NEW	89-14-092	308-177-150	NEW	89-03-035
308-122-390	AMD-P	89-14-090	308-130-330	NEW-P	89-10-077	308-177-150	REP-E	89-14-009
308-122-390	AMD	89-19-053	308-130-330	NEW	89-14-092	308-177-150	REP-P	89-14-104
308-122-400	AMD-P	89-14-090	308-130-340	NEW-P	89-10-077	308-177-150	REP	89-17-071
308-122-400	AMD	89-19-053	308-130-340	NEW	89-14-092	308-177-160	NEW-E	89-14-009
308-122-410	AMD-P	89-14-090	308-130-350	NEW-P	89-10-077	308-177-160	NEW-P	89-14-104
308-122-410	AMD	89-19-053	308-130-350	NEW	89-14-092	308-177-160	NEW	89-17-071
308-122-420	AMD-P	89-14-090	308-130-360	NEW-P	89-10-077	308-177-180	NEW-E	89-14-009
308-122-420	AMD	89-19-053	308-130-360	NEW	89-14-092	308-177-180	NEW-P	89-14-104
308-122-430	AMD-P	89-14-090	308-130-370	NEW-P	89-10-077	308-177-180	NEW	89-17-071
308-122-430	AMD	89-19-053	308-130-370	NEW	89-14-092	308-177-190	NEW-E	89-14-009
308-122-440	AMD-P	89-14-090	308-130-380	NEW-P	89-10-077	308-177-190	NEW-P	89-14-104
308-122-440	AMD	89-19-053	308-130-380	NEW	89-14-092	308-177-190	NEW	89-17-071
308-122-450	AMD-P	89-14-090	308-130-390	NEW-P	89-10-077	308-180-290	NEW-P	89-10-077
308-122-450	AMD	89-19-053	308-130-390	NEW	89-14-092	308-180-290	NEW	89-14-092
308-122-500	AMD-P	89-14-090	308-130-400	NEW-P	89-10-077	308-180-300	NEW-P	89-10-077
308-122-500	AMD	89-19-053	308-130-400	NEW	89-14-092	308-180-300	NEW	89-14-092
308-122-500	REP-E	89-21-050	308-138A-020	AMD-P	89-13-051	308-180-310	NEW-P	89-10-077
308-122-500	REP-P	89-21-051	308-138A-020	AMD	89-22-065	308-180-310	NEW	89-14-092
308-122-503	NEW-P	89-14-090	308-138A-025	AMD-P	89-19-054	308-180-320	NEW-P	89-10-077
308-122-503	NEW	89-19-053	308-138A-025	AMD	89-23-067	308-180-320	NEW	89-14-092
308-122-503	REP-E	89-21-050	308-138A-070	NEW-P	89-13-051	308-180-330	NEW-P	89-10-077
308-122-503	REP-P	89-21-051	308-138A-070	NEW	89-22-065	308-180-330	NEW	89-14-092
308-122-550	NEW-P	89-14-090	308-138A-080	NEW-P	89-13-051	308-180-340	NEW-P	89-10-077
308-122-550	NEW	89-19-053	308-138A-080	NEW	89-22-065	308-180-340	NEW	89-14-092
308-122-550	REP-E	89-21-050	308-138A-090	NEW-P	89-13-051	308-180-350	NEW-P	89-10-077
308-122-550	REP-P	89-21-051	308-138A-090	NEW	89-22-065	308-180-350	NEW	89-14-092
308-122-555	NEW-P	89-14-090	308-150-014	AMD-P	89-06-073	308-180-360	NEW-P	89-10-077
308-122-555	NEW	89-19-053	308-150-014	AMD	89-10-076	308-180-360	NEW	89-14-092
308-122-555	REP-E	89-21-050	308-154-085	NEW-P	89-06-073	308-180-370	NEW-P	89-10-077
308-122-555	REP-P	89-21-051	308-154-085	NEW	89-10-076	308-180-370	NEW	89-14-092
308-122-560	NEW-P	89-14-090	308-156-200	NEW-P	89-06-073	308-183-010	NEW-P	89-10-077
308-122-560	NEW	89-19-053	308-156-200	NEW	89-10-076	308-183-010	NEW	89-14-092
308-122-560	REP-E	89-21-050	308-173-010	NEW-P	89-10-077	308-183-020	NEW-P	89-10-077
308-122-560	REP-P	89-21-051	308-173-010	NEW	89-14-092	308-183-020	NEW	89-14-092
308-122-565	NEW-P	89-14-090	308-173-020	NEW-P	89-10-077	308-183-030	NEW-P	89-10-077
308-122-565	NEW	89-19-053	308-173-020	NEW	89-14-092	308-183-030	NEW	89-14-092
308-122-565	REP-E	89-21-050	308-173-070	NEW-P	89-10-077	308-183-040	NEW-P	89-10-077
308-122-565	REP-P	89-21-051	308-173-070	NEW	89-14-092	308-183-040	NEW	89-14-092
308-122-570	NEW-P	89-14-090	308-173-080	NEW-P	89-10-077	308-183-050	NEW-P	89-10-077
308-122-570	NEW	89-19-053	308-173-080	NEW	89-14-092	308-183-050	NEW	89-14-092
308-122-570	REP-E	89-21-050	308-173-090	NEW-P	89-10-077	308-183-060	NEW-P	89-10-077
308-122-570	REP-P	89-21-051	308-173-090	NEW	89-14-092	308-183-060	NEW	89-14-092
308-122-575	NEW-P	89-14-090	308-177-010	NEW-P	89-10-077	308-183-070	NEW-P	89-10-077
308-122-575	NEW	89-19-053	308-177-010	NEW	89-14-092	308-183-070	NEW	89-14-092
308-122-575	REP-E	89-21-050	308-177-020	NEW-P	89-10-077	308-183-080	NEW-P	89-10-077
308-122-575	REP-P	89-21-051	308-177-020	NEW	89-14-092	308-183-080	NEW	89-14-092
308-122-580	NEW-P	89-14-090	308-177-030	NEW-P	89-10-077	308-190-030	AMD-P	89-07-081
308-122-580	NEW	89-19-053	308-177-030	NEW	89-14-092	308-190-030	AMD	89-14-070
308-122-580	REP-E	89-21-050	308-177-040	NEW-P	89-10-077	308-190-040	AMD-P	89-07-081
308-122-580	REP-P	89-21-051	308-177-040	NEW	89-14-092	308-190-040	AMD	89-14-070
308-124A-025	AMD-P	89-05-057	308-177-050	NEW-P	89-10-077	308-190-041	NEW-P	89-07-081
308-124A-025	AMD-E	89-07-004	308-177-050	NEW	89-14-092	308-190-041	NEW	89-14-070
308-124A-025	AMD	89-08-009	308-177-060	NEW-P	89-10-077	308-190-042	NEW-P	89-07-081
308-124A-460	AMD-P	89-05-057	308-177-060	NEW	89-14-092	308-190-042	NEW	89-14-070
308-124A-460	AMD-E	89-07-004	308-177-070	NEW-P	89-10-077	308-190-060	NEW-P	89-10-077
308-124A-460	AMD	89-08-009	308-177-070	NEW	89-14-092	308-190-060	NEW	89-14-092
308-124A-460	AMD-P	89-23-096	308-177-080	NEW-P	89-10-077	308-190-070	NEW-P	89-10-077
308-124C-040	AMD-P	89-22-068	308-177-080	NEW	89-14-092	308-190-070	NEW	89-14-092
308-124D-060	REP-P	89-07-091	308-177-090	NEW-P	89-10-077	308-190-080	NEW-P	89-10-077
308-124D-060	REP	89-11-032	308-177-090	NEW	89-14-092	308-190-080	NEW	89-14-092
308-124D-061	NEW-P	89-22-069	308-177-110	NEW	89-03-035	308-190-090	NEW-P	89-10-077
308-124D-065	REP-P	89-07-091	308-177-110	AMD-E	89-14-009	308-190-090	NEW	89-14-092
308-124D-065	REP	89-11-032	308-177-110	AMD-P	89-14-104	308-190-100	NEW-P	89-10-077
308-124E-012	AMD-P	89-22-070	308-177-110	AMD	89-17-071	308-190-100	NEW	89-14-092
308-124E-014	AMD-P	89-22-071	308-177-115	NEW-E	89-14-009	308-190-110	NEW-P	89-10-077
308-124H-010	AMD-P	89-22-072	308-177-115	NEW-P	89-14-104	308-190-110	NEW	89-14-092
308-124H-030	AMD-P	89-07-091	308-177-115	NEW	89-17-071	308-190-120	NEW-P	89-10-077
308-124H-030	AMD	89-11-032	308-177-120	NEW	89-03-035	308-190-120	NEW	89-14-092
308-126A-030	AMD-P	89-15-058	308-177-120	AMD-E	89-14-009	308-190-130	NEW-P	89-10-077
308-126A-030	AMD	89-18-038	308-177-120	AMD-P	89-14-104	308-190-130	NEW	89-14-092
308-128B-060	REP-P	89-23-042	308-177-120	AMD	89-17-071	308-190-140	NEW-P	89-10-077

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308-195-030	AMD	89-09-006	308-230-070	NEW-P	89-10-077	315-06-020	AMD-P	89-09-079
308-195-120	NEW-P	89-10-077	308-230-070	NEW	89-14-092	315-06-020	AMD	89-12-042
308-195-120	NEW	89-14-092	308-230-080	NEW-P	89-10-077	315-06-035	AMD	89-05-015
308-195-130	NEW-P	89-10-077	308-230-080	NEW	89-14-092	315-06-115	NEW-P	89-13-061
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308-195-140	NEW-P	89-10-077	308-230-090	NEW	89-14-092	315-06-120	AMD-P	89-09-079
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308-195-170	NEW	89-14-092	308-230-130	NEW-P	89-10-077	315-10-060	AMD	89-09-008
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388-320	AMD-P	89-22-080	390-16-302	REP-P	89-17-139	391-25-070	RE-AD-P	89-23-022
388-320	AMD-E	89-22-087	390-16-302	REP	89-20-068	391-25-090	RE-AD-E	89-17-011
388-320	AMD-C	89-23-062	390-16-306	REP-P	89-17-139	391-25-090	RE-AD-P	89-23-022
388-320-340	NEW-E	89-14-099	390-16-306	REP	89-20-068	391-25-092	RE-AD-E	89-17-011
388-320-340	NEW-P	89-22-080	391-08-001	AMD-E	89-17-010	391-25-092	RE-AD-P	89-23-022
388-320-340	NEW-E	89-22-087	391-08-001	AMD-P	89-23-021	391-25-110	RE-AD-E	89-17-011
388-320-340	NEW-C	89-23-062	391-08-003	RE-AD-E	89-17-010	391-25-110	RE-AD-P	89-23-022
388-320-350	NEW-E	89-14-099	391-08-003	RE-AD-P	89-23-021	391-25-130	RE-AD-E	89-17-011
388-320-350	NEW-P	89-22-080	391-08-007	RE-AD-E	89-17-010	391-25-130	RE-AD-P	89-23-022
388-320-350	NEW-E	89-22-087	391-08-007	RE-AD-P	89-23-021	391-25-140	RE-AD-E	89-17-011
388-320-350	NEW-C	89-23-062	391-08-010	RE-AD-E	89-17-010	391-25-140	RE-AD-P	89-23-022
388-320-360	NEW-E	89-14-099	391-08-010	RE-AD-P	89-23-021	391-25-150	RE-AD-E	89-17-011
388-320-360	NEW-P	89-22-080	391-08-020	RE-AD-E	89-17-010	391-25-150	RE-AD-P	89-23-022
388-320-360	NEW-E	89-22-087	391-08-020	RE-AD-P	89-23-021	391-25-170	RE-AD-E	89-17-011
388-320-360	NEW-C	89-23-062	391-08-030	RE-AD-E	89-17-010	391-25-170	RE-AD-P	89-23-022
388-320-370	NEW-E	89-14-099	391-08-030	RE-AD-P	89-23-021	391-25-190	RE-AD-E	89-17-011
388-320-370	NEW-P	89-22-080	391-08-040	RE-AD-E	89-17-010	391-25-190	RE-AD-P	89-23-022
388-320-370	NEW-E	89-22-087	391-08-040	RE-AD-P	89-23-021	391-25-210	RE-AD-E	89-17-011
388-320-370	NEW-C	89-23-062	391-08-100	RE-AD-E	89-17-010	391-25-210	RE-AD-P	89-23-022
388-320-400	NEW-E	89-14-099	391-08-100	RE-AD-P	89-23-021	391-25-220	NEW-E	89-17-011
388-320-400	NEW-P	89-22-080	391-08-110	REP-E	89-17-010	391-25-220	NEW-P	89-23-022
388-320-400	NEW-E	89-22-087	391-08-110	REP-P	89-23-021	391-25-230	RE-AD-E	89-17-011
388-320-400	NEW-C	89-23-062	391-08-120	AMD-E	89-17-010	391-25-230	RE-AD-P	89-23-022
388-320-410	NEW-E	89-14-099	391-08-120	AMD-P	89-23-021	391-25-250	RE-AD-E	89-17-011
388-320-410	NEW-P	89-22-080	391-08-160	REP-E	89-17-010	391-25-250	RE-AD-P	89-23-022
388-320-410	NEW-E	89-22-087	391-08-160	REP-P	89-23-021	391-25-252	RE-AD-E	89-17-011
388-320-410	NEW-C	89-23-062	391-08-180	AMD-E	89-17-010	391-25-252	RE-AD-P	89-23-022
388-320-500	NEW-E	89-14-099	391-08-180	AMD-P	89-23-021	391-25-253	RE-AD-E	89-17-011
388-320-500	NEW-P	89-22-080	391-08-200	REP-E	89-17-010	391-25-253	RE-AD-P	89-23-022
388-320-500	NEW-E	89-22-087	391-08-200	REP-P	89-23-021	391-25-270	RE-AD-E	89-17-011
388-320-500	NEW-C	89-23-062	391-08-210	REP-E	89-17-010	391-25-270	RE-AD-P	89-23-022
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388-330-060	NEW	89-07-096	391-08-510	REP-E	89-17-010	391-25-390	RE-AD-P	89-23-022
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390-16-011	AMD	89-20-068	391-08-600	REP-E	89-17-010	391-25-391	RE-AD-P	89-23-022
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390-16-041	AMD-P	89-17-139	391-08-820	AMD-P	89-23-021	391-25-470	RE-AD-E	89-17-011
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390-16-055	AMD-P	89-17-139	391-08-920	REP-P	89-23-021	391-25-530	RE-AD-E	89-17-011
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392-129-115	NEW-P	89-21-100	392-139-128	AMD	89-23-121	392-140-051	REP	89-18-077
392-129-120	NEW-P	89-21-100	392-139-129	NEW-P	89-19-031	392-140-052	REP-P	89-14-036
392-129-125	NEW-P	89-21-100	392-139-129	NEW	89-23-121	392-140-052	REP	89-18-077
392-129-130	NEW-P	89-21-100	392-139-132	AMD-P	89-19-031	392-140-053	REP-P	89-14-036
392-129-135	NEW-P	89-21-100	392-139-132	AMD	89-23-121	392-140-053	REP	89-18-077
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392-129-150	NEW-P	89-21-100	392-139-156	AMD-P	89-19-031	392-140-055	REP-P	89-14-036
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392-137-001	RE-AD-E	89-16-016	392-139-162	AMD-P	89-19-031	392-140-056	REP-P	89-14-036
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392-137-002	RE-AD-P	89-16-012	392-139-164	AMD-P	89-19-031	392-140-057	REP-P	89-14-036
392-137-002	RE-AD-E	89-16-016	392-139-164	AMD	89-23-121	392-140-057	REP	89-18-077
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392-137-003	RE-AD-E	89-16-016	392-139-205	AMD-P	89-19-031	392-140-059	REP-P	89-14-036
392-137-003	RE-AD	89-23-001	392-139-205	AMD	89-23-121	392-140-059	REP	89-18-077
392-137-010	RE-AD-P	89-16-012	392-139-215	AMD-P	89-19-031	392-140-061	REP-P	89-14-036
392-137-010	RE-AD-E	89-16-016	392-139-215	AMD	89-23-121	392-140-061	REP	89-18-077
392-137-010	RE-AD	89-23-001	392-139-225	AMD-P	89-19-031	392-140-062	REP-P	89-14-036
392-137-015	RE-AD-P	89-16-012	392-139-225	AMD	89-23-121	392-140-062	REP	89-18-077
392-137-015	RE-AD-E	89-16-016	392-139-230	AMD-P	89-19-031	392-140-063	REP-P	89-14-036
392-137-015	RE-AD	89-23-001	392-139-230	AMD	89-23-121	392-140-063	REP	89-18-077
392-137-020	RE-AD-P	89-16-012	392-139-240	REP-P	89-19-031	392-140-064	REP-P	89-14-036
392-137-020	RE-AD-E	89-16-016	392-139-240	REP	89-23-121	392-140-064	REP	89-18-077
392-137-020	RE-AD	89-23-001	392-139-243	NEW-P	89-19-031	392-140-065	REP-P	89-14-036
392-137-025	RE-AD-P	89-16-012	392-139-243	NEW	89-23-121	392-140-065	REP	89-18-077
392-137-025	RE-AD-E	89-16-016	392-139-245	AMD-P	89-19-031	392-140-066	REP-P	89-14-036
392-137-025	RE-AD	89-23-001	392-139-245	AMD	89-23-121	392-140-066	REP	89-18-077
392-137-030	RE-AD-P	89-16-012	392-139-297	NEW-P	89-19-031	392-140-085	REP-P	89-14-036
392-137-030	RE-AD-E	89-16-016	392-139-297	NEW	89-23-121	392-140-085	REP	89-18-077
392-137-030	RE-AD	89-23-001	392-139-300	AMD-P	89-19-031	392-140-086	REP-P	89-14-036
392-137-035	RE-AD-P	89-16-012	392-139-300	AMD	89-23-121	392-140-086	REP	89-18-077
392-137-035	RE-AD-E	89-16-016	392-139-310	AMD-P	89-19-031	392-140-087	REP-P	89-14-036
392-137-035	RE-AD	89-23-001	392-139-310	AMD	89-23-121	392-140-087	REP	89-18-077
392-137-040	RE-AD-P	89-16-012	392-139-320	AMD-P	89-19-031	392-140-088	REP-P	89-14-036
392-137-040	RE-AD-E	89-16-016	392-139-320	AMD	89-23-121	392-140-088	REP	89-18-077
392-137-040	RE-AD	89-23-001	392-139-330	AMD-P	89-19-031	392-140-089	REP-P	89-14-036
392-137-045	RE-AD-P	89-16-012	392-139-330	AMD	89-23-121	392-140-089	REP	89-18-077
392-137-045	RE-AD-E	89-16-016	392-139-340	AMD-P	89-19-031	392-140-090	REP-P	89-14-036
392-137-045	RE-AD	89-23-001	392-139-340	AMD	89-23-121	392-140-090	REP	89-18-077
392-137-051	RE-AD-P	89-16-012	392-139-605	AMD-P	89-19-031	392-140-091	REP-P	89-14-036
392-137-051	RE-AD-E	89-16-016	392-139-605	AMD	89-23-121	392-140-091	REP	89-18-077
392-137-051	RE-AD	89-23-001	392-139-620	AMD-P	89-19-031	392-140-092	REP-P	89-14-036
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392-137-055	RE-AD	89-23-001	392-139-650	REP	89-23-121	392-140-093	REP	89-18-077
392-137-060	RE-AD-P	89-16-012	392-139-660	AMD-P	89-19-031	392-140-094	REP-P	89-14-036
392-137-060	RE-AD-E	89-16-016	392-139-660	AMD	89-23-121	392-140-094	REP	89-18-077
392-137-060	RE-AD	89-23-001	392-139-665	AMD-P	89-19-031	392-140-095	REP-P	89-14-036
392-137-065	RE-AD-P	89-16-012	392-139-665	AMD	89-23-121	392-140-095	REP	89-18-077
392-137-065	RE-AD-E	89-16-016	392-139-670	AMD-P	89-19-031	392-140-096	REP-P	89-14-036
392-137-065	RE-AD	89-23-001	392-139-670	AMD	89-23-121	392-140-096	REP	89-18-077
392-137-070	RE-AD-P	89-16-012	392-139-674	NEW-P	89-19-031	392-140-097	REP-P	89-14-036
392-137-070	RE-AD-E	89-16-016	392-139-674	NEW	89-23-121	392-140-097	REP	89-18-077
392-137-070	RE-AD	89-23-001	392-139-675	NEW-P	89-19-031	392-140-098	REP-P	89-14-036
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392-139-005	AMD	89-23-121	392-140	AMD-P	89-21-098	392-140-100	REP-P	89-14-036
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392-139-105	AMD-P	89-19-031	392-140-044	REP-P	89-14-036	392-140-102	REP	89-18-077
392-139-105	AMD	89-23-121	392-140-044	REP	89-18-077	392-140-103	REP-P	89-14-036
392-139-110	AMD-P	89-19-031	392-140-046	REP-P	89-14-036	392-140-103	REP	89-18-077
392-139-110	AMD	89-23-121	392-140-046	REP	89-18-077	392-140-104	REP-P	89-14-036
392-139-115	AMD-P	89-19-031	392-140-047	REP-P	89-14-036	392-140-104	REP	89-18-077
392-139-115	AMD	89-23-121	392-140-047	REP	89-18-077	392-140-105	REP-P	89-14-036
392-139-120	AMD-P	89-19-031	392-140-048	REP-P	89-14-036	392-140-105	REP	89-18-077
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392-191-020	AMD-E	89-18-044	392-196-090	AMD-E	89-16-017	419-72-030	NEW-P	89-11-095
392-191-020	AMD-P	89-19-080	392-196-090	AMD	89-22-004	419-72-030	NEW-C	89-22-040
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392-191-025	NEW-P	89-19-080	392-196-095	NEW-E	89-16-017	419-72-035	NEW-C	89-22-040
392-191-030	NEW-E	89-18-044	392-196-095	NEW	89-22-004	419-72-040	NEW-P	89-11-095
392-191-030	NEW-P	89-19-080	392-196-100	NEW-P	89-16-013	419-72-040	NEW-C	89-22-040
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392-191-040	NEW-P	89-19-080	392-196-105	NEW-E	89-16-017	419-72-050	NEW-C	89-22-040
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392-191-045	NEW-P	89-19-080	392-196-110	NEW-P	89-16-013	419-72-055	NEW-C	89-22-040
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392-191-060	NEW-P	89-19-080	392-196-110	NEW	89-22-004	419-72-060	NEW-C	89-22-040
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392-191-070	NEW-P	89-19-080	392-202-005	AMD	89-19-032	419-72-070	NEW-C	89-22-040
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392-191-075	NEW-P	89-19-080	392-202-010	AMD	89-19-032	419-72-075	NEW-C	89-22-040
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392-191-080	NEW-P	89-19-080	392-202-015	AMD	89-19-032	419-72-080	NEW-C	89-22-040
392-191-085	NEW-E	89-18-044	392-202-070	AMD-P	89-16-014	419-72-090	NEW-P	89-11-095
392-191-085	NEW-P	89-19-080	392-202-070	AMD	89-19-032	419-72-090	NEW-C	89-22-040
392-191-090	NEW-E	89-18-044	392-202-075	AMD-P	89-16-014	419-72-095	NEW-P	89-11-095
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392-196-015	AMD-E	89-16-017	392-202-110	AMD-P	89-16-014	434-04-020	NEW-P	89-15-036
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392-196-035	AMD-E	89-16-017	399-30-050	AMD-C	89-06-057	434-04-070	NEW	89-20-031
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392-196-040	AMD-P	89-16-013	399-30-060	AMD-P	89-02-057	434-04-075	NEW	89-20-031
392-196-040	AMD-E	89-16-017	399-30-065	NEW-P	89-06-057	434-04-080	NEW-P	89-15-036
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392-196-060	AMD	89-22-004	419-70-020	NEW	89-16-083	440-44-041	NEW-P	89-12-076
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392-196-075	AMD-E	89-16-017	419-72	NEW-C	89-19-034	440-44-043	NEW-P	89-12-076
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392-196-080	AMD-E	89-16-017	419-72-015	NEW-P	89-11-095	440-44-050	AMD-P	89-12-076
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458-20-107	AMD-E	89-23-018	460-33A-010	AMD	89-17-078	468-12	REVIEW	89-06-038
458-20-127	AMD-P	89-17-063	460-33A-015	AMD-P	89-13-068	468-14	REVIEW	89-08-061
458-20-127	AMD	89-21-001	460-33A-015	AMD	89-17-078	468-16-010	NEW-P	89-07-034
458-20-193B	AMD-C	89-02-052	460-33A-017	AMD-P	89-13-068	468-16-010	NEW-W	89-08-064
458-20-193B	AMD	89-06-015	460-33A-017	AMD	89-17-078	468-16-010	NEW-P	89-16-086
458-20-221	AMD-C	89-02-052	460-33A-031	AMD-P	89-13-068	468-16-010	NEW-W	89-19-013
458-20-221	AMD	89-06-016	460-33A-031	AMD	89-17-078	468-16-020	NEW-P	89-07-034
458-20-250	AMD-P	89-13-087	460-33A-055	AMD-P	89-13-068	468-16-020	NEW-W	89-08-064
458-20-250	AMD-E	89-13-089	460-33A-055	AMD	89-17-078	468-16-020	NEW-P	89-16-086
458-20-250	AMD	89-16-090	460-33A-065	AMD-P	89-13-068	468-16-020	NEW-W	89-19-013
458-20-252	AMD-C	89-04-042	460-33A-065	AMD	89-17-078	468-16-030	NEW-P	89-07-034
458-20-252	AMD-E	89-06-005	460-33A-080	AMD-P	89-13-068	468-16-030	NEW-W	89-08-064
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458-20-252	AMD-P	89-07-085	460-33A-085	AMD-P	89-13-068	468-16-030	NEW-W	89-19-013
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458-20-252	AMD-E	89-10-052	460-33A-105	AMD-P	89-13-068	468-16-040	NEW-W	89-08-064
458-20-252	AMD-P	89-13-086	460-33A-105	AMD	89-17-078	468-16-040	NEW-P	89-16-086
458-20-252	AMD-E	89-13-088	460-42A-020	REP-P	89-13-069	468-16-040	NEW-W	89-19-013
458-20-252	AMD	89-16-091	460-42A-020	AMD-C	89-17-075	468-16-050	NEW-P	89-07-034
458-20-253	AMD-P	89-17-064	460-42A-020	AMD	89-21-031	468-16-050	NEW-W	89-08-064
458-20-253	AMD	89-21-002	460-42A-030	NEW-P	89-13-069	468-16-050	NEW-P	89-16-086
458-20-254	NEW-P	89-08-089	460-42A-030	NEW	89-17-080	468-16-050	NEW-W	89-19-013
458-20-254	NEW	89-11-040	460-42A-081	AMD-P	89-13-066	468-16-060	NEW-P	89-07-034
458-20-255	NEW-P	89-13-041	460-42A-081	AMD-C	89-17-074	468-16-060	NEW-W	89-08-064
458-20-255	NEW-E	89-13-042	460-42A-082	AMD	89-21-032	468-16-060	NEW-P	89-16-086
458-20-255	NEW	89-17-001	460-44A-500	AMD-P	89-13-070	468-16-060	NEW-W	89-19-013
458-20-256	NEW-E	89-21-076	460-44A-500	AMD	89-17-076	468-16-070	NEW-P	89-07-034
458-30-260	AMD	89-05-009	460-44A-501	AMD-P	89-13-070	468-16-070	NEW-W	89-08-064
458-30-260	AMD-P	89-23-100	460-44A-501	AMD	89-17-076	468-16-070	NEW-P	89-16-086
458-30-261	NEW	89-05-008	460-44A-502	AMD-P	89-13-070	468-16-070	NEW-W	89-19-013
458-30-261	REP-P	89-23-100	460-44A-502	AMD	89-17-076	468-16-080	NEW-P	89-07-034
458-30-262	NEW-P	89-23-100	460-44A-503	AMD-P	89-13-070	468-16-080	NEW-W	89-08-064
458-30-590	AMD	89-05-010	460-44A-503	AMD	89-17-076	468-16-080	NEW-P	89-16-086
458-40-540	AMD-P	89-21-062	460-44A-505	AMD-P	89-13-070	468-16-080	NEW-W	89-19-013
458-40-540	AMD	89-23-095	460-44A-505	AMD	89-17-076	468-16-090	NEW-P	89-07-034
458-40-628	AMD-P	89-22-100	460-44A-506	AMD-P	89-13-070	468-16-090	NEW-W	89-08-064
458-40-660	AMD-P	89-10-061	460-44A-506	AMD	89-17-076	468-16-090	NEW-P	89-16-086
458-40-660	AMD-E	89-14-050	460-44A-508	NEW-P	89-13-070	468-16-090	NEW-W	89-19-013
458-40-660	AMD	89-14-051	460-44A-508	NEW	89-17-076	468-16-100	NEW-P	89-07-034
458-40-660	AMD-P	89-22-100	460-46A-010	AMD-P	89-03-044	468-16-100	NEW-W	89-08-064
458-40-670	AMD-P	89-10-061	460-46A-010	AMD	89-07-042	468-16-100	NEW-P	89-16-086
458-40-670	AMD-E	89-14-050	460-46A-050	AMD-P	89-03-044	468-16-100	NEW-W	89-19-013
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468-16-110	NEW-W	89-19-013	468-38-250	AMD-P	89-19-042	468-100-401	NEW-P	89-14-039
468-16-120	NEW-P	89-07-034	468-38-250	AMD	89-23-110	468-100-401	NEW	89-17-048
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468-16-140	NEW-W	89-08-064	468-58	REVIEW	89-08-061	468-100-503	NEW-P	89-14-039
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468-16-140	NEW-W	89-19-013	468-66	PREP	89-22-021	468-100-504	NEW-P	89-14-039
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468-16-150	NEW-W	89-08-064	468-74	PREP	89-22-021	468-100-505	NEW-P	89-14-039
468-16-150	NEW-P	89-16-086	468-78	REVIEW	89-22-021	468-100-505	NEW	89-17-048
468-16-150	NEW-W	89-19-013	468-95	PREP	89-22-021	468-100-601	NEW-P	89-14-039
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468-16-160	NEW-W	89-08-064	468-100-001	NEW	89-17-048	468-100-602	NEW-P	89-14-039
468-16-160	NEW-P	89-16-086	468-100-002	NEW-P	89-14-039	468-100-602	NEW	89-17-048
468-16-160	NEW-W	89-19-013	468-100-002	NEW	89-17-048	468-300	REVIEW	89-06-038
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468-16-170	NEW-W	89-08-064	468-100-003	NEW	89-17-048	468-300-010	AMD-P	89-08-068
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468-16-170	NEW-W	89-19-013	468-100-004	NEW	89-17-048	468-300-010	AMD	89-14-052
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468-16-180	NEW-P	89-16-086	468-100-006	NEW-P	89-14-039	468-300-020	AMD-C	89-12-005
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468-16-190	NEW-W	89-08-064	468-100-007	NEW	89-17-048	468-300-040	AMD-P	89-08-068
468-16-190	NEW-P	89-16-086	468-100-008	NEW-P	89-14-039	468-300-040	AMD-C	89-12-005
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468-16-200	NEW-P	89-07-034	468-100-009	NEW-P	89-14-039	468-300-070	AMD	89-04-014
468-16-200	NEW-W	89-08-064	468-100-009	NEW	89-17-048	468-300-070	AMD-P	89-08-068
468-16-200	NEW-P	89-16-086	468-100-010	NEW-P	89-14-039	468-300-070	AMD-C	89-12-005
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468-34	REVIEW	89-08-061	468-100-104	NEW-P	89-14-039	468-320-020	NEW-E	89-18-088
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468-34-140	AMD	89-05-022	468-100-201	NEW	89-17-048	468-320-040	NEW	89-22-028
468-34-150	AMD	89-05-022	468-100-202	NEW-P	89-14-039	468-320-040	NEW-P	89-18-087
468-34-170	AMD	89-05-022	468-100-202	NEW	89-17-048	468-320-050	NEW-E	89-18-088
468-34-190	AMD	89-05-022	468-100-203	NEW-P	89-14-039	468-320-050	NEW	89-22-028
468-34-210	AMD	89-05-022	468-100-203	NEW	89-17-048	468-320-060	NEW-P	89-18-087
468-34-220	AMD	89-05-022	468-100-204	NEW-P	89-14-039	468-320-060	NEW-E	89-18-088
468-34-250	AMD	89-05-022	468-100-204	NEW	89-17-048	468-320-060	NEW	89-22-028
468-34-290	AMD	89-05-022	468-100-205	NEW-P	89-14-039	468-320-070	NEW-P	89-18-087
468-34-300	AMD	89-05-022	468-100-205	NEW	89-17-048	468-320-070	NEW-E	89-18-088
468-34-320	AMD	89-05-022	468-100-206	NEW-P	89-14-039	468-320-070	NEW	89-22-028
468-34-340	AMD	89-05-022	468-100-206	NEW	89-17-048	468-320-080	NEW-P	89-18-087
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468-38-030	AMD	89-23-110	468-100-208	NEW	89-17-048	468-320-090	NEW-E	89-18-088
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468-38-040	AMD	89-23-110	468-100-301	NEW	89-17-048	468-320-100	NEW-P	89-18-087
468-38-050	AMD-P	89-19-042	468-100-302	NEW-P	89-14-039	468-320-100	NEW-E	89-18-088
468-38-050	AMD	89-23-110	468-100-302	NEW	89-17-048	468-320-100	NEW	89-22-028
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468-38-100	AMD	89-23-110	468-100-303	NEW	89-17-048	478-116-020	AMD	89-15-023
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478-116-095	AMD 89-15-023	479-112-018	NEW-P 89-10-053	480-08-055	REP 89-21-036
478-116-100	AMD-P 89-09-043	479-112-018	NEW-E 89-10-054	480-08-060	REP-C 89-17-049
478-116-100	AMD 89-15-023	479-112-018	NEW 89-14-005	480-08-060	REP-E 89-17-050
478-116-110	AMD-P 89-09-043	479-112-020	NEW-P 89-10-053	480-08-060	REP 89-21-036
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478-116-210	AMD-P 89-09-043	479-112-020	NEW 89-14-005	480-08-070	REP-E 89-17-050
478-116-210	AMD 89-15-023	479-113-010	NEW-P 89-10-053	480-08-070	REP 89-21-036
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478-116-240	AMD 89-15-023	479-113-010	NEW 89-14-005	480-08-080	REP-E 89-17-050
478-116-250	AMD-P 89-09-043	479-113-011	NEW-P 89-10-053	480-08-080	REP 89-21-036
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478-116-250	AMD-P 89-20-041	479-113-011	NEW 89-14-005	480-08-090	REP-E 89-17-050
478-116-260	AMD-P 89-20-041	479-113-029	NEW-P 89-10-053	480-08-090	REP 89-21-036
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478-116-270	AMD 89-15-023	479-113-029	NEW 89-14-005	480-08-100	REP-E 89-17-050
478-116-280	AMD-P 89-09-043	479-113-031	NEW-P 89-10-053	480-08-100	REP 89-21-036
478-116-280	AMD 89-15-023	479-113-031	NEW-E 89-10-054	480-08-110	REP-C 89-17-049
478-116-340	AMD-P 89-09-043	479-113-031	NEW 89-14-005	480-08-110	REP-E 89-17-050
478-116-340	AMD 89-15-023	479-113-032	NEW-P 89-10-053	480-08-110	REP 89-21-036
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478-116-345	NEW 89-15-023	479-113-032	NEW 89-14-005	480-08-120	REP-E 89-17-050
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478-116-360	AMD 89-15-023	479-113-035	NEW-E 89-10-054	480-08-130	REP-C 89-17-049
478-116-380	AMD-P 89-09-043	479-113-035	NEW 89-14-005	480-08-130	REP-E 89-17-050
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478-116-430	AMD 89-15-023	479-116-015	NEW 89-14-005	480-08-140	REP-E 89-17-050
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478-116-463	NEW-P 89-09-043	479-116-020	NEW 89-14-005	480-08-160	REP-E 89-17-050
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478-116-490	AMD-P 89-09-043	479-116-035	NEW 89-14-005	480-08-180	REP-E 89-17-050
478-116-490	AMD 89-15-023	479-116-040	NEW-P 89-10-053	480-08-180	REP 89-21-036
478-116-500	AMD-P 89-09-043	479-116-040	NEW-E 89-10-054	480-08-190	REP-C 89-17-049
478-116-500	AMD 89-15-023	479-116-040	NEW 89-14-005	480-08-190	REP-E 89-17-050
478-116-510	AMD-P 89-09-043	479-116-045	NEW-P 89-10-053	480-08-190	REP 89-21-036
478-116-510	AMD 89-15-023	479-116-045	NEW-E 89-10-054	480-08-200	REP-C 89-17-049
478-116-512	NEW-P 89-09-043	479-116-045	NEW 89-14-005	480-08-200	REP-E 89-17-050
478-116-515	NEW-P 89-09-043	479-116-050	NEW-P 89-10-053	480-08-200	REP 89-21-036
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478-116-525	NEW-P 89-09-043	479-116-060	NEW-P 89-10-053	480-08-208	REP-E 89-11-006
478-116-550	AMD-P 89-09-043	479-116-060	NEW-E 89-10-054	480-08-208	NEW-C 89-11-085
478-116-550	AMD 89-15-023	479-116-060	NEW 89-14-005	480-08-208	NEW-C 89-13-028
478-116-586	AMD-P 89-09-043	479-120-020	NEW-P 89-10-053	480-08-208	NEW-P 89-15-041
478-116-586	AMD 89-15-023	479-120-020	NEW-E 89-10-054	480-08-210	REP-C 89-17-049
478-116-600	AMD-P 89-09-043	479-120-020	NEW 89-14-005	480-08-210	REP-E 89-17-050
478-116-600	AMD 89-15-023	479-120-033	NEW-P 89-10-053	480-08-210	REP 89-21-036
478-116-600	AMD-P 89-20-041	479-120-033	NEW-E 89-10-054	480-08-220	REP-C 89-17-049
478-138-030	AMD-P 89-20-042	479-120-033	NEW 89-14-005	480-08-220	REP-E 89-17-050
478-138-040	AMD-P 89-20-042	480-08-010	REP-C 89-17-049	480-08-220	REP 89-21-036
478-138-050	AMD-P 89-20-042	480-08-010	REP-E 89-17-050	480-08-230	REP-C 89-17-049
479-112-005	NEW-P 89-10-053	480-08-010	REP 89-21-036	480-08-230	REP-E 89-17-050
479-112-005	NEW-E 89-10-054	480-08-015	REP-C 89-17-049	480-08-230	REP 89-21-036
479-112-005	NEW 89-14-005	480-08-015	REP-E 89-17-050	480-08-240	REP-C 89-17-049
479-112-007	NEW-P 89-10-053	480-08-015	REP 89-21-036	480-08-240	REP-E 89-17-050
479-112-007	NEW-E 89-10-054	480-08-020	REP-C 89-17-049	480-08-240	REP 89-21-036
479-112-007	NEW 89-14-005	480-08-020	REP-E 89-17-050	480-08-250	REP-C 89-17-049
479-112-008	NEW-P 89-10-053	480-08-020	REP 89-21-036	480-08-250	REP-E 89-17-050
479-112-008	NEW-E 89-10-054	480-08-030	REP-C 89-17-049	480-08-250	REP 89-21-036
479-112-008	NEW 89-14-005	480-08-030	REP-E 89-17-050	480-08-260	REP-C 89-17-049
479-112-009	NEW-P 89-10-053	480-08-030	REP 89-21-036	480-08-260	REP-E 89-17-050
479-112-009	NEW-E 89-10-054	480-08-040	REP-C 89-17-049	480-08-260	REP 89-21-036
479-112-009	NEW 89-14-005	480-08-040	REP-E 89-17-050	480-08-270	REP-C 89-17-049
479-112-010	NEW-P 89-10-053	480-08-040	REP 89-21-036	480-08-270	REP-E 89-17-050
479-112-010	NEW-E 89-10-054	480-08-050	REP-C 89-17-049	480-08-270	REP 89-21-036
479-112-010	NEW 89-14-005	480-08-050	REP-E 89-17-050	480-08-280	REP-C 89-17-049

**Table of WAC Sections Affected**

WAC #	WSR #	WAC #	WSR #	WAC #	WSR #			
480-08-280	REP-E	89-17-050	480-09-320	NEW-C	89-17-049	480-09-620	NEW-E	89-17-050
480-08-280	REP	89-21-036	480-09-320	NEW-E	89-17-050	480-09-620	NEW	89-21-036
480-08-290	REP-C	89-17-049	480-09-320	NEW	89-21-036	480-09-700	NEW-P	89-13-090
480-08-290	REP-E	89-17-050	480-09-330	NEW-P	89-13-090	480-09-700	NEW-C	89-17-049
480-08-290	REP	89-21-036	480-09-330	NEW-C	89-17-049	480-09-700	NEW-E	89-17-050
480-08-300	REP-C	89-17-049	480-09-330	NEW-E	89-17-050	480-09-700	NEW	89-21-036
480-08-300	REP-E	89-17-050	480-09-330	NEW	89-21-036	480-09-705	NEW-P	89-13-090
480-08-300	REP	89-21-036	480-09-340	NEW-P	89-13-090	480-09-705	NEW-C	89-17-049
480-08-310	REP-C	89-17-049	480-09-340	NEW-C	89-17-049	480-09-705	NEW-E	89-17-050
480-08-310	REP-E	89-17-050	480-09-340	NEW-E	89-17-050	480-09-705	NEW	89-21-036
480-08-310	REP	89-21-036	480-09-340	NEW	89-21-036	480-09-710	NEW-P	89-13-090
480-08-320	REP-C	89-17-049	480-09-400	NEW-P	89-13-090	480-09-710	NEW-C	89-17-049
480-08-320	REP-E	89-17-050	480-09-400	NEW-C	89-17-049	480-09-710	NEW-E	89-17-050
480-08-320	REP	89-21-036	480-09-400	NEW-E	89-17-050	480-09-710	NEW	89-21-036
480-08-330	REP-C	89-17-049	480-09-400	NEW	89-21-036	480-09-720	NEW-P	89-13-090
480-08-330	REP-E	89-17-050	480-09-410	NEW-P	89-13-090	480-09-720	NEW-C	89-17-049
480-08-330	REP	89-21-036	480-09-410	NEW-C	89-17-049	480-09-720	NEW-E	89-17-050
480-09	NEW-C	89-16-048	480-09-410	NEW-E	89-17-050	480-09-720	NEW	89-21-036
480-09	NEW-C	89-17-049	480-09-410	NEW	89-21-036	480-09-730	NEW-P	89-13-090
480-09	NEW-E	89-17-050	480-09-420	NEW-P	89-13-090	480-09-730	NEW-C	89-17-049
480-09	NEW	89-21-036	480-09-420	NEW-C	89-17-049	480-09-730	NEW-E	89-17-050
480-09-010	NEW-P	89-13-090	480-09-420	NEW-E	89-17-050	480-09-730	NEW	89-21-036
480-09-010	NEW-C	89-17-049	480-09-420	NEW	89-21-036	480-09-735	NEW-P	89-13-090
480-09-010	NEW-E	89-17-050	480-09-425	NEW-P	89-13-090	480-09-735	NEW-C	89-17-049
480-09-010	NEW	89-21-036	480-09-425	NEW-C	89-17-049	480-09-735	NEW-E	89-17-050
480-09-015	NEW-P	89-17-049	480-09-425	NEW-E	89-17-050	480-09-735	NEW	89-21-036
480-09-015	NEW-E	89-17-050	480-09-425	NEW	89-21-036	480-09-736	NEW-P	89-13-090
480-09-015	NEW	89-21-036	480-09-430	NEW-P	89-13-090	480-09-736	NEW-C	89-17-049
480-09-100	NEW-P	89-13-090	480-09-430	NEW-C	89-17-049	480-09-736	NEW-E	89-17-050
480-09-100	NEW-C	89-17-049	480-09-430	NEW-E	89-17-050	480-09-736	NEW	89-21-036
480-09-100	NEW-E	89-17-050	480-09-430	NEW	89-21-036	480-09-740	NEW-P	89-13-090
480-09-100	NEW	89-21-036	480-09-440	NEW-P	89-13-090	480-09-740	NEW-C	89-17-049
480-09-110	NEW-P	89-13-090	480-09-440	NEW-C	89-17-049	480-09-740	NEW-E	89-17-050
480-09-110	NEW-C	89-17-049	480-09-440	NEW-E	89-17-050	480-09-740	NEW	89-21-036
480-09-110	NEW-E	89-17-050	480-09-440	NEW	89-21-036	480-09-745	NEW-P	89-13-090
480-09-110	NEW	89-21-036	480-09-450	NEW-P	89-13-090	480-09-745	NEW-C	89-17-049
480-09-120	NEW-P	89-13-090	480-09-450	NEW-C	89-17-049	480-09-745	NEW-E	89-17-050
480-09-120	NEW-C	89-17-049	480-09-450	NEW-E	89-17-050	480-09-745	NEW	89-21-036
480-09-120	NEW-E	89-17-050	480-09-450	NEW	89-21-036	480-09-750	NEW-P	89-13-090
480-09-120	NEW	89-21-036	480-09-460	NEW-P	89-13-090	480-09-750	NEW-C	89-17-049
480-09-130	NEW-P	89-13-090	480-09-460	NEW-C	89-17-049	480-09-750	NEW-E	89-17-050
480-09-130	NEW-C	89-17-049	480-09-460	NEW-E	89-17-050	480-09-750	NEW	89-21-036
480-09-130	NEW-E	89-17-050	480-09-460	NEW	89-21-036	480-09-760	NEW-P	89-13-090
480-09-130	NEW	89-21-036	480-09-465	NEW-P	89-13-090	480-09-760	NEW-C	89-17-049
480-09-135	NEW-P	89-17-049	480-09-465	NEW-C	89-17-049	480-09-760	NEW-E	89-17-050
480-09-135	NEW-E	89-17-050	480-09-465	NEW-E	89-17-050	480-09-760	NEW	89-21-036
480-09-135	NEW	89-21-036	480-09-465	NEW	89-21-036	480-09-770	NEW-P	89-13-090
480-09-140	NEW-P	89-13-090	480-09-470	NEW-P	89-13-090	480-09-770	NEW-C	89-17-049
480-09-140	NEW-C	89-17-049	480-09-470	NEW-C	89-17-049	480-09-770	NEW-E	89-17-050
480-09-140	NEW-E	89-17-050	480-09-470	NEW-E	89-17-050	480-09-770	NEW	89-21-036
480-09-140	NEW	89-21-036	480-09-470	NEW	89-21-036	480-09-780	NEW-P	89-13-090
480-09-150	NEW-P	89-13-090	480-09-475	NEW-P	89-13-090	480-09-780	NEW-C	89-17-049
480-09-150	NEW-C	89-17-049	480-09-475	NEW-C	89-17-049	480-09-780	NEW-E	89-17-050
480-09-150	NEW-E	89-17-050	480-09-475	NEW-E	89-17-050	480-09-780	NEW	89-21-036
480-09-150	NEW	89-21-036	480-09-475	NEW	89-21-036	480-09-800	NEW-P	89-13-090
480-09-200	NEW-P	89-13-090	480-09-480	NEW-P	89-13-090	480-09-800	NEW-C	89-17-049
480-09-200	NEW-C	89-17-049	480-09-480	NEW-C	89-17-049	480-09-800	NEW-E	89-17-050
480-09-200	NEW-E	89-17-050	480-09-480	NEW-E	89-17-050	480-09-800	NEW	89-21-036
480-09-200	NEW	89-21-036	480-09-480	NEW	89-18-009	480-09-810	NEW-P	89-13-090
480-09-210	NEW-P	89-13-090	480-09-500	NEW-P	89-13-090	480-09-810	NEW-C	89-17-049
480-09-210	NEW-C	89-17-049	480-09-500	NEW-C	89-17-049	480-09-810	NEW-E	89-17-050
480-09-210	NEW-E	89-17-050	480-09-500	NEW-E	89-17-050	480-09-810	NEW	89-21-036
480-09-210	NEW	89-21-036	480-09-500	NEW	89-21-036	480-09-815	NEW-P	89-13-090
480-09-220	NEW-P	89-13-090	480-09-510	NEW-P	89-13-090	480-09-815	NEW-C	89-17-049
480-09-220	NEW-C	89-17-049	480-09-510	NEW-C	89-17-049	480-09-815	NEW-E	89-17-050
480-09-220	NEW-E	89-17-050	480-09-510	NEW-E	89-17-050	480-09-815	NEW	89-21-036
480-09-220	NEW	89-21-036	480-09-510	NEW	89-21-036	480-09-820	NEW-P	89-13-090
480-09-230	NEW	89-21-036	480-09-600	NEW-P	89-13-090	480-09-820	NEW-C	89-17-049
480-09-300	NEW-P	89-13-090	480-09-600	NEW-C	89-17-049	480-09-820	NEW-E	89-17-050
480-09-300	NEW-C	89-17-049	480-09-600	NEW-E	89-17-050	480-09-820	NEW	89-21-036
480-09-300	NEW-E	89-17-050	480-09-600	NEW	89-21-036	480-09-830	NEW-P	89-13-090
480-09-300	NEW	89-21-036	480-09-610	NEW-P	89-13-090	480-09-830	NEW-C	89-17-049
480-09-310	NEW-P	89-13-090	480-09-610	NEW-C	89-17-049	480-09-830	NEW-E	89-17-050
480-09-310	NEW-C	89-17-049	480-09-610	NEW-E	89-17-050	480-09-830	NEW	89-21-036
480-09-310	NEW-E	89-17-050	480-09-610	NEW	89-21-036	480-12-100	REP-W	89-20-048
480-09-310	NEW	89-21-036	480-09-620	NEW-P	89-13-090	480-12-165	AMD-P	89-23-046
480-09-320	NEW-P	89-13-090	480-09-620	NEW-C	89-17-049	480-12-180	AMD	89-06-021

Table of WAC Sections Affected

WAC #	WSR #	WAC #	WSR #	WAC #	WSR #
480-12-180	AMD-P 89-23-046	480-90-071	AMD-C 89-16-047	480-105-080	REP-P 89-12-068
480-12-190	AMD 89-06-021	480-90-071	AMD 89-17-034	480-105-080	REP 89-15-043
480-12-195	AMD 89-06-021	480-90-201	REP-P 89-05-042	480-107-001	NEW-P 89-08-111
480-12-195	AMD-P 89-23-046	480-90-201	REP 89-08-030	480-107-001	NEW-W 89-12-067
480-12-250	AMD-W 89-19-047	480-90-206	REP-P 89-05-042	480-107-001	NEW-P 89-12-068
480-12-250	AMD-P 89-19-048	480-90-206	REP 89-08-030	480-107-001	NEW 89-15-043
480-12-285	AMD 89-04-045	480-90-216	REP-P 89-05-042	480-107-005	NEW-P 89-08-111
480-12-375	AMD-W 89-20-048	480-90-216	REP 89-08-030	480-107-005	NEW-W 89-12-067
480-12-445	AMD-P 89-06-020	480-90-221	REP-P 89-05-042	480-107-005	NEW-P 89-12-068
480-12-445	AMD 89-09-071	480-90-221	REP 89-08-030	480-107-005	NEW 89-15-043
480-12-990	AMD-W 89-20-048	480-90-226	REP-P 89-05-042	480-107-010	NEW-P 89-08-111
480-30-095	AMD 89-06-021	480-90-226	REP 89-08-030	480-107-010	NEW-W 89-12-067
480-30-097	NEW-P 89-23-046	480-90-231	REP-P 89-05-042	480-107-010	NEW-P 89-12-068
480-30-100	AMD 89-06-021	480-90-231	REP 89-08-030	480-107-010	NEW 89-15-043
480-30-100	AMD-P 89-23-046	480-90-241	REP-P 89-05-042	480-107-020	NEW-P 89-08-111
480-30-120	AMD-W 89-19-047	480-90-241	REP 89-08-030	480-107-020	NEW-W 89-12-067
480-30-120	AMD-P 89-19-048	480-90-246	REP-P 89-05-042	480-107-020	NEW-P 89-12-068
480-35-010	NEW-P 89-20-049	480-90-246	REP 89-08-030	480-107-020	NEW 89-15-043
480-35-010	NEW-E 89-20-051	480-90-251	REP-P 89-05-042	480-107-030	NEW-P 89-08-111
480-35-010	NEW 89-23-049	480-90-251	REP 89-08-030	480-107-030	NEW-W 89-12-067
480-35-020	NEW-P 89-20-049	480-90-256	REP-P 89-05-042	480-107-030	NEW-P 89-12-068
480-35-020	NEW-E 89-20-051	480-90-256	REP 89-08-030	480-107-030	NEW 89-15-043
480-35-020	NEW 89-23-049	480-90-261	REP-P 89-05-042	480-107-040	NEW-P 89-08-111
480-35-030	NEW-P 89-20-049	480-90-261	REP 89-08-030	480-107-040	NEW-W 89-12-067
480-35-030	NEW-E 89-20-051	480-90-266	REP-P 89-05-042	480-107-040	NEW-P 89-12-068
480-35-030	NEW 89-23-049	480-90-266	REP 89-08-030	480-107-040	NEW 89-15-043
480-35-040	NEW-P 89-20-049	480-90-271	REP-P 89-05-042	480-107-050	NEW-P 89-08-111
480-35-040	NEW-E 89-20-051	480-90-271	REP 89-08-030	480-107-050	NEW-W 89-12-067
480-35-040	NEW 89-23-049	480-90-276	REP-P 89-05-042	480-107-050	NEW-P 89-12-068
480-35-050	NEW-P 89-20-049	480-90-276	REP 89-08-030	480-107-050	NEW 89-15-043
480-35-050	NEW-E 89-20-051	480-90-281	REP-P 89-05-042	480-107-060	NEW-P 89-08-111
480-35-050	NEW 89-23-049	480-90-281	REP 89-08-030	480-107-060	NEW-W 89-12-067
480-35-060	NEW-P 89-20-049	480-90-286	REP-P 89-05-042	480-107-060	NEW-P 89-12-068
480-35-060	NEW-E 89-20-051	480-90-286	REP 89-08-030	480-107-060	NEW 89-15-043
480-35-060	NEW 89-23-049	480-100-031	AMD-P 89-09-070	480-107-070	NEW-P 89-08-111
480-35-070	NEW-P 89-20-049	480-100-031	AMD-C 89-11-084	480-107-070	NEW-W 89-12-067
480-35-070	NEW-E 89-20-051	480-100-031	AMD 89-12-070	480-107-070	NEW-P 89-12-068
480-35-070	NEW 89-23-049	480-100-031	AMD-W 89-19-047	480-107-070	NEW 89-15-043
480-35-080	NEW-P 89-20-049	480-100-031	AMD-P 89-19-048	480-107-080	NEW-P 89-08-111
480-35-080	NEW-E 89-20-051	480-105-001	REP-P 89-08-111	480-107-080	NEW-W 89-12-067
480-35-080	NEW 89-23-049	480-105-001	REP-W 89-12-067	480-107-080	NEW-P 89-12-068
480-35-090	NEW-P 89-20-049	480-105-001	REP-P 89-12-068	480-107-080	NEW 89-15-043
480-35-090	NEW-E 89-20-051	480-105-001	REP 89-15-043	480-107-090	NEW-P 89-08-111
480-35-090	NEW 89-23-049	480-105-005	REP-P 89-08-111	480-107-090	NEW-W 89-12-067
480-35-100	NEW-P 89-20-049	480-105-005	REP-W 89-12-067	480-107-090	NEW-P 89-12-068
480-35-100	NEW-E 89-20-051	480-105-005	REP-P 89-12-068	480-107-090	NEW 89-15-043
480-35-100	NEW 89-23-049	480-105-005	REP 89-15-043	480-107-100	NEW-P 89-08-111
480-35-110	NEW-P 89-20-049	480-105-010	REP-P 89-08-111	480-107-100	NEW-W 89-12-067
480-35-110	NEW-E 89-20-051	480-105-010	REP-W 89-12-067	480-107-100	NEW-P 89-12-068
480-35-110	NEW 89-23-049	480-105-010	REP-P 89-12-068	480-107-100	NEW 89-15-043
480-35-120	NEW-P 89-20-049	480-105-010	REP 89-15-043	480-107-110	NEW-P 89-08-111
480-35-120	NEW-E 89-20-051	480-105-020	REP-P 89-08-111	480-107-110	NEW-W 89-12-067
480-35-120	NEW 89-23-049	480-105-020	REP-W 89-12-067	480-107-110	NEW-P 89-12-068
480-40-065	NEW-P 89-23-046	480-105-020	REP-P 89-12-068	480-107-110	NEW 89-15-043
480-40-100	NEW-P 89-23-046	480-105-020	REP 89-15-043	480-107-120	NEW-P 89-08-111
480-50-090	AMD-P 89-19-048	480-105-030	REP-P 89-08-111	480-107-120	NEW-W 89-12-067
480-62-085	NEW-P 89-19-048	480-105-030	REP-W 89-12-067	480-107-120	NEW-P 89-12-068
480-70-325	AMD-P 89-23-046	480-105-030	REP-P 89-12-068	480-107-120	NEW 89-15-043
480-70-330	AMD 89-06-021	480-105-030	REP 89-15-043	480-107-130	NEW-P 89-08-111
480-70-335	AMD-P 89-23-046	480-105-040	REP-P 89-08-111	480-107-130	NEW-W 89-12-067
480-70-350	AMD-P 89-19-048	480-105-040	REP-W 89-12-067	480-107-130	NEW-P 89-12-068
480-70-400	AMD 89-06-021	480-105-040	REP-P 89-12-068	480-107-130	NEW 89-15-043
480-70-405	AMD 89-06-021	480-105-040	REP 89-15-043	480-107-140	NEW-P 89-08-111
480-75-010	NEW-P 89-19-048	480-105-050	REP-P 89-08-111	480-107-140	NEW-W 89-12-067
480-80-070	AMD-P 89-12-072	480-105-050	REP-W 89-12-067	480-107-140	NEW-P 89-12-068
480-80-070	AMD 89-15-042	480-105-050	REP-P 89-12-068	480-107-140	NEW 89-15-043
480-80-330	AMD-P 89-08-110	480-105-050	REP 89-15-043	480-107-150	NEW-P 89-08-111
480-80-330	AMD 89-12-038	480-105-060	REP-P 89-08-111	480-107-150	NEW-W 89-12-067
480-80-390	NEW-P 89-12-069	480-105-060	REP-W 89-12-067	480-107-150	NEW-P 89-12-068
480-80-390	NEW-C 89-17-041	480-105-060	REP-P 89-12-068	480-107-150	NEW 89-15-043
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