

**APRIL 6, 1994**

**OLYMPIA, WASHINGTON**

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filed not later than March 23, 1994

## 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).

## REPUBLICATION OF OFFICIAL DOCUMENTS

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## CERTIFICATE

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

DENNIS W. COOPER  
Code Reviser

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## STATE MAXIMUM INTEREST RATE

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

The maximum allowable interest rate applicable for the month of April 1994 pursuant to RCW 19.52.020 is twelve point zero percent (12.00%).

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

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# WASHINGTON STATE REGISTER

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

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## STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

### 1. ARRANGEMENT OF THE REGISTER

The Register is arranged in the following six sections:

- (a) **PROPOSED**-includes the full text of preproposal comments, original proposals, continuances, supplemental notices, and withdrawals.
- (b) **PERMANENT**-includes the full text of permanently adopted rules.
- (c) **EMERGENCY**-includes the full text of emergency rules and rescissions.
- (d) **MISCELLANEOUS**-includes notice of public meetings of state agencies, rules coordinator notifications, summaries of attorney general opinions, executive orders and emergency declarations of the governor, rules of the state Supreme Court, and other miscellaneous documents filed with the code reviser's office under RCW 34.08.020 and 42.30.075.
- (e) **TABLE**-includes a cumulative table of the WAC sections that are affected in the current year.
- (f) **INDEX**-includes a combined subject matter and agency index.

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

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

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

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

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

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

### 4. EFFECTIVE DATE OF RULES

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

### 5. EDITORIAL CORRECTIONS

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

## 1993 - 1994

### 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>         |
| 93-16                     | Jul 7                       | Jul 21                | Aug 4                                  | Aug 18                      | Sep 7                                  |
| 93-17                     | Jul 21                      | Aug 4                 | Aug 18                                 | Sep 1                       | Sep 21                                 |
| 93-18                     | Aug 4                       | Aug 18                | Sep 1                                  | Sep 15                      | Oct 5                                  |
| 93-19                     | Aug 25                      | Sep 8                 | Sep 22                                 | Oct 6                       | Oct 26                                 |
| 93-20                     | Sep 8                       | Sep 22                | Oct 6                                  | Oct 20                      | Nov 9                                  |
| 93-21                     | Sep 22                      | Oct 6                 | Oct 20                                 | Nov 3                       | Nov 23                                 |
| 93-22                     | Oct 6                       | Oct 20                | Nov 3                                  | Nov 17                      | Dec 7                                  |
| 93-23                     | Oct 20                      | Nov 3                 | Nov 17                                 | Dec 1                       | Dec 21                                 |
| 93-24                     | Nov 3                       | Nov 17                | Dec 1                                  | Dec 15                      | Jan 4, 1994                            |
| 94-01                     | Nov 24                      | Dec 8                 | Dec 22, 1993                           | Jan 5, 1994                 | Jan 25                                 |
| 94-02                     | Dec 8                       | Dec 22, 1993          | Jan 5, 1994                            | Jan 19                      | Feb 8                                  |
| 94-03                     | Dec 22, 1993                | Jan 5, 1994           | Jan 19                                 | Feb 2                       | Feb 22                                 |
| 94-04                     | Jan 5                       | Jan 19                | Feb 2                                  | Feb 16                      | Mar 8                                  |
| 94-05                     | Jan 19                      | Feb 2                 | Feb 16                                 | Mar 2                       | Mar 22                                 |
| 94-06                     | Feb 2                       | Feb 16                | Mar 2                                  | Mar 16                      | Apr 5                                  |
| 94-07                     | Feb 23                      | Mar 9                 | Mar 23                                 | Apr 6                       | Apr 26                                 |
| 94-08                     | Mar 9                       | Mar 23                | Apr 6                                  | Apr 20                      | May 10                                 |
| 94-09                     | Mar 23                      | Apr 6                 | Apr 20                                 | May 4                       | May 24                                 |
| 94-10                     | Apr 6                       | Apr 20                | May 4                                  | May 18                      | Jun 7                                  |
| 94-11                     | Apr 20                      | May 4                 | May 18                                 | Jun 1                       | Jun 21                                 |
| 94-12                     | May 4                       | May 18                | Jun 1                                  | Jun 15                      | Jul 5                                  |
| 94-13                     | May 25                      | Jun 8                 | Jun 22                                 | Jul 6                       | Jul 26                                 |
| 94-14                     | Jun 8                       | Jun 22                | Jul 6                                  | Jul 20                      | Aug 9                                  |
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| 94-17                     | Jul 27                      | Aug 10                | Aug 24                                 | Sep 7                       | Sep 27                                 |
| 94-18                     | Aug 10                      | Aug 24                | Sep 7                                  | Sep 21                      | Oct 11                                 |
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| 94-20                     | Sep 7                       | Sep 21                | Oct 5                                  | Oct 19                      | Nov 8                                  |
| 94-21                     | Sep 21                      | Oct 5                 | Oct 19                                 | Nov 2                       | Nov 22                                 |
| 94-22                     | Oct 5                       | Oct 19                | Nov 2                                  | Nov 16                      | Dec 6                                  |
| 94-23                     | Oct 26                      | Nov 9                 | Nov 23                                 | Dec 7                       | Dec 27                                 |
| 94-24                     | Nov 9                       | Nov 23                | Dec 7                                  | Dec 21                      | Jan 10, 1995                           |

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

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

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

## **Regulatory Fairness Act**

The Regulatory Fairness Act, chapter 19.85 RCW, was adopted in 1982 to minimize the impacts of state regulations on small business. RCW 43.31.025 defines small business as “any business entity (including a sole proprietorship, corporation, partnership, or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has fifty or fewer employees.” The act requires review and mitigation of proposed rules that have an economic impact on more than 20 percent of the businesses of all industries or more than 10 percent of the businesses in any one industry (as defined by any three-digit SIC code).

When the above criteria is met, agencies must prepare a small business economic impact statement (SBEIS) that identifies and analyzes compliance costs and determines whether proposed rules impact small businesses disproportionately when compared to large businesses. When a proportionately higher burden is imposed on small businesses, agencies must mitigate those impacts. All permanent rules adopted under the Administrative Procedure Act, chapter 34.05 RCW, are subject to review to determine if the requirements of the Regulatory Fairness Act apply. Impact statements are filed with the Office of the Code Reviser as part of the required notice of hearing.

### **AN SBEIS IS REQUIRED**

When:

The proposed rule has any economic impact on more than 20 percent of all industries or more than 10 percent of any one industry; or

The proposed rule **IMPOSES** costs to business that are not minor and negligible.

### **AN SBEIS IS NOT REQUIRED**

When:

The rule is proposed only to comply or conform with a Federal law or regulation;

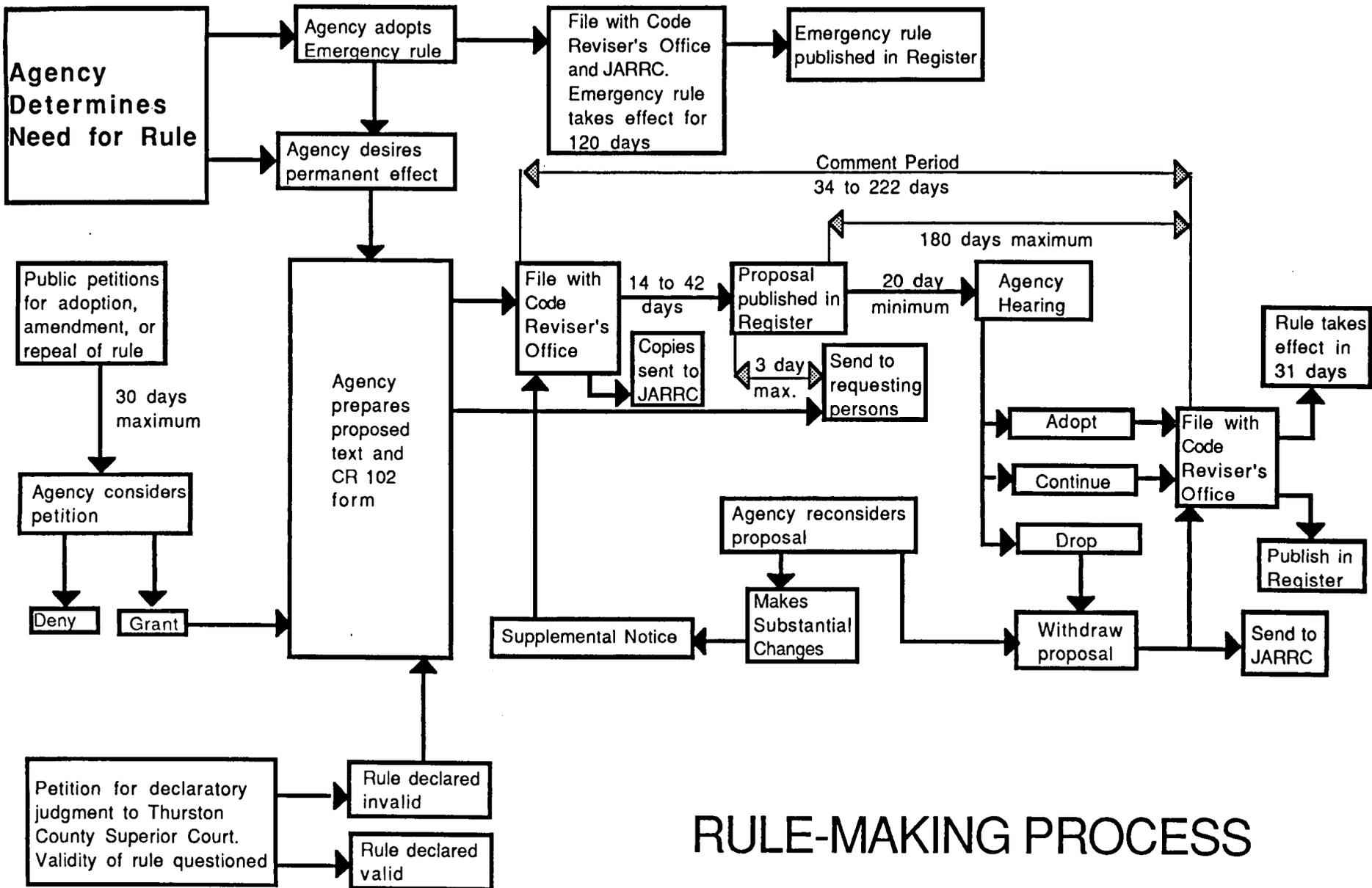
There is no economic impact on business;

The rule **REDUCES** costs to business;

There is only minor or negligible economic impact;

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

The rule is pure restatement of statute.



# RULE-MAKING PROCESS

**WSR 94-07-007**  
**WITHDRAWAL OF PROPOSED RULES**  
**GROWTH PLANNING**  
**HEARINGS BOARDS**  
 [Filed March 3, 1994, 9:51 a.m.]

The Joint Growth Planning Hearings Boards are withdrawing the proposed amendments to WAC 242-02-520 and 242-02-892 that were published in WSR 94-01-097.

M. Peter Philley  
 Rules Coordinator

**WSR 94-07-011**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 [Filed March 4, 1994, 12:46 p.m.]

Original Notice.

Title of Rule: WAC 246-920-115 Adjudicative proceedings.

Purpose: To establish rules for adjudicative proceedings.

Statutory Authority for Adoption: RCW 18.72.150.

Statute Being Implemented: Chapter 18.72 RCW.

Summary: To establish rules for adjudicative proceedings.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Traci Troutman, 1300 S.E. Quince, Olympia, 6-4566.

Name of Proponent: Medical Disciplinary Board, 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 establish rules for adjudicative proceedings.

Proposal does not change existing rules.

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

Hearing Location: Tacoma Sheraton Hotel, 1320 Broadway Plaza, Tacoma, WA, on May 26, 1994, at 4:00 p.m.

Submit Written Comments to: Traci Troutman, Program Manager, Medical Disciplinary Board, by May 1, 1994.

Date of Intended Adoption: May 26, 1994.

March 2, 1994  
 Traci Troutman  
 Program Manager  
 Medical Disciplinary Board  
 Gail Zimmerman  
 Executive Director  
 Acting Director

**NEW SECTION**

**WAC 246-920-115 Adjudicative proceedings.** The Board adopts the model procedural rules for adjudicative proceedings as adopted by the department of health and contained in chapter 246-11 WAC, including subsequent amendments.

**WSR 94-07-021**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Public Assistance)  
 [Filed March 8, 1994, 11:40 a.m.]

Continuance of WSR 94-05-044.

Title of Rule: WAC 388-86-030 Eyeglasses and examinations.

Purpose: Removes the need for prior authorization of vision care services. Restricts adult clients to one eye examination for procurement of eyeglasses every two years.

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

Date of Intended Adoption: March 22, 1994.

March 8, 1994  
 Dewey Brock, Chief  
 Office of Vendor Services  
 Administrative Services Division

**WSR 94-07-023**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**  
 [Filed March 8, 1994, 12:50 p.m.]

Original Notice.

Title of Rule: Amending WAC 458-20-174 Sales to motor carriers operating in interstate or foreign commerce of motor vehicles, trailers, parts, etc.

Purpose: To provide tax reporting information to persons making sales to motor carriers.

Statutory Authority for Adoption: RCW 82.32.300.

Statute Being Implemented: Title 82 RCW.

Summary: This rule explains the B&O taxes which apply to sales to motor carriers and the documentation required for retail sales tax exemption.

Name of Agency Personnel Responsible for Drafting: Alan Lynn, 711 Capitol Way, #303, Olympia, (206) 586-9040; Implementation: Les Jaster, 711 Capitol Way, #303, Olympia, (206) 586-7150; and Enforcement: Russ Brubaker, 711 Capitol Way, #303, Olympia, (206) 586-0257.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule explains the provisions of RCW 82.08.0262 and 82.08.0263. Motor carriers may purchase trucks and trailers without payment of retail sales tax if the first use will be on an interstate haul and with a trip permit. Component parts and repairs may be purchased without payment of retail sales tax if the carrier has ICC authority authorizing interstate hauls.

Proposal Changes the Following Existing Rules: The use tax provisions have been removed from this rule and placed in WAC 458-20-17401 which is being adopted at the same time. The rule explains the "retailing of interstate transportation equipment" B&O tax classification.

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

The Department of Revenue has reviewed administrative provisions contained in this rule in order to lessen the economic impact on small businesses. A small business economic impact statement is not required for the following reason(s): As department policy is not changed by this amendment, we are unaware of any economic burden on small businesses; and businesses do not alter their way of doing business as a result of this amendment. There is no additional record keeping required.

Hearing Location: Evergreen Plaza Building, 2nd Floor Conference Room, 711 Capitol Way South, Olympia, WA, on April 28, 1994, at 9:30 a.m.

Submit Written Comments to: Les Jaster, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, FAX (206) 664-0972, by April 28, 1994.

Date of Intended Adoption: May 9, 1994.

March 8, 1994  
 Russell W. Brubaker  
 Assistant Director

AMENDATORY SECTION (Amending Order ET 83-16, filed 3/15/83)

**WAC 458-20-174 Sales to motor carriers operating in interstate or foreign commerce of motor vehicles, trailers, parts, etc.** (1) Introduction. This section explains the retail sales tax exemptions provided by RCW 82.08.0262 and RCW 82.08.0263 for sales to motor carriers operating in interstate or foreign commerce. Addressed are the requirements which must be met and the documents which must be preserved to substantiate a claim of retail sales tax exemption. Motor carriers should refer to WAC 458-20-17401 for a discussion of the use tax and use tax exemptions available to motor carriers for the purchase or use of vehicles and parts under RCW 82.12.0254.

((BUSINESS AND OCCUPATION TAX))

~~((In computing tax liability under the retailing classification, persons engaged in the business of selling motor vehicles, trailers, parts and accessories, and persons engaged in the business of installing, cleaning, repairing or otherwise altering or improving such vehicles or parts are not permitted any deduction by reason of the fact that such sales or services are made to or for persons for use in conducting interstate or foreign commerce. Insofar as concerns the tax liability of vendors of such property or services it is immaterial that the purchaser may be entitled to a statutory exemption from payment of the retail sales tax.))~~

(2) Business and occupation tax. Business and occupation tax is due on all sales to motor carriers when delivery is made in Washington, notwithstanding that the retail sales tax may not apply because of the specific statutory exemptions provided by RCW 82.08.0262 and RCW 82.08.0263.

(a) Retailing of interstate transportation equipment. This B&O tax classification, with respect to sales to motor carriers, applies to retail sales which are exempt from retail sales tax because of the provisions of RCW 82.08.0262 or RCW 82.08.0263. (See RCW 82.04.2904.) The retailing of interstate transportation B&O tax applies to the following, but only when the retail sales tax exemption requirements for RCW 82.08.0262 or RCW 82.08.0263 are met:

(i) sales of motor vehicles, trailers, and component parts thereof;

(ii) the lease of motor vehicles and trailers without operator; and

(iii) charges for labor and services rendered in respect to constructing, cleaning, repairing, altering or improving vehicles and trailers or component parts thereof. The term "component part", as used in this section, means all tangible personal property which will be attached to, and is intended to be a permanent part of, the motor vehicle or trailer. The term "component part" includes:

(A) motors, motor and body parts, batteries and tires;

(B) spare parts which are designed and intended for ultimate attachment to the carrier vehicle; and

(C) items such as cellular telephones, radios and fire extinguishers which are held by brackets with the brackets permanently attached to the vehicle in a definite and secure manner and these items are attached to the bracket when not in use and intended to remain with the vehicle.

(b) Retailing. The retailing tax applies to the following:

(i) Sales and services as described in subsection (2)(a)(i-iii), which do not meet the exemption requirements provided in RCW 82.08.0262 or RCW 82.08.0263;

(ii) Sales of equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property therein;

(iii) Sales of consumable supplies, such as lubricants and ice; and

(iv) Towing charges.

(c) Interstate sales deduction for lease income.

Persons who lease motor vehicles and trailers to motor carriers, without operator, may claim an interstate sales deduction for the amount of the lease income attributable to the actual out of state use of said vehicles and trailers. Documentation substantiating such a claim must be retained by the lessor. This deduction may be taken even if the vehicle is not used substantially in interstate hauls for hire. The B&O tax applies to that portion of use of the vehicle while the vehicle is being used in Washington, even if the usage is in connection with interstate hauls and the vehicle is used substantially in hauling for hire in interstate commerce.

((RETAIL SALES TAX))

(3) Retail sales tax. RCW 82.08.0262 and RCW 82.08.0263 provide exemption from the retail sales tax for certain sales to motor carriers when delivery is made in Washington.

(((1)))a) Sales of motor vehicles and trailers. ~~((Under RCW 82.08.0263 of the law, sales of motor vehicles and trailers to be used for the purpose of transporting therein persons or property for hire in interstate or foreign commerce whether such use is by the owner or whether such motor vehicles and trailers are leased to the user with or without driver, are not subject to the retail sales tax when delivery is made to the purchaser in this state: PROVIDED, both of the following requirements are met:))~~ RCW 82.08.0263 provides an exemption from the retail sales tax for sales of motor vehicles and trailers to be used for transporting therein persons or property for hire in interstate or foreign commerce. This exemption is available whether such use is by a for hire motor carrier, or by persons

PROPOSED

operating the vehicles and trailers under contract with a for hire motor carrier. The following requirements must be met to perfect any claim for exemption:

~~((a))~~ The ((purchaser or user is the holder of)) for hire carrier must hold a carrier permit issued by the Interstate Commerce Commission; and

~~((b))~~ ii) ((Said)) The vehicle will move upon the highways of this state from the point of delivery in this state to a point outside the state under the authority of a trip permit, also known as a one-transit permit, issued ((by the director of motor vehicles pursuant to)) under the provisions of RCW 46.16.160. In some cases the vehicle may require servicing or alterations to prepare it for use as carrier property. This may include such things as installing signs, adding accessories, changing tires, custom painting, etc. Movement of the vehicle to the site where the servicing or alterations will take place will not result in a loss of the exemption when all conditions for exemption are met.

~~(In order to qualify for this exemption from the retail sales tax such buyers must furnish to their vendors the number of the permit issued to the carrier by the Interstate Commerce Commission and must have affixed to the vehicle before it leaves the premises of the dealer the necessary trip permit. In addition, and as evidence of the exempt nature of such sales, the seller is required to obtain from the buyer an exemption certificate, to which he must append his own certification, all reading substantially to the following effect:)~~

iii) The seller, at the time of the sale, must retain as a part of its records a copy of the trip permit, or other satisfactory evidence that a trip permit was obtained, and an exemption certificate, both of which must be completed in their entirety. The exemption certificate must be in substantially the following form.

**EXEMPTION CERTIFICATE**

The undersigned hereby certifies that ~~((is))~~ it is, or has contracted to operate for, the holder of carrier permit No. . . . ., issued by the Interstate Commerce Commission; that the vehicle this date purchased from you being a (specify truck or trailer and make), Motor No. . . . ., Serial No. . . . ., will move on the highways of this state from (point of origin in state) to (out of state destination) under the authority of a trip permit dated . . . . ., issued under the provisions of RCW 46.16.160 ~~((by the director of motor vehicles through the agency of the Washington State Patrol Office located at . . . . .));~~ and that the sale of this vehicle is entitled to exemption from the Retail Sales Tax under the provisions of RCW 82.08.0263.

Dated . . . . .  
.....  
(name of carrier-purchaser)  
By .....  
(title)  
.....  
(address)

**CERTIFICATE OF DEALER**

I hereby certify that upon the delivery of the above described vehicle to said purchaser there was affixed thereto trip permit No. . . . ., and that the same authorized the transit of this vehicle between the points of origin and destination as hereinabove set forth.

.....  
(name of dealer)  
.....  
(title)

~~In all other cases where the purchaser takes delivery of the vehicle in this state the retail sales tax is applicable to the sale and must be collected from the purchaser.~~

iv) The lease of motor vehicles and trailers to motor carriers, without operator, must satisfy all conditions and requirements provided by RCW 82.08.0263 to qualify for the retail sales tax exemption. Failure to meet these requirements will require the lessor to collect the retail sales tax on the lease. However, where the exemption from retail sales tax has not been met, a retail sales tax exemption may continue to apply to that portion of the lease while the vehicle is being used outside Washington, provided the lessor can substantiate the usage outside Washington. (See WAC 458-20-193).

~~((2))~~ b) Sales of component parts of motor vehicles and trailers and charges for repairs, etc. ((RCW 82.08.0262 exempts from the application of the retail)) sales tax for sales of tangible personal property which becomes a component part (as that term is hereinafter defined) of motor vehicles and trailers whether owned by or leased with or without drivers and used by the holder of a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state, in the course of constructing, repairing, cleaning, altering, or improving the same, also sales of or charges made for labor and services rendered in respect to such constructing, repairing, cleaning, altering, or improving. In applying this statutory exemption it is important that both sellers and buyers notice the distinction between this and the exemption provided for in RCW 82.08.0263 of the law (see 1 above). This exemption is not open to all motor carriers operating under a permit issued by the Interstate Commerce Commission, but only to those whose permits authorize actual transportation across the state boundaries.) RCW 82.08.0262 provides an exemption from the retail sales tax for sales of component parts and repairs of motor vehicles and trailers. However, this exemption is available only if the user of the motor vehicle or trailer is the holder of a carrier permit issued by the Interstate Commerce Commission which authorizes transportation by motor vehicle across the boundaries of Washington. Since the Interstate Commerce Commission requires carriers to obtain permits only when the carrier is hauling for hire, the exemption applies only to parts and repairs purchased for vehicles which are used in hauling for hire. The exemption includes labor and services rendered in constructing, repairing, cleaning, altering, or improving such motor vehicles and trailers.

i) This exemption is available whether the motor vehicles or trailers are owned by, or operated under contract with, persons holding the carrier permit. This exemption applies even if the motor vehicle or trailer to which the parts

are attached will not be used substantially in interstate hauls, provided the vehicles are used in hauling for hire.

The term "component part" is construed to mean all tangible personal property which is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries and tires. The term also includes spare parts which are designed and intended for ultimate attachment to the carrier vehicle. It does not include equipment or tools which may be used in connection with the operation of the truck or trailer as a carrier of persons or goods but which will not become permanently attached to and an integral part of the same, nor does it include consumable supplies, such as lubricants and ice.))

~~((Buyers claiming sales tax exemption under this statutory section are required to furnish to their vendors the number of the permit issued to the carrier by the Interstate Commerce Commission authorizing transportation across the boundaries of the state and, as evidence of the exempt nature of such sales, sellers must take from the buyer an exemption certificate reading in substance, as follows:))~~

(ii) The seller must retain as a part of its records a completed exemption certificate. This certificate may be:

(A) Issued for each purchase;

(B) Incorporated in or stamped upon the purchase order;

or

(C) In blanket form certifying all future purchases as being exempt from sales tax. Blanket forms must be renewed every four years.

(iii) This certificate should be in substantially the following form:

EXEMPTION CERTIFICATE

The undersigned hereby certifies that it is, or has contracted to operate for, the holder of a carrier permit, No. . . . ., issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state,~~(-and that)~~ The undersigned further certifies that the motor truck or trailer to be constructed, repaired, cleaned, altered, or improved by you, or to which the subject matter of this purchase is to become a component part, will be used in direct connection with the business of ((conducting interstate or foreign commerce by)) transporting therein persons or property for hire ((across the boundaries of this state)); and that such sale and/or charges are exempt from the Retail Sales Tax under the provisions of RCW 82.08.0262.

Dated . . . . .

.....  
(name of carrier-purchaser)

.....  
(address)

By .....  
(title)

(c) The following sales do not qualify for exemption under the provisions of RCW 82.08.0262 or RCW 82.08.0263, and are subject to the retail sales tax when delivery is made in Washington.

(i) Sales of equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property for hire;

(ii) Sales of consumable supplies, such as lubricants and ice; and

(iii) Towing charges.

~~((The retail sales tax does apply to the sale of all other accessories, supplies and equipment to motor carriers operating under permits authorizing transportation across the boundaries of the state.))~~

~~((Furthermore, the retail sales tax applies to the sale of all tangible personal property, irrespective of whether or not the same may be construed to be a "component part" of a truck or trailer, and the sale of or charge made for labor and services rendered in respect to the constructing, operating, cleaning, altering or improving of motor vehicles and trailers where the Interstate Commerce Commission permit held by the operator of such vehicles does not authorize transportation across the boundaries of this state.))~~

~~((The exemption certificates referred to in this rule must be retained by the seller in his files as a part of his permanent records subject to audit by the department of revenue. As to any sales transactions claimed to be exempt from the retail sales tax under the provisions of RCW 82.08.0262 and 82.08.0263, where no exemption certificate has been secured and retained as required herein, or where the exemption certificate does not substantially comply with the essentials set out in the foregoing forms, the seller will bear the burden of proving its tax exempt status.))~~

~~((USE TAX))~~

~~((The use tax applies upon the actual use within this state of all articles of tangible personal property purchased at retail and upon the acquisition of which the retail sales tax has not been paid to this state, unless such use is exempt from use tax under the provisions of chapter 82.12 RCW. Pursuant to RCW 82.12.0254 the use tax does not apply to the following uses:))~~

~~((a) The use by the holder of a carrier permit issued by the Interstate Commerce Commission of any motor vehicle or trailer whether owned by or leased with or without driver to the permit holder and used in substantial part in the normal and ordinary course of the user's business for transporting persons or property for hire across the boundaries of this state if the first use within this state is actual use in conducting interstate or foreign commerce.))~~

~~((b) The use of tangible personal property which becomes a component part of any motor vehicle or trailer used by the holder of a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state whether such motor vehicle or trailer is owned by or leased with or without driver to the permit holder.))~~

~~((c) The use of any motor vehicle or trailer while being operated under the authority of a trip permit issued by the director of motor vehicles pursuant to RCW 46.16.160 and moving upon the highways from the point of delivery within this state to a point outside this state.))~~

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.

**WSR 94-07-024**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**  
 [Filed March 8, 1994, 12:53 p.m.]

Original Notice.

Title of Rule: New section WAC 458-20-17401 Use tax of motor carriers operating in interstate or foreign commerce for motor vehicles, trailers, parts, etc.

Purpose: To provide use tax reporting information to motor carriers hauling in interstate commerce.

Statutory Authority for Adoption: RCW 82.32.300.

Statute Being Implemented: Chapter 82.12 RCW.

Summary: This rule explains when use tax applies on the use of trucks, trailers, parts, etc. to motor carriers.

Name of Agency Personnel Responsible for Drafting: Alan Lynn, 711 Capitol Way, #303, Olympia, (206) 586-9040; Implementation: Les Jaster, 711 Capitol Way, #303, Olympia, (206) 586-7150; and Enforcement: Russ Brubaker, 711 Capitol Way, #303, Olympia, (206) 586-0257.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule explains the conditions which apply for motor carriers to be exempt on purchases by motor carriers. It discusses the documentation required. It explains that "substantial use" in interstate commerce means twenty-five percent and the methods to meet this requirement.

Proposal Changes the Following Existing Rules: Language dealing with use tax has been removed from WAC 458-20-174 and placed in this rule.

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

The Department of Revenue has reviewed administrative provisions contained in this rule in order to lessen the economic impact on small businesses. A small business economic impact statement is not required for the following reason(s): As department policy is not changed by this amendment, we are unaware of any economic burden on small businesses; and businesses do not alter their way of doing business as a result of this amendment. There is no additional record keeping required.

Hearing Location: Evergreen Plaza Building, 2nd Floor Conference Room, 711 Capitol Way South, Olympia, WA, on April 28, 1994, at 9:30 a.m.

Submit Written Comments to: Les Jaster, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, FAX (206) 664-0972, by April 28, 1994.

Date of Intended Adoption: May 9, 1994.

March 8, 1994  
 Russell W. Brubaker  
 Assistant Director

NEW SECTION

**WAC 458-20-17401 Use tax of motor carriers operating in interstate or foreign commerce for motor vehicles, trailers, parts, etc. (1) Introduction.** This section explains the use tax and the use tax exemptions provided by RCW 82.12.0254 which apply to motor carriers operating in interstate or foreign commerce. Motor carriers should refer to WAC 458-20-174 for a discussion of the retail sales tax and retail sale tax exemptions which apply to motor carriers for the purchase of vehicles and parts under RCW 82.08.0262 and RCW 82.08.0263.

(2) **Use tax.** The use tax supplements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any tangible personal property purchased at retail, where the user has not paid retail sales tax with respect to the purchase of the property used. (See also WAC 458-20-178.) If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the use tax directly to the department unless the purchase and/or use is exempt from the use tax.

(3) **Motor vehicles and trailers.** Purchasers of motor vehicles and trailers should note the differences in the conditions and requirements for the retail sales and use tax exemptions provided by RCW 82.08.0263 and RCW 82.12.0254, respectively. The purchaser of a motor vehicle or trailer may qualify for the retail sales tax exemption at the time of purchase, yet incur a use tax liability for the subsequent use of the same vehicle or trailer.

(a) RCW 82.12.0254 provides a use tax exemption for the use of any motor vehicle or trailer while being operated under the authority of a trip permit and moving from the point of delivery in this state to a point outside this state. However, any subsequent use in Washington of the vehicle by a Washington based carrier could be subject to use tax unless the first use was in actual transportation for hire across the state boundaries.

(b) RCW 82.12.0254 provides a use tax exemption for the use of any motor vehicle or trailer owned by, or operated under contract with, a for hire motor carrier engaged in the business of transporting persons or property in interstate or foreign commerce. All of the following conditions must be met for the exemption to apply:

(i) The user is, or operates under contract with, a holder of an ICC permit;

(ii) The vehicle is used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of the state; and

(iii) The first use in Washington is actual use in conducting interstate or foreign commerce. Notwithstanding this requirement, the use tax exemption will not be lost simply because a motor carrier holding an ICC permit moves the vehicle to a Washington site for servicing or modification in preparation for use as a carrier vehicle. Nor shall the exemption be lost simply because the motor carrier first moves the vehicle to a Washington site for the purposes of obtaining a payload which is immediately hauled to an out of state destination by the same vehicle. A "trip permit" is required for the first use as a condition of retail sales tax exemption, but this is not a requirement for exemption from

the use tax where the vehicle was purchased outside Washington. (See WAC 458-20-174.)

(iv) "In substantial part" means that the motor vehicle or trailer for which exemption is claimed actually crosses Washington boundaries and is used a minimum of twenty-five percent in interstate hauling for hire.

(c) The following examples show how the exemption from use tax on motor vehicle and trailers would apply to specific situations. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) ABC Trucking, a carrier with ICC authority, purchased a used truck from XYZ Truck Sales. The required exemption certificate was completed and a trip permit was obtained. ABC Trucking moved the vehicle from the seller's lot to its maintenance shop located at its terminal where ICC identification numbers were painted on the doors and new tires were installed by the purchaser's employees. The truck was then placed in service with the first haul being a laden haul destined for an out-of-state location with movement under the authority of a trip permit.

This purchase and first use is exempt of retail sales and use tax. Since the first movement of the truck to the purchaser's maintenance shop was solely for the purpose of preparing the truck for use, the exemption was not lost. All other requirements for exemption were met. A reasonable interruption in the direct out-of-state movement of the vehicle will be allowed to permit such activities as the painting of belt lines and bumpers, the installation of signs, the inspection of the vehicle, the installation of tires, and installation of accessory items. The purchase of the vehicle was exempt from retail sales tax by meeting the trip permit requirements. However, any subsequent use of the vehicle in Washington would have been subject to use tax if the vehicle's first use in Washington had not been in hauling for hire in interstate or foreign commerce. Since that requirement was met, the use of this vehicle will continue to be exempt of use tax as long as it continues to be used substantially in interstate hauls for hire.

(ii) HB Company is a for hire carrier which maintains tractor/trailer fleets at terminals located in Montana and Washington. HB Company holds a carrier permit issued by the Interstate Commerce Commission. HB reassigned a tractor/trailer rig which had been previously used at its Montana terminal to its Washington terminal. This rig had been used exclusively in Montana and previously had never been brought to Washington. The tractor/trailer is brought into Washington unladen.

Since the first movement within Washington was not in hauling for hire and the vehicle had previously been used by HB as carrier property, the use tax is due on this rig. RCW 82.12.0254 requires that first use in Washington be actually in conducting interstate or foreign commerce. The exemption would not have been lost if the vehicle had not been previously used as carrier property and was simply being moved under a trip permit to a Washington location to be prepared for use as carrier property.

(d) The motor carrier must continue to substantially use the motor vehicle or trailer in interstate hauls for hire during each calendar year to retain the exemption from use tax. This requires that at the start of each calendar year the

carrier review the usage of each vehicle and trailer for the previous calendar year. If a particular vehicle was used for less than the full calendar year, the vehicle must be used substantially in interstate hauls for hire during the first twelve months of use and for each calendar year thereafter. Use tax is due for those vehicles which have not been used substantially in interstate commerce and on which retail sales or use tax has not been paid. Carriers who maintain their records on a fiscal year basis may, at their option, elect to review the usage of their vehicles using their fiscal year rather than the calendar year. If a fiscal year is used, it must be used for the entire fleet of vehicles. These carriers may not change to a calendar year basis without first obtaining prior approval from the department. Usage will be reviewed on a calendar or fiscal year basis and not on a "moving" twelve month period, with the exception that a twelve month period other than a calendar or fiscal year will be used for new vehicles acquired during the year. For example, a tractor purchased on June 1, 1992 will need to have met the substantial use test for the period June 1, 1992 through May 31, 1993 and for the calendar year 1993 and each calendar thereafter in order to retain use tax exemption.

(e) The motor carrier may select one of the methods from those below for determining if its motor vehicles and trailers satisfy the substantial use threshold for exemption under RCW 82.12.0254. The particular method must be applied to all trucks, tractors, and trailers within the fleet. Regardless of the method selected, a vehicle will not be considered as used in interstate hauls unless the vehicle actually crosses the boundaries of the state and is used in part outside Washington. The motor carrier may change the method with the prior written consent of the department of revenue. The methods are:

(i) Line crossing. The line crossing method compares the number of interstate for hire hauls made by a particular motor vehicle or trailer to the total number of for hire hauls. The motor vehicle or trailer must actually cross the boundaries of this state, or be used in hauling for hire exclusively outside this state, for the haul to be considered an interstate haul.

(ii) Mileage. The mileage method compares the interstate mileage associated with the for hire hauls made by a particular motor vehicle or trailer, to the total mileage associated with its for hire hauls. All mileage associated with a specific haul which requires the motor vehicle or trailer to actually cross the boundaries of this state, or haul exclusively outside this state, is considered to be interstate mileage.

(iii) Revenue. The revenue method compares the interstate for hire revenue generated by the particular motor vehicle or trailer to the total for hire revenue generated. The revenue generated by the motor vehicle or trailer actually crossing the boundaries of this state, or hauling exclusively outside this state, is considered to be interstate revenue for the purposes of determining use tax liability. If the motor carrier uses more than one motor vehicle or trailer to transport the cargo, the revenue generated from hauling this cargo must be allocated between the motor vehicles and/or trailers used. For the purposes of determining use tax liability, a truck which is used only within the state of Washington will not be considered as having interstate revenue even if the haul originated outside Washington

through the use of another truck operated by the same carrier and the cargo was later transferred to another vehicle in this state.

(iv) Other. Any other method may be used when approved in advance and in writing by the department of revenue.

(f) The following examples show how the methods of determining substantial interstate use would be applied to various situations. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) ARC Trucking picks up a load of cargo in Spokane, Washington and delivers it to the dock in Seattle, Washington, for subsequent shipment to Japan. While ARC may claim an interstate and foreign sales deduction on its excise tax return for the income attributable to this haul if all of the requirements of RCW 82.16.050(8) are met, the haul itself is considered to be intrastate for the purposes of determining whether the tractor/trailer rig meets the substantial use threshold discussed in RCW 82.12.0254. Both the pickup and delivery points are within the state of Washington.

(ii) DMG Express picks up a load of cargo in Yakima, Washington for ultimate delivery in Billings, Montana. The cargo is initially hauled from the Yakima location to DMG's hub terminal in Spokane, Washington by truck A. It is unloaded from truck A at the hub terminal, subsequently reloaded on truck B, and delivered to Billings. For the purposes of determining qualification for the use tax exemption provided by RCW 82.12.0254, two hauls have taken place. The haul performed by truck A is considered to be an intrastate haul, while the haul performed by truck B is considered interstate for purposes of determining continued exemption from use tax on the trucks, even though the entire hauling income may be deductible from the motor transportation tax.

(iii) AA Express operates one tractor/trailer rig, which has previously met the retail sales and use tax exemption requirements. AA verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the line crossing method. AA makes one hundred for hire hauls within the calendar year of 1992. Of these hauls, seventy-one are entirely in Washington, ten are performed entirely outside Washington, and nineteen require AA to cross the borders of Washington. AA Express has not incurred a use tax liability on the tractor/trailer rig as twenty-nine percent of the for hire hauls were interstate in nature.

(iv) BDC Hauling operates one tractor/trailer rig which has previously met the retail sales and use tax exemption requirements. BDC verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the mileage method. BDC makes one hundred for hire hauls within the calendar year of 1992, for a total of one hundred thousand miles. Fifteen of these hauls were interstate in nature and involved travel of twenty-eight thousand miles, including the Washington miles of the interstate hauls where the rig made border crossings. BDC Hauling has not incurred a use tax liability for its use of the tractor/trailer rig. Under the mileage method, twenty-eight percent of the tractor/trailer's usage was in interstate hauling.

(v) GV Trucking operates one tractor/trailer rig, which has previously met the retail sales and use tax exemption requirements. GV verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the revenue method. GV makes one hundred for hire hauls within the calendar year of 1992, for which GV earns eighty thousand dollars. Fifteen of these hauls were interstate in nature, for which GV earned twenty thousand dollars. GV Trucking has not incurred a use tax liability for its use of the tractor/trailer rig. Under the revenue method, twenty-five percent of GV's usage of the tractor/trailer rig was in interstate hauling.

(4) **Special application to trailers.** Motor carriers must keep appropriate records and determine qualification for the use tax exemption provided by RCW 82.12.0254 for each individual truck and tractor. Motor carriers are encouraged to keep similar records for each individual trailer. Where records are maintained to document the use of individual trailers, use tax liability for trailers must be determined on the basis of those records. However, it is recognized that some motor carriers have no system of tracking or documenting the travel of their trailers and it would be an undo burden to require such record keeping, particularly where a tractor may be used to pull multiple trailers and the trailers are not assigned to a specific tractor. These motor carriers may elect to determine the use tax liability attributable to their use of trailers on the basis of their actual use of the tractors.

(a) Under this method, it is assumed that there is a direct correlation between the use of tractors and the use of trailers. Whenever use tax is incurred on a tractor because of the failure to maintain the twenty-five percent interstate usage, use tax will also be due on one or more trailers. The number of trailers subject to the use tax under this method shall correspond to the fleetwide trailer to tractor ratio. Any trailer to tractor ratio resulting in a fraction shall be rounded up when determining the number of trailers subject to the use tax. For example, if the fleetwide ratio of trailers to tractors is two and one quarter to one, and one tractor fails to maintain the substantial use threshold in a given year, the motor carrier shall incur a use tax liability on three trailers.

(b) The trailer or trailers subject to use tax under this method shall be those acquired nearest to the purchase date of the tractor triggering the use tax liability for those trailers meeting the following conditions:

(i) The trailer or trailers are compatible for towing with the tractor upon which use tax is incurred; and

(ii) The trailer or trailers have not previously incurred a retail sales or use tax liability; and

(iii) The trailer or trailers have been actively used in hauling for hire in the year tax liability is incurred.

(c) Under this method of reporting, use tax liability is generally incurred on one or more trailers whenever a tractor is subject to the use tax. If a tractor is purchased with the intent that less than twenty-five percent of the hauls will be across state borders, it will be presumed the tractor will also be pulling a trailer or trailers on which use tax is also due. However, the motor carrier will not incur use tax on a trailer simply because the initial use of the tractor was not a laden for hire haul across the borders of this state, provided the tractor would meet the substantial interstate use for future hauls under RCW 82.12.0254. In any event and irrespective

of the method of reporting, carriers must document, through the use of trip permits and the exemption certificate, that the first use of a trailer was in interstate hauling in order for retail sales tax or use tax exemption to apply to the purchase or first use.

(d) The following examples show how this method would be applied to typical situations. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) ABC Trucking has eight tractors and fifteen trailers in its fleet. The tractors and trailers met the exemption from retail sales tax and use tax at the time they were purchased and it was determined during previous annual reviews that the tractors continued to be substantially used on interstate hauls. However, at the time of the annual review which was made in January 1993, it was determined that a Kenworth tractor which had been purchased in June 1985 was not used at least twenty-five percent in interstate hauls during 1992. Use tax is due on this tractor. Under this method, use tax is also due on two trailers. The two trailers on which use tax must be reported are the two purchased most nearly to June 1985, the date of the Kenworth purchase.

(ii) DC Hauling has no system of tracking or documenting the travel of its trailers and has elected to determine its trailer use tax liability on the basis of its actual use of tractors. DC Hauling has a fleetwide ratio of two trailers to one tractor. DC purchases a tractor, the initial use of which is a laden for hire haul entirely within the borders of this state. DC Hauling must pay retail sales upon the purchase of the tractor or, if retail sales tax is not paid, use tax upon the first use within this state. Unless DC Hauling elects to document that the tractor otherwise continues to satisfy the substantial interstate use provision of RCW 82.12.0254 for future hauls, use tax is also due on two trailers.

(5) **Valuation.** The value of the motor vehicle or trailer subject to the use tax is its fair market value at the time of first use within the twelve month review period for which the exemption cannot be maintained. However, because the taxpayer will not know until the close of the period whether the usage met the exemption requirements, the use tax is due and should be reported on the last excise tax return for that review period. For example, a motor carrier who has previously met the exemption requirements for a particular truck determines this truck no longer was substantially used in interstate hauls during calendar year 1992. Use tax should be reported on the last tax return filed for 1992 with the taxable value based on the value of the truck at January 1, 1992.

(a) In the absence of a readily available fair market value, the department will accept a value based on depreciation schedules used by the department of licensing to determine the value of vehicles for licensing purposes.

(b) The following examples show how use tax liability would be determined in typical situations. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) ABC Trucking purchased five trailers for use in both interstate and intrastate for hire hauls on January 1, 1990. All the necessary conditions for exemption under RCW 82.08.0263 were met; delivery was made in Washington, and

the trailers were purchased without payment of the retail sales tax. The taxpayer uses the "line crossing" method for determining interstate use.

ABC Trucking keeps a journal showing the origin and destination for each haul which identifies each truck/tractor and trailer used on a per unit basis. This journal is reviewed at the end of each calendar year to verify compliance with the statutory provision that motor vehicles and trailers be substantially used for transporting therein persons or property for hire across the boundaries of the state. During the first year of use, all five of the trailers met the "substantial use" threshold. However, in reviewing this journal for the period of January 1991 through December 1991, ABC Trucking determines that two of the trailers purchased on January 1, 1990 failed to meet the twenty-five percent "substantial use" threshold during 1991. ABC Trucking must remit use tax directly to the department on its December 1991 excise tax return, based on the fair market values of the two trailers as of January 1, 1991. Since the taxpayer maintained specific usage records for each trailer, the "substantial use" in interstate hauling must be met by each trailer for which exemption is claimed. If detailed records for usage of trailers had not been kept, use tax liability of the trailers would have been based on the tractors. In any event, use tax liability may not be determined based on the overall experience of a fleet of vehicles. If a vehicle is used both in hauling for hire and in hauling the carrier's own products, the "substantial use" is determined solely on the usage in hauling for hire.

(ii) DB Carriers is a motor carrier which is engaged in both intrastate and interstate for hire hauls. DB purchases and first uses a truck in Washington on January 1, 1992. All the necessary conditions for exemption under RCW 82.08.0263 were met; delivery was made in Washington, and the truck was purchased without payment of the retail sales tax. DB Carriers uses the "line crossing" method for determining interstate use.

DB Carriers keeps a journal showing the origin and destination for each haul which identifies each truck used on a per unit basis. This journal is reviewed at the end of the 1992 calendar year, and DB determines that the truck failed to meet the twenty-five percent "substantial use" threshold. DB Carriers would remit use tax directly to the department on its December 1992 excise tax return, based on the fair market value of the truck as of January 1, 1992. DB Carriers may not compute the use tax liability based upon the December 31, 1992 fair market value as the vehicle never satisfied the substantial interstate use provision of RCW 82.12.0254 and was taxable on its first use.

(6) **Leased vehicles.** Leased vehicles will be treated no differently than purchased vehicles. Motor vehicles and trailers, leased without operator, are exempt from the use tax when all the conditions and requirements expressed in subsection (3)(b) are satisfied. This includes meeting the requirement that first use be in hauling across the boundaries of the state and that there be continued substantial use in interstate hauls. If the motor vehicle or trailer fails to meet the twenty-five percent "substantial use" threshold, the lessee will incur a use tax liability upon all lease payments beginning with the period in which the vehicle no longer met the substantial use test. However, the use tax applies only to the portion of the lease which is for use in Washington.

The use tax liability shall be based on the portion of each lease payment attributable to actual in-state use.

(a) If the use of the leased vehicle is subject to use tax, the method for determining in-state and out-of-state use of motor vehicles and trailers leased without operator is based upon the method provided by the lease agreement for determining the lease payment. If the lease payment is determined solely on the basis of mileage incurred, mileage should be the basis for determining in-state and out-of-state use. If the lease agreement calls for a fixed monthly lease payment, or a fixed monthly lease payment with an additional charge for "excessive" mileage, the determination of in-state and out-of-state use should be based upon the length of time the vehicle is physically located within and without Washington.

(b) The following examples show how this method would be applied to typical situations. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) BG Hauling is a for hire carrier which on January 1, 1991 enters into a lease agreement for a truck without operator. The monthly lease payments are based on number of miles driven. All the necessary conditions for the retail sales and use tax exemptions for the first year of the lease were met. BG Hauling verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis.

BG determines that this truck failed to meet the twenty-five percent substantial use threshold for calendar year 1992. Use tax will be due beginning with the period for which the exemption no longer applied, in this case beginning with January 1992. Once the exemption was lost, BG Hauling will incur a use tax liability upon all future lease payments through the end of the lease agreement. However, BG Hauling may report use tax only on that portion of each lease payment attributable to actual in-state use, provided it maintains accurate records substantiating the truck's in-state and out-of-state activity. BG Hauling would use mileage as a basis for determining the in-state and out-of-state use.

(ii) AM Carriers enters into a lease agreement for a tractor without operator on January 1, 1991. This lease agreement requires a fixed per/month lease payment with an additional per/mile charge for any mileage in excess of a contracted amount. All necessary conditions for the retail sales and use tax exemptions for the first year of the lease were met and AM Carriers verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis.

AM determines that this tractor failed to meet the substantial use threshold for calendar year 1992. Beginning with the January 1, 1992 lease payment, AM Carriers will incur a use tax liability upon all lease payments through the end of the lease agreement. When determining its tax liability, AM Carriers may remit use tax only upon that portion of each lease payment attributable to actual in-state use, provided accurate records are maintained to substantiate the in-state and out-of-state use of the tractor. The basis for determining this use would be the length of time the vehicle was physically located within and without Washington.

(iii) MG Inc. is an equipment distributor which, in addition to hauling its own product to customers, is engaged

in hauling for hire activities. MG is a holder of an ICC permit. MG enters into a lease agreement for a truck without operator on January 1, 1992. The lease payments are based on number of miles driven. All conditions for retail sales and use tax exemption are satisfied for the first year of the lease.

Based upon the truck's for hire hauling activities during the 1993 calendar year, MG determines that the use of the truck failed to satisfy the twenty-five percent substantial use threshold. MG must remit use tax upon all subsequent lease payments through the end of the lease agreement. Provided accurate records are maintained to substantiate in-state and out-of-state use, MG may remit use tax only upon that portion of each lease payment attributable to actual in-state use. MG must use mileage as a basis for determining in-state and out-of-state use of the truck. While only the hauling for hire activities are reviewed when determining whether the truck satisfies the substantial interstate use threshold, once it is established the exemption cannot be maintained the use tax liability is based upon all in-state activity, including the motor carrier's hauling of its own product.

(7) **Component parts.** RCW 82.12.0254 also provides a use tax exemption for the use of tangible personal property which becomes a component part of any motor vehicle or trailer used for transporting therein persons or property for hire. This exemption is available whether the motor vehicle or trailer is owned by, or operated under contract with, a person holding a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state. Since the Interstate Commerce Commission requires carriers to obtain permits only when the carrier is hauling for hire, the exemption applies only to tangible personal property purchased for vehicles which are used in hauling for hire. The exemption for component parts will apply even if the parts are for use on a motor vehicle or trailer which is used less than twenty-five percent in interstate hauls for hire, provided the vehicle is used in hauling for hire.

(a) For the purposes of this section, the term "component parts" means any tangible personal property which is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries, and tires. It includes the axle and wheels, referred to as "converter gear" or "dollies", which is used to connect a trailer behind a tractor and trailer. "Component parts" also include tangible personal property which is attached to the vehicle and used as an integral part of the motor carrier's operation of the vehicle. It would include cellular telephones, communication equipment, fire extinguishers, and other such items, whether themselves permanently attached to the vehicle or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the vehicle in a definite and secure manner with these items attached to the bracket when not in use and intended to remain with that vehicle. "Component part" can include an item which is permanently attached to the vehicle even if the item is not required mechanically for operation of the vehicle, such as a cellular phone.

(b) The following items do not qualify for exemption from the use tax under the provisions of RCW 82.12.0254:

- (i) Equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property for hire; and
- (ii) Consumable supplies, such as lubricants and ice.

March 8, 1994  
Russell W. Brubaker  
Assistant Director

**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 94-07-025**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**  
[Filed March 8, 1994, 12:55 p.m.]

Original Notice.

Title of Rule: Amending WAC 458-20-185 Tax on tobacco products.

Purpose: This rule provides tax reporting information to persons selling tobacco products. It is being amended because of a change in tax rates.

Statutory Authority for Adoption: RCW 82.32.300.

Statute Being Implemented: Chapter 82.26 RCW.

Summary: This rule is being amended to implement section 309, chapter 492, Laws of 1993.

Name of Agency Personnel Responsible for Drafting: Laurel Costen, 711 Capitol Way, #303, Olympia, (206) 664-0057; Implementation and Enforcement: Gary O'Neil, 2735 Harrison N.W., Building 4, Olympia, (206) 753-2871.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule provides tax reporting information to persons selling tobacco products. The rule explains when and how the tax is paid. The anticipated effect is that sellers will pay the proper amount of tax.

Proposal Changes the Following Existing Rules: These are amendments to WAC 458-20-185. The rule previously indicated the tax rates which applied to sales of tobacco products, 1993 legislation changed the rates. The rates are removed from the rule and may be obtained from the department.

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

The Department of Revenue has reviewed administrative provisions contained in this rule in order to lessen the economic impact on small businesses. A small business economic impact statement is not required for the following reason(s): No economic impact. This rule has no identifiable administrative costs to small business; and negligible impact. This rule requires no additional action on the part of small business.

Hearing Location: Evergreen Plaza Building, 2nd Floor Conference Room, 711 Capitol Way South, Olympia, WA, on April 28, 1994, at 9:30 a.m.

Submit Written Comments to: Les Jaster, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, FAX (206) 664-0972, by April 28, 1994.

Date of Intended Adoption: May 3, 1994.

**AMENDATORY SECTION** (Amending WSR 90-04-038, filed 1/31/90, effective 3/3/90)

**WAC 458-20-185 Tax on tobacco products. (1) Introduction.** This section explains the tax liabilities of persons engaged in business as a distributor or subjobber of tobacco products. It addresses only those taxes which apply exclusively to tobacco products. See WAC 458-20-186 for tax liabilities associated with taxes which apply exclusively to cigarettes.

~~((1))~~ **(2) Definitions.** (a) "Tobacco products" means all tobacco products except cigarettes ~~((see WAC 458-20-186 for cigarette excise taxes))~~. The term includes cigars, cheroots, stogies, periques; granulated, plug cut, crimp cut, ready rubbed or other smoking tobacco; snuff, snuff flour, cavendish, plug, twist, fine cut, or other chewing tobacco; shorts, refuse scraps, clippings, cuttings, sweepings, or other kinds or forms of tobacco.

(b) "Distributor" means

(i) Any person engaged in the business of selling tobacco products in this state who brings or causes to be brought into this state from without the state any tobacco products for sale, or

(ii) Any person who makes, manufactures, or fabricates tobacco products in state for sale in this state, or

(iii) Any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state.

(c) "Subjobber" means any person, other than a tobacco manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers.

(d) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever by any person for a consideration. It includes all gifts by persons selling tobacco products.

(e) "Wholesale sales price" means the established manufacturer's price to the distributor, exclusive of any discount or other reduction.

(f) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

~~((2))~~ **(3) Nature of tax.** The Washington state tobacco products tax is ~~(A)~~ an excise tax ~~((is))~~ levied ~~((at the combined rate of 64.90% of))~~ on the value of the wholesale sales price on all tobacco products sold, used, consumed, handled, or distributed within the state~~((;))~~. ~~((pursuant to the following statutes: RCW 82.26.020(1) which levies a general fund tax at the rate of 48.15% and RCW 82.26.025 which levies an additional tax of 16.75% payable into the water quality fund.))~~ The rate of tax is a combination of statutory percentage rates found in RCW 82.26.020 and RCW 82.26.025. Charts with current rates are available from the special programs divisions at the department of revenue. The tax is to be paid by the distributor at the time the distributor brings or causes to be brought into this state from without the state tobacco products for sale.

PROPOSED

~~((3))~~ (4) **Books and Records.** Since the tobacco products tax is paid on returns as computed by the taxpayer rather than by affixing of stamps or decals, the law contains stringent provisions requiring that accurate and complete records be maintained and preserved for ~~((5))~~ five years for examination by the department of revenue.

(a) The records to be kept by distributors include itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state or shipped or transported to retailers in this state, and of all sales (including customers' names and addresses) of tobacco products except retail sales. All other pertinent papers and documents relating to purchase, sale, or disposition of tobacco products must ~~((likewise))~~ be ~~((so))~~ retained.

(b) Retailers and subjobbers must secure and retain legible and itemized invoices of all tobacco products purchased, showing name and address of the seller and the date of purchase.

(c) Records of all deliveries or shipments (including ownership, quantities) of tobacco products from any public warehouse of first destination in this state must be kept by the warehouse.

~~((4))~~ (5) **Reports and Returns.** The tax is reported on the combined excise tax return, Form REV 40 2406, to be filed according to the reporting frequency assigned by the department. Detailed instructions for preparation of these returns may be secured from the department.

(a) Out-of-state wholesalers or distributors selling directly to retailers in Washington should apply for a certificate of registration, and the department will furnish returns for reporting the tax.

~~((5))~~ (6) **Interstate and sales to U.S.** The tax does not apply to tobacco products sold to federal government agencies, nor to deliveries to retailers or wholesalers outside the state for resale by such retailers or wholesalers, and a credit may be taken for the amount of tobacco products tax previously paid on such products.

~~((6))~~ (7) **Returned or Destroyed Goods.** A credit may also be taken for tobacco products destroyed or returned to the manufacturer on which tax was previously paid, but returns on which such credits are claimed must be accompanied by appropriate affidavits or certificates conforming to those illustrated below:

**(a) Certificate of Taxpayer**  
Claim for Credit on Tobacco Products  
Tax Merchandise Destroyed

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

That he/she is (Title) of the (Business Name), a dealer in tobacco products; that ~~((said))~~ the dealer has destroyed merchandise unfit for sale, said tobacco products having a wholesale sales price of \$ . . . . .; that tobacco tax had been paid on such tobacco products; that ~~((said))~~ the tobacco products were destroyed in the following manner and in the presence of an authorized agent of the department of revenue:

.....  
(State date and manner of destruction)  
.....  
.....

Attested to:

Date .....

By .....

Signature of Taxpayer or  
Authorized Representative.

.....  
Position with Dealer

.....  
Dealer

.....  
Address of Dealer

APPROVED:

.....  
Authorized ~~((Agency))~~ Agent of  
Department of Revenue of the  
State of Washington.

**(b) Certificate of Manufacturer**

Claim for Credit on Tobacco Products  
Tax - Merchandise Returned:

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

That he/she is (Title) of the (Business Name), a manufacturer of tobacco products; that the ~~((said))~~ manufacturer has received from (Dealer), (Address), a dealer in tobacco products within the State of Washington, certain tobacco products which were unfit for sale, ~~((said))~~ the tobacco products having a wholesale sales price of \$ . . . . .; that ~~((said))~~ the tobacco products were destroyed in the following manner:

.....  
~~((State))~~ Indicate date and manner of destruction

Credit issued on Memo No. ....  
credit approved by: .....

.....  
Signature of Taxpayer or  
Authorized Representative

.....  
on behalf of the Department  
of Revenue - State of  
Washington .

.....  
Name of Manufacturer

.....  
Address

**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.

**WSR 94-07-026**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**  
 [Filed March 8, 1994, 12:57 p.m.]

Original Notice.

Title of Rule: Amending WAC 458-20-186 Tax on cigarettes.

Purpose: This rule provides tax reporting information to persons purchasing, consuming, or selling cigarettes. It is being amended because of tax rate changes.

Statutory Authority for Adoption: RCW 82.32.300.

Statute Being Implemented: Chapter 82.24 RCW.

Summary: This rule is being amended to implement section 308, chapter 492, Laws of 1993.

Name of Agency Personnel Responsible for Drafting: Laurel Costen, 711 Capitol Way, #303, Olympia, (206) 664-0057; Implementation and Enforcement: Gary O'Neil, 2735 Harrison N.W., Building 4, Olympia, (206) 753-2871.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule explains the taxes which apply to the purchase, sale, or consumption of cigarettes in Washington. It explains how the taxes are paid and when they are due. The anticipated effect is that the proper amount of taxes will be paid.

Proposal Changes the Following Existing Rules: This is an amendment to WAC 458-20-186. The rule previously listed the specific tax rates. These rates were changed by the 1993 legislation. The rates are being removed from the rule, but will be available from the department. This will eliminate need to revise the rule in the future simply because of a rate change.

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

The Department of Revenue has reviewed administrative provisions contained in this rule in order to lessen the economic impact on small businesses. A small business economic impact statement is not required for the following reason(s): No economic impact. This rule has no identifiable administrative costs to small business; and negligible impact. This rule requires no additional action on the part of small business.

Hearing Location: Evergreen Plaza Building, 2nd Floor Conference Room, 711 Capitol Way South, Olympia, WA, on April 28, 1994, at 9:30 a.m.

Submit Written Comments to: Les Jaster, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, FAX (206) 664-0972, by April 28, 1994.

Date of Intended Adoption: May 3, 1994.

March 8, 1994  
 Russell W. Brubaker  
 Assistant Director

AMENDATORY SECTION (Amending WSR 90-24-036, filed 11/30/90, effective 1/1/91)

WAC 458-20-186 Tax on cigarettes (1) Introduction. This section explains the tax liabilities of persons who sell, use, consume, handle, possess or distribute cigarettes in

this state. It addresses only those taxes which apply exclusively to cigarettes. See WAC 458-20-185 for tax liabilities associated with tobacco products other than cigarettes.

~~((1))~~ (2) In general. The Washington state cigarette tax ~~(is imposed in the total amount of 1.7 cents per cigarette or 34 cents upon each package of 20 cigarettes or 42 and 1/2 cents per package of 25. The cigarette tax provides funds to drug enforcement and education, water quality and the general fund accounts in the amount of 3, 8, and 23 cents respectively upon each package of 20 cigarettes.~~

~~(2) This tax~~ is due and payable by the first person who sells, uses, consumes, handles, possesses or distributes the cigarettes in this state.

(a) For purposes of this rule, a possessor is anyone who personally or through an agent, employee, or designee has possession of cigarettes in this state.

(b) Payment is made through the purchase of stamps from ~~((authorized))~~ banks authorized by the department of revenue to sell the stamps.

(3) Rates. The Washington state cigarette tax is imposed on a per cigarette basis. The rate of tax is a combination of statutory rates found in RCW 82.24.020 and RCW 82.24.027. Charts with current rates are available from the special programs division at the department of revenue.

~~((3))~~ (4) Exemptions. To qualify for exemptions from the tax, certain procedures must be followed. Exemptions and their procedures are as follows:

(a) The cigarette tax does not apply ~~((upon))~~ to cigarettes sold to persons licensed as cigarette distributors in other states when, as a condition of the sale, the seller either delivers the cigarettes to such a buyer at a point outside this state, or delivers the same to a common carrier with the shipment consigned by the seller to such a buyer at a location outside this state. Any person engaged in making sales to licensed distributors in other states or making export sales (see WAC 458-20-193(A) and 458-20-193C) or in making sales to the federal government must furnish a surety bond in a sum equal to twice the amount of tax which would be affixed to the cigarettes that are set aside for the conduct of such business without affixing cigarette tax stamps. Such unstamped stock must be kept separate and apart from any stamped stock.

(b) The cigarette tax does not apply to cigarettes in the possession of a person authorized to purchase cigarettes at a military facility when purchased for their own consumption.

~~((4))~~ (c) ((Cigarettes, other than those above mentioned, which are stamped and exempt from the tax by reason of their sale either to an Indian or an Indian tribe for resale must follow the provisions of WAC 458-20-192.)) The cigarette tax does not apply to cigarettes sold at an outlet on an enrolled Native American tribal member's tribal reservation to an enrolled Native American tribal member for personal consumption. Cigarettes sold to an enrolled tribal member must be stamped, but are untaxed due to the exempt nature of the sale. However, sales made by a Native American cigarette outlet to non-tribal members are subject to the tax. These cigarettes are both stamped and taxed.

(5) ((Collection-)) Liability, collection and stamps. Every person unlawfully in possession of unstamped cigarettes in this state shall be liable for the cigarette tax provided for herein.

(a) Ordinarily, the tax obligation is imposed and collected on the first possessor of such unstamped cigarettes. However, failure by the first possessor to pay such tax does not excuse any subsequent possessor of unstamped cigarettes.

(b) Stamps indicating the payment of the cigarette tax must be affixed prior to any sale, use, consumption, handling, possession or distribution for all cigarettes other than those mentioned in ~~((3))~~ (4)(a) above. The stamp must be applied to the smallest container or package, unless the department determines that it is impractical to do so.

~~((6))~~ (c) Every licensed stamping wholesaler shall stamp those cigarettes that require stamping within 72 hours after receipt, but in any event, on or before sale or transfer to another party. Stamps shall be of the type authorized by the department which at present is ~~((only))~~ the heat applied "fuson" type. The use of meter stamping machines for use in imprinting packages, in lieu of attaching stamps, is not authorized by the department. The use of water "decalcomania" type stamps by such vendors is not authorized.

~~((7))~~ (d) Persons other than licensed stamping wholesalers must file with the department of revenue, prior to receipt, a notice of intent to possess unstamped cigarettes in the state of Washington. A copy of this notice, validated by an agent of the department of revenue, must be in the possession of any such person who is in possession of unstamped cigarettes in this state.

~~((8))~~ (e) Persons who have filed the ~~((aforementioned))~~ notice must bring the cigarettes to a department office for payment of the tax within 72 hours of receipt, but in any event, on or before sale or transfer to another party. ~~((Persons who have failed to file the notice of intent, as provided above, must bring the cigarettes to a department office for payment of the tax before the end of business on the day of receipt, if such is a department business day, but if not, then on or before the close of the next department business day following receipt. In any event such persons shall bring the cigarettes in and pay the tax on or before the sale or transfer thereof to another party.))~~ Failure ~~((so to act))~~ to file this notice will subject the person in possession of such cigarettes to criminal sanctions as set forth in subparagraphs ~~((17))~~ (9) and ~~((18))~~ (10) below.

~~((9))~~ (f) Any unstamped or untaxed cigarettes in the possession of persons (other than licensed stamping wholesalers) who have failed to file a notice of intent to possess unstamped cigarettes in the state of Washington or who have failed to affix stamps and/or who have failed to pay the tax as required herein, will be deemed contraband and subject to seizure and forfeiture under the provisions of RCW 82.24.130.

~~((10))~~ (g) State approved cigarette stamps are available from authorized banks. Payment for stamps may be made either at the time of ~~((sale))~~ purchase of the stamps from the banks, or deferred until later, although the latter form of payment is available only to vendors who meet the requirements of the department and who have furnished a surety bond equal to the proposed total monthly credit limit. In addition, purchases on a deferred payment plan may be made only by the cigarette seller ~~((himself))~~ or by an agent authorized by ~~((him))~~ the cigarette seller to do so. This authorization may be in the form of a signature card, filed with the bank, from which stamps are usually obtained, and

kept current by the vendor. Payments under a deferred plan are due within 30 days following the purchase, and are to be paid at the outlet from which the stamps were obtained, and may be paid by check payable to the department of revenue. Cigarette wholesalers who purchase stamps under either plan are allowed ~~((as compensation for their services in affixing stamps, an amount equal to))~~ a discount of \$4.00 per thousand stamps affixed, which is offset against the purchase price.

~~((h))~~ (h) When the rate of tax increases, the first person who sells, uses, consumes, handles, possesses, or distributes previously taxed cigarettes after the rate increase is liable for the additional tax. Failure by the first person to pay the additional tax arising from the first taxable event does not relieve subsequent individuals of tax liability arising from a subsequent taxable event.

~~((11))~~ (6) Books and Records. An accurate set of records showing all transactions had with reference to the purchase, sale or distribution of cigarettes must be retained.

(a) These records may be combined with those required in connection with the tobacco products tax, by WAC 458-20-185, provided there is a segregation therein of the amount involved. All such records must be preserved for ~~((5))~~ five years from the date of the transaction.

~~((12))~~ ~~((In particular, p))~~ (b) Persons shipping or delivering any cigarettes to a point outside of this state shall transmit to the ~~((miscellaneous tax and unclaimed property))~~ special programs division, not later than the 15th of the following calendar month, a true duplicate invoice showing full and complete details of the interstate sale or delivery.

~~((13))~~ (7) Reports and returns. The department of revenue may require any person dealing with cigarettes, in this state, to complete and return forms, as furnished, setting forth sales, inventory and other data required by the department to maintain control over trade in cigarettes.

~~((14))~~ (a) Manufacturers and wholesalers selling stamped, unstamped or untaxed cigarettes shall, before the 15th day of each month, transmit to the ~~((miscellaneous tax and unclaimed property))~~ special programs division a complete record of sales of cigarettes in this state during the preceding month.

~~((15))~~ (8) Refunds. Any person may request a refund of the face value of the stamps when the tax is not applicable and the stamps are returned to the department. Documentation supporting the claim must be provided at the time the claim for refund is made.

(a) Refunds for stamped untaxed cigarettes sold to ~~((Indians or Indian))~~ Native American individuals or tribes ~~((see subsection 4(c) above))~~ will include the stamping allowance and will be approved by an agent of the department.

(b) Refunds for stamped cigarettes will not include the stamping allowance if the stamps are:

~~((a))~~ (i) Damaged, or unfit for sale, and as a result are destroyed or returned to the manufacturer or distributor.

~~((b))~~ (ii) Improperly or partially affixed through burns, jams, double stamps, stamped on carton flaps, or improper removal from the stamp roll.

~~((16))~~ (c) The claim for refund must be filed on a form which is provided by the department, Form REV 37-2063. An affidavit or a certificate from the manufacturer claiming refund, or by the agent of the department verifying

the voiding of stamps and authorizing the refund, shall accompany the form.

~~((+7))~~ **(9) Criminal provisions.** RCW 82.24.110(1) prohibits certain specified criminal activities with respect to cigarettes and makes such activities gross misdemeanors. Also, RCW 82.24.100 and 82.24.110(2) prohibit alteration or fabrication of stamps and transportation and/or possession of 300 or more cartons of unstamped cigarettes and makes those activities felonies. Persons commercially handling cigarettes in this state must refer to these statutes.

~~((+8))~~ **(10) Search, seizure and forfeiture.** The department of revenue may search for, seize and subsequently dispose of unstamped cigarette packages and containers, vehicles of all kinds utilized for the transportation thereof, and vending machines utilized for the sale thereof. Persons handling unstamped cigarettes in this state must refer to RCW 82.24.130 and subsequent sections for provisions relating to search, seizure and forfeiture of such property, for possible redemption thereof, and for treatment of such property in the absence of redemption.

~~((+9))~~ **(11) Penalties.** RCW 82.24.120 provides a penalty for failure to affix the cigarette stamps or to cause such stamps to be affixed as required, or to pay any tax due under chapter 82.24 RCW. In addition to the tax found to be due, a penalty equal to the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars shall be assessed. Interest shall also be added at the rate of one percent for each thirty days or portions thereof from the date the tax became due. The department may cancel all or part of the penalty for good reason.

**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 94-07-027**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**  
 [Filed March 8, 1994, 1:00 p.m.]

Original Notice.

Title of Rule: New section WAC 458-20-261 Ticket sellers.

Purpose: To explain that the service charges for sales of tickets to professional sporting events became a retail sale on July 1, 1993.

Statutory Authority for Adoption: RCW 82.32.300.

Statute Being Implemented: RCW 82.04.050.

Summary: Chapter 25, Laws of 1993 sp. sess. amended the definition of "retail sale" to include service charges on sales of tickets to professional sporting events.

Name of Agency Personnel Responsible for Drafting and Implementation: Les Jaster, 711 Capitol Way, #303, Olympia, (206) 586-7150; Enforcement: Russ Brubaker, 711 Capitol Way, #303, Olympia, (206) 586-0257.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule explains that service charges related to sales of tickets to professional sporting events is a retail sale. Service charges includes all charges for the customer convenience and includes any handling and mailing charge to the customer. Place of sale is the location of the seller used by the customer. Anticipated effect is proper tax reporting.

Proposal does not change existing rules.

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

The Department of Revenue has reviewed administrative provisions contained in this rule in order to lessen the economic impact on small businesses. A small business economic impact statement is not required for the following reason(s): The changes to this rule are made to conform to mandates of the legislature and the department is given no discretionary latitude; and the department is not aware of any new or additional administrative responsibilities placed on a business as a result of this rule.

Hearing Location: Evergreen Plaza Building, 2nd Floor Conference Room, 711 Capitol Way South, Olympia, WA, on April 28, 1994, at 11:00 a.m.

Submit Written Comments to: Les Jaster, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, FAX (206) 664-0972, by April 28, 1994.

Date of Intended Adoption: May 3, 1994.

March 8, 1994  
 Russell W. Brubaker  
 Assistant Director

**NEW SECTION**

**WAC 458-20-261 Ticket sellers. (1) Introduction.** This section discusses the taxability of service charges for tickets. RCW 82.04.050 was amended in 1993 to include as a retail sale the service charges associated with tickets to professional sporting events.

**(2) Definitions.** For purposes of RCW 82.04.050 (3)(f), the following definitions apply:

(a) "Service charges" are all charges by a ticket seller for customer convenience, handling and/or mailing tickets.

(b) "Professional sporting events" are all sporting events where the participants are paid professionals rather than amateurs.

(i) Professional sports include baseball, basketball, football, ice hockey, soccer, golf, tennis, boxing, wrestling, gymnastics, track and field events, rodeos, horse racing, motorcycle racing, auto racing, bodybuilding, and any other sport where the players are paid professionals rather than amateurs.

(ii) Professional sporting events do not include amateur sporting events, even though charges may be made for those events.

(iii) Professional sporting events do not include exhibitions by amateurs and professionals where no competition is involved.

**(3) Retail sales.** Effective July 1, 1993, if a ticket for a professional sporting event is purchased in this state, any associated service charge is subject to Washington's retail sales tax and retailing B&O tax.

(a) The place of sale for the service charge is where the seller or the seller's agent is located that is used by the customer when the ticket is purchased. Service charges for tickets purchased in this state are retail sales in this state even if the ticket is purchased for an event that is out of state.

(b) The purchases of tickets and other items used by ticket sellers in performing their services are retail sales. Tickets are not purchased for resale by ticket agents or others selling tickets. Ticket sellers are required to pay retail sales tax to their suppliers. If the supplier fails to collect the retail sales tax, the ticket agent must report deferred sales or use tax directly to the department of revenue. See WAC 458-20-144.

**(4) Service charges for purchases of tickets other than professional sports.** Service charges associated with tickets other than professional sporting events are not retail sales. These service charges are subject to the business and occupation tax at the rate for service and other business activities.

**(5) Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(a) A Washington resident ordered four tickets for a professional basketball game to be held in Oregon. The customer called a ticket agent's office in Tacoma, Washington to order the tickets. The ticket agent mailed the tickets to the customer from its Seattle office. The ticket agent charged the customer a service charge of \$2.50 for each ticket. The \$10.00 service charge is subject to Washington's retail sales tax. The place of sale was Tacoma, as that was the seller's location used by the customer.

(b) An Oregon resident ordered four tickets by mail from a professional baseball team in Seattle for a game to be held in Seattle. The baseball team mailed the tickets to the customer and charged a \$3.00 postage and handling fee. The postage and handling fee is a service charge and subject to Washington's retail sales tax. The place of sale was Seattle.

(c) A Washington resident ordered four tickets for an ice skating exhibition and four tickets for an exhibition game between two professional tennis players from a ticket agent located in Seattle. The ticket agent charged a \$2.50 service charge for each ticket. The ice skating show is not a professional sporting event because it is an exhibition without competition. The tennis exhibition is a professional sporting event because it involves competition between two professionals. Therefore, only the \$10.00 service charge for the tickets to the tennis exhibition game is a retail sale. The place of sale was Seattle.

Title of Rule: WAC 388-49-500 Income deductions.  
 Purpose: Implements Section 13912 of the Mickey Leland Childhood Hunger Relief Act, Public Law 103-66. Raises the food stamp shelter cap from \$207 to \$231 effective July 1, 1994.

Statutory Authority for Adoption: RCW 74.04.510.  
 Statute Being Implemented: RCW 74.04.510.  
 Summary: Raises the shelter cap to \$231 effective July 1, 1994.

Reasons Supporting Proposal: The Mickey Leland Act (Public Law 103-66) raised the food stamp shelter cap from \$207 to \$231 effective with benefits issued July 1, 1994, and after.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dan Ohlson, Division of Income Assistance, 438-8326.

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

Rule is necessary because of federal law, 7 CFR 273.9 (e)(5)(ii).

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, 14th and Franklin, Olympia, Washington, on April 26, 1994, at 10:00 a.m.

If you need sign language assistance, please contact the Office of Vendor Services by April 12, 1994. TDD 753-4595 or SCAN 234-4595.

Submit Written Comments to: Identify WAC number, Dewey Brock, Chief, Office of Vendor Services, Mailstop 45811, Department of Social and Health Services, Olympia, 98504, TELEFAX 586-8487 or SCAN 321-8487, by April 19, 1994.

Date of Intended Adoption: May 26, 1994.

March 9, 1994  
 Dewey Brock, Chief  
 Office of Vendor Services  
 Administrative Services Division

AMENDATORY SECTION (Amending Order 3666, filed 11/10/93, effective 12/11/93)

**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 thirty-one 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);

(c) A dependent care deduction of the actual amount incurred not to exceed one hundred sixty dollars per dependent when 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 an elderly or disabled household member;

WSR 94-07-031

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Public Assistance)

[Filed March 9, 1994, 8:25 a.m.]

Original Notice.

(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 two hundred ~~((seven))~~ thirty-one dollars; and

(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) A household's 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) Household intends to return to the home;

(ii) Current occupants, if any, are not claiming shelter costs for food stamp purposes; and

(iii) Home is not being leased or rented during the household's absence.

(b) Charges for the repair of the home 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 the household:

(i) Has not yet received a billing for utilities;

(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.

(e) A shelter amount of one hundred thirty-seven dollars when all household members are homeless as specified under WAC 388-49-020(36) and the household incurs or expects to incur:

(i) Monthly shelter costs no greater than one hundred thirty-seven dollars; or

(ii) Unverified shelter costs exceeding one hundred thirty-seven dollars.

(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 provide excess medical or shelter deductions effective with supplemental security income (SSI) eligibility when households:

(a) Become categorically eligible within the time limits specified under WAC 388-49-120 and 388-49-150 after a food stamp application;

(b) Receive food stamps as a nonassistance household until becoming categorically eligible; or

(c) Become categorically eligible after denial of nonassistance food stamps.

(5) The department shall not provide a deduction for that portion of a deductible expense, described under this section, paid by an excluded:

(a) Reimbursement; or

(b) Vendor payment, except for Low Income Home Energy Assistance Act (LIHEAA) payments.

(6) The department shall verify:

(a) Dependent care costs including changes, except in prospective budgeting; and

(b) 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.

(c) Actual shelter costs for homeless households when such costs exceed the amount in subsection (2)(e) of this section.

(7) If medical reimbursement cannot be verified, the department shall certify the household without allowing the deduction, except in prospective budgeting.

**WSR 94-07-035**

**PROPOSED RULES**

**PUBLIC DISCLOSURE COMMISSION**

[Filed March 9, 1994, 10:56 a.m.]

**Original Notice.**

Title of Rule: New WAC 390-16-071 Annual report of major contributors and persons making independent expenditures, 390-16-309 Identification of affiliated entities, 390-17-320 Contributions from corporations, businesses, unions and political committees, and 390-20-148 Lobbyist direction or control of employer contributions; and amending WAC 390-16-207 In-kind contributions and expenditures—Reporting, 390-16-308 Identification of source of contribution, 390-16-310 Limitations on contributions, and 390-20-052 Application of RCW 42.17.190—Report of agency lobbying.

Purpose: For WAC 390-16-071, 390-16-309, 390-17-320, 390-20-148, 390-16-207, 390-16-308, and 390-16-310 implement Initiative 134; and for WAC 390-20-052 clarify who files the agency lobbying report.

Statutory Authority for Adoption: RCW 42.17.390.

Statute Being Implemented: Chapter 42.17 RCW.

Summary: WAC 390-16-071, requires a new annual report be filed if a contribution in excess of \$10,000 is made; WAC 390-16-309, describes what constitutes an affiliated entity; WAC 390-17-320, prohibits entities who are prohibited from making contributions from earmarking or otherwise directing a contribution to certain candidates/officials; WAC 390-20-148, defines what is deemed to be exercising direction or control by a lobbyist or lobbyist employer making a contribution; WAC 390-16-207, outlines reporting when in-kind contributions or expenditures are made; WAC 390-16-308, describes the procedure for identifying the source of a contribution; WAC 390-16-310, defines contribution limitations; and WAC 390-20-052, describes the reports that are required by individuals who lobby for a public agency.

Reasons Supporting Proposal: For WAC 390-16-071, 390-16-309, 390-17-320, 390-20-148, 390-16-207, 390-16-

308, and 390-16-310 implement Initiative 134; and for WAC 390-20-052 clarify who files the agency lobbying report.

Name of Agency Personnel Responsible for Drafting: Roselyn Marcus, AG, Olympia, 586-1913; Implementation and Enforcement: Melissa Warheit, Public Disclosure Commission, Olympia, 753-1111.

Name of Proponent: Public Disclosure Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 390-16-071, requires a new annual report be filed if a contribution in excess of \$10,000 is made; WAC 390-16-309, describes what constitutes an affiliated entity; WAC 390-17-320, prohibits entities who are prohibited from making contributions from earmarking or otherwise directing a contribution to certain candidates/officials; WAC 390-20-148, defines what is deemed to be exercising direction or control by a lobbyist or lobbyist employer making a contribution; WAC 390-16-207, outlines reporting when in-kind contributions or expenditures are made; WAC 390-16-308, describes the procedure for identifying the source of a contribution; WAC 390-16-310, defines contribution limitations; and WAC 390-20-052, describes the reports that are required by individuals who lobby for a public agency.

Proposal does not change existing rules.

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

Hearing Location: Second Floor Conference Room, Evergreen Plaza Building, 711 Capitol Way, Olympia, WA, on April 26, 1994, at 9 a.m.

Submit Written Comments to: Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, by April 11, 1994.

Date of Intended Adoption: April 26, 1994.

March 9, 1994  
David R. Clark  
Assistant Director  
for Melissa Warheit  
Executive Director

## NEW SECTION

**WAC 390-16-071 Annual report of major contributors and persons making independent expenditures.** Any person, other than an individual (1) who made contributions to federal, state and local candidates, political committees registered in Washington state, and statewide and local ballot issue committees totaling more than \$10,000 in the aggregate during the preceding calendar year, or (2) who made independent expenditures regarding federal, state and local candidates and statewide and local ballot issues totaling more than \$500 in the aggregate during the preceding calendar year, shall file with the commission the report required pursuant to RCW 42.17.180. This report shall not be required of a candidate's authorized committee or a political committee provided the information has been properly reported pursuant to RCW 42.17.080 and .090.

## NEW SECTION

### **WAC 390-16-309 Identification of affiliated entities.**

(1) Two or more entities are treated as a single person and share one contribution limit under RCW 42.17.640 if one of the entities is:

(a) A corporation and the other is a subsidiary, branch or division of the corporation;

(b) A national or international labor union, or state body of such national or international labor union, and the other is a local union or other subordinate organization of such national or international labor union or state body;

(c) A trade association or state body of such trade association and the other is a branch or local unit of such trade association;

(d) A national or state collective bargaining organization and the other is a branch or local unit of such national or state collective bargaining organization;

(e) A national or international federation of labor unions, or a state federation of labor unions, and the other is a local body of such federation;

(f) A membership organization and the other is a local unit or branch of such membership organization;

(g) Any entity referenced in (a) through (f) above and a political committee established, financed, maintained or controlled by that entity.

(2) For purposes of RCW 42.17.640, two entities shall not be treated as a single entity solely because one of the entities is a dues paying member of the other entity.

(3) In addition to paragraph (1) above, two or more entities shall be treated as one entity and share a contribution limit under RCW 42.17.640 if one of the entities is established, financed, maintained or controlled by the other, as evidenced by any one of the following factors:

(a) Whether one entity owns a controlling interest in the voting stock or securities of another entity; or

(b) Whether one entity has authority or the ability to direct or participate, other than through a vote as a member, in the governance of another entity through provisions of constitution, bylaws, contract or other formal or informal procedure or has authority or the ability to hire, appoint, demote or otherwise control, other than through a vote as a member, the officers or other decision making employees or members of another entity; or

(c) Whether (i) one entity has a common or overlapping membership with another which indicates either a formal or ongoing relationship between the two organizations or the creation of a successor entity and (ii) the entity has an active or significant role in the formation of the other entity and (iii) the entities have similar patterns of contributions or contributors which indicate a formal or ongoing relationship between the entities; or

(d) Whether one entity provides, causes or arranges, funds, services or goods in a significant amount or on an ongoing basis, through direct or indirect means to the other entity, for less than full consideration. Full consideration includes the payment of membership dues.

NEW SECTION

**WAC 390-17-320 Contributions from corporations, businesses, unions and political committees.** Pursuant to RCW 42.17.640(10), entities prohibited from contributing to a candidate for state office, a state official against whom recall charges have been filed or a political committee having the expectation of making expenditures in support of the recall of the official shall not earmark or otherwise direct a contribution to one of these recipients through a political committee.

NEW SECTION

**WAC 390-20-148 Lobbyist direction or control of employer contributions.** For purposes of RCW 42.17.670, a lobbyist shall be deemed to be exercising direction or control over the choice of the recipient state office candidate, state official against whom recall charges have been filed or a political committee if the lobbyist:

(1) officially decides to which state office candidates, state officials against whom recall charges have been filed or political committees the lobbyist employer or the employer's political committee contributes; or

(2) has the ability, on his or her own initiative, to execute or authorize payment of a contribution by the lobbyist employer or the employer's political committee to a state office candidate, a state official against whom recall charges have been filed or a political committee.

AMENDATORY SECTION (Amending WSR 93-22-002, filed 10/20/93)

**WAC 390-16-207 In-kind contributions and expenditures—Reporting.** (1) Whenever a candidate or a political committee makes one or more in-kind expenditures which (i) directly or indirectly, in whole or in part, benefit another identifiable candidate or political committee and (ii) in the aggregate amount to a value of fifty dollars or more in the reporting period, then, for the purpose of complying with the provisions of RCW 42.17.090 (1)(f);

(a) Such candidate or political committee shall identify the candidate or political committee benefitted by such expenditure and state the value thereof; and

(b) The candidate or political committee that receives benefit of such expenditure or expenditures shall report a corresponding amount as a contribution received and as an expenditure made by such candidate or political committee.

(2) Whenever a candidate or a political committee makes an in-kind expenditure which supports or opposes more than one candidate or ballot proposition, the person making such expenditure shall identify each candidate or ballot proposition to which such support or opposition is directed and, if the aggregate expenditure amounts to fifty dollars or more, shall state the prorated amount of the expenditure or expenditures properly attributable to each such candidate or ballot proposition.

(3) Whenever a candidate or political committee provides its equipment, property or other facilities owned, retained, leased or controlled by it to another candidate or political committee, the fair market value of the use of such equipment, property or other facilities, if it amounts to fifty dollars or more, shall be reported as follows:

(a) By the candidate or political committee providing the equipment, property or other facilities, by attaching to its form C-4, Schedule B, a statement setting forth the name of the candidate or political committee benefitted and the date, description and value of the in-kind contribution made by it;

(b) By the candidate or political committee benefitting from the use of such equipment, property or other facilities, by reporting the value of such use in its form C-4, Schedule B, both as a contribution and as an expenditure.

(4) ~~((Corporations, unions and other entities not prohibited from making contributions by RCW 42.17.640(10) may make available their facilities for volunteer services such as telephone banks without incurring an in-kind contribution so long as the service does not exceed four hours per month in the aggregate for all recipient candidates and political committees. More frequent use of such facilities will constitute an in-kind contribution which must be valued at the fair market value of comparable facilities. "Volunteer services" does not include the production of political advertising, holding fundraising events or providing transportation to candidates or campaign workers of candidates, political parties or caucus committees.))~~ Notwithstanding subsections (1) through (3) of this section, whenever a candidate or political committee subject to the contribution limits of RCW 42.17.640 receives an in-kind contribution from any person valued at more than \$25 in the aggregate during the election cycle, or year for political committees, the contribution is reportable pursuant to RCW 42.17.090 and subject to limits provided in RCW 42.17.640.

AMENDATORY SECTION (Amending WSR 93-04-072, filed 1/29/93)

**WAC 390-16-308 Identification of source of contribution.** Any person who makes a contribution shall inform the candidate or treasurer, at the time the contribution is made, of the true and actual source of funds from which the contribution is made. To identify the source of a contribution received by check or other written instrument in the absence of other information, a candidate or treasurer shall apply the following:

Provided, that in cases where the source of the contribution is known and differs from the guidelines set forth below, the known source of the contribution shall be reported;

Provided further, that contributions made ~~((by or))~~ through an intermediary or conduit or transmitted by an intermediary ((lobbyist)) shall identify the true and actual source of the funds ~~((for whom the contribution was made)).~~

(1) A contribution drawn upon a single account shall be attributed to the account holder as identified by the name printed on the face of the check or negotiable instrument.

(2) A contribution drawn upon a joint account shall be attributed in equal proportion to each of the account holders as identified by the names printed on the face of the check or negotiable instrument unless the candidate or treasurer is notified in writing that the contribution should be allocated in different proportions.

(3) A contribution made by a sole proprietor or drawn upon the account of a business which is a sole proprietorship shall be attributed to the owner of the business entity.

(4) A contribution drawn upon the account of a partnership shall be attributed to the partnership as a separate entity except that;

Any check drawn upon the partnership account but which is to be paid from the capital account of one or more individual partners shall identify at the time of transmittal to the candidate or treasurer the name(s) of the contributing partner(s) and shall be attributed to the contributing partner(s).

(5) A contribution drawn upon the account of a corporation, union, association or other organization, shall be attributed to the corporation, union, association or other ((similar)) organization as a separate entity unless that entity is affiliated with another entity pursuant to WAC 390-16-309. ((except that;

(a) A Contribution drawn upon the account of a wholly owned or controlled subsidiary shall identify the name of the parent or controlling corporation and the contribution shall be attributed to the parent or controlling corporation;

(b) A Contribution drawn upon the account of a controlled union subdivision shall identify the name of the controlling union and the contribution shall be attributed to the controlling union;

(c) A contribution drawn upon the account of a controlled subdivision of an association or other similar organization shall name the controlling association or other similar organization and the contribution shall be attributed to the controlling association.

(d) A subsidiary, union subdivision or subdivision of an association or other similar organization is "controlled" by another entity if it does not maintain executive and fiscal independence over its operations and functions as demonstrated by:

(i) Whether the corporation or organization owns a controlling interest in the voting stock or securities of the subsidiary or subdivision;

(ii) Whether the corporation or organization has the authority or ability to direct or participate in the governance of the subsidiary or subdivision through provisions of constitutions, bylaws, contracts or other rules, or through formal or informal practices or procedures;

(iii) Whether the corporation or organization has the authority or ability to hire, appoint, demote or otherwise control the officers or other decision making employees or members of the subsidiary or subdivision;

(iv) Whether the corporation or organization has common or overlapping membership with the subsidiary or subdivision which indicates a formal or ongoing relationship between the two entities.

(v) Whether a corporation, organization or entity has common or overlapping members, officers or employees with the subsidiary or subdivision which indicates a formal or ongoing relationship between the two entities or which indicates the creation of a successor entity;

(vi) Whether the corporation, organization or entity has common or overlapping officers or employees with the subsidiary or subdivision which indicates a formal or ongoing relationship between the two entities;

(vii) Whether the corporation, organization or entity provides funds or goods in a significant amount or on an ongoing basis through direct or indirect payments to the subsidiary or subdivision;

(viii) Whether the corporation, organization or entity causes or arranges for funds in a significant amount or on an ongoing basis to be provided to a subsidiary, subdivision or another entity, but not including the transfer to an organization of its allocated share of proceeds jointly raised;

(ix) Whether the corporation, organization or entity or its agent had an active or significant role in the formation of another corporation, organization or entity;

(x) Whether the corporation, organization or entity has similar patterns of contributions or contributors which indicates a formal or ongoing relationship with the subdivision or subsidiary.

(6) Contributions made by political committees established, financed, maintained, or controlled by any corporation, organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such person, shall be considered to have been made by a single political committee.)

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 WSR 93-16-064, filed 7/30/93)

**WAC 390-16-310 Limitations on contributions.** The limitations on contributions as provided in RCW 42.17-105(8) and RCW 42.17.640 shall be as follows:

(1) The limitation on contributions shall not apply to a "candidate" as that term is defined in RCW 42.17.020(5) and 42.17.630(3) when the candidate is contributing to his or her own campaign using his or her own personal funds as defined in WAC 390-17-305.

(2) The limitations on contributions shall apply separately to the contributions made by each spouse.

(3) Emancipated minor children (children under 18 years of age) may make contributions which do not exceed the limitations on contributions ((and)) and the contribution is properly attributed to the emancipated minor child ((and)) if;

(a) The decision to contribute is made knowingly and voluntarily by the emancipated minor child;

(b) The funds, goods, or services contributed are owned or controlled exclusively by the emancipated minor child, such as income earned by the child, the proceeds of a trust for which the child is the beneficiary, or a savings account opened and maintained exclusively in the child's name; and

(c) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another ((individual)) person.

Contributions by emancipated minor children which do not meet these requirements and contributions by unemancipated minor children shall be considered contributions by the child's parents. Fifty percent of the contributions will be attributed to each parent, or in the case of a single custodial parent, the total amount is attributed to the parent.

(4) Contributions from a business organized as a sole proprietorship and contributions from the owner of the sole proprietorship shall be aggregated for purposes of determining the limitations of contributions under to RCW 42.17-105(8) and 42.17.640.

(5) The limitations on contributions shall apply separately to the contributions made by a partnership from the contributions made by an individual partner except that;

Contributions made from or charged against the capital account of an individual partner shall be aggregated with the partner's individual contributions for purposes of determining the limitations on contributions under RCW 42.17.105(8) and 42.17.640.

(6) The limitations on contributions shall apply separately to the contributions made by an entity (corporation, ~~((union, association or))~~ subsidiary ~~((corporation, or subdivision of the union, association or other similar organization~~ except that;

~~(a) A contribution from a wholly owned or controlled subsidiary corporation or subdivision of a union, association or other similar organization shall be aggregated with the contributions of the parent or controlling corporation or organization for purposes of determining the limitations on contributions under RCW 42.17.105(8) and 42.17.640.~~

~~(b) A subsidiary, union subdivision or subdivision of an association or other similar organization is "controlled" by another entity, if it does not maintain executive and fiscal independence over its operations and functions as demonstrated by the factors set forth in WAC 390-16-308 (5)(d)(i) through (x).~~

~~(7) The limitations on contributions shall apply separately to political committees except that; Political committees which are established, financed, maintained or controlled by any corporation, organization or any other person, including any parent, subsidiary, branch, division, department, or local unit of such persons shall be aggregated and considered as having been made by a single political committee for purposes of determining the limitations on contributions under RCW 42.17.105(8) and 42.17.640.)~~ or branch, national union and local unions, collective bargaining organizations and local units, membership organizations and local units and other organizations) pursuant to the standards set forth in WAC 390-16-309.

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 WSR 91-16-072, filed 8/2/91)

**WAC 390-20-052 Application of RCW 42.17.190—Reports of agency lobbying.** Pursuant to the authority granted in RCW 42.17.190(8), the commission adopts the following interpretations regarding the reporting of lobbying by public agencies pursuant to RCW 42.17.190:

(1) The phrase "in-person lobbying" contained in RCW 42.17.190 (5)(d)(v)(B) includes activity which is intended to influence the passage or defeat of legislation, such as testifying at public hearings, but does not include activity which is not intended to influence legislation, such as attending a hearing merely to monitor or observe testimony and debate.

(2) The phrase "a legislative request" contained in RCW 42.17.190 (5)(d)(ii) includes an oral request from a member of the legislature or its staff.

(3) Pursuant to RCW 42.17.190(6), certain local agencies may elect to have lobbying activity on their behalf reported by their elected officials, officers and employees in the same manner as lobbyists who register and report under RCW 42.17.150 and 42.17.170:

(a) When any subagency (i.e. department, bureau, board, commission or agency) within a state agency, county, city, town, municipal corporation, quasi-municipal corporation or special purpose district (i.e. primary agency) has independent authority to expend public funds for lobbying, that subagency may file a separate L-5 reporting the information required by RCW 42.17.190(5).

(b) When a subagency elects to file its own, separate L-5, it shall notify the commission and the administrative head of the primary agency of its intentions in writing. The primary agency shall not thereafter include information for the subagency in its L-5, and shall have no legal obligation for the filings of the subagency.

(c) Whenever such a local agency makes such an election, it shall provide the commission with a written notice.

~~((b))~~ (d) After such an election, those who lobby on behalf of such local agency shall register and report all lobbying activity reportable under RCW 42.17.190(5) in the same manner as lobbyists who are required to register and report under RCW 42.17.150 and 42.17.170. Such a local agency shall report pursuant to RCW 42.17.180.

~~((e))~~ (e) In order to terminate such an election, such a local agency shall provide the commission with a written notice and it shall report pursuant to RCW 42.17.190(5) thereafter.

~~((d))~~ (f) The exemptions from reportable lobbying activity contained in RCW 42.17.190 (5)(d) apply to all agencies, whether or not they have exercised the election to report in the same manner as lobbyists who report under RCW 42.17.150, 42.17.170 and 42.17.180. The exemptions contained in RCW 42.17.160 (1), (3) and (4) do not apply to any agency.

(4) Unless an agency has elected to report its lobbying pursuant to RCW 42.17.190(6) and subsection (3) of this section, an agency shall include the reportable lobbying activity on its behalf by an elected official in its quarterly report. Such an elected official does not file any separate report of that activity.

(5) Reportable in-person lobbying by elected officials, officers and employees:

(a) An elected official does not engage in reportable in-person lobbying on behalf of this agency unless and until that elected official has expended in excess of fifteen dollars of nonpublic funds in connection with such lobbying for or on behalf of any one or more members of the legislature or state elected officials or public officers or employees of the state of Washington during any three-month period as provided in RCW 42.17.190 (5)(d)(v)(B).

(b) Other officers and employees do not engage in reportable in-person lobbying on behalf of their agency unless and until they have, in the aggregate, expended in excess of fifteen dollars of nonpublic funds in connection with such lobbying for or on behalf of any one or more members of the legislature or state elected officials or public officers or employees of the state of Washington or they have, in the aggregate, engaged in such lobbying for more

than four days or parts thereof during any three month period as provided in RCW 42.17.190 (5)(d)(v)(B).

(c) When limits in (a) or (b) of this subsection have been exceeded, the agency shall report such elected official, officer, or employee as a "person who lobbied this quarter" on the front of PDC Form L-5 and include a listing of those excess expenditures as noted on that form.

**WSR 94-07-036**  
**PREPROPOSAL COMMENTS**  
**DEPARTMENT OF LICENSING**  
 (Vehicle Services Division)  
 [Filed March 9, 1994, 12:16 p.m.]

Subject of Possible Rule Making: Vehicle trip permits issued for unlicensed vehicles which would be required to obtain a license registration and for vehicles which could be operated if apportioned registration were obtained, on public highways of this state.

Persons may comment on this subject by telephone, FAX, or writing, Jack L. Lince, Licensing Services Manager, P.O. Box 2957, Olympia, WA 98507-2957, by April 26, 1994, (206) 753-7379, FAX 664-0339.

March 8, 1994  
 Nancy Kelly, Administrator  
 Title and Registration Services

**WSR 94-07-037**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**  
 [Filed March 9, 1994, 3:56 p.m.]

Original Notice.

Title of Rule: WAC 308-65-040 Hulk hauler—Application for license, 308-65-070 Hulk hauler—General procedures and requirements, and 308-54-160 Termination of business.

Purpose: WAC 308-65-040 and 308-65-160 are housekeeping changes. WAC 308-65-070(3) is being deleted as it refers to the wrong statute and is covered in RCW 46.16.079.

Statutory Authority for Adoption: RCW 46.79.080.

Statute Being Implemented: Chapter 46.79 RCW.

Summary: Amending WAC 308-65-040, this section deletes reference WAC 308-61-320(5) and replaces with WAC 308-65-070(5); WAC 308-65-070, this section deletes subsection (3); and WAC 308-65-160, this section deletes the reference to RCW 46.70.081.

Name of Agency Personnel Responsible for Drafting and Implementation: Michele Gruender, Administrative Assistant, P.O. Box 48071, Olympia, WA 98504-8071, (206) 586-1100; and Enforcement: Heather Hamilton, Administrator, P.O. Box 48070, Olympia, WA 98504-8070, (206) 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: WAC 308-65-040 and 308-65-160 are housekeeping

changes. The changes are needed to correct minor mistakes; and WAC 308-65-070(3) is being deleted as it refers to the wrong statute and is already in RCW 46.16.079.

Proposal Changes the Following Existing Rules: WAC 308-65-040, corrects an incorrect WAC number; WAC 308-65-070(3), deletes a section that refers to an incorrect statute; and WAC 308-65-160, eliminates the end of a line that states an incorrect RCW.

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

Hearing Location: Department of Licensing, 3rd Floor Executive Conference Room, General Administration Building, 11th and Columbia, Olympia, Washington 98504, on May 13, 1994, at 9:00 a.m.

Submit Written Comments to: Michele Gruender, Department of Licensing, P.O. Box 48071, Olympia, WA 98504-8071, by May 2, 1994.

Date of Intended Adoption: May 27, 1994.

March 2, 1994  
 Heather Hamilton  
 Administrator

AMENDATORY SECTION (Amending WSR 93-08-076, filed 4/6/93, effective 5/7/93)

**WAC 308-65-040 Hulk hauler—Application for license.** The application for a hulk hauler's license shall be made on the form provided by the department and shall include, in addition to any other information the department may require, and in addition to the provisions of RCW 46.79.030:

(1) A statement regarding whether or not the applicant has ever previously had a license as a hulk hauler denied, suspended, or revoked and on what dates and what grounds.

(2) A certification from a member of the Washington state patrol that his/her vehicle(s) are properly identified in accordance with WAC (~~(308-61-320)~~) 308-65-070(5).

The license may be renewed prior to the expiration date by filing a renewal application, securing a signature of the appropriate member of the Washington state patrol on his/her application, and paying a renewal fee of ten dollars.

AMENDATORY SECTION (Amending WSR 93-08-076, filed 4/6/93, effective 5/7/93)

**WAC 308-65-070 Hulk hauler—General procedures and requirements.** Hulk haulers shall comply with all statutes, rules and regulations relative to the handling of vehicles and vehicle hulks.

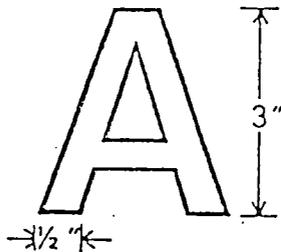
(1) Change of address. The department shall be notified immediately of any change of mailing address.

(2) License certificate. The license certificate shall be carried in the vehicles operated by hulk haulers. If a hulk hauler operates more than one vehicle he/she shall request additional license certificates for each vehicle. Such certificates shall also be carried for inspection by law enforcement officers.

(3) ~~(Tow car fee. The licensee of any fixed load vehicle equipped for lifting or transporting any disabled, impounded or abandoned vehicle or part thereof, may pay a twenty five dollar fee in lieu of tonnage fees provided in RCW 46.16.070.~~

((4))) Inspection of transport vehicle. Prior to the issuance of a hulk hauler license the vehicle to be used in transporting vehicle salvage must be inspected by the appropriate law enforcement official to verify compliance with safety requirements applying to transportation of vehicle salvage on the highways of the state.

((5)) (4) Identification of licensee's vehicles. All vehicles equipped for lifting or transporting vehicles or hulks which are operated on the highways of this state shall display the licensee's name, mailing address, and current business telephone number of such licensee. Such information shall be painted on or permanently affixed to both sides of the vehicle. Each letter and numeral shall be made with at least a half-inch stroke for the width and shall be at least three inches high. See example.



**AMENDATORY SECTION** (Amending WSR 93-08-076, filed 4/6/93, effective 5/7/93)

**WAC 308-65-160 Termination of business.** A hulk hauler or scrap processor who terminates his business shall return his/her license and special license plates to the department for cancellation within ten business days of such termination(~~(, except as provided in RCW 46.70.081)).~~

**WSR 94-07-038  
WITHDRAWAL OF PROPOSED RULES  
DEPARTMENT OF AGRICULTURE**  
[Filed March 9, 1994, 3:59 p.m.]

Effective immediately, the Department of Agriculture, Food Safety and Animal Health Division, wishes to withdraw the proposed rule to increase the assessment on egg seals.

This proposal was filed on February 14, 1994, WSR 94-05-074.

John Daly  
Assistant Director  
Food Safety and Animal Health

**WSR 94-07-041  
PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**  
(Public Assistance)  
[Filed March 10, 1994, 9:51 a.m.]

Original Notice.

Title of Rule: WAC 388-11-205 Assessing support.

Purpose: Brings support enforcement division (SED) into compliance with United States District Court Judge

Bryan's injunction dated February 4, 1994. Treats the Washington state child support schedule minimum monthly order amount as a presumption. WAC 388-11-205 clarifies that the presiding officer can deviate from the support order of \$25 per month per child upon a proper showing by the parties.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

Summary: Brings the department into compliance with the court ruling. Under the rule, the minimum order amount under the support schedule is rebuttable. Presiding officers and review judges in SED hearings can deviate from the minimum order amount.

Reasons Supporting Proposal: February 4, 1994, United States District Court ruling holds that the Washington state child support schedule minimum order requirements violates state child support plan requirements under Title IV-D of the Social Security Act. 45 CFR 302.56 requires state support guidelines to be rebuttable presumptions. The court found that the minimum order requirement is not rebuttable.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bill Kellington, Support Enforcement Division, 586-3426.

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

Rule is necessary because of federal court decision, N.R. vs. Soliz, U.S. District Court Docket #C93-5338B.

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, 14th and Franklin, Olympia, Washington, on April 26, 1994, at 10:00 a.m.

If you need sign language assistance, please contact the Office of Vendor Services by April 12, 1994. TDD 753-4595 or SCAN 234-4595.

Submit Written Comments to: Identify WAC number, Dewey Brock, Chief, Office of Vendor Services, Mailstop 45811, Department of Social and Health Services, Olympia, 98504, TELEFAX 586-8487 or SCAN 321-8487, by April 19, 1994.

Date of Intended Adoption: May 3, 1994.

March 10, 1994  
Dewey Brock, Chief  
Office of Vendor Services  
Administrative Services Division

**AMENDATORY SECTION** (Amending Order 3344, filed 3/24/92, effective 4/24/92)

**WAC 388-11-205 Assessing support.** (1) In any adjudicative proceeding, agreed settlement or consent order involving the administrative establishment of a support obligation, the responsible parent and any residential parent shall complete worksheets approved by the administrator for the courts under RCW 26.19.050. The ((office of)) support enforcement division (SED) may complete a worksheet on behalf of a residential parent receiving public assistance, or residing in another state.

(2) ~~((OSE))~~ SED and the presiding or review officer shall determine the basic support obligation according to the Washington state child support schedule, chapter 26.19 RCW.

(3) ~~((OSE))~~ SED and the presiding or review officer may impute income based on the standards for ~~((inputting))~~ imputing income stated at chapter 26.19 RCW. A recipient's eligibility for and receipt of AFDC ~~((or FIP))~~ benefits shall raise a rebuttable presumption that the recipient is:

(a) Complying with all assistance program eligibility requirements including job search requirements; and ~~((is))~~

(b) Not voluntarily under-employed or unemployed.

(4) ~~((OSE))~~ SED and the presiding or review officer shall adjust a responsible parent's share of the basic support obligation to reflect circumstances in the parent's household and the household of any residential parent. ~~((OSE))~~ SED and the presiding or review officer:

(a) May ~~((, at their discretion, and in compliance with RCW 26.19.075,))~~ deviate from the amount of child support calculated using the standard calculation ~~((, A deviation))~~ when the amount is unjust or inappropriate in the particular case; and

(b) Shall not enter an order or agreed settlement deviating from the standard ~~((may not be made))~~ calculation without specific reasons for ~~((these deviations))~~ the deviation set forth in the order and supported by the evidence.

(5) If requested, ~~((OSE))~~ SED and the presiding or review officer shall:

(a) Assess responsibility for known health care, day care, and special child-rearing expenses under the Washington state child support schedule;

(b) Apportion responsibility for unknown and or future health care, day care, and special child-rearing expenses between the parents in the same proportion as the basic support obligation; and

(c) Assess responsibility for birth costs under WAC 388-11-220.

(6) A responsible parent's total support obligation shall consist of:

(a) The amount determined according to the Washington state child support schedule, including the effect of any deviations from the basic child support obligation;

(b) Amounts the responsible parent is obligated to pay for health insurance; and

(c) Amounts the responsible parent is obligated to pay for day care and special child-rearing expenses.

(7) A responsible parent shall pay:

(a) Health insurance premiums directly to the responsible parent's insurance provider ~~((, The responsible parent shall pay));~~

(b) All other amounts, including amounts currently paid to third parties for special child-rearing expenses, to the Washington state support registry.

(8) A responsible parent's total administrative current support obligation shall not exceed forty-five percent of the responsible parent's net income unless the presiding officer finds good cause for exceeding the forty-five percent limitation. Good cause includes but is not limited to:

(a) The responsible parent has substantial wealth;

(b) A child on whose behalf support is sought has special medical or educational needs;

(c) Large families;

(d) Psychological need; or

(e) Children with daycare expenses.

(9) ~~((When))~~ The parties' combined monthly net income of ~~((the parties is))~~ less than six hundred dollars ~~((, OSE))~~ shall raise a rebuttable presumption that the support obligation should be not less than twenty-five dollars per month per child. SED, the presiding officer or the review judge ~~((shall enter a support order of not less than twenty-five dollars per month per child))~~ may deviate from the presumptive amount in compliance with RCW 26.19.075, and subsection (4) of this section.

(10) Neither the presiding officer nor ~~((OSE))~~ SED shall set a current support obligation that reduces the responsible parent's income below the needs standard for one person adopted under RCW 74.04.770, except:

(a) ~~((For the minimum required support order of))~~ That SED, the presiding officer, and the review judge shall not enter or agree to an order for less than twenty-five dollars per month per child, unless there are grounds for a deviation from that amount; or

(b) If the presiding officer finds reasons for deviation under chapter 26.19 RCW.

(11) ~~((In cases where))~~ When the department is assessing a child support debt for a dependent child placed in foster care or living with a ~~((non-needy))~~ nonneedy relative, ~~((OSE))~~ SED, the presiding officer or the review judge shall calculate the support obligation using the child support schedule as follows:

(a) Combine the net income of both parents in the "father" column on the worksheet and not attribute income in the "mother" column when the responsible parents reside together;

(b) Calculate each parent's support obligation independently and attribute no income to the other parent when the responsible parents do not reside together; and

(c) Assess support only for the child named in the notice.

(12) ~~((OSE))~~ SED, presiding officers, and department review judges shall:

(a) Apply any legislative changes to the Washington state child support schedule prospectively only from the effective date of the legislation unless the legislative change is specifically retroactive in effect ~~((, OSE, presiding officers, and department review judges shall));~~

(b) Assess support debts for past periods of time according to the Washington state child support schedule in effect at the time the support debt accrued ~~((, except that));~~ and

(c) Assess child support debts accrued before July 1, 1988 ~~((, shall be assessed))~~ according to the Washington state child support schedule that became effective July 1, 1988.

**WSR 94-07-067**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SERVICES FOR THE BLIND**  
[Filed March 14, 1994, 2:48 p.m.]

Original Notice.

Title of Rule: WAC 67-35-030 Terms defined and 67-35-230 Department responsibility—Maintained facility.

Purpose: Revise/delete sections in WAC 67-35-030, due to repetition (improve clarity); and in WAC 67-35-230, deletes sections that should be in departmental policies and procedures.

Statutory Authority for Adoption: Chapter 74.18 RCW.

Summary: WAC 67-35-030, one repetition deleted; and WAC 67-35-230, subsections (2), (3), (4), and (5) deleted.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bonnie Jindra, Olympia, DSB, 586-0275.

Name of Proponent: Department of Services for the Blind, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 67-35-030 Terms defined, clarify any confusion caused by inadvertent repetition of beginning sentence of subsection (19)(c); and WAC 67-35-230 Department responsibility—Maintained facility, outlines departmental responsibility to maintain facilities operated by blind vendors in good order. The existing WAC outlines procedures that should be within departmental policy.

Proposal Changes the Following Existing Rules: WAC 67-35-230 deletes subsections (2), (3), (4), and (5).

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

Hearing Location: Department of Services for the Blind, 521 East Legion Way, Olympia, WA 98504-0933, on April 28, 1994, at 9:00 a.m.

Submit Written Comments to: Bonnie Jindra, P.O. Box 40933, Olympia, WA 98504, by April 14, 1994.

Date of Intended Adoption: May 1, 1994.

March 14, 1994

Bonnie Jindra  
Assistant Director

**AMENDATORY SECTION** (Amending WSR 93-10-067, filed 5/3/93, effective 6/3/93)

**WAC 67-35-030 Terms defined.** The terms defined in this section shall have the indicated meaning when used in this chapter.

(1) "Agreement" means that document issued by the department to a blind licensee assigning responsibility for the management of a designated vending facility in accordance with these rules and the terms and conditions of the permit or contract.

(2) "Blind" means visual acuity of no more than 20/200 in the better eye with correcting lenses; or if visual acuity is greater than 20/200, a limitation in the field of vision of the better eye so that its widest diameter subtends an angle of no greater than 20 degrees, as determined by an examination by a physician skilled in diseases of the eye, or an optometrist, whichever the person chooses.

(3) "Blind licensee" or "licensee" means a person licensed by the department to operate a vending facility in the vending facility program, but who is not assigned a vending facility.

(4) "Blind vendor" or "vendor" means a person licensed by the department to operate a vending facility in the vending facility program and who is assigned a vending facility.

(5) "Contract" means the negotiated terms and conditions between the manager controlling federal or other property and the department covering the operation of a vending facility on federal or other property.

(6) "Cost of goods purchased and other operating expenses" this item of the income statement includes the cost of goods purchased and the operating expenses such as maintenance of equipment, rent, utilities, insurance, Social Security, workmen's compensation, pest control, delivery services, licenses, state and local taxes.

(7) "Department" means the Washington department of services for the blind.

(8) "Equipment" means all appliances, utensils, counters, cupboards, storage devices, furniture and other furnishings used in the operation of the vending facility, to which the department retains title.

(9) "Federal property" means any building, land or other real property owned, leased or occupied by any department, agency or instrumentality of the United States including the Department of Defense and the United States Postal Service, or any other instrumentality wholly owned by the United States.

(10) "Gross income" is the aggregate of gross sales, all machine income received by vendors, rebates and any other income received by the vending operations.

(11) "License" means a written instrument issued by the department to a blind person authorizing that person to operate a vending facility on federal or other property.

(12) "Management services" means supervision, inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve vending facilities operated by blind vendors. "Management services" does not include those services or costs which pertain to the ongoing operation of an individual facility after the initial establishment period.

(13) "Net proceeds" - (net profit) means the amount remaining from the sale of articles or services of vending facilities, and any vending machine or other income accruing to blind vendors after deducting the cost of such sale and other expenses (excluding set-aside charges required to be paid by blind vendors).

(14) "Other property" means property which is not federal property.

(15) "Permit" means the official approval given the department by another department, agency or instrumentality in control of the maintenance, operation and protection of federal property, or a person in control of other property, whereby the department is authorized to establish a vending facility.

(16) "Public building" means any building which is owned by the state of Washington or any political subdivision thereof, and any space leased by the state of Washington or any political subdivision thereof in any privately-owned building: *Provided*, That any vending facility or vending machine under the jurisdiction and control of a local board of education shall not be included without the consent and approval of that local board.

(17) "Program" means the vending facility program, (also known as the business enterprises program) including all of the activities, obligations and relationships described in this chapter.

(18) "Set aside funds" means any income from vending machines on federal property received by the department and not paid to vendors as income under provision of 34 CFR, section 395.8 (a), (b), and (c).

(19) "Vending facility" means cafeterias, snack bars, vending counters, vending carts, vending machines or any combination of the above, at which food, tobacco, refreshments or sundries are offered for sale, and which operate under the vending facility program. Vending facilities will be identified by the following classifications:

(a) "Cafeteria" means a food dispensing vending facility capable of merchandising a broad variety of prepared foods and beverages. Characteristically, the cafeteria has specialized equipment, a food preparation area, and booths and tables for seating. Vending machines may be part of a cafeteria.

(b) "Other types of facilities" means those facilities not included under the cafeteria or vending machine, such as snack bars, lunch counters and dry stands which provide a variety of articles dispensed manually by the vendor.

(i) "Dry stand" means a vending facility which merchandises, among other things, tobacco, sundries and prepackaged food and refreshment items. Characteristically, the dry stand has no specialized equipment for refrigerating or heating foods or beverages, nor any food preparation area. Merchandise is consumed away from the dry stand. Vending machines may be a part of the dry stand.

(ii) "Lunch counter" means a vending facility which merchandises, among other things, lines of refreshment and food items suitable for a light meal. Characteristically, the lunch counter has specialized equipment for the refrigerating, cooking or heating of foods and beverages, and has a limited food preparation area. Merchandise may be consumed at or away from the lunch counter. Vending machines may be part of the facility.

(iii) "Snack bar" means a vending facility which merchandises, among other things, limited lines of refreshment and prepared food items. Characteristically, a snack bar has specialized equipment for refrigerating or heating foods and beverages but has no food preparation area. Merchandise may be consumed at or away from the snack bar. Vending machines may be a part of the facility.

(c) (~~"Vending machine facility" means a vending facility comprised of coin or currency operated machines merchandising, among other things, a variety of food and refreshment items.~~) "Vending machine facility" means a vending facility comprised of coin or currency operated machines merchandising, among other things, a variety of food and refreshment items. The vendor is responsible for the management of the machines and usually performs such functions as loading and servicing the machines and other customer-related services. Characteristically, there is no provision for booth or table seating at such a facility.

(20) "Vending machine" means any coin-operated machine offering food, refreshments, tobacco or sundries for sale.

(21) "Primary location" means any location that is acquired through the bid process pursuant to the provisions of WAC 67-35-070.

(22) "Nonprimary location" means any location that is bid per WAC 67-35-070 and is awarded for a temporary

period of time not to exceed one year from the date of award.

AMENDATORY SECTION (Amending Order 86-2, filed 3/21/86)

**WAC 67-35-230 Department responsibility—Maintained facility.** ~~((1))~~ The department will, within program resources, maintain or cause to be maintained each facility in good repair and attractive condition. The department will, within program resources, or in accordance with terms and conditions of the permit or contract, replace, or cause to be replaced obsolete or worn-out equipment.

~~((2) Vendors shall pay repair charges for each separate repair job on vending facility equipment of one hundred dollars or ten percent of the cost of repair, whichever is greater. For purposes of this subsection, repair or a repair job shall mean the cost associated with a single visit of a repair technician to a vending facility without respect to the amount of equipment being repaired, or multiple visits, and/or contact relative to the repair of a single item.~~

~~(3) When a vendor takes over the operation of a vending facility, the department will within program resources, pay for all repair charges during the first six months and the one hundred dollar or ten percent deduction will not apply.~~

~~(4) The remainder of the charges for repair or maintenance of vending facility equipment described in subsections (2) and (3) of this section shall be paid for from set aside funds. If set aside funds are entirely depleted, the vendor shall pay the costs of repair of vending facility equipment at his/her facility.~~

~~(5) For purposes of this section, vending facility equipment shall include equipment provided by the department and equipment furnished as a part of the contract or permit for which the department and operator assumes the responsibility of maintenance.)~~

**WSR 94-07-072**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (By the Code Reviser's Office)  
 [Filed March 15, 1994, 8:01 a.m.]

WAC 440-22-205, proposed by the Department of Social and Health Services in WSR 93-18-008, appearing in issue 93-18 of the State Register, which was distributed on September 15, 1993, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 94-07-073**  
**WITHDRAWAL OF PROPOSED RULES**  
**STATE TOXICOLOGIST**  
 (By the Code Reviser's Office)  
 [Filed March 15, 1994, 8:02 a.m.]

WAC 448-13-080 and 448-13-210, proposed by the State Toxicologist in WSR 93-18-013, appearing in issue 93-18 of the State Register, which was distributed on September 15, 1993, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 94-07-074**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF ECOLOGY**  
 (By the Code Reviser's Office)  
 [Filed March 15, 1994, 8:03 a.m.]

WAC 173-19-3506, proposed by the Department of Ecology in WSR 93-18-081, appearing in issue 93-18 of the State Register, which was distributed on September 15, 1993, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 94-07-075**  
**WITHDRAWAL OF PROPOSED RULES**  
**HEALTH CARE AUTHORITY**  
 (By the Code Reviser's Office)  
 [Filed March 15, 1994, 8:04 a.m.]

WAC 55-01-010, 55-01-020, 55-01-030, 55-01-040, 55-01-050, 55-01-060, 55-01-070 and 55-01-080, proposed by the Health Care Authority in WSR 93-18-102, appearing in issue 93-18 of the State Register, which was distributed on September 15, 1993, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 94-07-081**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Public Assistance)  
 [Filed March 16, 1994, 10:54 a.m.]

Original Notice.

Title of Rule: Amending WAC 388-11-065 Defenses to liability; and new WAC 388-11-067 Equitable estoppel.

Purpose: Allows the defense of equitable estoppel in support enforcement division (SED) adjudicative proceed-

ings. Explains when equitable estoppel is available in SED hearings. Establishes the burden and standard of proof. Requires presiding officers to ensure that parties have adequate time to prepare and argue the issues involved in estoppel.

Statutory Authority for Adoption: RCW 74.08.090.  
 Statute Being Implemented: RCW 74.08.090.

Summary: Sets the burden of proof regarding equitable estoppel; establishes the administrative law judge's authority and duty to consider equitable estoppel; provides for continuances when parties have not had opportunity to prepare and respond to a claim of estoppel; defines certain elements of the equitable estoppel defense.

Reasons Supporting Proposal: Allows ALJs to consider the defense of equitable estoppel in OSE adjudicative proceedings. The department is required to consider this defense under *Kramerevsky vs. DSHS*.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bill Kellington, Support Enforcement Division, 586-3426.

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, 14th and Franklin, Olympia, Washington, on April 26, 1994, at 10:00 a.m.

If you need sign language assistance, please contact the Office of Vendor Services by April 12, 1994. TDD 753-4595 or SCAN 234-4595.

Submit Written Comments to: Identify WAC number, Dewey Brock, Chief, Office of Vendor Services, Mailstop 45811, Department of Social and Health Services, Olympia, 98504, TELEFAX 586-8487 or SCAN 321-8487, by April 19, 1994.

Date of Intended Adoption: April 28, 1994.

March 16, 1994  
 Dewey Brock, Chief  
 Office of Vendor Services  
 Administrative Services Division

AMENDATORY SECTION (Amending Order 3403, filed 6/9/92, effective 7/10/92)

**WAC 388-11-065 Defenses to liability.** (1) A responsible parent who objects to a notice and finding of parental or financial responsibility shall have the burden of establishing defenses to liability. Defenses include, but are not limited to:

- (a) Payment;
- (b) Superior court order;
- (c) He or she is not a responsible parent;
- (d) The amount requested in the notice is inconsistent with the amount assessed under WAC 388-11-205; ((e))
- (e) Equitable estoppel, subject to WAC 388-11-067; or
- (f) Any other matter constituting an avoidance or affirmative defense.

(2) A dependent child's or a residential parent's ineligibility to receive public assistance is not a defense to the assessment of a support obligation.

(3) A responsible parent may be excused from providing support for a dependent child receiving public assistance if the responsible parent is the legal custodian of the child and has been wrongfully deprived of physical custody of the child. The responsible parent may only be excused for any period during which such parent was wrongfully deprived of custody. The responsible parent shall establish that:

(a) A court of competent jurisdiction of any state has entered an order giving legal and physical custody of the child to the responsible parent;

(b) The custody order has not been modified, superseded, or dismissed;

(c) The child was taken or enticed from the responsible parent's physical custody and such parent has not subsequently assented to deprivation. Proof of enticement shall require more than a showing that the child is allowed to live without certain restrictions the responsible parent would impose; and

(d) Within a reasonable time after deprivation, the responsible parent exerted and continues to exert reasonable efforts to regain physical custody of the child.

#### NEW SECTION

**WAC 388-11-067 Equitable estoppel.** (1) Equitable estoppel is available in adjudicative proceedings conducted under chapters 388-11, 388-13 and 388-14 WAC.

(2) When a party raises, or the facts indicate, a claim that equitable estoppel applies to a party to the proceeding, the presiding officer shall:

(a) Consider equitable estoppel according to the precedents set by reported Washington state appellate case law, where not contrary to public policy; and

(b) Enter findings of fact and conclusions of law sufficient to determine if the elements of equitable estoppel are met and apply.

(3) The party asserting, or benefiting from, equitable estoppel must prove each element of that defense by clear, cogent and convincing evidence.

(4) The presiding officer shall consider in the record whether a continuance is necessary to allow the parties to prepare to argue equitable estoppel when:

(a) A party raises equitable estoppel; or

(b) The facts presented require consideration of equitable estoppel.

(5) When the presiding officer orders a continuance under subsection (4) of this section, the presiding officer shall enter an initial decision and order for current support if:

(a) Current support is an issue in the proceeding; and

(b) The claim for current support is unaffected by the equitable estoppel defense.

(6) The defense of equitable estoppel is not available to a party to the extent that the:

(a) Party raises the defense against the department's claim for reimbursement of public assistance; and

(b) Act or representation forming the basis for an estoppel claim:

(i) Was made by a current or former public assistance recipient;

(ii) Was made on or after the effective date of the assignment of support rights; and

(iii) Purported to waive, satisfy, or discharge a support obligation assigned to the department.

**WSR 94-07-082  
PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(Public Assistance)

[Filed March 16, 1994, 10:55 a.m.]

Original Notice.

Title of Rule: WAC 388-15-214 Chore personal care services budget control.

Purpose: This amendment will make NFLC clients who are discharged from a nursing facility, top priority for placement under the lidded chore program.

Statutory Authority for Adoption: RCW 74.08.545.

Statute Being Implemented: RCW 74.08.545.

Summary: Assures services to the most critically needy. May reduce caseload.

Reasons Supporting Proposal: Level A clients are first priority on the chore waiting list. This proposed change establishes clients relocating from a nursing home as Level A and top priority to receive NFLC chore services.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lois Wusterbarth, Home and Community Services Division, 493-2538.

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, 14th and Franklin, Olympia, Washington, on April 26, 1994, at 10:00 a.m.

If you need sign language assistance, please contact the Office of Vendor Services by April 12, 1994. TDD 753-4595 or SCAN 234-4595.

Submit Written Comments to: Identify WAC number, Dewey Brock, Chief, Office of Vendor Services, Mailstop 45811, Department of Social and Health Services, Olympia, 98504, TELEFAX 586-8487 or SCAN 321-8487, by April 19, 1994.

Date of Intended Adoption: April 27, 1994.

March 16, 1994

Dewey Brock, Chief

Office of Vendor Services

Administrative Services Division

AMENDATORY SECTION (Amending Order 3041 [3500], filed 7/13/90 [1/27/93], effective 8/13/90 [2/27/93])

**WAC 388-15-214 Chore personal care services budget control.** (1) The department shall establish a monthly dollar lid on chore personal care service expenditures to maintain expenditures within the legislative appropriation.

(2) When expenditure projections reach the monthly dollar lid, the department shall place names of applicants for chore personal care services on a waiting list in the order of their risk of placement in a long-term care facility. Priorities shall be as follows:

(a) Level A. Applicant ~~((needs help with one of the following personal care tasks)):~~

(i) ~~((Eating))~~ Is client being relocated by the department from a nursing facility; or

(ii) ~~((Body care;~~

(iii) ~~Transfer;~~

(iv) ~~Positioning; or~~

~~((Toileting))~~ Needs help with one of the personal care tasks of eating, body care, transfer, positioning, or toileting.

(b) Level B. Applicant needs help with four or more other personal care tasks listed under WAC 388-15-208(12);

(c) Level C. Applicant needs help with one to three other personal care tasks.

(3) If the monthly dollar lid is not sufficient to stay within the legislative appropriation, the department may implement a ratable reduction of hours or payment for some or all chore personal care service clients.

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

**WSR 94-07-083**  
**PROPOSED RULES**  
**GAMBLING COMMISSION**  
 [Filed March 16, 1994, 11:37 a.m.]

Original Notice.

Title of Rule: WAC 230-02-030 Normal commission operations—Administrative office address and business hours, 230-02-125 Adjusted net gambling receipts defined, 230-08-120 Quarterly activity report by operators of bingo games (license Class D and above), 230-08-130 Quarterly activity reports by operators of punchboards and pull tabs, 230-08-150 Quarterly activity reports by manufacturers, 230-08-160 quarterly activity reports by operators of social and public card rooms, 230-08-260 Fund raising events—Activity report required, 230-25-200 Bingo at fund raising event, and 230-30-050 Punchboard and pull tab operation.

**Purpose:** Packet of rules have minor housekeeping changes to clarify wording, amend WAC reference, correct address or change reporting requirement.

**Statutory Authority for Adoption:** RCW 9.46.070.

**Statute Being Implemented:** Chapter 9.46 RCW.

**Summary:** WAC 230-02-030, housekeeping change to amend address; WAC 230-02-125, housekeeping change to clarify wording in subsection (5); WAC 230-08-120, housekeeping change to clarify wording; WAC 230-08-130, housekeeping change to require preparer to print name and phone number on report; WAC 230-08-150, housekeeping

change to require preparer to print name and phone number on report; WAC 230-08-160, housekeeping change to require preparer to print name and number on report; WAC 230-08-260, housekeeping change to require preparer to print name and number on report; WAC 230-25-200, housekeeping change to amend WAC reference in subsection (1); and WAC 230-30-050, housekeeping change to delete last sentence in subsection (3).

**Name of Agency Personnel Responsible for Drafting:** Shanna Lingel, Rules Coordinator, Lacey, 438-7685; **Implementation:** Frank L. Miller, Director, Lacey, 438-7640; and **Enforcement:** Neal Nunamaker, Deputy Director, Lacey, 438-7690.

**Name of Proponent:** [Gambling Commission], governmental.

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

**Explanation of Rule, its Purpose, and Anticipated Effects:** The proposed housekeeping changes are to clarify wording, amend WAC reference, correct address or change reporting requirement in accordance with code reviser standards.

**Proposal Changes the Following Existing Rules:** Amends existing rules to clarify wording of rule, amend RCW reference, correct address or change reporting requirement in accordance with code reviser standards.

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

The agency has considered whether these rule changes would create an economic impact on small businesses as defined in chapter 19.85 RCW. It has determined that there are no economic impacts to small business as a result of these proposals for the following reasons: No cost or expenditure of resources; no affect on industry; and no substantive change in existing regulatory scheme.

**Hearing Location:** Cypress Inn, Highway 167 @ 84th Avenue exit, Kent, Washington 98032, on May 13, 1994, at 10:00 a.m.

**Submit Written Comments to:** Shanna R. Lingel, Washington State Gambling Commission, P.O. Box 42400, Olympia, WA 98504-2400, by May 11, 1994.

**Date of Intended Adoption:** May 13, 1994.

March 15, 1994  
 Shanna R. Lingel  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 90-15-044, filed 7/16/90, effective 8/16/90)

**WAC 230-02-030 Normal commission operations—Administrative office address and business hours.** (1) The administrative office of the commission is located in Lacey, Washington. Services available are administration, information, licensing, investigation, activity report processing, and public records. Unless specifically provided elsewhere in these rules, applications for licenses, submission of materials or requests for notices or information of any kind, may be made by addressing correspondence to:

| <u>Mailing Address</u>                                                                                                                             | <u>Location Address</u>                                                                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| Washington State Gambling<br>Commission<br>(4511 Woodview Drive S.E.<br>Lacey, Washington 98504 8121.)<br>P.O. Box 42400<br>Olympia, WA 98504-2400 | Washington State Gambling<br>Commission<br>649 Woodland Square Loop S.E.<br>Lacey, WA 98503 |

(2) Normal business hours for the administrative office, unless specifically provided elsewhere in these rules, shall be 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

**AMENDATORY SECTION** (Amending Order 183, filed 9/13/88)

**WAC 230-02-125 Adjusted net gambling receipts defined.** "Adjusted net gambling receipts" means the combined income from all gambling activities that are compared to gross sales for determination of commercial stimulant compliance. Adjusted net gambling receipts are determined by deducting the following expenses from net gambling receipts, when they are supported by verifiable records and actually paid out during the period:

(1) Federal, state, and local taxes and fees, other than income taxes, directly relating to the gambling activity: *Provided*, That taxes and fees may be deducted using the accrual accounting method if all accounting records are normally maintained on the accrual method and notice is provided to the commission;

(2) The cost of one licensed card room employee to be on duty any time the activity is open for business: *Provided*, That the total cost allowed shall not exceed \$12.50 per hour of operation;

(3) The cost of providing a "pan" dealer as allowed by WAC 230-40-225: *Provided*, That the total cost allowed shall not exceed \$7.50 per hour of operation; and

(4) The cost of punchboards, pull tabs, dispensing devices, cards, chips and card room furniture and fixtures actually used in conjunction with the gambling activity. Card room furniture and fixtures that cost in excess of one thousand dollars may be treated as a capital improvement for purposes of this rule.

(5) The actual cost of capital improvements and leasehold improvements to the licensed premises, less interest. Capital improvements shall include remodeling, updating, and other improvements to the licensed premises. Routine maintenance, cleaning, and painting shall not be treated as capital improvements. *Provided*, the cost for such improvements shall be amortized during a period of not less than two years. The licensee shall choose the period and report it on its quarterly report, (~~along with~~) and keep copies of all receipts supporting the expenditure: *Provided*, the capital improvement deduction shall not exceed \$5,000 for any quarter.

**AMENDATORY SECTION** (Amending WSR 90-10-007, filed 4/19/90, effective 7/1/90)

**WAC 230-08-120 Quarterly activity report by operators of bingo games (license Class D and above).** Each organization licensed to conduct bingo games in Class D and above shall submit an activity report to the commis-

sion concerning the licensed activity and other matters set forth below during each of the following periods of the year:

January 1st through March 31st  
April 1st through June 30th  
July 1st through September 30th  
October 1st through December 31st

If the licensee does not renew its license, then it shall file a report for the period between the previous report filed and the expiration date of its license.

The report form shall be furnished by the commission and the completed report shall be received in the office of the commission or postmarked no later than 30 days following the end of the period for which it is made.

The report shall be signed by the highest ranking officer or his/her designee. If the report is prepared by someone other than the licensee or an employee, then the preparer shall (~~also sign the report and~~) print his/her name and phone number on the report.

The report shall be completed in accordance with the related instructions furnished with the report. The report shall include, among other items, the following:

(1) The gross gambling receipts from bingo (~~by month~~).

(2) The total amount of cash prizes actually paid out and the total of the cost to the licensee of all merchandise prizes actually paid out (~~by month~~). Donated prizes will be recorded at the fair market value of the prize at the time they were received by the organization.

(3) The net gambling receipts (~~by month~~).

(4) Full details on all expenses directly related to bingo, including at least the following:

(a) Wages, monies, or things of value paid or given to each person connected with the management, promotion, conduct or operation of the bingo game together with an attachment setting out the following:

- (i) Name;
- (ii) Duties performed;
- (iii) Hours worked; and

(iv) Wages, monies or things of value paid or given for conducting bingo activities. When an employee works in more than one activity, the total hours worked and total wages shall also be reported (~~by~~);

(b) A statement describing the allocation method used in allocating common use expenses; and

(c) A detailed listing of all items included under "other."

(5) The net income.

(6) The total number of customers participating.

(7) The total number of sessions held.

(8) Net income from the operation of retail sales activities operated in conjunction with bingo games.

**AMENDATORY SECTION** (Amending Order 179, filed 6/14/88)

**WAC 230-08-130 Quarterly activity reports by operators of punchboards and pull tabs.** Each licensee for the operation of punchboards and pull tabs shall submit an activity report to the commission concerning the operation of the licensed activity and other matters set forth below during each of the following periods of the year:

January 1st through March 31st  
 April 1st through June 30th  
 July 1st through September 30th  
 October 1st through December 31st

If the licensee does not renew his license, then he shall file a report for the period between the previous report filed and the expiration date of his license.

The report form shall be furnished by the commission and the completed report shall be received in the office of the commission or postmarked no later than 30 days following the end of the period for which it is made.

The report shall be signed by the highest ranking executive officer or his designee. If the report is prepared by someone other than the licensee or his employee, then the preparer shall ~~((also sign))~~ print his/her name and phone number on the report.

The report shall be completed in accordance with the related instructions furnished with the report. The report shall include the following:

- (1) Gross sales, other than licensed gambling activities during the reporting period;
- (2) That portion of the gross sales that relates solely to the sale of food and drink for consumption on the premises;
- (3) The gross gambling receipts from punchboards and the gross receipts from pull tabs;
- (4) The total amount of cash prizes paid out and the cost to the licensee of all merchandise prizes paid out, for punchboards and for pull tabs;
- (5) Full details of all expenses related to the purchase and operation of punchboards and pull tabs; and
- (6) Total net gambling income.
- (7) For the calendar quarter ending December 31, 1988, the number of punchboards and the number of pull tab series that were either in play and in inventory awaiting play as of the end of business on September 30, 1988;
- (8) For all calendar quarters ending after September 30, 1988, the number of punchboards and the number of pull tab series removed from play during the period; and
- (9) For all calendar quarters ending after September 30, 1988, the number of punchboards and the number of pull tab series purchased during the period, less all un-played devices returned for credit during the period.

AMENDATORY SECTION (Amending WSR 94-01-033, filed 12/6/93, effective 1/6/94)

**WAC 230-08-150 Quarterly activity reports by manufacturers.** Each licensed manufacturer shall submit an activity report to the commission concerning all sales and services relating to gambling activities each quarter by completing a report form furnished by the commission. The following requirements shall be followed for completion and filing of activity reports:

- (1) Quarterly reporting periods are defined as:
  - (a) January 1st through March 31st;
  - (b) April 1st through June 30th;
  - (c) July 1st through September 30th; and
  - (d) October 1st through December 31st.
- (2) The completed report shall be received in the office of the commission or postmarked no later than thirty days following the end of the period for which it is made;

(3) The report shall be signed by the highest ranking executive officer or their designee. If the report is prepared by someone other than the licensee or their employee, then the preparer shall ~~((also sign))~~ print his/her name and phone number on the report;

(4) The report shall include, among other items, the following:

(a) The gross sales of gambling related supplies or equipment, or merchandise of any kind which could be used to operate, or in connection with, punchboards, pull tabs, pull tab dispensing devices, bingo, or amusement games, when such sales are made in the state of Washington or for distribution or use within the state of Washington;

(b) The quantity of each specific type of such device, equipment, or merchandise sold within the state or for distribution or use within the state of Washington by the licensee;

(c) A listing of the name and address of each person who was a manufacturer's representative for the licensee or who solicited sales of such devices or equipment for or on behalf of the licensee within the state of Washington or for use or distribution within the state; and

(d) The number of employees in the state of Washington other than those listed in (c) of this subsection.

(5) Each manufacturer with an active license must submit a report regardless of the level of activity. If no activity was conducted during the period, a report stating "no activity" shall be submitted;

(6) If a licensee does not renew their license, then they shall file a report for the period between the previous report filed and the expiration date of the license.

AMENDATORY SECTION (Amending Order 161, filed 9/15/86, effective 1/1/87)

**WAC 230-08-160 Quarterly activity reports by operators of social and public card rooms.** Each licensee for the operation of social or public card rooms shall submit an activity report to the commission concerning the operation of the licensed activity and other matters set forth below during each of the following periods of the year:

January 1st through March 31st  
 April 1st through June 30th  
 July 1st through September 30th  
 October 1st through December 31st.

If the licensee does not renew his license, then he shall file a report for the period between the previous report filed and the expiration date of his license.

The report form shall be furnished by the commission and the completed report shall be received in the office of the commission or postmarked no later than 30 days following the end of the period for which it is made.

The report shall be signed by the highest ranking executive officer or his designee. If the report is prepared by someone other than the licensee or his employee, then the preparer shall ~~((also sign))~~ print his/her name and phone number on the report.

The report shall be completed in accordance with the related instructions furnished with the report. The report shall include the following:

(1) Gross sales, other than licensed gambling activities during the report period;

(2) That portion of the gross sales that relates solely to the sale of food and drink for consumption on the premises;

(3) Gross gambling receipts from the collection of fees charged for allowing persons to play;

(4) Full details of all compensation paid by the licensee to each person for any work connected with the management, promotion, conduct or operation of the card room, including:

(a) A description of the work performed by that person, including identifying each "Pan" dealer;

(b) The hourly wage, including benefits; and

(c) The total hours worked during the period.

(5) Full details of all other expenses related to the operation of the card room;

(6) The net gambling income or loss from the operation of the card room for the reporting period;

(7) The normal days and times of operation of the card room;

(8) The total hours the card room was open during the period;

(9) The total hours "Pan" was played and a paid dealer was provided during the period; and

(10) Full details of any meals furnished employees included in (1) or (2) above as sales:

*Provided*, That persons licensed under Class D - general, no fee charged, are exempt from all portions of this rule.

**AMENDATORY SECTION** (Amending WSR 90-13-022, filed 6/11/90, effective 7/31/90)

**WAC 230-08-260 Fund raising events—Activity report required.** Each licensee for the operation of fund raising events shall submit an activity report to the commission concerning the operation of the licensed activities and other matters set forth below for the period of each event.

The report form shall be furnished by the commission and the completed report shall be received in the office of the commission no later than 30 days following the authorized operating days or day.

The report shall be signed by the highest ranking executive officer or his designee. If the report is prepared by someone other than the licensee or his employee, then the preparer shall ~~(sign)~~ print his/her name and phone number on the report.

The report shall include, among other items, the following information:

(1) The gross receipts from each separate gambling activity;

(2) Total cash prizes actually paid out and the total of the cost to the licensee of all merchandise prizes actually given out for each separate gambling activity. Donated prizes will be recorded at the fair market value of the prize at the time they were received by the organization;

(3) The net receipts for each separate gambling activity;

(4) The total net receipts;

(5) Full details of all expenses directly related to each event.

**AMENDATORY SECTION** (Amending Order 140, filed 6/15/84)

**WAC 230-25-200 Bingo at fund raising event.** (1) Bingo games conducted solely at, and as a part of, a licensed fund raising event authorized under RCW 9.46.030(1) shall be treated as conducted solely pursuant to the license to conduct that fund raising event. All income, prizes awarded, and other expenses shall be accounted for, and reported to the commission, as required for fund raising events and need not be reported, or accounted for, as required for bingo games conducted under a bingo license issued by the commission, or under a different statutory authority: *Provided*, That the provisions of WAC (~~(230-20-100)~~) 230-20-101 and 230-20-102 shall apply to bingo games conducted at such fund raising events.

Income from bingo games conducted at, and as a part of, such a fund raising event shall be applied only against the maximum income permitted for fund raising events and shall not be applied against other maximum income limits imposed by chapter 9.46 RCW or the commission rules.

(2) All of the commission's rules applicable to the conduct of bingo games, whether general or specific, shall apply to the conduct of bingo games at, or as a part of, a fund raising event, except as provided in subsection (1) above and except the following rules which shall not be applicable:

(a) WAC 230-20-070;

(b) WAC 230-20-090;

(c) WAC 230-20-170;

(d) WAC 230-20-190;

(e) WAC 230-20-220;

(f) WAC 230-04-061.

**AMENDATORY SECTION** (Amending WSR 90-21-053, filed 10/15/90, effective 11/15/90)

**WAC 230-30-050 Punchboard and pull tab operation.** (1) No person under the age of eighteen years and no person visibly intoxicated or visibly under the influence of any narcotic, shall be allowed to play or sell any punchboard or pull tab device. It shall be the responsibility of the licensee and the responsibility of the person physically operating the punchboard or pull tab device to determine that no unauthorized person is allowed to play or sell.

(2) No operator shall permit the display or operation of any punchboard or pull tab which may have in any manner been marked, defaced, tampered with or otherwise placed in a condition, or operated in a manner, which may deceive the public or which affects the chances of winning or losing upon the taking of any chance thereon.

(3) All pull tabs must be dispensed from a coin-operated vending machine or a clear container which affords the player an opportunity to observe the complete series. If pull tabs are not sold out of a coin-operated vending machine, the complete series must be placed in a clear container and mixed prior to being offered for sale. Failure to mix may result in a minimum five day suspension of license for each series not mixed. Licensees may bundle pull tabs into stacks of up to \$10, provided the bundles are thoroughly mixed prior to sale to the public. ~~((This section of the rule shall be reviewed for its applicability at the commission meeting in July 1991.))~~

(4) All records, reports and receipts relating to a punchboard or pull tab series in play must be retained on the licensed premises so long as the series or punchboard is in play and be made available on demand to law enforcement officers and representatives of the commission.

(5) When operators purchase merchandise to be used as prizes on punchboards or pull tab series from other than a licensed distributor, the following information must be on the invoice provided by the seller:

- (a) The date of purchase;
- (b) The company's name and adequate business address;
- (c) A full description of each item purchased;
- (d) The quantity of items purchased;
- (e) The cost per individual items purchased; and
- (f) The sales invoice or receipt must be maintained by the operator for at least three years.

**WSR 94-07-085**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 [Filed March 16, 1994, 3:32 p.m.]

The Department of Labor and Industries is hereby withdrawing the following proposed new sections of chapter 296-62 WAC, General occupational health standards: WAC 296-62-12001 Scope and application, 296-62-12011 Evaluation and control of health systems and illnesses related to indoor air quality, 296-62-12013 Indoor air quality during remodeling of occupied offices, 296-62-12015 Effective dates, 296-62-12017 Appendix A: Carbon dioxide measurement—Nonmandatory, 296-62-12019 Appendix B: Radon—Nonmandatory, 296-62-12021 Appendix C: Information sources—Nonmandatory, and 296-62-12023 Appendix D: Smoking cessation program information—Nonmandatory.

These proposed changes were filed on November 3, 1993, with public hearings held on December 7, December 8 and December 9, 1993, WSR 93-22-108.

Mark O. Brown  
 Director

**WSR 94-07-087**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Institutions)  
 [Filed March 17, 1994, 8:47 a.m.]

Original Notice.

Title of Rule: WAC 275-156-010 Definitions, 275-156-015 Limitation of funds, 275-156-020 Maximum allowable reimbursement for civil commitment cost, 275-156-025 Billing procedure, and 275-156-030 Exceptions.

Purpose: Increases the consistency between these rules and related Washington state rules and policies addressing travel, per diem, and compensation; and clarifies the meaning of parts of the rule.

Statutory Authority for Adoption: RCW 71.09.050 and 43.20A.050.

Statute Being Implemented: RCW 71.09.050 and 43.20A.050.

Summary: Increases consistency with state travel policy and clarifies sections of the rule which proved to be confusing during its use over the past two years.

Reasons Supporting Proposal: These amendments increase the consistency between these rules and related Washington state rules and policies addressing travel, per diem, and compensation; and clarify the meaning of the rules.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sam Volo, Special Commitment Center, SCAN 291-2247.

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, 14th and Franklin, Olympia, Washington, on April 26, 1994, at 10:00 a.m.

If you need sign language assistance, please contact the Office of Vendor Services by April 12, 1994. TDD 753-4595 or SCAN 234-4595.

Submit Written Comments to: Identify WAC number, Dewey Brock, Chief, Office of Vendor Services, Mailstop 45811, Department of Social and Health Services, Olympia, 98504, TELEFAX 586-8487 or SCAN 321-8487, by April 19, 1994.

Date of Intended Adoption: April 27, 1994.

March 17, 1994  
 Dewey Brock, Chief  
 Office of Vendor Services  
 Administrative Services Division

**AMENDATORY SECTION** (Amending Order 3447, filed 8/27/92, effective 9/27/92)

**WAC 275-156-010 Definitions.** (1) "Attorney cost" means the fully documented (~~prosecutorial and defense~~) fee directly related to the violent sexual predator civil commitment process for:

- (a) A single assigned prosecuting attorney;
- (b) When the person is indigent, a single court-appointed attorney; and

(c) Additional counsel, when additional counsel is approved by the presiding judge for good cause. Said fee includes the cost of paralegal services.

(2) "Department" means the department of social and health services.

(3) "Evaluation by expert cost" means a county-incurred service fee (~~as the result of~~) directly resulting from the completion of a comprehensive examination and/or a records review, by a single examiner selected by the county, of a person:

- (a) Investigated for "sexually violent predator" probable cause;

(b) Alleged to be a "sexually violent predator" and who has had a petition filed; or

(c) Committed as a "sexually violent predator" and under review for release.

In the case where the person is indigent, "evaluation by expert cost" includes the fee for a comprehensive examination and/or records review by a single examiner selected by the person examined. When additional examiners are approved by the presiding judge for good cause, "evaluation by expert cost" includes the cost of additional examiners.

(4) ~~((Incremental))~~ Incidental cost means county-incurred efforts or costs that are not otherwise covered and are exclusively attributable to the trial of a person alleged to be a "sexually violent predator."

(5) ~~("Judicial cost" means the costs a county incurs as the result of filing a petition for the civil commitment of a person alleged to be a "sexually violent predator" under chapter 71.09 RCW. This cost is limited to fees for judges which shall include court clerk and bailiff services, court reporter services, transcript typing and preparation, expert and nonexpert witnesses, jury, and jail facilities.)~~ "Investigative cost" means a cost incurred by a policy agency or other investigative agency in the course of investigating issues specific to:

(a) Filing or responding to a petition alleging a person is a "sexually violent predator;" or

(b) Testifying at a hearing to determine if a person is a "sexually violent predator."

(6) ~~("Law enforcement cost" means a cost incurred by a police agency investigating issues specific to:~~

~~(a) Filing a petition alleging a person is a "sexually violent predator;" or~~

~~(b) A hearing to determine if a person is a "sexually violent predator."~~

(7) "Medical cost" means a county-incurred extraordinary medical expense beyond the routine services of a jail.

~~((8))~~ (7) "Secretary" means the secretary of the department of social and health services.

~~((9))~~ (8) "Transportation cost" means the cost a county incurs when transporting a person alleged to be, or having been found to be, a "sexually violent predator," to and from a sexual predator program facility.

(9) "Trial cost" means the costs a county incurs as the result of filing a petition for the civil commitment of a person alleged to be a "sexually violent predator" under chapter 71.09 RCW. This cost is limited to fees for:

(a) Judges, including court clerk and bailiff services;

(b) Court reporter services;

(c) Transcript typing and preparation;

(d) Expert and nonexpert witnesses;

(e) Jury; and

(f) Jail facilities.

AMENDATORY SECTION (Amending Order 3263, filed 10/8/91, effective 11/8/91)

**WAC 275-156-015 Limitation of funds.** The department shall:

(1) Reimburse funds to a county when funds are available;

(2) Limit a county's reimbursement to costs of civil commitment trials or hearings as described under this chapter;

(3) Restrict a county's reimbursement to documented ~~((law enforcement,))~~ investigative expert evaluation, attorney, transportation, ~~((judicial))~~ trial, incidental and medical costs;

(4) Not pay a county a cost under the rules of this section ~~((and))~~ when said cost is otherwise reimbursable under law;

(5) Pay a county's claim for a trial or hearing occurring during each biennium in the order in which the claim is received at the ~~((department's))~~ office of accounting services, special commitment center, until the department's biennial appropriation is expended.

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 3447, filed 8/27/92, effective 9/27/92)

**WAC 275-156-020 Maximum allowable reimbursement for ~~((law enforcement))~~ civil commitment cost.** The department shall reimburse a county for actual costs incurred ~~((during the period July 1, 1990, through June 30, 1992,))~~ up to the maximum allowable rate as specified:

(1) Attorney cost - Up to forty-nine dollars and forty-one cents per hour;

(2) Evaluation by expert cost - Actual costs, within reasonable limits, plus travel and per diem according to state travel policy;

(3) ~~((Judicial))~~ Trial costs:

(a) Judge - Up to forty-six dollars and five cents per hour ~~((These county costs shall include court clerk and bailiff services));~~

(b) Court reporters - Up to twenty dollars and seventy-one cents per hour;

(c) Transcript typing and preparation services - Up to four dollars and thirteen cents per page;

(d) Expert witnesses - Actual costs within reasonable limits plus travel and per diem according to state travel policy;

(e) Nonexpert witnesses - ~~((Up to thirty one dollars and thirteen cents per day))~~ Actual compensation, travel and per diem paid to witnesses, provided compensation is in accordance with chapter 2.40 RCW and state travel policy;

(f) ~~((Jury - Thirty one dollars and thirteen cents per day))~~ Jurors - Actual compensation, travel, and per diem paid to jurors provided compensation is in accordance with chapter 2.36 RCW and state travel policy;

(g) Jail facilities - Thirty dollars per day.

(4) ~~((Law enforcement cost - Up to twenty dollars and sixty six cents per hour;~~

~~((5))~~ Investigative cost - Up to twenty dollars and sixty-six cents per hour. Medical costs - Up to fifty dollars per day, not to exceed five consecutive days; and

~~((6))~~ (5) Transportation cost - ((Up to twenty six cents per mile, plus the cost of one meal for transporting staff, if transport exceeds eleven consecutive hours)) Actual compensation paid to transport staff, plus mileage and per diem at the rate specified in the state travel policy.

AMENDATORY SECTION (Amending Order 3263, filed 10/8/91, effective 11/8/91)

**WAC 275-156-025 Billing procedure.** (1) When a county requests the department reimburse a county's cost, the county shall:

- (a) Make a claim using the state of Washington invoice voucher, Form A 19 1-A; ~~((and))~~
- (b) Attach to the claim necessary documentation, support, and justification materials;
- (c) Report expenses billed by the hour in one-quarter hour increments unless smaller increments are provided to the county by the vendor; and
- (d) Include the name of the person for whom the costs were incurred and the cause number when it exists.

(2) The department may subject a county's claim documentation to periodic audit at the ~~((discretion of the department))~~ department's discretion.

(3) Only an authorized administrator, or the county administrator's designee, may submit to the department a request for a county's cost reimbursement.

(4) ~~((A county's reimbursement claim shall contain the name of the person for whom costs were incurred.~~

~~((5)))~~ (5) A county shall submit a reimbursement claim to the department within thirty days of final costs incurred to assure proper handling of the claim.

~~((6)))~~ (6) When a county submits a reimbursement claim, the county shall submit a reimbursement claim to the ~~((department of social and health services))~~ special commitment center, offices of accounting services.

~~((7)))~~ (7) If the department's reimbursement appropriation becomes exhausted before the end of a biennium, a county may continue to make a claim for reimbursement. The department may use the reimbursement claim to justify a request for adequate department funding during future biennia.

**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 3263, filed 10/8/91, effective 11/8/91)

**WAC 275-156-030 Exceptions.** (1) The secretary may grant exceptions to the rules of this chapter.

(2) A county seeking an exception shall ~~((make))~~ request the exception ~~((request using the DSHS exception request Form, DSHS 05-210(X), and file it with)),~~ in writing from the secretary or secretary's designee.

(3) The department ~~((will))~~ shall deny a claim which does not follow the rules of this chapter unless the secretary or ~~((secretary))~~ secretary's designee granted an exception before the claim was filed.

**WSR 94-07-088  
PROPOSED RULES  
PUBLIC DISCLOSURE COMMISSION**

[Filed March 17, 1994, 11:12 a.m.]

Original Notice.

Title of Rule: Amending WAC 390-05-235 Definition—Fair market value, 390-16-308 Identification of source of contribution, and 390-16-310 Limitations on contributions.

Purpose: Implement Initiative 134.

Statutory Authority for Adoption: RCW 42.17.390.

Statute Being Implemented: Chapter 42.17 RCW.

Summary: WAC 390-05-235, regarding in-kind contributions to political campaigns, specifies the conditions under which donors and buyers of donated items are making campaign contributions and the value of such contributions; WAC 390-16-308, describes the procedure for identifying the source of a contribution; and WAC 390-16-310, defines contribution limitations.

Reasons Supporting Proposal: Implement Initiative 134.

Name of Agency Personnel Responsible for Drafting: Roselyn Marcus, AG, Olympia, 586-1913; Implementation and Enforcement: Melissa Warheit, Public Disclosure Commission, Olympia, 753-1111.

Name of Proponent: Public Disclosure Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 390-05-235, clarifies application of legal requirement to value and report in-kind contributions designed to reduce confusion and simplify campaign disclosure reporting; WAC 390-16-308, describes the procedure for identifying the source of a contribution; and WAC 390-16-310, defines contribution limitations.

Proposal does not change existing rules.

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

Hearing Location: Second Floor Conference Room, Evergreen Plaza Building, 711 Capitol Way, Olympia, WA, on April 26, 1994, at 9 a.m.

Submit Written Comments to: Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, by April 11, 1994.

Date of Intended Adoption: April 26, 1994.

March 15, 1994

Melissa Warheit

Executive Director

AMENDATORY SECTION (Amending WSR 93-22-002, filed 10/20/93)

**WAC 390-05-235 Definition—Fair market value.**

(1)(a) "Fair market value" or "value" when used in the act or rules is the amount in cash which a well-informed buyer or lessee, willing but not obligated to buy or lease that property, would pay, and which a well-informed seller, or lessor, willing but not obligated to sell or lease it, would accept, taking into consideration all uses to which the property is adapted and might in reason be applied.

(b) If, in determining "fair market value" or "value," the amount a buyer would pay and the amount a seller would accept would be based on varying standards, then the fair market value of the contribution shall be based on the amount the contributor would ordinarily accept for selling the property, rather than the amount the candidate or political committee would ordinarily pay. For example, if a contributor who sells property in the ordinary course of his or her

business at a wholesale price donates such property to a candidate or political committee who would ordinarily pay the retail price as a consumer, then the fair market value of the contribution shall be the wholesale price.

(2)(a) Any person who donates an item for sale, raffle, auction or awarding at a fund raising event is making a contribution to the recipient candidate or political committee in an amount equal to the fair market value of the item donated.

(b) Any person who buys a donated item makes a contribution equal in value to the difference between the purchase or auction price and the fair market value of the donated item.

(c) If the purchase or auction price is the same as the fair market value, the buyer's contribution is zero. If the purchase or auction price is less than the fair market value, the buyer's contribution is zero and the donor's contribution is reduced to the amount of the sale or auction price.

(3) The value of any in-kind contribution donated to any candidate or political committee subject to contribution limits pursuant to RCW 42.17.640 shall not, when combined with other contributions to that candidate or political committee, exceed the donor's applicable contribution limit as set forth in RCW 42.17.640. The value of an in-kind contribution donated as an exempt contribution to a bona fide political party committee or other political committee eligible to receive exempt funds is only subject to the limit imposed by RCW 42.17.105(8).

(4)(a) Except as provided in WAC 390-16-207, if a person permits a candidate, a candidate's authorized committee or a political committee to use the telephones of a business, union, organization or other entity without charge for the purpose of making local campaign-related calls, the telephone usage is an in-kind contribution and shall be valued at its fair market value or, if no fair market value is ascertainable, \$1 per telephone per calendar day or part thereof.

(b) If toll calls are permitted, the toll charges are also an in-kind contribution unless the candidate, the candidate's authorized committee or the political committee reimburses the person in full within 30 days of making the toll calls.

**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 WSR 93-04-072, filed 1/29/93)

**WAC 390-16-308 Identification of source of contribution.** Any person who makes a contribution shall inform the candidate or treasurer, at the time the contribution is made, of the true and actual source of funds from which the contribution is made. To identify the source of a contribution received by check or other written instrument in the absence of other information, a candidate or treasurer shall apply the following:

Provided, that in cases where the source of the contribution is known and differs from the guidelines set forth below, the known source of the contribution shall be reported;

Provided further, that contributions made ~~((by or))~~ through an intermediary or conduit or transmitted by an intermediary ~~((lobbyist))~~ shall identify the true and actual source of the funds ~~((for whom the contribution was made))~~.

(1) A contribution drawn upon a single account shall be attributed to the account holder as identified by the name printed on the face of the check or negotiable instrument.

(2) A contribution drawn upon a joint account shall be attributed in equal proportion to each of the account holders as identified by the names printed on the face of the check or negotiable instrument unless the candidate or treasurer is notified in writing that the contribution should be allocated in different proportions.

(3) A contribution made by a sole proprietor or drawn upon the account of a business which is a sole proprietorship shall be attributed to the owner of the business entity.

(4) A contribution drawn upon the account of a partnership shall be attributed to the partnership as a separate entity except that;

Any check drawn upon the partnership account but which is to be paid from the capital account of one or more individual partners shall identify at the time of transmittal to the candidate or treasurer the name(s) of the contributing partner(s) and shall be attributed to the contributing partner(s).

(5) A contribution drawn upon the account of a corporation, union, association or other organization, shall be attributed to the corporation, union, association or other ~~((similar))~~ organization as a separate entity unless that entity is affiliated with another entity pursuant to WAC 390-16-309 in which case a contribution from one of those entities is attributed to both entities. ~~((except that;~~

~~(a) A contribution drawn upon the account of a wholly owned or controlled subsidiary shall identify the name of the parent or controlling corporation and the contribution shall be attributed to the parent or controlling corporation;~~

~~(b) A Contribution drawn upon the account of a controlled union subdivision shall identify the name of the controlling union and the contribution shall be attributed to the controlling union;~~

~~(c) A contribution drawn upon the account of a controlled subdivision of an association or other similar organization shall name the controlling association or other similar organization and the contribution shall be attributed to the controlling association.~~

~~(d) A subsidiary, union subdivision or subdivision of an association or other similar organization is "controlled" by another entity if it does not maintain executive and fiscal independence over its operations and functions as demonstrated by:~~

~~(i) Whether the corporation or organization owns a controlling interest in the voting stock or securities of the subsidiary or subdivision;~~

~~(ii) Whether the corporation or organization has the authority or ability to direct or participate in the governance of the subsidiary or subdivision through provisions of constitutions, bylaws, contracts or other rules, or through formal or informal practices or procedures;~~

~~(iii) Whether the corporation or organization has the authority or ability to hire, appoint, demote or otherwise control the officers or other decision-making employees or members of the subsidiary or subdivision;~~

~~(iv) Whether the corporation or organization has common or overlapping membership with the subsidiary or subdivision which indicates a formal or ongoing relationship between the two entities.~~

~~(v) Whether a corporation, organization or entity has common or overlapping members, officers or employees with the subsidiary or subdivision which indicates a formal or ongoing relationship between the two entities or which indicates the creation of a successor entity;~~

~~(vi) Whether the corporation, organization or entity has common or overlapping officers or employees with the subsidiary or subdivision which indicates a formal or ongoing relationship between the two entities;~~

~~(vii) Whether the corporation, organization or entity provides funds or goods in a significant amount or on an ongoing basis through direct or indirect payments to the subsidiary or subdivision;~~

~~(viii) Whether the corporation, organization or entity causes or arranges for funds in a significant amount or on an ongoing basis to be provided to a subsidiary, subdivision or another entity, but not including the transfer to an organization of its allocated share of proceeds jointly raised;~~

~~(ix) Whether the corporation, organization or entity or its agent had an active or significant role in the formation of another corporation, organization or entity;~~

~~(x) Whether the corporation, organization or entity has similar patterns of contributions or contributors which indicates a formal or ongoing relationship with the subdivision or subsidiary.~~

~~(6) Contributions made by political committees established, financed, maintained, or controlled by any corporation, organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such person, shall be considered to have been made by a single political committee.))~~

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 WSR 93-16-064, filed 7/30/93)

**WAC 390-16-310 Limitations on contributions.** The limitations on contributions as provided in RCW 42.17.105(8) and RCW 42.17.640 shall be as follows:

(1)(a) The limitation on contributions in RCW 42.17.640 shall not apply to a "candidate" as that term is defined in RCW 42.17.020(5) and 42.17.630(3) when the candidate is contributing to his or her own campaign using his or her own personal funds as defined in WAC 390-17-305.

(b) The limitation on contributions in RCW 42.17.640 shall apply to contributions to the candidate from the candidate's spouse or other immediate family members.

(2) The limitations on contributions shall apply separately to the contributions made by each spouse.

(3) Emancipated minor children (children under 18 years of age) may make contributions which do not exceed the limitations on contributions ~~((+f))~~ and the contribution is properly attributed to the emancipated minor child ~~((and))~~ if:

(a) The decision to contribute is made knowingly and voluntarily by the emancipated minor child;

(b) The funds, goods, or services contributed are owned or controlled exclusively by the emancipated minor child, such as income earned by the child, the proceeds of a trust for which the child is the beneficiary, or a savings account opened and maintained exclusively in the child's name; and

(c) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another ~~((individual))~~ person.

Contributions by emancipated minor children which do not meet these requirements and contributions by unemancipated minor children shall be considered contributions by the child's parents. Fifty percent of the contributions will be attributed to each parent, or in the case of a single custodial parent, the total amount is attributed to the parent.

(4) Contributions from a business organized as a sole proprietorship and contributions from the owner of the sole proprietorship shall be aggregated for purposes of determining the limitations of contributions under to RCW 42.17.105(8) and 42.17.640.

(5) The limitations on contributions shall apply separately to the contributions made by a partnership from the contributions made by an individual partner except that;

Contributions made from or charged against the capital account of an individual partner shall be aggregated with the partner's individual contributions for purposes of determining the limitations on contributions under RCW 42.17.105(8) and 42.17.640.

(6) The limitations on contributions shall apply separately to the contributions made by an entity (corporation, ~~((union, association or))~~ subsidiary ~~((corporation, or subdivision of the union, association or other similar organization except that;~~

~~(a) A contribution from a wholly owned or controlled subsidiary corporation or subdivision of a union, association or other similar organization shall be aggregated with the contributions of the parent or controlling corporation or organization for purposes of determining the limitations on contributions under RCW 42.17.105(8) and 42.17.640.~~

~~(b) A subsidiary, union subdivision or subdivision of an association or other similar organization is "controlled" by another entity, if it does not maintain executive and fiscal independence over its operations and functions as demonstrated by the factors set forth in WAC 390-16-308 (5)(d)(i) through (x).~~

(7) The limitations on contributions shall apply separately to political committees except that; Political committees which are established, financed, maintained or controlled by any corporation, organization or any other person, including any parent, subsidiary, branch, division, department, or local unit of such persons shall be aggregated and considered as having been made by a single political committee for purposes of determining the limitations on contributions under RCW 42.17.105(8) and 42.17.640.)) or branch, national union and local unions, collective bargaining organizations and local units, membership organizations and local units and other organizations and their local units) pursuant to the standards set forth in WAC 390-16-309.

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 94-07-089**

**WITHDRAWAL OF PROPOSED RULES  
PUBLIC DISCLOSURE COMMISSION**

[Filed March 17, 1994, 11:15 a.m.]

The Public Disclosure Commission hereby withdraws WAC 390-16-308 and 390-16-310 from WSR 94-07-035 filed March 9, 1994.

Karen M. Copeland  
Administrative Officer

**WSR 94-07-090**

**PROPOSED RULES  
CENTRAL WASHINGTON UNIVERSITY**

[Filed March 17, 1994, 2:31 p.m.]

**Original Notice.**

Title of Rule: WAC 106-116-011 Preamble, 106-116-040 Authority of campus police officers, 106-116-042 Infractions, 106-116-103 Additional or replacement vehicles, 106-116-10401 Animal traffic, 106-116-201 Permitted parking areas, 106-116-202 No parking areas, 106-116-203 Specific parking prohibitions, 106-116-204 Commuter students, 106-116-205 Apartment residents, 106-116-207 Faculty-staff parking, 106-116-208 Fire lanes and service drives, 106-116-212 Liability, 106-116-213 Parking of trailers, campers, and similar purpose vehicles on campus, 106-116-301 Purchasing parking permits, 106-116-303 Display of permits, 106-116-304 Disability parking permit, 106-116-305 Daily parking permits, 106-116-306 Temporary parking permits, 106-116-307 Parking fees, 106-116-308 Replacement of parking permit, 106-116-310 Contractor parking permits, 106-116-311 Parking fee refunds, 106-116-403 Visitor parking permits, 106-116-410 Continuous parking, 106-116-501 Basic speed limit, 106-116-513 Procedure—Infractions and service thereof, 106-116-514 Election to forfeit or contest, 106-116-515 Procedure—Complaint and information, 106-116-521 Monetary penalties, 106-116-601 Traffic regulation signs, markings, barricades, etc., 106-116-603 Monetary penalty schedule, 106-116-701 Impounding procedures, 106-116-702 Inoperative vehicles, 106-116-853 Definitions, and 106-116-901 Bicycle parking and traffic regulations.

Purpose: WAC 106-116-011, to make editorial changes and specify that parking permits are required in designated parking lots; WAC 106-116-040, to change campus safety to campus police; WAC 106-116-042, to make editorial changes including changing campus safety to campus police; WAC 106-116-103, to change procedure for registration of additional or replacement vehicles; WAC 106-116-10401, to make editorial changes; WAC 106-116-201, to make editorial changes and redefine parking areas; WAC 106-116-202, to make editorial changes; WAC 106-116-203, to make editorial changes regarding parking prohibitions; WAC 106-116-204, to make editorial changes; WAC 106-116-205, to make editorial changes; WAC 106-116-207, to make editorial changes; WAC 106-116-208, to make editorial

changes and clarification of service drive use; WAC 106-116-212, to make editorial change; WAC 106-116-213, to make editorial changes; WAC 106-116-301, to make editorial change; WAC 106-116-303, to make editorial changes; WAC 106-116-304, to make editorial changes and to change name of handicapped student services office to ADA affairs and student assistance; WAC 106-116-305, to make editorial changes, specify requirements for load/unload permits, and remove special permit availability; WAC 106-116-306, to make editorial changes and clearly define how and where per-day permit may be purchased; WAC 106-116-307, to make editorial changes; WAC 106-116-308, to make editorial changes; 106-116-310 to make editorial changes; WAC 106-116-311, to make editorial changes; WAC 106-116-403, to delete no-cost visitor permit availability; WAC 106-116-410, to make editorial changes; WAC 106-116-501, to make editorial change; WAC 106-116-513, to make editorial change; WAC 106-116-514, to make editorial changes; WAC 106-116-515, to make editorial changes including adjustment of sexist language; WAC 106-116-521, to make editorial changes; WAC 106-116-601, to make editorial changes; WAC 106-116-603, to make editorial changes; WAC 106-116-702, to make editorial changes; WAC 106-116-853, to make editorial changes; and WAC 106-116-901, to make editorial changes.

Statutory Authority for Adoption: RCW 28B.10.528, 28B.10.560, 28B.35.120.

Summary: WAC 106-116-011, parking permit required in designated parking areas, as well as editorial changes, inclusion of permit requirement in designated areas and editorial consistency; WAC 106-116-040, change of name from campus safety to campus policy officers, title change consistent with RCW 28B.10.555; WAC 106-116-042, change of department name and editorial changes, incorporation of departmental name change and editorial consistency; WAC 106-116-103, clarification of process to register additional or replacement vehicles with parking office, editorial consistency; WAC 106-116-10401, editorial changes and department name change, editorial consistency and incorporation of department name change; WAC 106-116-201, editorial changes, changes to no-parking and twenty-four-hour enforcement areas, and ADA language change from "handicapped" to "disabled persons," editorial consistency, no-parking enforcement clarification, and compliance with ADA language guidelines; WAC 106-116-202, department name change, incorporation of department name change; WAC 106-116-203, change of language from "handicapped" to "disability" and inclusion of additional special permit category, compliance with ADA language guidelines and inclusion of additional special permit category; WAC 106-116-204, editorial changes, editorial consistency; WAC 106-116-205, editorial changes including deletion of building no longer used for apartments and inclusion of additional student village parking area designation, editorial consistency; WAC 106-116-207, editorial changes, editorial consistency; WAC 106-116-208, editorial changes including load/unload permit regulations, editorial consistency; WAC 106-116-212, editorial changes, editorial consistency; WAC 106-116-213, editorial changes and change of departmental name, editorial consistency and incorporation of departmental name change; WAC 106-116-301, change of location for

cashier's office, incorporation of new location for cashier's office; WAC 106-116-303, editorial changes, editorial consistency; WAC 106-116-304, editorial changes including office name change consistent with ADA language and parking permit, editorial consistency and compliance with ADA language guidelines; WAC 106-116-305, editorial changes involving daily and load/unload parking permits and disabled vehicle regulations, editorial consistency and daily parking permit definition; WAC 106-116-306, editorial changes including location of cashier's office and location of auxiliary services office to obtain permits for conference program attendees, editorial consistency and office location changes; WAC 106-116-307, editorial changes including change in location of cashier's office, editorial consistency; WAC 106-116-308, editorial changes including change of department name, editorial consistency; WAC 106-116-310, editorial changes including change of department name, editorial consistency; WAC 106-116-311, editorial changes including location of auxiliary services parking office, editorial consistency; WAC 106-116-403, deletion of reference to courtesy permits which are no longer used, consistency with current policy; WAC 106-116-410, editorial changes, editorial consistency; WAC 106-116-501, editorial changes, editorial consistency; WAC 106-116-513, change of department name, implementation name change; WAC 106-116-514, notation of building location for cashier's office and departmental name changes, inclusion of building location and departmental name changes; WAC 106-116-515, editorial changes including removal of sexist language, editorial consistency; WAC 106-116-521, editorial changes including change of departmental name, editorial consistency; WAC 106-116-601, change of departmental name, inclusion of departmental name change; WAC 106-116-603, editorial changes, fee increase for illegal use of parking permit, and language change from "handicapped" to "disabled person" permit, editorial consistency and compliance with ADA language guidelines; WAC 106-116-701, change of departmental name, inclusion of departmental name change; WAC 106-116-702, editorial changes, editorial consistency; WAC 106-116-853, editorial changes, editorial consistency; and WAC 106-116-901, change of departmental name, inclusion of departmental name change.

Reasons Supporting Proposal: See Summary above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Chief Steve Rittreiser, Public Safety and Police Services, SCAN 453-2958, Central Washington University, 400 East 8th Avenue, Ellensburg, WA 98926-7527.

Name of Proponent: Chief Steve Rittreiser, public.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Rules and their purposes were explained in Purpose and Summary above. These changes are basically editorial in nature designed to improve readability, implement departmental name changes, clarify procedures, and eliminate sexist language.

Proposal Changes the Following Existing Rules: WAC 106-116-011, procedure adjustment and editorial changes; WAC 106-116-040, department name change; WAC 106-116-042, department name and editorial changes; WAC 106-116-103, procedure and editorial changes; WAC 106-116-

10401, editorial changes and department name change; WAC 106-116-201, editorial changes, changes in parking area designations, and ADA language compliance; WAC 106-116-202, department name change; WAC 106-116-203, ADA language compliance and addition of special permit; WAC 106-116-204, editorial changes; WAC 106-116-205, editorial changes; WAC 106-116-207, editorial changes; WAC 106-116-208, editorial changes; WAC 106-116-212, editorial changes; WAC 106-116-213, editorial changes and change of departmental name; WAC 106-116-301, change of location for cashier's office; WAC 106-116-303, editorial changes; WAC 106-116-304, editorial changes and ADA language compliance; WAC 106-116-305, editorial and procedural changes; WAC 106-116-306, editorial and department location changes; WAC 106-116-307, editorial and department location changes; WAC 106-116-308, editorial changes and change of department name; WAC 106-116-310, editorial changes and change of department name; WAC 106-116-311, editorial changes and change of department location; WAC 106-116-403, procedural change; WAC 106-116-410, editorial changes; WAC 106-116-501, editorial changes; WAC 106-116-513, department name change; WAC 106-116-514, department location and name changes; WAC 106-116-515, editorial changes to remove sexist language; WAC 106-116-521, department name change; WAC 106-116-601, department name change; WAC 106-116-603, editorial changes, fee increase for illegal use of parking permit, and ADA language compliance; WAC 106-116-701, department name change; WAC 106-116-702, editorial changes; WAC 106-116-853, editorial changes; and WAC 106-116-901, department name change.

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

Hearing Location: Student Union Building (SUB) 103, on April 26, 1994, at 10 a.m.

Submit Written Comments to: Judy Miller, President's Office, Central Washington University, by April 22, 1994.

Date of Intended Adoption: April 26, 1994.

March 14, 1994

Ivory V. Nelson

President

AMENDATORY SECTION (Amending Order 37, filed 1/13/78)

**WAC 106-116-011 Preamble.** Drivers (~~(of vehicles)~~) on the property of Central Washington University are responsible for their vehicle's safe and lawful operation. A CWU parking permit or daily permit is required in designated parking lots. Individuals operating or parking vehicles on university-owned property must do so in compliance with these regulations, and ordinances and laws of the city of Ellensburg, county of Kittitas, and state of Washington.

AMENDATORY SECTION (Amending Order 47, filed 11/3/81)

**WAC 106-116-040 Authority of campus ((~~safety~~))** police officers. Campus (~~(safety)~~) police officers, duly appointed and sworn pursuant to RCW 28B.10.555 are peace officers of the state and have police powers as are vested in sheriffs and peace officers generally under the laws of Washington state.

AMENDATORY SECTION (Amending Order 53, filed 6/9/83, effective 7/24/83)

**WAC 106-116-042 Infractions.** (1) The entire campus, including parking and traffic areas, is patrolled by the ~~((campus))~~ public safety and police services department with authority to issue infractions for on-campus violations. This authority is further shown in WAC 106-116-040 of this policy.

(2) The ~~((campus))~~ public safety and police services department and its duly sworn officers have authority to issue infractions for violations of Washington Administrative Codes and ordinances and laws of the city of Ellensburg, county of Kittitas, and state of Washington, ~~((which))~~ when violations occur on university-owned property.

AMENDATORY SECTION (Amending Order 53, filed 6/9/83, effective 7/24/83)

**WAC 106-116-103 Additional or replacement vehicles.** ~~((When a new or different motor vehicle is acquired, it shall be necessary to obtain a new permit for that vehicle. When such a change of vehicles has been accomplished, the old permit will be surrendered to the campus safety department and a new permit with the same expiration date assigned will be issued at no charge by the cashier's office.))~~ If you have a current CWU parking permit and obtain an additional or different motor vehicle, you must register that vehicle with the auxiliary services parking office, Barge Hall.

AMENDATORY SECTION (Amending Order 45, filed 8/14/80)

**WAC 106-116-10401 Animal traffic.** It shall be unlawful for any person to drive, lead, walk, or ride any cattle, horse, or beast of burden upon any of the lawns, beds, sidewalks, malls, service drives, or parking lots of Central Washington University except as authorized by permit by the chief of ~~((campus))~~ public safety and police services for parades and university-sponsored activities.

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-201 Permitted parking areas.** ~~((+))~~ University-owned parking areas are marked with signs reading, "Parking by university permit only." Vehicles parked without valid parking permits will be ticketed from 7:30 a.m. to 4:30 p.m. Monday through Friday, except:

~~((2))~~ (1) No parking permitted daily in J-8, Q-14, ~~((and))~~ S-10 and O-5 lots from 4:00 a.m. to 6:00 a.m. except as posted in designated areas of those lots ~~((as posted))~~.

~~((3))~~ (2) Enforcement shall be in effect twenty-four hours a day in ~~((the following parking areas:~~

~~(a) Buttons Apartments;~~

~~(b) Limited time zones;~~

~~(c) I-15 and N-19 lot;~~

~~(d) Handicapped))~~ "limited time zones" and "disabled persons areas."

AMENDATORY SECTION (Amending Order 47, filed 11/3/81)

**WAC 106-116-202 No parking areas.** Parking is permitted only in areas designated and marked for parking in accordance with all signs posted in the designated parking area.

For example, prohibited areas include fire hydrants, fire lanes, yellow curb zones, crosswalks, driveways, service drives, or any area not expressly permitted by sign or these regulations. Vehicles are not permitted to be parked on any undeveloped university property without the approval of the chief of the ~~((campus))~~ public safety ~~((department))~~ and police services. This section will be enforced twenty-four hours a day.

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-203 Specific parking prohibitions.** (1) Parking in areas and places normally used for moving traffic is a specific violation of these regulations.

(2) Parking in such a position with relation to other parked cars or marked parking spaces as to impede, restrict, or prevent free ingress or egress by other automobiles violates these regulations.

(3) Parking in areas marked for a special permit or clearly designated by signing for special use not available to the general public or regular permit holders is prohibited. Examples: Parking in a space marked "~~((handicapped))~~ disability permit(s) only," or "health center permit only," or "psychology permit only."

(4) Parking and/or driving on sidewalks is prohibited.

(5) Parking or driving on lawns or flower beds is prohibited.

AMENDATORY SECTION (Amending Order 46, filed 3/23/81)

**WAC 106-116-204 Commuter students.** Students who commute and park in university-owned parking areas must purchase and display a valid parking permit. They may not park in staff and faculty parking zones ~~((or areas, nor in student reserved lots or zones))~~.

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-205 Apartment residents.** (1) Residents of Brooklane Village, Roy P. Wahle ~~((University))~~ Complex, Student Village Apartments, and Getz Short Apartments ~~((and Buttons Apartments))~~ do not need parking permits to park in the parking area adjacent to their respective apartments but must register their vehicles with the housing office.

(2) Apartment residents may purchase a commuter parking permit.

(3) Residents of Student Village may park in lots T-22, U-22, V-22, and X-22 without a permit.

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-207 Faculty-staff parking.** Faculty and staff parking (~~((areas))~~) zones are posted with signs reading, "faculty and staff parking only." Student parking is not permitted in any designated faculty and staff parking (~~((area))~~) zone Monday through Friday from 7:30 a.m. to 4:30 p.m.

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-208 Fire lanes and service drives.** Parking is not allowed at any time in the service drives or fire lanes of (~~((all))~~) any campus building((s)). Fire lanes and service drives may be used by service and emergency vehicles(~~(- Load/unload permits are required for unloading personal items))~~. After the required load/unload permit has been obtained, vendor and student-owned vehicles may use the service drives to load or unload items. These permits are available at the public safety and police services department.

AMENDATORY SECTION (Amending Order 59, filed 11/7/86)

**WAC 106-116-212 Liability.** Neither the university nor its employees shall be liable for damages to or theft from a vehicle while parked in university-owned parking lots.

AMENDATORY SECTION (Amending Order 53, filed 6/9/83, effective 7/24/83)

**WAC 106-116-213 Parking of trailers, campers, and similar purpose vehicles on campus.** It shall be unlawful for any individual, firm, or corporation to park any type of vehicle on the grounds of Central Washington University for the purpose of using such vehicle as a living unit.

Any exception must be approved, in writing; by the chief of (~~((campus))~~) public safety(~~(- in writing))~~) and police services.

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-301 Purchasing parking permits.** Parking permits may be purchased from the cashier's office, (~~((Mitchell))~~) Barge Hall.

AMENDATORY SECTION (Amending Order 59, filed 11/7/86)

**WAC 106-116-303 Display of permits.** (1) Parking permits shall be (~~((displayed))~~) conspicuously (~~((by hanging over))~~) hung from the inside (~~((rear-view))~~) rearview mirror.

(2) Special permits must be displayed in the manner described at time of issuance.

(3) Motorcycle parking permits are to be placed in a conspicuous location on the front fork, handlebar, or fender of the motorcycle.

AMENDATORY SECTION (Amending Order 47, filed 11/3/81)

**WAC 106-116-304 Disability parking permit.** Any university employee, student, or visitor who can show physical disability may apply to the (~~((handicapped student services))~~) ADA affairs and student assistance office for a (~~((handicapped))~~) disability parking permit. Certification by a physician may be required. Disability permits issued by the state of Washington in all forms and disability permits issued by other state agencies or institutions shall be honored. Additionally, a CWU parking permit or daily permit is necessary in parking lots normally requiring permits.

AMENDATORY SECTION (Amending Order 59, filed 11/7/86)

**WAC 106-116-305 ((Special)) Daily parking permits.** (~~((Special))~~) (1) Daily parking permits are available from the ((campus safety department or)) automatic ticket dispensers. These permits must be displayed in clear view on the dash of the vehicle, ((numbered side up)) as instructed on the permit, readable from outside the vehicle.

~~((1) A special permit is available when permitted vehicle is inoperative and replacement vehicle is being used.~~

~~((2) Permits are available for loading or unloading. The time limit is thirty minutes.~~

~~((3) Vendor permits are available for vendors conducting business on campus.)~~ (2) Thirty-minute "load/unload permits" are available for loading and unloading. Load/unload permits are available to vendors conducting business on campus, service vehicles, and student vehicles. Load/unload permits are available at the public safety and police services department.

(3) No permits are available for inoperative or disabled vehicles. Public safety and police services should be contacted if your vehicle becomes disabled in a university-owned parking lot.

AMENDATORY SECTION (Amending Order 47, filed 11/3/81)

**WAC 106-116-306 Temporary parking permits.** Temporary parking permits are valid only in areas not falling within prohibitions of WAC 106-116-202 and 106-116-203 and may be:

(1) Purchased on a (~~((daily))~~) per-day basis from coin-operated dispensers in lots where available.

(2) Purchased on a per-week basis from the cashier's office in (~~((Mitchell))~~) Barge Hall(~~(- on a weekly basis))~~.

(3) Obtained (~~((through the scheduling center in the Samuelson Union Building or at the conference center, Courson Hall, for attendees of conferences, workshops, and meetings scheduled through those offices.~~

(4) Valid only in areas not falling within prohibitions of WAC 106-116-202 and 106-116-203), for attendees of conferences, workshops and meetings, at Courson Conference Center or through the auxiliary services parking office, Barge Hall.

AMENDATORY SECTION (Amending Order 37, filed 1/13/78)

**WAC 106-116-307 Parking fees.** Parking fees for university-owned parking lots will be charged through the sale of permits according to a schedule of charges maintained in the cashier's office (~~(in Mitchell)~~), Barge Hall. Governmental vehicles are fee exempt.

AMENDATORY SECTION (Amending Order 45, filed 8/14/80)

**WAC 106-116-308 Replacement of parking permit.** ~~((1) Parking permits will be issued at no cost for a newly acquired vehicle if that vehicle replaces one which had a permit.~~

~~(2) Remains of the original parking permit must be presented to the campus safety department.~~

~~(3) Lost or stolen parking permits will be replaced without cost upon presentation of satisfactory proof of loss.)~~ Lost or stolen parking permits must be reported to the public safety and police services department. Upon verification, the permit will be replaced at no cost.

AMENDATORY SECTION (Amending Order 53, filed 6/9/83, effective 7/24/83)

**WAC 106-116-310 Contractor parking permits.** All contractors responsible for construction projects on the campus or for repair and maintenance contracts and those who make continuous deliveries of supplies must contact the ~~(campus)~~ public safety and police services department, prior to starting work, to obtain permits for the parking of those vehicles necessary to carry on the work.

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-311 Parking fee refunds.** (1) Application for parking permit fee refunds are to be made at the auxiliary services parking office, Barge Hall. The parking permit must be surrendered upon application for a refund.

(2) A full parking fee refund is obtainable only within the first seven calendar days of any academic quarter in which the permit is issued.

(3) Refunds are permitted only under the following conditions:

- (a) Student teaching, or other off-campus program;
- (b) Withdrawal from the university;
- (c) Termination of employment.
- (4) Refunds will not be made for daily permits.

AMENDATORY SECTION (Amending Order 53, filed 6/9/83, effective 7/24/83)

**WAC 106-116-403 Visitor parking permits.** Visitors may obtain parking permits from the automatic permit dispensers.

~~((Visitors on official business may obtain a courtesy permit from the campus safety office, located 1/2 block west of D Street on 11th Avenue.))~~

AMENDATORY SECTION (Amending Order 59, filed 11/7/86)

**WAC 106-116-410 Continuous parking.** Vehicles ~~((which have received))~~ receiving an infraction notice for violating parking and traffic regulations and which have not been moved ~~((for))~~ within twenty-four hours ~~((since))~~ following the issuance of the original infraction notice ~~((was issued))~~, shall be in violation of this section.

AMENDATORY SECTION (Amending Order CWU AO 67, filed 10/31/91, effective 12/1/91)

**WAC 106-116-501 Basic speed limit.** The speed limit on the university-owned streets shall be as posted, except:

- (1) The speed limit in the parking areas is 15 m.p.h.
- (2) No person shall operate a motor vehicle on the campus at a speed greater than is reasonable and prudent for existing conditions.
- (3) The speed limit on malls and service drives is 10 m.p.h.

AMENDATORY SECTION (Amending Order 59, filed 11/7/86)

**WAC 106-116-513 Procedure—Infractions and service thereof.** Upon probable cause to believe that a violation of these regulations has occurred, an appropriate notice of infraction may be issued setting forth the date, the approximate time, the locality, and the nature of the violation. Such notice may be served by delivering or attaching a copy thereof to the alleged violator, or by placing a copy thereof in some prominent place within or upon the vehicle. Service by mail shall be accomplished by placing a copy of the notice in the mail addressed to the alleged violator at the address shown on the records of the office of the registrar or the personnel ~~((and benefits))~~ services office for that person or any other last known address of that person.

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-514 Election to forfeit or contest.** The notice of infraction issued pursuant to WAC 106-116-513 of these regulations shall inform the alleged violator that he/she may elect either to forfeit the monetary penalty to the infraction(s) charged or to contest the matter(s).

(1) If the alleged violator chooses to forfeit the penalty, he/she may do so by paying the appropriate amount to the cashier's office, Barge Hall. Payment will be in cash, check, certified check, or by money order. Such payment may also be made by mail. Such forfeiture shall constitute a waiver of a right to a hearing.

(2) If the alleged violator chooses to contest, he/she may do so by contacting the auxiliary services parking office, Barge Hall, ~~((CWU))~~ where parking infraction appeal forms are available upon request. The completed form stating the reasons for challenging the validity of the assessed obligation must be filed in the auxiliary services parking office within fifteen days of the date of the infraction notice. The appeal must be reviewed by the university parking appeal board, consisting of three student members, one faculty member, one staff member, the chief of ~~((campus))~~ public safety and police services (ex officio) and the director of student

activities (ex officio). The parking appeal board will render a decision in good faith.

(3) A person charged with a parking infraction who deems himself or herself aggrieved by the final decision of the university parking appeal board may, within ten days after written notice of the final decision, appeal by filing a written notice thereof with the ((campus)) public safety ((office)) and police services department or the auxiliary services parking office. Documents relating to the appeal shall immediately be forwarded to the lower Kittitas County district court which shall have jurisdiction over such offense and such appeal shall be heard de novo.

AMENDATORY SECTION (Amending Order 47, filed 11/3/81)

**WAC 106-116-515 Procedure—Complaint and information.** (1) An infraction notice served in accordance with the provisions of WAC 106-116-513 of these regulations shall constitute the complaint or information against the person to whom delivered or mailed. The person to whom the vehicle permit was issued shall be held liable, or if no permit has been issued, the owner of the vehicle shall be held liable.

(2) The complaint or information may be amended at any time, either in writing (delivered or mailed to the alleged violator) or upon motion at trial in his or her presence, to include new charges of violations of these regulations.

AMENDATORY SECTION (Amending Order 46, filed 3/23/81)

**WAC 106-116-521 Monetary penalties.** (1) The monetary penalties to be assessed for violations of these regulations shall be those detailed in WAC 106-116-603.

(2) The chief of ((campus)) public safety and police services will cause:

(a) These regulations or a reasonable condensation thereof to be prominently displayed in the ((campus)) public safety and police services department.

(b) The amount of the monetary penalty to be written on the parking-violation notices served on alleged violators.

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-601 Traffic regulation signs, markings, barricades, etc.** (1) The ((campus)) public safety ((office)) and police services department and the auxiliary services office are authorized to erect signs, barricades, and other structures and to paint marks and other directions upon the streets and roadways for the regulation of traffic and parking upon state lands devoted mainly to the educational or research activities of Central Washington University. Such signs, barricades, structures, markings, and directions shall be so made and placed as to, in the opinion of the chief of ((campus)) public safety and police services and the director of auxiliary services, best effectuate the objectives stated in WAC 106-116-020 of these regulations.

(2) No sign, barricade, structure, marking, or direction for the purpose of regulating traffic or parking shall be moved, defaced, or in any way changed by any person

without authorization from the chief of ((campus)) public safety and police services.

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-603 Monetary penalty schedule.**

| Offense                                                                                                      | Penalty             |
|--------------------------------------------------------------------------------------------------------------|---------------------|
| (1) Improper display of permit . . . . .                                                                     | \$ 5.00             |
| (2) Parking faculty-staff area . . . . .                                                                     | 12.00               |
| (3) Parking yellow stripe or curb . . . . .                                                                  | 7.00                |
| (4) Parking outside designated parking area . . . . .                                                        | 7.00                |
| (5) Obstructing traffic . . . . .                                                                            | 25.00               |
| (6) Parking at improper angle or using more than one stall, or backing into parking stall . . . . .          | 7.00                |
| (7) Violation of the bicycle parking rules in WAC 106-116-901 . . . . .                                      | 7.00                |
| (8) Reserved parking area . . . . .                                                                          | 12.00               |
| (9) No parking area . . . . .                                                                                | 10.00               |
| (10) Overtime parking . . . . .                                                                              | 7.00                |
| (11) Using counterfeit, falsely made, or altered permit . . . . .                                            | 100.00              |
| (12) Illegal use of permit . . . . .                                                                         | ((25.00))<br>100.00 |
| (13) No current permit . . . . .                                                                             | 7.00                |
| (14) Parking service drive . . . . .                                                                         | 12.00               |
| (15) Parking/driving sidewalks, malls . . . . .                                                              | 15.00               |
| (16) Parking/driving lawns . . . . .                                                                         | 20.00               |
| (17) Parking fire lane . . . . .                                                                             | 25.00               |
| (18) Parking fire hydrant . . . . .                                                                          | 25.00               |
| (19) Driving, walking, leading, etc., certain animals on campus without permit (WAC 106-116-10401) . . . . . | 12.00               |
| (20) Other violations of the objectives of the CWU parking and traffic regulations . . . . .                 | 7.00 to 12.00       |
| (21) Parking in a space marked "((handicapped)) disabled person permit((s)) only" . . . . .                  | 30.00               |
| (22) Continuous parking . . . . .                                                                            | 20.00               |

The first \$5.00 to \$7.00 infraction notice between September 1 and August 31 each year shall be considered a written warning and no monetary penalty will be imposed if brought to the ((campus)) public safety ((police-office)) and police services department within seven calendar days from the date of the infraction. Parking-warning transactions will be ((handled)) processed by that ((office)) department between the hours of 7:00 a.m. and 4:00 p.m., Monday through Friday.

Failure to respond within fifteen days will result in the issuance of an overdue notice and an administrative charge of \$2.00 will be added. If payment has not been received within ten days after issuance of the overdue notice, the original monetary penalty will be doubled except that, in accordance with RCW 46.63.110(3), the penalty for failure to respond shall not exceed ((twenty-five dollars)) \$25.00 for any single infraction. Further failure to respond may result in one or more of the following sanctions:

- (a) Withholding of transcripts;
- (b) Deduction from payroll checks; and/or

(c) Withholding of parking permits.

**AMENDATORY SECTION** (Amending Order 45, filed 8/14/80)

**WAC 106-116-701 Impounding procedures.** (1) Any vehicle parked upon the Central Washington University campus lands in violation of these regulations, including the motor vehicle and other traffic laws of the state of Washington and the traffic code of the city of Ellensburg, may be impounded and taken to such place for storage as the chief of ~~((campus))~~ public safety and police services selects.

(2) The expense of such impounding and storage shall be charged to the owner or operator of the vehicle and paid prior to the release of the vehicle.

(3) CWU and its employees shall not be liable for loss or damage of any kind resulting from such immobilization, impounding and storage.

**AMENDATORY SECTION** (Amending Order 19, filed 8/22/74)

**WAC 106-116-702 Inoperative vehicles.** Disabled or inoperative vehicles shall be removed from the campus within ~~((72))~~ seventy-two hours ~~((3))~~ three days. Vehicles which have been parked in excess of ~~((72))~~ seventy-two hours ~~((3))~~ three days and which appear to be inoperative or unmovable may be impounded and stored at the expense of the owner and/or operator.

**AMENDATORY SECTION** (Amending Order 63, filed 5/18/88)

**WAC 106-116-853 Definitions.** As used in WAC 106-116-850 through 106-116-859 "skateboard" means a device made of wood, plastic, metal, or components thereof, with wheels, ridden, as down ~~((and))~~ an incline, usually in a standing position. It may or may not be motorized.

**AMENDATORY SECTION** (Amending Order CWU AO 67, filed 10/31/91, effective 12/1/91)

**WAC 106-116-901 Bicycle parking and traffic regulations.** (1) The primary aim of the bicycle control program is safety, and this aim will be achieved by keeping bicycles out of buildings, away from building exits, and parking them off paths and sidewalks. Bicycles must never be parked in stairwells, hallways, or any place which will be a safety hazard or hinder exit from buildings.

(2) Bicycles must be parked in racks. At times, rack space may not be available and parking near the racks is permitted provided the parked bicycles do not interfere with pedestrian traffic.

(3) The following specific regulations must be observed while operating bicycles on campus:

(a) Do not ride bicycles inside buildings at any time.

(b) Do not lean or park bicycles near or against windows.

(c) Pedestrians have the right of way on all malls and sidewalk areas of the university. At all times and places of congested pedestrian traffic, the bicycle rider must go slowly and yield to pedestrians. A violation of this provision shall constitute a moving violation and shall be referred directly

to the court of the judge of the Lower Kittitas County district court.

(d) Bicyclists must observe the 10 m.p.h. speed limits on malls and service drives.

(e) Bicyclists must ride in designated lanes where they exist.

(4) Impoundment policy:

(a) Bicycles parked on paths, sidewalks, in buildings, or near building exits may be impounded, except in areas adjacent to residence halls, or as otherwise permitted and designated by the director of housing as bike storage rooms. Bicycles left over 72 hours may be impounded.

(b) Impounded bicycles will be stored in a location determined by the chief of ~~((campus))~~ public safety and police services. Bicycles will be released at specific times and upon presentation of proof of ownership. Owners of impounded bicycles, if identifiable, will be notified immediately upon impoundment and must reclaim the bicycle within seven days.

(c) Abandoned, lost, or found bicycles that have been impounded shall be subject to sale in accordance with the laws of the state of Washington.

#### WSR 94-07-095

#### PROPOSED RULES

#### SHORELINES HEARINGS BOARD

[Filed March 17, 1994, 4:49 p.m.]

Original Notice.

Title of Rule: Amend rules of procedure.

Purpose: To provide a more expeditious disposition of appeals without sacrifice to fairness.

Statutory Authority for Adoption: RCW 90.58.175.

Statute Being Implemented: RCW 90.58.175.

Summary: Motions practice; preparation of orders by counsel; dismissal or default; regard for unrepresented parties; and calendaring for primary and secondary settings.

Reasons Supporting Proposal: These are measures of regulatory reform identified to expedite process fairly and without additional appropriation.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Judge William A. Harrison, P.O. Box 40903, Lacey, WA, (206) 459-6327.

Name of Proponent: Shorelines Hearings Board, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: To move proceedings in a more orderly way by providing that requests for an order shall be by motion, that counsel prepare orders based on rulings, that parties be dismissed for failure to appear, that unrepresented parties be protected from prejudice if found to have committed harmless error and to expedite calendaring.

Proposal Changes the Following Existing Rules: Accelerates and simplifies the attainment of stipulated continuances or resolution of contested requests for continuance. The other amendments make express what current rules would presently allow.

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

RCW 19.85.060(2). Negligible economic impact. Purpose is to arrive sooner at a final decision in each appeal.

Hearing Location: Board's Office, 4224 6th Avenue S.E., Building 2, P.O. Box 40903, Lacey, WA 98504-0903, on April 26, 1994, at 10:00 a.m.

Submit Written Comments to: Judge William A. Harrison, 4224 6th Avenue S.E., Building 2, P.O. Box 40903, Lacey, WA 98504-0903, by April 26, 1994.

Date of Intended Adoption: May 10, 1994.

March 17, 1994  
 Honorable William A. Harrison  
 Administrative Appeals Judge

NEW SECTION

**WAC 461-08-001 Board administration and address of the board.** The administrative business of the board, except rule making, is performed by the environmental hearings office. To the extent necessary for rule making, the appeals board holds regular meetings at 10:00 a.m. on the second Tuesday of each month at the address set forth below.

(2) The board is organized within the Environmental Hearings Office, 4224 - 6th Avenue SE, Building No. 2 Rowesix, Lacey, Washington. The mailing address is:

Shorelines Hearings Board  
 PO Box 40903  
 Olympia, WA 98504-0903

(3) The telephone number of the board is (206) 459-6327. The telefacsimile number is (206) 438-7699.

NEW SECTION

**WAC 461-08-047 Appearance and practice before the board—Parties not represented by legal counsel—Waiver of rules to prevent manifest injustice.** The presiding officer may waive any of these rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel where necessary to avoid manifest injustice.

NEW SECTION

**WAC 461-08-144 Procedures—Motions.** (1) An application to the board for an order shall be by motion which, unless made during a hearing, shall be in writing, state with particularity the grounds therefor and set forth the relief sought. Dispositive motions will be filed and briefed in accordance with CR 56 unless a scheduling letter or order varies that procedure. Each written motion shall have appended to it the order which the motion seeks. The moving party shall affirmatively seek the stipulation of all parties and present a stipulated order wherever possible. If the motion is contested, the moving party shall note the motion for hearing on a date deemed by the clerk to be available for that purpose. The motion, order and note for hearing shall then be filed and served. Where the clerk specifies that the hearing shall be telephonic, the moving party shall originate the telephonic hearing conference call.

(2) Unless oral argument is requested, a motion will be decided on the written record.

NEW SECTION

**WAC 461-08-156 Hearing—Primary and secondary setting.** (1) Each case shall be assigned a primary hearing date. A case has first priority for hearing on that date.

(2) Each case may be assigned a secondary hearing date. That date will precede the primary hearing date. A case has second priority for hearing on the secondary date, and will proceed to hearing only if the primary case does not proceed. The parties to a primary case shall inform the clerk of the board as soon as any settlement occurs. The parties to a secondary case may contact the clerk of the board to learn whether or not the primary case will proceed. The parties to a secondary case may also contact directly the parties to a primary case to learn whether or not the primary case will proceed.

AMENDATORY SECTION (Amending Order 82-1, Resolution No. 82-1, filed 9/9/81)

**WAC 461-08-160 Hearings—Continuances(~~, hearing postponements~~) and dismissals. (~~(1) Continuances.~~**

~~(a) Pursuant to agreements at prehearing conference. If agreement is reached at a prehearing conference, continuances shall be granted in accordance with such agreement and no written application therefor shall be required.~~

~~(b) Requests prior to hearing. If, prior to the hearing date, a party is not able to fully present evidence at the scheduled hearing, such party shall file a written request for continuance with the board setting forth the reasons therefor as soon as such reasons are known and deliver copies to all other parties.~~

~~(c) Requests at time of hearing. If reasons requiring a continuance of a hearing are not known in time to permit compliance with subsection (b) of this section, application therefor may be made orally at the hearing.~~

~~(d) When granted. Applications for a continuance made pursuant to subsections (b) or (c) above shall only be granted upon a proper showing of good cause to prevent manifest injustice. In order to show "good cause," the party applying for a continuance because of the unavailability of a witness or witnesses shall show that due diligence was exercised in attempting to obtain the presence of such witnesses at the time set for hearing and the reasons for their unavailability, and shall identify the witnesses and explain, in substance, what the testimony of such witnesses would prove. In all cases in which a request for continuance is granted, subsequent hearings shall be scheduled.~~

~~(2) Hearing postponements. A postponement of a hearing may be requested by any party after receipt of the notice of hearing. Provided, That written objections are filed within ten days of the receipt of such notice. Copies of such request shall be served on all other parties. If the request is granted, all parties shall be notified of the postponement. Requests for postponement not filed within the ten day period shall be granted only in exceptional cases to prevent manifest injustice.~~

~~In all cases where a request for postponement is granted, subsequent hearings shall be scheduled in accordance with WAC 461-08-165.~~

~~(3) Dismissal. If the appealing party fails to appear at the scheduled hearing and fails to obtain a continuance or postponement as provided in this section, the request for~~

~~review shall be dismissed except to prevent manifest injustice or unless such party can show good cause for such failure. Such showing shall be made in writing and filed with the board, and copies shall be delivered to all other parties, not later than ten days after the date of mailing of the order of dismissal.-)~~ (1) Continuance of a hearing is within the discretion of the board, whether contested or uncontested by the parties. The board may continue a hearing on its own motion.

(2) The continuance of a hearing shall be sought by written motion. Each such motion shall have appended to it the continuance order which the motion seeks. The moving party shall: Contact the clerk of the board to determine available dates; affirmatively seek the stipulation of all parties; and set forth the continued date in the order. If the continuance is contested, the moving party shall set forth in the order the continued date being requested and shall note the motion for telephonic hearing on a date deemed by the clerk to be available for that purpose. The motion, order and note for telephonic hearing shall then be filed and served. The moving party shall originate the telephonic hearing conference call.

#### NEW SECTION

**WAC 461-08-167 Dismissal or default.** (1) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties a default or other dispositive order which shall include a statement of the grounds for the order. Within seven days after service of a default or dismissal order for failure to attend or participate, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon.

(2) An appellant may request to withdraw an appeal. Requests before appellant rests are mandatory and afterwards are permissive.

#### NEW SECTION

**WAC 461-08-237 Disposition of contested cases—Preparation of findings, conclusions and orders.** Upon request of the board or presiding officer, findings, conclusions and orders shall be prepared by counsel. The same shall be based upon the oral or memorandum opinion. The board or presiding officer may adopt said findings, conclusions and orders in part or in whole or may prepare their own findings, conclusions and orders.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 461-08-165 Hearings—Conditions for setting subsequent hearings.

### WSR 94-07-096 PROPOSED RULES HYDRAULICS APPEALS BOARD

[Filed March 17, 1994, 4:50 p.m.]

Original Notice.

Title of Rule: Rules of procedure.

Purpose: To adopt rules of procedure. Former rule adopted under chapter 1-08 WAC.

Statutory Authority for Adoption: RCW 75.20.140.

Statute Being Implemented: RCW 75.20.140.

Summary: Rules of procedure in appeals from agricultural and other hydraulic permits granted or denied by Department of Fisheries and Wildlife.

Reasons Supporting Proposal: To provide written process for appeals following repeal of chapter 1-08 WAC.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Judge William A. Harrison, P.O. Box 40903, Lacey, WA, (206) 459-6327.

Name of Proponent: Hydraulics Appeals Board, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: To adopt written rules of procedure after repeal of chapter 1-08 WAC.

Proposal Changes the Following Existing Rules: Substitutes rules of the state Pollution Control Hearings Board which is organized with the Hydraulics Appeals Board within the independent Environmental Hearings Office.

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

RCW 19.85.060(2). Negligible economic impact. Purpose is to arrive sooner at a final decision in each appeal.

Hearing Location: Board's Office, 4224 6th Avenue S.E., Building 2, P.O. Box 40903, Lacey, WA 98504-0903, on April 26, 1994, at 10:00 a.m.

Submit Written Comments to: Judge William A. Harrison, 4224 6th Avenue S.E., Building 2, P.O. Box 40903, Lacey, WA 98504-0903, by April 26, 1994.

Date of Intended Adoption: May 10, 1994.

March 17, 1994

Honorable William A. Harrison  
Administrative Appeals Judge

#### AMENDATORY SECTION (Amending Order 1, filed 3/2/89)

**WAC 259-04-060 Procedures applicable.** ~~((The board and all parties shall be guided by the uniform procedural rules established in chapter 1-08 WAC which are expressly adopted in their entirety by this reference.))~~ Insofar as applicable and not in conflict with these rules, the procedural rules established in chapter 371-08 WAC shall apply.

**WSR 94-07-097**  
**PROPOSED RULES**  
**FOREST PRACTICES**  
**APPEALS BOARD**

[Filed March 17, 1994, 4:51 p.m.]

**Original Notice.**

Title of Rule: Amend rules of procedure.

Purpose: To provide a more expeditious disposition of appeals without sacrifice to fairness.

Statutory Authority for Adoption: RCW 76.09.230(5).

Statute Being Implemented: RCW 76.09.230(5).

Summary: Motions practice; preparation of orders by counsel; dismissal or default; regard for unrepresented parties; and calendaring for primary and secondary settings.

Reasons Supporting Proposal: These are measures of regulatory reform identified to expedite process fairly and without additional appropriation.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Judge William A. Harrison, P.O. Box 40903, Lacey, WA, (206) 459-6327.

Name of Proponent: Forest Practices Appeals Board, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: To move proceedings in a more orderly way by providing that requests for an order shall be by motion, that counsel prepare orders based on rulings, that parties be dismissed for failure to appear, that unrepresented parties be protected from prejudice if found to have committed harmless error and to expedite calendaring.

Proposal Changes the Following Existing Rules: Accelerates and simplifies the attainment of stipulated continuances or resolution of contested requests for continuance. The other amendments make express what current rules would presently allow.

No small business economic impact statement required by chapter 19.85 RCW.

RCW 19.85.060(2). Negligible economic impact. Purpose is to arrive sooner at a final decision in each appeal.

Hearing Location: Board's Office, 4224 6th Avenue S.E., Building 2, P.O. Box 40903, Lacey, WA 98504-0903, on April 26, 1994, at 10:00 a.m.

Submit Written Comments to: Judge William A. Harrison, 4224 6th Avenue S.E., Building 2, P.O. Box 40903, Lacey, WA 98504-0903, by April 26, 1994.

Date of Intended Adoption: May 10, 1994.

March 17, 1994

Honorable William A. Harrison  
 Administrative Appeals Judge

**AMENDATORY SECTION** (Amending WSR 90-23-093, filed 11/21/90, effective 12/22/90)

**WAC 223-08-010 Board administration and address of the board.** (1) The administrative business of the appeals board, except rule making, is performed by the environmental hearings office(~~(, which holds regular meetings on the third Tuesday of each month, pursuant to WAC 198-12-030, at the address set forth below and at such other times and places as necessary))~~ To the extent necessary for rule making, the appeals board holds regular meetings at 10:00

a.m. on the second Tuesday of each month at the address set forth below.

(2) The appeals board is organized within the Environmental Hearings Office, 4224 - 6th Avenue S.E., Building No. 2 Rowesix, Lacey, Washington. The mailing address is:

Forest Practices Appeals Board

~~((Mailstop: PY-24))~~

PO Box 40903

Olympia, Washington 98504-0903

(3) The telephone number of the board is (206) 459-6327. The telefacsimile number is (206) 438-7699.

**NEW SECTION**

**WAC 223-08-072 Appearance and practice—Parties not represented by legal counsel—Waiver of rules to prevent manifest injustice.** The presiding officer may waive any of these rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel where necessary to avoid manifest injustice.

**NEW SECTION**

**WAC 223-08-148 Procedures—Motions.** (1) An application to the board for an order shall be by motion which, unless made during a hearing, shall be in writing, state with particularity the grounds therefor and set forth the relief sought. Dispositive motions will be filed and briefed in accordance with CR 56 unless a scheduling letter or order varies that procedure. Each written motion shall have appended to it the order which the motion seeks. The moving party shall affirmatively seek the stipulation of all parties and present a stipulated order wherever possible. If the motion is contested, the moving party shall note the motion for hearing on a date deemed by the clerk to be available for that purpose. The motion, order and note for hearing shall then be filed and served. Where the clerk specifies that the hearing shall be telephonic, the moving party shall originate the telephonic hearing conference call.

(2) Unless oral argument is requested, a motion will be decided on the written record.

**NEW SECTION**

**WAC 223-08-162 Hearing—Primary and secondary setting.** (1) Each case shall be assigned a primary hearing date. A case has first priority for hearing on that date.

(2) Each case may be assigned a secondary hearing date. That date will precede the primary hearing date. A case has second priority for hearing on the secondary date, and will proceed to hearing only if the primary case does not proceed. The parties to a primary case shall inform the clerk of the board as soon as any settlement occurs. The parties to a secondary case may contact the clerk of the board to learn whether or not the primary case will proceed. The parties to a secondary case may also contact directly the parties to a primary case to learn whether or not the primary case will proceed.

AMENDATORY SECTION (Amending WSR 90-23-093, filed 11/21/90, effective 12/22/90)

**WAC 223-08-165 Hearing—Continuance**~~((**and dismissal/default**)).~~ (1) **Continuance.**

Continuance of a hearing is within the discretion of the appeals board whether contested or uncontested by the parties. The appeals board may continue a hearing upon its own motion.

(2) ~~((**Dismissal, default.**~~

~~(a) The appealing party may request to voluntarily withdraw an appeal orally at any conference or hearing and at any other time by filing a written request with the appeals board and serving a copy simultaneously upon all persons entitled to service of the notice commencing the proceeding. Requests before the appealing party rests after his opening case shall be granted. Requests after the appealing party rests after his opening case may be granted or denied at the discretion of the appeals board.~~

~~(b) Whenever an appealing party fails to appear at a scheduled hearing without voluntarily withdrawing or obtaining a continuance, the appeal shall be dismissed except to prevent manifest injustice. The appealing party may request that the appeals board vacate such order of dismissal by filing a writing under oath with the appeals board, within ten days of the date of such order, showing good cause for failure to appear. Upon a finding that good cause has been shown, the appeals board shall vacate the dismissal and set a subsequent hearing.~~

~~(c) Whenever a respondent fails to appear at a scheduled hearing without obtaining a continuance, the appeals board shall enter, upon presentation of a *prima facie* case, a default order granting the relief requested by the appealing party except where manifest injustice would result. The respondent may request that the appeals board vacate such default order by filing with the appeals board, within ten days of the date of such order, a writing under oath showing good cause for failure to appear and a meritorious position in the case. Upon a finding that good cause and a meritorious argument have been shown, the appeals board shall vacate the default order and set a subsequent hearing.)~~ The continuance of a hearing shall be sought by written motion. Each such motion shall have appended to it the continuance order which the motion seeks. The moving party shall: Contact the clerk of the board to determine available dates; affirmatively seek the stipulation of all parties; and set forth the continued date in the order. If the continuance is contested, the moving party shall set forth in the order the continued date being requested and shall note the motion for telephonic hearing on a date deemed by the clerk to be available for that purpose. The motion, order and note for telephonic hearing shall then be filed and served. The moving party shall originate the telephonic hearing conference call.

#### NEW SECTION

**WAC 223-08-171 Hearing—Dismissal or default.** (1)

If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties a default or other dispositive order which shall include a statement of the grounds for the order. Within seven days after service of a default or dismissal order for failure to attend or participate, the party

against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon.

(2) An appellant may request to withdraw an appeal. Requests before appellant rests are mandatory and afterwards are permissive.

#### NEW SECTION

**WAC 223-08-252 Decision—Preparation of findings, conclusions and orders.** Upon request of the board or presiding officer, findings, conclusions and orders shall be prepared by counsel. The same shall be based upon the oral or memorandum opinion. The board or presiding officer may adopt said findings, conclusions and orders in part or in whole or may prepare their own findings, conclusions and orders.

**WSR 94-07-098**  
**PROPOSED RULES**  
**POLLUTION CONTROL**  
**HEARINGS BOARD**  
[Filed March 17, 1994, 4:53 p.m.]

Original Notice.

Title of Rule: Amend rules of procedure.

Purpose: To provide a more expeditious disposition of appeals without sacrifice to fairness.

Statutory Authority for Adoption: RCW 43.21B.170.

Statute Being Implemented: RCW 43.21B.170.

Summary: Motions practice; preparation of orders by counsel; dismissal or default; regard for unrepresented parties; and calendaring for primary and secondary settings.

Reasons Supporting Proposal: These are measures of regulatory reform identified to expedite process fairly and without additional appropriation.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Judge William A. Harrison, P.O. Box 40903, Lacey, WA, (206) 459-6327.

Name of Proponent: Pollution Control Hearings Board, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: To move proceedings in a more orderly way by providing that requests for an order shall be by motion, that counsel prepare orders based on rulings, that parties be dismissed for failure to appear, that unrepresented parties be protected from prejudice if found to have committed harmless error and to expedite calendaring.

Proposal Changes the Following Existing Rules: The provision for dismissal for failure to appear is changed to conform to chapter 34.05 RCW, as amended. The other amendments make express what current rules would presently allow.

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

RCW 19.85.060(2). Negligible economic impact. Purpose is to arrive sooner at a final decision in each appeal.

Hearing Location: Board's Office, 4224 6th Avenue S.E., Building 2, P.O. Box 40903, Lacey, WA 98504-0903, on April 26, 1994, at 10:00 a.m.

Submit Written Comments to: Judge William A. Harrison, 4224 6th Avenue S.E., Building 2, P.O. Box 40903, Lacey, WA 98504-0903, by April 26, 1994.

Date of Intended Adoption: May 10, 1994.

March 17, 1994  
Honorable William A. Harrison  
Administrative Appeals Judge

AMENDATORY SECTION (Amending WSR 91-03-028, filed 1/8/91, effective 2/8/91)

**WAC 371-08-010 Board administration—Office and address of the board.** (1) The administrative business of the board, except rule making, is performed by the Environmental Hearings Office (~~(, which holds regular meetings at 10:00 a.m. on the second Tuesday of each month, pursuant to WAC 198-12-030, at the address set forth below and at such other times and places as the chairperson shall designate)~~) To the extent necessary for rule making, the board holds regular meetings at 10:00 a.m. on the second Tuesday of each month at the address set forth below.

(2) The board is housed at the office of the Environmental Hearings Office, 4224 6th Avenue S.E., Building 2 Rowsix, Lacey, Washington. The principal hearing room used by the board is located at the same address, although many hearings are held near the site of the dispute at issue.

(3) The mailing address of the board is:

Pollution Control Hearings Board  
(~~Mailstop: PY-21~~)  
PO Box 40903  
Olympia, WA 98504-0903

(4) The telephone number of the board is (206) 459-6327. The telefacsimile number is (206) 438-7699.

#### NEW SECTION

**WAC 371-08-061 Appearance and practice before the board—Parties not represented by legal counsel—Waiver of rules to prevent manifest injustice.** The presiding officer may waive any of these rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel where necessary to avoid manifest injustice.

AMENDATORY SECTION (Amending WSR 91-03-028, filed 1/8/91, effective 2/8/91)

**WAC 371-08-147 ((Prehearing)) Procedures—Motions.** (1) An application to the board for an order shall be by motion which, unless made during a hearing, shall be in writing, state with particularity the grounds therefor and set forth the relief sought. (~~Written motions may be included in the notice of appeal or filed and served separately.~~) Dispositive motions will be filed and briefed in accordance with CR 56 unless a scheduling letter or order varies that procedure. Each written motion shall have appended to it the order which the motion seeks. The moving party shall affirmatively seek the stipulation of all parties and present a stipulated order wherever possible. If the motion in contested, the moving party shall note the motion for hearing on a

date deemed by the clerk to be available for that purpose. The motion, order and note for hearing shall then be filed and served. Where the clerk specifies that the hearing shall be telephonic, the moving party shall originate the telephonic hearing conference call.

(2) (~~When a motion is filed, the matter will be scheduled separately. In all cases, the defending party shall have an opportunity to respond.~~

(3)) Unless oral argument is requested, a motion will be decided on the written record.

AMENDATORY SECTION (Amending WSR 91-03-028, filed 1/8/91, effective 2/8/91)

**WAC 371-08-162 Hearings—((Default)) Primary and secondary setting.** (~~((1) If a party fails to attend or participate in a hearing or other stage of an appeal, the presiding officer may serve on all parties an order of default or other dispositive order, which shall include a statement of the grounds for the order.~~

(2) ~~Within ten days after receipt of an order under subsection (1) of this section, the party against whom it was entered may file and serve a written motion requesting that the order be vacated and stating the grounds relied upon.)~~

(1) Each case shall be assigned a primary hearing date. A case has first priority for hearing on that date.

(2) Each case may be assigned a secondary hearing date. That date will precede the primary hearing date. A case has second priority for hearing on the secondary date, and will proceed to hearing only if the primary case does not proceed. The parties to a primary case shall inform the clerk of the board as soon as any settlement occurs. The parties to a secondary case may contact the clerk of the board to learn whether or not the primary case will proceed. The parties to a secondary case may also contact directly the parties to a primary case to learn whether or not the primary case will proceed.

AMENDATORY SECTION (Amending WSR 91-03-028, filed 1/8/91, effective 2/8/91)

**WAC 371-08-165 Hearings—Continuances, dismissal.** (1) Continuance of a hearing is within the discretion of the board, whether contested or uncontested by the parties. The board may continue a hearing on its own motion.

(2) (~~Normally, motions for continuance should be filed more than three months before the scheduled hearing date, so that any time cleared on the calendar can be productively used for other appeals.~~

(3) ~~Prior to moving for a continuance, a person should confer and seek agreement on the matter with the other parties.)~~ The continuance of a hearing shall be sought by written motion. Each such motion shall have appended to it the continuance order which the motion seeks. The moving party shall: Contact the clerk of the board to determine available dates; affirmatively seek the stipulation of all parties; and set forth the continued date in the order. If the continuance is contested, the moving party shall set forth in the order the continued date being requested and shall note the motion for telephonic hearing on a date deemed by the clerk to be available for that purpose. The motion, order and note for telephonic hearing shall then be filed and served.

The moving party shall originate the telephonic hearing conference call.

#### NEW SECTION

**WAC 371-08-167 Dismissal or default.** (1) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties a default or dismissal order which shall include a statement of the grounds for the order. Within seven days after service of a default or dismissal order for failure to attend or participate, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon.

(2) An appellant may request to withdraw an appeal. Requests before appellant rests are mandatory and afterwards are permissive.

#### NEW SECTION

**WAC 371-08-197 Disposition of adjudicative proceedings—Preparation of findings, conclusions and orders.** Upon request of the board or presiding officer, findings, conclusions and orders shall be prepared by counsel. The same shall be based upon the oral or memorandum opinion. The board or presiding officer may adopt said findings, conclusions and orders in part or in whole or may prepare their own findings, conclusions and orders.

**WSR 94-07-107**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
[Filed March 21, 1994, 9:13 a.m.]

Original Notice.

Title of Rule: Radiation protection—Fees, chapter 246-254 WAC, Fees for users of radioactive material.

Purpose: This chapter establishes fees charged for licensing and inspection services rendered by the Division of Radiation Protection.

Other Identifying Information: WAC 246-254-070, 246-254-080, 246-254-090, 246-254-100, and 246-254-120.

Statutory Authority for Adoption: RCW 43.70.110 and [43.70.]250.

Statute Being Implemented: Chapter 70.98 RCW.

Summary: The proposed rule change will revise the current fee schedule for radioactive materials users.

Reasons Supporting Proposal: Additional revenue is necessary to make the radioactive materials program self-supporting.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: T. R. Strong, Tumwater, 586-8949.

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: In 1982, the legislature authorized and the department instructed its radiation protection program to be funded by self-supporting fees. After a financial review of the program, it is necessary to adjust the fees to reflect actual

costs for the period beginning July 1, 1994. Therefore it is proposed to increase the fees to make the radioactive materials program self-supporting.

Proposal Changes the Following Existing Rules: The proposed changes would increase the fees charged to users of radioactive materials.

Small Business Economic Impact Statement: The Department of Health licenses approximately 440 businesses, institutions, and private practices to possess or use radioactive materials. Fees to support the regulatory program within the Department of Health are based on the cost of providing the regulatory oversight for each category of use. Licensees within each fee category may come from a number of different standard industrial classification (SIC) categories.

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 businesses in any one industry (as defined by the 3 digit SIC code) be reviewed and altered to minimize their impact on small business. The regulations revising fees for radioactive material licenses must meet the provisions of chapter 19.85 RCW.

Impact of Proposed Fees for Radioactive Materials: Radioactive material license fees are based on the cost of providing health and safety inspections and license reviews for the specific use of the licensed radioactive material. By law, all licensees must meet the same radiation safety requirements. Since the use of radioactive material is frequently only a minor aspect of the business' overall activity, the cost of the license fee per employee shows a disproportionate burden for the small business. For example, the fee for a portable gauge user (proposed to be \$585 per year) would cost \$117 per employee per year in a five employee business versus about \$6 per employee per year in a 100 employee business. Similarly, the fee for a diagnostic nuclear medicine license (proposed to be \$255 per year) would cost \$255 per employee per year in a 10 employee clinic versus about \$26 in a 100 employee hospital.

To meet the legislative requirement to minimize the proportionately higher burden on small businesses, a small business discount of 25% is authorized in WAC 246-254-030 for any licensee meeting the definition of a small business as set forth in the Regulatory Fairness Act. The small business discount is currently given to approximately one quarter of the department's radioactive materials licensees.

Hearing Location: Building 5 Airdustrial Park, Tumwater, Washington 98504, on April 26, 1994, at 10 a.m.

Submit Written Comments to: Ann Foster, Department of Health Rules Coordinator, P.O. Box 47890, Olympia, WA 98504-7890, by April 25, 1994.

Date of Intended Adoption: April 26, 1994.

March 21, 1994  
Bruce Miyahara  
Secretary

AMENDATORY SECTION (Amending Order 372, filed 6/8/93, effective 7/9/93)

**WAC 246-254-070 Fees for specialized radioactive material licenses.** (1) Persons licensed or authorized to possess or use radioactive material in the following special

categories shall forward annual fees to the department as follows:

(a) (~~Three~~) Four thousand (~~eight hundred thirty~~) sixty dollars for operation of a single nuclear pharmacy.

(b) Six thousand (~~five~~) nine hundred (~~sixty~~) fifty-five dollars for operation of a single nuclear laundry.

(c) Six thousand (~~five~~) nine hundred (~~sixty~~) fifty-five dollars for a license authorizing a single facility to use more than one curie of unsealed radioactive material in the manufacture and distribution of radioactive products or devices containing radioactive material.

(d) Two thousand (~~three~~) four hundred forty dollars for a license authorizing a single facility to use less than or equal to one curie of unsealed radioactive material or any quantity of previously sealed sources in the manufacture and distribution of products or devices containing radioactive material.

(e) Six hundred thirty-five dollars for a license authorizing the receipt and redistribution from a single facility of manufactured products or devices containing radioactive material.

(f) Four thousand (~~three~~) six hundred (~~eighty~~) forty dollars for a license authorizing decontamination services operating from a single facility.

(g) Two thousand (~~eighty~~) two hundred five dollars for a license authorizing waste brokerage including the possession, temporary storage at a single facility, and over-packing only of radioactive waste.

(h) Nine hundred (~~thirty~~) eighty-five dollars for a license authorizing equipment servicing involving:

(i) Incidental use of calibration sources;

(ii) Maintenance of equipment containing radioactive material; or

(iii) Possession of sealed sources for purpose of sales demonstration only.

(i) One thousand (~~seven~~) eight hundred fifty-five dollars for a license authorizing health physics services, leak testing, or calibration services.

(j) One thousand (~~ninety~~) one hundred fifty-five dollars for a civil defense license.

(k) Three hundred (~~thirty~~) fifty dollars for a license authorizing possession of special nuclear material as pacemakers or depleted uranium as shielding.

(2) Persons licensed or authorized to possess and use radioactive material in the following broad scope categories shall forward annual fees to the department as follows:

(a) Thirteen thousand (~~one~~) nine hundred (~~thirty~~) twenty dollars for a license authorizing possession of atomic numbers three through eighty-three with maximum authorized possession of any single isotope greater than one curie.

(b) Six thousand (~~twenty~~) three hundred eighty dollars for a license authorizing possession of atomic numbers three through eighty-three with maximum authorized possession of any single isotope greater than 0.1 curie but less than or equal to one curie.

(c) (~~Four~~) Five thousand (~~nine~~) two hundred (~~twenty~~) fifteen dollars for a license authorizing possession of atomic numbers three through eighty-three with maximum authorized possession less than or equal to 0.1 curie.

(3) Persons licensed or authorized to possess or use radioactive material which are not covered by any of the

annual license fees described in WAC 246-254-070 through 246-254-100, shall pay fees as follows:

(a) An initial application fee of one thousand dollars;

(b) Billing at the rate of eighty-five dollars for each hour of direct staff time associated with issuing and maintaining the license and for the inspection of the license; and

(c) Any fees for additional services as described in WAC 246-254-120.

(d) The initial application fee will be considered a credit against billings for direct staff charges but is otherwise nonrefundable.

(4) Persons licensed or authorized to possess or use radioactive material in a facility for radioactive waste processing, including resource recovery, volume reduction, decontamination activities, or other waste treatment, but not permitting commercial on-site disposal, shall pay fees as follows:

(a) A nonrefundable initial application fee for a new license of sixteen thousand dollars which shall be credited to the applicant's quarterly billing described in (b) of this subsection; and

(b) Quarterly billings for actual direct and indirect costs incurred by the department including, but not limited to, license renewal, license amendments, compliance inspections, a resident inspector for time spent on the licensee's premises as deemed necessary by the department, laboratory and other support services, and travel costs associated with staff involved in the foregoing.

AMENDATORY SECTION (Amending Order 372, filed 6/8/93, effective 7/9/93)

**WAC 246-254-080 Fees for medical and veterinary radioactive material licenses.** (1) Persons licensed or authorized to possess or use radioactive material in the following medical or veterinary categories shall forward annual fees to the department as follows:

(a) Three thousand (~~five~~) seven hundred ten dollars for operation of a mobile nuclear medicine program from a single base of operation.

(b) Two thousand (~~four~~) five hundred (~~ten~~) fifty-five dollars for a license authorizing groups II and III of WAC 246-235-120 for diagnostic nuclear medicine at a single facility.

(c) Two thousand (~~eighty~~) two hundred five dollars for a license authorizing groups IV and V of WAC 246-235-120 for medical therapy at a single facility.

(d) Three thousand (~~two~~) four hundred (~~eighty~~) seventy-five dollars for a license authorizing groups II or III and groups IV or V of WAC 246-235-120 for full diagnostic and therapy services at a single facility.

(e) One thousand (~~seven~~) eight hundred fifty-five dollars for a license authorizing groups VI of WAC 246-235-120 for brachytherapy at a single facility.

(f) One thousand (~~ninety~~) one hundred fifty-five dollars for a license authorizing brachytherapy or gamma stereotactic therapy or teletherapy at a single facility.

(g) One thousand (~~six~~) seven hundred forty dollars for a license authorizing medical or veterinary possession of greater than two hundred millicuries total possession of radioactive material at a single facility.

(h) One thousand three hundred (~~ten~~) ninety dollars for a license authorizing medical or veterinary possession of greater than thirty millicuries but less than or equal to two hundred millicuries total possession of radioactive material at a single facility.

(i) (~~Nine hundred eighty~~) One thousand forty dollars for a license authorizing medical or veterinary possession of less than or equal to thirty millicuries total possession of radioactive material at a single facility.

(j) (~~Eight~~) Nine hundred (~~seventy~~) twenty dollars for a license authorizing group I as defined in WAC 246-235-120 or in vitro uses of radioactive material at a single facility.

(k) Five hundred (~~fifty~~) eighty-five dollars for a license authorizing medical or veterinary possession of a sealed source for diagnostic use at a single facility.

(2) Persons with licenses authorizing multiple locations of use shall increase the annual fee by fifty percent for each additional location or base of operation.

**AMENDATORY SECTION** (Amending Order 372, filed 6/8/93, effective 7/9/93)

**WAC 246-254-090 Fees for industrial radioactive material licenses.** (1) Persons licensed or authorized to possess or use radioactive material in the following industrial categories shall forward annual fees to the department as follows:

(a) Four thousand (~~fifty~~) two hundred ninety-five dollars for a license authorizing the use of radiographic exposure devices in one or more permanent radiographic vaults in a single facility.

(b) Five thousand (~~one~~) four hundred (~~fifty~~) sixty dollars for a license authorizing the use of radiographic exposure devices at temporary job sites but operating from a single storage facility.

(c) Two thousand (~~five~~) six hundred (~~twenty~~) seventy dollars for a license authorizing well-logging activities including the use of radioactive tracers operating from a single storage facility.

(d) Five hundred (~~fifty~~) eighty-five dollars for a license authorizing possession of portable sealed sources including moisture/density gauges and excluding radiographic exposure devices operating from a single storage facility.

(e) Six hundred thirty-five dollars for a license authorizing possession of any nonportable sealed source, including special nuclear material and, excluding radioactive material used in gas chromatograph at a single facility.

(f) (~~Three~~) Four hundred (~~eighty~~) five dollars for a license authorizing possession of gas chromatograph units containing radioactive material at a single facility.

(g) One thousand (~~forty~~) one hundred dollars for a license authorizing possession of any self-shielded or pool type irradiator with sealed source total quantity greater than one hundred curies at a single facility.

(h) Five thousand (~~five~~) eight hundred thirty dollars for a license authorizing possession of sealed sources for a walk-in type irradiator at a single facility.

(i) (~~Four~~) Five thousand (~~eight~~) one hundred ten dollars for a license authorizing possession of greater than one gram of unsealed special nuclear material or greater than five hundred kilograms of source material at a single facility.

(j) One thousand (~~five~~) six hundred (~~thirty~~) twenty dollars for a license authorizing possession of less than or equal to one gram of unsealed special nuclear material or five hundred kilograms of source material at a single facility.

(k) Two hundred (~~fifty~~) sixty-five dollars for a license authorizing possession of static elimination devices not covered by a general license.

(2) Persons with licenses authorizing multiple locations of permanent storage shall increase the annual fee by fifty percent for each additional location.

(3) Depleted uranium registrants required to file Form RHF-20 shall forward an annual fee of fifty-~~(five)~~ eight dollars to the department.

**AMENDATORY SECTION** (Amending Order 372, filed 6/8/93, effective 7/9/93)

**WAC 246-254-100 Fees for laboratory radioactive material licenses.** (1) Persons licensed or authorized to possess or use unsealed radioactive material in the following laboratory categories shall forward annual fees to the department as follows:

(a) Two thousand (~~six~~) seven hundred (~~thirty~~) ninety dollars for a license authorizing possession at a single facility of unsealed sources in amounts greater than:

- (i) One millicurie of I-125 or I-131; or
- (ii) One hundred millicuries of H-3 or C-14; or
- (iii) Ten millicuries of any single isotope.

(b) One thousand three hundred (~~ten~~) ninety dollars for a license authorizing possession at a single facility of unsealed sources in amounts:

- (i) Greater than 0.1 millicurie and less than or equal to one millicurie of I-125 or I-131; or
- (ii) Greater than ten millicuries and less than or equal to one hundred millicuries of H-3 or C-14; or
- (iii) Greater than one millicurie and less than or equal to ten millicuries of any single isotope.

(c) One thousand (~~ninety~~) one hundred fifty-five dollars for a license authorizing possession at a single facility of unsealed sources in amounts:

- (i) Greater than 0.01 millicurie and less than or equal to 0.1 millicurie of I-125 or I-131; or
- (ii) Greater than one millicurie and less than or equal to ten millicuries of H-3 or C-14; or
- (iii) Greater than 0.1 millicurie and less than or equal to one millicurie of any other single isotope.

(d) (~~Three~~) Four hundred (~~eighty~~) five dollars for a license authorizing possession at a single facility of unsealed or sealed sources in amounts:

- (i) Less than or equal to 0.01 millicurie of I-125 or I-131; or
- (ii) Less than or equal to one millicurie of H-3 or C-14; or
- (iii) Less than or equal to 0.1 millicurie of any other single isotope.

(e) Five hundred thirty dollars for a license authorizing possession at a single facility of large quantities of naturally occurring radioactive material in total concentration not exceeding 0.002 microcuries per gram.

(2) Persons with licenses authorizing multiple locations of use shall increase the annual fee by fifty percent for each additional location.

(3) Persons registered to perform in vitro testing pursuant to Form RHF-15 shall forward an annual fee of fifty-~~(five)~~ eight dollars to the department.

**AMENDATORY SECTION** (Amending Order 372, filed 6/8/93, effective 7/9/93)

**WAC 246-254-120 Fees for licensing and compliance actions.** (1) In addition to the fee for each radioactive material license as described under WAC 246-254-070, 246-254-080, 246-254-090, and 246-254-100, a licensee shall pay a service fee for each additional licensing and compliance action as follows:

(a) For a second follow-up inspection, and each follow-up inspection thereafter, a fee of eighty-five dollars per hour of direct staff time associated with the follow-up inspection, not to exceed eight hundred fifty dollars per follow-up inspection. Hours are calculated in half-hour increments.

(b) For each environmental cleanup monitoring visit, a fee of eighty-five dollars per hour of direct staff time associated with the environmental cleanup monitoring visit, not to exceed two thousand one hundred twenty-five dollars per visit. Hours are calculated in half-hour increments.

(c) For each new license application, the fee of one hundred fifty dollars in addition to the required annual fee.

(d) For each sealed source and device evaluation, a fee of eighty-five dollars per hour of direct staff time associated with each sealed source and device evaluation, not to exceed two thousand ~~((four))~~ five hundred fifty dollars per evaluation.

(e) For review of air emission and environmental programs and data collection and analysis of samples, and review of decommissioning activities by qualified staff in those work units, a fee of eighty-five dollars per hour of direct staff time associated with the review. The fee does not apply to reviews conducted by the radioactive materials section staff and does not apply unless the review time would result in a special service charge exceeding ten percent of the licensee's annual fee.

(f) For expedited licensing review, a fee of eighty-five dollars per hour of direct staff time associated with the review. This fee only applies when, by the mutual consent of licensee and affected staff, a licensing request is taken out of date order and processed by staff during nonwork hours and for which staff is paid overtime.

(2) The licensee or applicant shall pay any additional service fees at the time of application for a new license or within thirty days of the date of the billing for all other licensing and compliance actions.

(3) The department shall process an application only upon receipt of the new application fee and the annual fee.

(4) The department may take action to modify, suspend, or terminate the license or sealed source and device registration if the licensee fails to pay the fee for additional licensing and compliance actions billed by the department.

## WSR 94-07-108

### PROPOSED RULES

#### DEPARTMENT OF HEALTH

[Filed March 21, 1994, 9:15 a.m.]

Original Notice.

Title of Rule: Radiation protection—Fees, chapter 246-254 WAC, Fees for radiation machine users.

Purpose: This chapter establishes fees charged for registration and inspection services by the Division of Radiation Protection.

Statutory Authority for Adoption: RCW 43.70.110 and [43.70].250.

Other Identifying Information: WAC 246-254-053.

Statute Being Implemented: Chapter 70.98 RCW.

Summary: The proposed rule change will revise the current fee schedule for radiation machine users.

Reasons Supporting Proposal: Additional revenue is necessary to make the x-ray control program self-supporting.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: T. R. Strong, Tumwater, 586-8949.

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: In 1982, the legislature authorized and the department instructed its radiation protection program to be funded by self-supporting fees. After a financial review of the program, it is necessary to adjust the fees to reflect actual costs for the period beginning July 1, 1994. Therefore it is proposed to increase the fees to make the x-ray control program self-supporting.

Proposal Changes the Following Existing Rules: The proposed changes would increase the fees charged to users of radiation machines.

Small Business Economic Impact Statement: The Department of Health registers 5042 radiation machine facilities including: 2398 dental, 933 medical private practice, 824 chiropractic, 480 veterinarians, 148 podiatry, 152 industry, education and others, and 107 hospitals. Four thousand seven hundred and twenty-five of these facilities are considered to be small businesses. RCW 43.70.110 and 43.70.250 mandates the department to charge fees to recover program costs including administrative charges. Fees to support the regulatory program within the Department of Health are based on both the cost of providing the regulatory oversight for each type of facility and on the number of x-ray tubes each facility possesses.

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 businesses in any one industry (as defined by the 3 digit SIC code) be reviewed and altered to minimize their impact on small business.

Impact of Proposed Fees for Radiation Machines: By law, all registrants must meet the same radiation safety requirements. It is essential that all radiation machines be used in such a manner as to protect the public health and safety and to protect those occupationally exposed persons.

The review of the impact of the fees on small businesses has been done. The cost of a registration fee per employ-

ee shows a disproportionate burden for small businesses. For example, the fee for a five employee dental office with three tubes would be \$249 or \$49.80 per employee. A 19 tube medical facility with 100 employees would pay a \$2237 fee or \$22.37 per employee.

RCW 19.85.030(1), Regulatory Fairness Act, requires agencies to reduce the economic impact of rules on small business when it is legal and feasible. The department has found that it is not feasible to offset the greater burden on small businesses by increasing the fees for large businesses. For example, if a 25% small business discount were given to 94% or 4,725 of 5,042 businesses, we believe an unreasonable burden would be placed on the remaining large facilities. By further example, the fees for each hospital, large medical facility and many industrial firms would have to be raised by \$1,172. A 19 tube medical facility would have to pay \$3409 rather than \$2,237. We do not believe it is feasible to shift this burden.

In summary, fees for radiation machine facilities are based on the cost of providing health and safety inspections and registration. The department estimates that 94% of radiation machine facilities are small facilities (less than 50 employees). Therefore, it is not feasible to reduce the economic impact by offering a small business discount.

Hearing Location: Building 5 Airdustrial Park, Tumwater, Washington 98504, on April 26, 1994, at 10 a.m.

Submit Written Comments to: Ann Foster, Department of Health Rules Coordinator, P.O. Box 47890, Olympia, WA 98504-7890, by April 25, 1994.

Date of Intended Adoption: April 26, 1994.

March 21, 1994  
Bruce Miyahara  
Secretary

**AMENDATORY SECTION** (Amending Order 372, filed 6/8/93, effective 7/9/93)

**WAC 246-254-053 Radiation machine facility registration fees.** (1) Persons owning and/or leasing and using radiation-producing machines shall submit an eighty-five dollar registration fee to the department at the time of application and every two years thereafter. In addition:

- (a) For dentists, veterinarians, and podiatrists, add:
- (i) ~~((Eighty-five))~~ Ninety dollars for the first tube; and
  - (ii) ~~Thirty-((five))~~ seven dollars for each additional tube.
- (b) For hospitals and medical or chiropractic facilities, add:

(i) ~~Two hundred ((thirty))~~ forty-four dollars for the first tube; and

(ii) One hundred six dollars for each additional tube.

(c) For industrial, research, and other uses, add:

(i) One hundred thirty-eight dollars for the first tube; and

(ii) ~~Thirty-((five))~~ seven dollars for each additional tube.

(2) The department shall charge a maximum total fee of five thousand three hundred dollars for any facility or group of facilities where an in-house, full-time staff of at least two or more is devoted entirely to in-house radiation safety.

(3) For any facility with a mammographic x-ray machine, add a biennial surcharge of two hundred fifty dollars.

(4) A penalty fee of eighty-five dollars shall be charged for late registration or late reregistration.

**WSR 94-07-109**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Public Assistance)

[Filed March 21, 1994, 9:48 a.m.]

Original Notice.

Title of Rule: Chapter 388-96 WAC, Nursing home accounting and reimbursement system.

Purpose: WAC 388-96-010(14), to be in agreement with definition in chapter 248-14 WAC; WAC 388-96-010(43), removed a substantive provision and placed it in WAC 388-96-754; WAC 388-96-113(3), revised to grant an exception to 120 day rule to reverse accruals; WAC 388-96-134(1), add a clarifying comma; WAC 388-96-217, clarify what constitutes a violation, who may receive a fine, and when a fine may be waived; WAC 388-96-221(4), to clarify the effect of ESSB 5724 (1993 session) on settlements; WAC 388-96-226 and 388-96-228, to clarify the effect of zESSB 5724 (1993 session) on settlements; WAC 388-96-525(4), clarify what education and training expenses are allowable; WAC 388-96-533, to allow funding for administrator-in-training; WAC 388-96-534, to clarify that approved JCAD does not mean costs are allowable; WAC 388-96-559 (1)(C), clarify salvage values and their use in determining depreciation; WAC 388-96-565(1), update section to current practice; WAC 388-96-585 (2)(b), remove outdated language; WAC 388-96-585 (2)(w), clarify what employee benefits are not reimbursable; WAC 388-96-585 (2)(aa), clarify what fees for professional licenses are not reimbursable; WAC 388-96-585 (2)(vv), new subsection clarifying promotional advertising is unallowable; WAC 388-96-704, remove terms no longer used; WAC 388-96-707, repeal unnecessary because covered under WAC 388-96-585 (2)(b); WAC 388-96-709, to change administration and operation to administrative and operational and delineate difference between first and second rate years of a state fiscal biennium in the new contractor's rate; WAC 388-96-710, to clarify sample selection and the effect of the first and second rate years of a state fiscal biennium on the new contractor's rate; WAC 388-96-719(10), clarify ESSB 5724 effect on occupancy level determination in the first and second rate years of the state fiscal biennium; WAC 388-96-721, repeal because procedure not policy and no longer applicable; WAC 388-96-722, 388-96-727, 388-96-735 and 388-96-737, revised to reflect effect of current funding on the nursing, food, administrative and operational prospective rate for the first and second rate years of the state fiscal biennium; WAC 388-96-745, to clarify change in bed capacity as the result of capitalized addition or replacement on occupancy level determinations; WAC 388-96-753, new section on the effect of current funding under WAC 388-96-774, 388-96-776 and 388-96-777 on ROI; WAC 388-96-754, to remove references to current funding and to add substantive provisions on the determination of ROI in the first and second rate years of a state biennium; WAC 388-96-763, to clarify which cost

reports and patient days will be used to set the rates for exceptionally heavy care under the new rate system established by ESSB 5724 of 1993; WAC 388-96-774, to clarify that current funding (CF) for staffing is only available for nursing and operational cost centers and must be requested after the date of hire. Limits the number of requests for CF to two for any state fiscal year. Adds bankruptcy, correction of survey citations and complaint resolution as prohibitions for granting and using CF. Remove CF for capitalized additions or replacements to new section WAC 388-96-776. Adds regulatory limits on completion of application and beginning date of CF; WAC 388-96-776, new section to delineate the rules for requesting CF for capitalized additions and replacements; WAC 388-96-777, new section giving the department the ability to grant CF on its own initiative. Contractors may not request current funding under this section; and WAC 388-96-904, eliminates the Office of Contracts Management as the reviewing authority for 904(1) audit challenges. Authority will rest with the Office of Rates Management. Clarifies the contractor's duties when a facsimile is used to establish a request date. Permits 904(1) conference earlier than fourteen days if both parties mutually agree. Requires contractor to submit documentation fourteen days in advance of conference. Clarifies when the administrative review determination will be issued.

Statutory Authority for Adoption: RCW 74.46.800.

Statute Being Implemented: RCW 74.46.800.

Summary: Clarify 1993 implementation of ESSB 5724 and provide additional regulatory support for settlement, reduction in beds, new contractor rate, ROI and property under the new rate system established by the implementation of ESSB 5724.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Pat Hague and Paul Montgomery, Aging and Adult Services, 493-2587.

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, 14th and Franklin, Olympia, Washington, on May 24, 1994, at 10:00 a.m.

If you need sign language assistance, please contact the Office of Vendor Services by May 10, 1994. TDD 753-4595 or SCAN 234-4595.

Submit Written Comments to: Identify WAC number, Dewey Brock, Chief, Office of Vendor Services, Mailstop 45811, Department of Social and Health Services, Olympia, 98504, TELEFAX 586-8487 or SCAN 321-8487, by May 17, 1994.

Date of Intended Adoption: May 26, 1994.

March 21, 1994  
 Dewey Brock, Chief  
 Office of Vendor Services  
 Administrative Services Division

Reviser's note: The material contained in this filing will appear in the 94-09 issue of the Register as it was received after the applicable closing date for the issue for agency-typed material exceeding the volume limitations of WAC 1-21-040.

**WSR 94-07-110**  
**PROPOSED RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed March 21, 1994, 10:45 a.m.]

Original Notice.

Title of Rule: WAC 16-324-640 Limited generation certified seed potato—Winter greenhouse test tolerance.

Purpose: To repeal the section on greenhouse grow outs for limited generation seed potatoes.

Statutory Authority for Adoption: Chapter 15.14 RCW.

Statute Being Implemented: Chapter 15.14 RCW.

Summary: The proposal repeals WAC 16-324-640.

Reasons Supporting Proposal: Growers have requested this repeal to bring the Washington state seed potato standards closer to similar standards in other states.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Max G. Long, 2015 South 1st Street, Yakima, WA, (509) 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: This rule change will eliminate the need for limited generation winter testing for seed potatoes. The winter testing is not required by other states.

Proposal Changes the Following Existing Rules: It repeals the requirement for winter greenhouse testing.

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

Hearing Location: Whatcom County Annex, 1000 North Forest Street, Bellingham, WA 98225, on April 28, 1994, at 1:00 p.m.

Submit Written Comments to: Max G. Long, 2015 South 1st Street, MS-3, Yakima, WA 98903, by April 28, 1994.

Date of Intended Adoption: May 13, 1994.

March 18, 1994  
 K. Diane Dolstad  
 Assistant Director

**REPEALER**

The following section of the Washington Administrative Code is repealed:

|                |                                                                 |
|----------------|-----------------------------------------------------------------|
| WAC 16-324-640 | Limited generation certified seed potato—Winter test tolerance. |
|----------------|-----------------------------------------------------------------|

**WSR 94-07-111**  
**PROPOSED RULES**  
**DEPARTMENT OF AGRICULTURE**  
 [Filed March 21, 1994, 10:48 a.m.]

Original Notice.

Title of Rule: WAC 16-482-016 Exceptions—Permit requirement.

Purpose: To allow broader industry representation in determining the need and requirements for importing noncertified seed potatoes, or otherwise prohibited seed potatoes.

Statutory Authority for Adoption: Chapter 17.24 RCW.

Statute Being Implemented: Chapter 17.24 RCW.

Summary: The proposal requires a committee be consulted prior to the issuance of a special permit for planting seed potatoes.

Reasons Supporting Proposal: Industry should be consulted before issuing a permit that could affect their ability to produce potatoes or seed potatoes.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Max G. Long, 2015 South 1st Street, Yakima, WA, (509) 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: The change adds additional industry consultation before issuance of a permit.

Proposal Changes the Following Existing Rules: The proposal adds the requirement of consulting a committee prior to issuance of a permit.

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

Hearing Location: Whatcom County Annex, 1000 North Forest Street, Bellingham, WA 98225, on April 28, 1994, at 1:30 p.m.

Submit Written Comments to: Max G. Long, 2015 South 1st Street, Yakima, WA 98903, by April 28, 1994.

Date of Intended Adoption: May 13, 1994.

March 18, 1994

K. Diane Dolstad

Assistant Director

AMENDATORY SECTION (Amending Order 2075, filed 3/13/91, effective 4/13/91)

**WAC 16-482-016 Exceptions—Permit requirement.**

The director may allow planting of seed potatoes, otherwise prohibited, by special permit. Such permit shall specify the conditions under which planting is allowed and shall be obtained prior to planting. Prior to issuance of a permit, the director shall consult with a committee composed of one member from the Washington state seed potato commission and two members of the Washington state potato commission, appointed by the respective commission chairs, as to the need for and terms of such permit.

**WSR 94-07-112**  
**PROPOSED RULES**  
**YAKIMA COUNTY**  
**CLEAN AIR AUTHORITY**  
 [Filed March 21, 1994, 10:59 a.m.]

Original Notice.

Title of Rule: Amendments to Restated Regulation I of YCCA affecting Sections 5.03, 5.04, 5.10, 5.11, 8.02, 9.05, 13.02, and 13.03.

Purpose: To include editorial changes to Sections 5.03, 5.04, 5.10 and 5.11, penalty amounts for Section 8.02, correction of type of devices prohibited in Section 9.05, and additional fees in Sections 13.02 and 13.03.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

Summary: Amendments include editorial changes to Sections 5.03, 5.04, 5.10 and 5.11, penalty amounts for Section 8.02, correction of type of devices prohibited in Section 9.05, and additional fees in Sections 13.02 and 13.03.

Reasons Supporting Proposal: Penalties and additional NOC and outdoor burning permit fees need to be clarified and codified.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tom T. Silva, 6 South 2nd Street, Room 1016, Yakima, WA 98901, (509) 575-4116 ext. 11.

Name of Proponent: Yakima County Clean Air Authority, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The editorial changes to Sections 5.03, 5.04, 5.10, and 5.11 are as following: Section 5.03(D), Item 4 is removed from list and made part of general statement under subsection; Section 5.04(D), the applicable state regulation, chapter 173-425 WAC, is identified for clarification; and Sections 5.10 and 5.11(D), the word "department" is deleted and replaced with word "authority" to indicate the applicable agency. Under Section 8.02 a new subsection (F) with a penalty schedule is added in order to codify penalties that are currently assessed according to agency policy. In Section 9.05 the words "without burning wood" and "burn wood in" are deleted and replaced with words "other than a solid fuel burning device" and "use," respectively, in order to clarify (in accordance with state regulation) that all solid fuel burning devices are prohibited under the stated conditions. In Section 13.02 additional fees have been added to account for air handling and air pollution control equipment. Such equipment is critical in many notice of construction applications in determining ambient air quality impact. In Section 13.03 additional fees have been added to account for nonresidential outdoor burning permits.

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: Yakima County Courthouse, 128 North 2nd Street, Room 420, Yakima, WA, on May 11, 1994, at 2:30 p.m.

Submit Written Comments to: Tom Silva, Director  
APCO, Yakima County Clean Air Authority, County  
Courthouse, Yakima, Washington 98901, by May 10, 1994.

Date of Intended Adoption: May 11, 1994.

March 18, 1994

Tom T. Silva, Director  
Air Pollution Control Officer

**SECTION 5.03 - REGULATIONS APPLICABLE TO ALL OUTDOOR BURNING WITHIN THE JURISDICTION OF THE YAKIMA COUNTY CLEAN AIR AUTHORITY, LOCAL CITIES, TOWNS, FIRE PROTECTION DISTRICTS AND CONSERVATION DISTRICTS**

A. The Yakima County Clean Air Authority finds that it is consistent with its policy of reducing outdoor burning to the greatest extent possible to prohibit outdoor burning in certain areas subject to the exceptions as set forth in subsection 5.03(D) hereof.

B. Except as set forth in subsection 5.03(D) hereof, no outdoor burning shall be allowed in any area of Yakima County, Washington which exceeds federal or state ambient air quality standards for pollutants emitted by outdoor burning which includes the Yakima Urban Area and the city limits of the city of Selah, Washington.

C. Except as provided in Section 5.03(D) hereof, outdoor burning shall not be allowed in any urban growth area as defined in RCW 36.70(a).030 and RCW 36.70(a).110, or in any city in the Authority's jurisdiction having a population greater than 10,000 persons if:

1. Such areas threaten to exceed state or federal air quality standards, and;
2. Alternative disposal practices consisting of a good solid waste management plan are reasonably available or practices eliminating production of organic refuse are reasonably available.

D. Outdoor burning shall be allowed upon permit obtained from the Authority for the following purposes:

1. Weed abatement along ditch banks and fence lines;
2. Agricultural burning as defined in WAC 173-425-030;
3. Instruction in methods of fire fighting conducted by fire districts or city fire departments or any government controlled fire fighting agency;

~~4. All such permits issued pursuant to this provision shall be subject to the conditions and limitations as are set forth in Section 5.04 hereof.~~

All such permits issued pursuant to this provision shall be subject to the conditions and limitations as are set forth in Section 5.04 hereof.

E. Outdoor burning shall be allowed without permit for:

1. Small outdoor fires on an occasional basis for ceremonial, religious, or cooking purposes or like social purposes;
2. Fires from barbecues, flares, torches, gas burners, incense burners and insect pots.

**SECTION 5.04 - REGULATIONS APPLICABLE TO PERMITS ISSUED BY THE YAKIMA COUNTY CLEAN AIR AUTHORITY FOR ALL OTHER OUTDOOR BURNING**

A. Outdoor burning permits will be issued by the Yakima County Clean Air Authority pursuant to restrictions and limitations on outdoor burning as set forth in these Regulations as follows:

1. Weed abatement, agricultural burning to control diseases and insects or developments of physiological conditions conducive to increase crop yield.

a. All applications for permits to set fire for such agricultural burning shall be acted upon by the Authority within seven (7) days from the date such application is filed.

b. When burning is necessary to control disease or insect infestation and alternative methods are not available and the Yakima County Agricultural Extension Agency so certifies.

2. Instruction in methods of fire fighting conducted by fire districts or city fire departments or any government controlled fire fighting agency.

B. Permits issued for burning under this Section shall be drafted to minimize emissions, including denial of permission to burn during periods of adverse meteorological conditions.

C. All permits issued by the Authority will contain conditions to insure that public interest in air, water and land pollution and safety to life and property is fully considered and will be designed to minimize air pollution as practicable.

D. All applications for permits must demonstrate that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life and property and no other reasonable alternative (as defined in the WAC 173-425) is available to successfully carry out the enterprise in which the applicant is engaged.

**SECTION 5.10 - SENSITIVE AREA DESIGNATION**

In order to control the emission of air contaminants in a manner which takes into account the severity of the air pollution problem in the different areas in which the sources are, or may be located, the Authority, after public hearing upon due notices to all interested parties, may designate sensitive areas. Designation of such areas shall be based on a consideration of present and predicted ambient air quality; population density and trends; distance of sources from public roads; recreational areas and areas of human habitation; topographic and meteorological conditions and other pertinent variables. Sources within a designated sensitive area shall be subject to more stringent standards or compliance schedule than sources located outside such areas. This section applies only to those geographical areas and source categories under the direct jurisdiction of the ~~department~~ Authority.

**SECTION 5.11 - MONITORING AND SPECIAL REPORTING**

A. Monitoring.

The Authority shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations of air contaminants as approved by the Board.

As part of this program, the Authority or its authorized representative may require any source under the jurisdiction of the Authority to conduct stack and/or ambient air monitoring, and to report the results to the Authority.

B. Investigation of conditions.

The Control Officer or an authorized representative shall have authority to investigate conditions as set forth in Section 2.02(C).

C. Source testing.

In order to demonstrate compliance with this Regulation, the Authority or its authorized representative may require that a test be made of the source in a manner approved by the Authority. The operator of a source may be required to provide the necessary platform and sampling ports to perform a test of the source. The Authority 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 any time.

D. Report of breakdown or upset condition.

If an equipment breakdown or upset condition occurs resulting in emissions in excess of applicable limits set by this Regulation or resulting in emissions which violate an applicable compliance schedule, the owner or operator of the affected source shall take immediate corrective action and shall report such breakdown to the ~~department~~ Authority by the next working day after the breakdown occurs.

An initial breakdown or upset condition shall not be subject to penalties for emissions in excess of the limits set by this chapter, providing the owner or operator complies with the provisions of this subsection and providing the breakdown or upset was not the result of gross negligence. If an extended time period is required to complete the corrective action, the Authority or its authorized representative may require that the operation be curtailed or shutdown. Repeated breakdowns may be subject to all penalties authorized by law. The Authority or its authorized representative may issue regulatory orders specifying maintenance and operating procedures.

E. Continuous Monitoring and Recording.

Owners and operators of the following categories of stationary sources shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified. The exceptions listed for the following categories do not apply if the continuous emission monitoring is required by the SIP.

1. Fossil fuel-fired steam generators.

a. Opacity, except where:

(1) Steam generator capacity is less than 250 million BTU per hour heat input, or

(2) Only gaseous fuel is burned, or

(3) 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 administration or judicial procedure, been found in violation of any visible emission standard.

b. Sulfur dioxide, except where:

(1) Steam generator capacity is less than 250 million BTU per hour heat input, or

(2) Sulfur dioxide control equipment is not required.

c. Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

d. 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 (30%), as reported to the Federal Power Commission for the calendar year 1974, or as

otherwise demonstrated to the Authority by the owner or operator.

2. Sulfuric acid plants.

Sulfur dioxide where production capacity is more than three hundred (300) tons per day, expressed as one hundred percent (100%) 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.

3. Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries.

a. Opacity where fresh feed capacity is more than 20,000 barrels per day.

4. Wood residue fuel-fired steam generators.

a. Opacity, except where:

(1) Steam generator capacity is less than 100 million BTU per hour heat input.

b. Continuous monitoring equipment.

The requirements of Section 5.11 (E)(5) do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment shall be subject to approval by the Authority.

5. Owners and operators of those sources required to install continuous monitoring equipment under this Regulation or the SIP shall demonstrate to the 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, Section 3, 4, and 5, promulgated on October 6, 1975, which is by this reference adopted and incorporated herein.

F. All sources subject to this Regulation shall procure and install equipment and commence monitoring and recording activities no later than eighteen (18) months after adoption of this Regulation by the Authority. Any extension to this time requirement shall be negotiated through the variance procedure of WAC 173-400-150.

G. Special considerations.

If or reason of physical plant limitations or extreme economic situations, the Authority determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally be of 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.

Subsection 5.11(E) does not apply to any source which is:

1. Subject to a New Source Performance Standard.

2. Not subject to an applicable Emission Standard.

3. Scheduled for retirement within five (5) years after inclusion of monitoring equipment requirements in this Regulation, 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 Regulation during periods of monitoring system malfunctions provided that the source owner or operator shows to the satisfaction of the Authority that the real malfunction was unavoidable and is being repaired as expeditiously as practicable.

**SECTION 8.02 - ADDITIONAL OR ALTERNATIVE PENALTIES**

A. In addition to or as an alternate to any other penalty provided by law, any person who violates the provisions of Chapter 70.94 RCW, Chapter 70.120 RCW, or any of the rules and regulations the Yakima County Clean Air Authority may enforce under such Chapters of the Revised Code of Washington may incur a civil penalty in an amount not to exceed Ten Thousand Dollars (\$10,000) per day for each violation. Each such violation shall be a separate and distinct event, and, in the case of a continuing violation, each days continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order issued pursuant to this Chapter shall be liable for a civil penalty of not more than Ten Thousand Dollars (\$10,000) per day for each day of continued noncompliance.

B. Penalties incurred but not paid shall accrue interest beginning on the ninety-first (91st) day following the date that the penalty becomes due and payable at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed interest shall not begin to accrue until the thirty-first (31st) day following the final resolution of the appeal.

C. Each act of commission or omission which procures, aids or abets the violation described herein shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.12(B).300.

D. In addition to the other penalties provided above, any person knowingly under-reporting emissions or other information used to set fees or persons required to pay emissions or permit fees who are more than ninety (90) days late with such payments may be subject to a penalty equal to three (3) times the amount of the original fee owed.

E. All penalties recovered under this section by the Authority shall be paid into the treasury of the Authority and rendered into its funds.

F. In addition to the other provisions of this Section, a specific Civil Penalty may be imposed in violation of other Sections of this Regulation in accordance to the following schedule:

| Section Violated                                                                                                                                                             | Civil Penalty per Written Notices Issued |                               |                                |                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|-------------------------------|--------------------------------|----------------|
|                                                                                                                                                                              | First                                    | Second *                      | Third *                        | Subsequent     |
| SECTION 2.03 - Miscellaneous Provisions                                                                                                                                      | \$100 to \$1,000                         | \$2,000 to \$3,000            | go to Subsequent               | Up to \$10,000 |
| SECTION 4.01 - Registration                                                                                                                                                  | \$50 to \$500                            | \$1,000 to \$3,000            | go to Subsequent               | Up to \$10,000 |
| SECTION 4.02 - Notice of Construction                                                                                                                                        | \$50 to \$500                            | \$1,000 to \$3,000            | go to Subsequent               | Up to \$10,000 |
| SECTION 5.01 - Outdoor Burning                                                                                                                                               | Warning to \$25                          | \$25 to \$50                  | \$50 to \$100                  | Up to \$10,000 |
| SECTION 5.02 - Regulations Applicable to All Outdoor Burning                                                                                                                 | \$25 to \$500                            | Up to \$1,000                 | Up to \$2,000                  | Up to \$10,000 |
| SECTION 5.03 - Regulations Applicable to All Outdoor Burning within the Jurisdiction of the YCCAA, Local Cities, Towns, Fire Protection Districts and Conservation Districts | Warning to \$25                          | \$25 to \$50                  | \$50 to \$100                  | Up to \$10,000 |
| SECTION 5.04 - Regulations Applicable to Permits Issued by YCCAA for All Other Outdoor Burning                                                                               | \$25 to \$500                            | Up to \$1,000                 | Up to \$2,000                  | Up to \$10,000 |
| SECTION 5.05 - Additional Restrictions on Outdoor Burning                                                                                                                    | \$25 to \$500                            | Up to \$1,000                 | Up to \$2,000                  | Up to \$10,000 |
| SECTION 5.06 - General Standards for Maximum Permissible Emissions                                                                                                           | \$50 to \$500 or Warning to \$25         | Up to \$1,000 or \$25 to \$50 | Up to \$2,000 or \$50 to \$100 | Up to \$10,000 |
| SECTION 5.07 - Minimum Emission Standards for Combustion and Incineration Sources                                                                                            | \$50 to \$500                            | Up to \$1,000                 | Up to \$2,000                  | Up to \$10,000 |
| SECTION 5.09 - Minimum Standards or Procedures for Certain Source Categories                                                                                                 | \$50 to \$500 or Warning to \$25         | Up to \$1,000 or \$25 to \$50 | Up to \$2,000 or \$50 to \$100 | Up to \$10,000 |
| SECTION 5.12 - Preventive Measures                                                                                                                                           | \$50 to \$500                            | Up to \$1,000                 | Up to \$2,000                  | Up to \$10,000 |
| ARTICLE IX - Woodstoves and Fireplaces                                                                                                                                       | \$50 to \$500 or Warning to \$25         | Up to \$1,000 or \$25 to \$50 | Up to \$2,000 or \$50 to \$100 | Up to \$10,000 |

\* Civil Penalty suspended from the previous Written Notice may be added.

**SECTION 9.05 - PROHIBITION OF VISIBLE EMISSIONS DURING AIR POLLUTION EPISODES**

A. Any person in a residence or commercial establishment which has an adequate source of heat ~~without burning wood~~ other than a solid fuel burning device shall:

1. Not ~~burn wood in use~~ any solid fuel burning device whenever the Department of Ecology or the Authority has determined under RCW 70.94.715 that any Air Pollution Episode exists in that area.

2. Not ~~burn wood in use~~ any solid fuel burning device except those which are either Oregon Department of Environmental Quality Phase II or United States Environmental Protection Agency certified or certified by the Department of Ecology under RCW 70.94.457(1) or a pellet stove either certified or issued an exemption by the United States Environmental Protection Agency in accordance with Title 40, Part 60 of the Code of Federal Regulations in the geographic area and for the period of time that a first stage of impaired air quality has been determined by the Department of Ecology or by the Yakima County Clean Air Authority. The geographic area affected by a first stage of impaired air quality is the Woodsmoke Control Zone as defined in Section 1.03(48).

3. Not ~~burn wood in use~~ any solid fuel burning device, including those that meet the standards set forth in RCW 70.94.457, in any geographic area for the period of time that a second stage of impaired air quality has been determined by the Department of Ecology or the Yakima County Clean Air Authority. The geographic area affected by a second stage of impaired air quality is the Woodsmoke Control Zone as defined in Section 1.03(48).

**SECTION 13.02 - NOTICE OF CONSTRUCTION FEE SCHEDULE**

Sources required to file a "Notice of Construction, Installation or Establishment of New Air Contaminant Source" shall pay a fee according to the following schedule:

|                                                               |         |
|---------------------------------------------------------------|---------|
| Filing Fee (for all sources):                                 | \$50    |
| <b>Air Handling or Air Pollution Control Equipment (ACFM)</b> |         |
| 0 < 200                                                       | \$25    |
| 200 < 5,000                                                   | \$100   |
| 5,000 < 20,000                                                | \$200   |
| 20,000 < 50,000                                               | \$300   |
| 50,000 < 100,000                                              | \$400   |
| 100,000 < 250,000                                             | \$500   |
| 250,000 < 500,000                                             | \$650   |
| > 500,000                                                     | \$800   |
| <b>Fuel Burning Equipment Installation (MMBTU/H):</b>         |         |
| <5                                                            | \$25    |
| 5-10 5<10                                                     | \$100   |
| 10-20 10<20                                                   | \$150   |
| 20-50 20<50                                                   | \$250   |
| 50-100 50<100                                                 | \$350   |
| 100-250 100<250                                               | \$500   |
| 250-500 250<500                                               | \$1,000 |
| >500                                                          | \$1,500 |
| <b>Fuel Burning Equipment Fuel Change (MMBTU/H):</b>          |         |
| <5                                                            | \$15    |
| 5-10 5<10                                                     | \$40    |
| 10-20 10<20                                                   | \$60    |
| 20-50 20<50                                                   | \$80    |
| 50-100 50<100                                                 | \$100   |
| 100-250 100<250                                               | \$150   |
| 250-500 250<500                                               | \$200   |
| >500                                                          | \$250   |

|                                                                |         |
|----------------------------------------------------------------|---------|
| <b>Refuse Burning Equipment (tons per day Rated Capacity):</b> |         |
| <5(w/o HCl controls)                                           | \$100   |
| 5-12 5<12(w/o HCl controls)                                    | \$200   |
| <12(w/ HCl controls)                                           | \$500   |
| 12-250 12<250(w/ HCl controls)                                 | \$2,000 |
| >250(w/ HCl controls)                                          | \$4,000 |
| <b>Solid Waste Incineration (tons/hour):</b>                   |         |
| 0-5 2                                                          | \$0     |
| 2-4                                                            | \$0     |
| >4                                                             | \$0     |
| <b>Other Incinerators (pounds/hour):</b>                       |         |
| <100                                                           | \$0     |
| 100-200 100<200                                                | \$300   |
| 200-500 200<500                                                | \$500   |
| 500-1,000 500<1,000                                            | \$750   |
| >1,000                                                         | \$1,500 |
| <b>Volatile Material Storage Tanks (gals):</b>                 |         |
| <4,000                                                         | \$0     |
| 4,000-20,000 4,000<20,000                                      | \$0     |
| 20,000-40,000 20,000<40,000                                    | \$65    |
| 40,000-100,000 40,000<100,000                                  | \$200   |
| 100,000-500,000 100,000<500,000                                | \$750   |
| 500,000-1,000,000 500,000<1,000,000                            | \$1,200 |
| >1,000,000                                                     | \$1,200 |
| <b>Significant Emissions Surcharge:</b>                        |         |
|                                                                | \$250   |
| <b>Gasoline Stations:</b>                                      |         |
| Stage I                                                        | \$50    |
| Stage II                                                       | \$50    |
| <b>Temporary Source:</b>                                       |         |
|                                                                | \$75    |
| <b>Odor Source:</b>                                            |         |
|                                                                | \$200   |
| <b>SEPA:</b>                                                   |         |
|                                                                | \$50    |

**SECTION 13.03 - OUTDOOR BURNING PERMIT FEES**

The Authority shall collect a ~~assess~~ assess fees of \$5 for each outdoor burning permit it issues under the requirements of Article V of this regulation in accordance with the following fee schedule:

| PERMIT TYPE OR ACTIVITY    | QUANTITY OF MATERIAL     | PERMIT FEE            | EXPIRATION DATE        |
|----------------------------|--------------------------|-----------------------|------------------------|
| Residential                | Any Amount               | \$5                   | 31 Dec of Current Year |
| Agricultural               | Per WAC 173-430          |                       |                        |
| Fire Dept. Training        | Any Amount               | \$100                 | 30 Days After Issuance |
| All Others <sup>1</sup>    | 10 Acres Or Less         | \$25                  | 30 Days After Issuance |
|                            | More Than 10 Acres       | \$2.50 Per Acre       | 30 Days After Issuance |
|                            | 10 Cubic Yards Or Less   | \$50                  | 30 Days After Issuance |
|                            | More Than 10 Cubic Yards | \$8.50 Per Cubic Yard | 30 Days After Issuance |
| Re-inspection <sup>2</sup> |                          | \$25                  |                        |
| Application <sup>3</sup>   |                          | \$25                  |                        |

1. Fees will be assessed on a volume basis when the material to be burned is consolidated into piles. Fees will be assessed on an acreage basis when the material is to be burned in place (e.g. weeds burned along ditch banks or fence lines).
2. If required.
3. Required for all non-residential outdoor burning permits.

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

Reviser's note: The 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.

**WSR 94-07-114  
PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Public Assistance)**

[Filed March 21, 1994, 11:40 a.m.]

Original Notice.

Title of Rule: Title 388 WAC, Department of Social and Health Services (public assistance).

Purpose: Rewriting, reorganizing, and recodifying the rule policies relating to financial and medical assistance programs. Facilitates on-line (computer) access by eligibility staff in our field offices and makes these policies easier to understand. WAC 388-265-1750 allows the department to pay fees for protective payees for certain AFDC recipients.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

Summary: Rewritten to clarify and simplify existing rules without making substantive changes to existing policy. Changes include a shift from long narrative paragraphs to outline format, use of short words and sentences, deletion of redundant policies, deletion of procedural material, reorganization of chapters into a sequence that corresponds with worker process, and consistent use of terms in chapters.

Reasons Supporting Proposal: Facilitates on-line (computer) access by eligibility staff in our field offices and makes these policies easier to understand.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Patricia Richards, Division of Income Assistance, 438-8343.

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, 14th and Franklin, Olympia, Washington, on April 26, 1994, at 10:00 a.m.

If you need sign language assistance, please contact the Office of Vendor Services by April 12, 1994. TDD 753-4595 or SCAN 234-4595.

Submit Written Comments to: Identify WAC number, Dewey Brock, Chief, Office of Vendor Services, Mailstop 45811, Department of Social and Health Services, Olympia, 98504, TELEFAX 586-8487 or SCAN 321-8487, by April 19, 1994.

Date of Intended Adoption: May 2, 1994.

March 21, 1994

Dewey Brock, Chief

Office of Vendor Services  
Administrative Services Division

**Chapter 388-200 WAC  
FINANCIAL AND MEDICAL ASSISTANCE—  
GENERAL PROVISIONS**

NEW SECTION

**WAC 388-200-1050 Department and client responsibilities.** (1) The department and the client have a dual responsibility to determine and maintain eligibility for public assistance in the initial or redetermination of eligibility for assistance.

(2) The department has the responsibility to:

(a) Treat a client with dignity and courtesy;

(b) Give a client sufficient opportunity to make pertinent needs known to the department;

(c) Inform a client what the department can, or cannot, do for the client;

(d) Respect the rights of a client under the U.S. Constitution, the Social Security Act, Title VI of the Civil Rights Act of 1964, and all other relevant provisions of federal and state law when:

(i) Taking an application;

(ii) Determining eligibility; and

(iii) Administering financial and medical assistance programs;

(e) Avoid practices which violate the client's privacy or subject the client to harassment;

(f) Inform a client of:

(i) The client's rights and responsibilities concerning eligibility for, and receipt of, assistance;

(ii) All factors which may affect the client's continuing eligibility for assistance; and

(iii) Changes of law or rule which affect the client's eligibility;

(g) Act promptly and correctly on all known changes which affect the client's eligibility for assistance.

(3) The client has the responsibility to:

(a) Report all changes in the client's circumstances which affect eligibility for assistance. The client must report changes in writing promptly and accurately; and

(b) Take any reasonable action to develop resources which will reduce or eliminate the client's need for public assistance.

NEW SECTION

**WAC 388-200-1100 Grievance procedure.** (1) If a client is aggrieved by a department decision, the client has the right to present a written grievance to the supervisor. The supervisor shall:

(a) Make a decision on the client's grievance; and

(b) Send the client written notification of the supervisor's decision within ten days of receipt of the grievance.

(2) If a client is not satisfied with the decision of the supervisor, the client has the right to present a written grievance to the supervisor's administrator. The administrator shall:

(a) Make a decision on the client's grievance within ten days of receipt of the grievance; and

(b) Send the client written notification of the administrator's decision.

(3) The written notice from the administrator terminates the grievance procedure.

(4) The client's right to pursue a grievance shall not in any way prevent the client from requesting a fair hearing under chapter 388-08 WAC.

(5) The department may respond to the client's grievance by informing the client that the department prefers that the fair hearing or judicial review process resolve the matter, if the client has a fair hearing or judicial review pending on the same issue.

#### NEW SECTION

**WAC 388-200-1150 Exception to rule.** (1) Rules for determining eligibility and amount of payment are based on federal and state law and are designed to permit the department to grant necessary assistance considering the client's requirements and resources.

(2) State rules are based on living conditions which the department considers to apply to the majority of client situations. Individual circumstances may exist where application of a particular rule works in opposition to the desired objective stated in subsection (1) of this section.

(3) The department cannot make an exception to a specific provision of federal or state law. However, the secretary, or designee, can authorize an individual case exception to a rule when:

(a) The rule is not specifically enunciated in federal or state law; and

(b) Granting an exception appears to be in the best interest of overall economy and the client's welfare.

(4) The department may grant an exception when:

(a) The client's situation differs from that of the majority; or, the client's circumstances are peculiar;

(b) It would ease the conditions the client would face without the assistance; and

(c) It would increase opportunities for the client to function effectively.

(5) The client does not have a right to a fair hearing as specified under chapter 388-08 WAC for an exception decision.

#### NEW SECTION

**WAC 388-200-1160 Notification of exception to rule request and decision.** The department shall notify a client in writing within ten days of:

(1) A decision as to whether the department will initiate an exception to rule request when requested by the client; and

(2) Of the approval or denial of an exception to rule which was requested by the department.

#### NEW SECTION

**WAC 388-200-1200 Translation of written communications with a limited English proficient client.** The department shall fully translate the following written communications into the primary language of the limited English proficient client:

(1) A notice requesting information or action which requires a response from the client to determine:

(a) Initial eligibility; or

(b) Continuing eligibility for assistance;

(2) A notice of approval, denial, or withdrawal of an application for assistance;

(3) A notice of termination, suspension or reduction of assistance;

(4) A notice describing client rights and responsibilities; and

(5) A notice requiring a client's signature or informed consent.

#### NEW SECTION

**WAC 388-200-1250 Gifts, bequests by will, and contributions.** (1) The department may accept a gift, bequest, or contributions in cash, or otherwise, from an association or corporation.

(2) The department shall not accept a gift or contribution from a person applying for, or receiving, public assistance.

(3) The department shall not advise any person desiring information or assistance regarding the preparation of a will. The department shall advise the person to contact an attorney, or the local legal aid society.

### **Chapter 388-210 WAC APPLICATIONS FOR ASSISTANCE**

#### NEW SECTION

**WAC 388-210-1000 Who may apply.** The department shall accept and promptly act upon an application from any person wishing to apply for assistance. An application may be made by:

(1) A person making the request in the person's own behalf or for the person's dependent;

(2) A legal guardian or a person legally eligible to make application on behalf of a minor or incompetent person;

(3) Any other person acting in behalf of the applicant when the applicant cannot make application under one of the preceding methods. Such person shall indicate the reason for initiating the application.

#### NEW SECTION

**WAC 388-210-1010 Application form.** (1) An applicant shall make a written request for assistance on a department designated form.

(2) The department shall make the form as brief as administratively feasible and request only information ordinarily known to the applicant.

(3) The department may designate different forms for reapplication.

(4) The department shall inform an applicant at the time of signing that the application contains:

- (a) A written declaration made under penalty of perjury; and
  - (b) That such declaration is made in lieu of any oath otherwise required.
- (5) The department shall give each applicant a written acknowledgement of receipt of an application at the time of making application.

**NEW SECTION**

**WAC 388-210-1020 Completion of application form.**

- (1) Each applicant shall complete and submit application forms as provided for under WAC 388-210-1010.
- (2) The department shall assist an applicant in the completion of application forms when necessary.
- (3) The applicant's written statement of application for AFDC must include all siblings under nineteen years of age, as specified in WAC 388-215-1000, living in the household, whether or not financial assistance is being requested for all of the children. Children with the following relationship must be included:
- (a) Full brothers or full sisters;
  - (b) Half brothers or half sisters; or
  - (c) Stepbrothers or stepsisters.
- (4) The parent or stepparent applying on behalf of their dependent children must declare the total resources and income available for all siblings living in the home.
- (5) Both parents shall sign all application forms for AFDC, if living together.
- (6) The applicant and spouse must sign all application forms for general assistance or medical assistance irrespective of whether the spouse is included in the application as a dependent.
- (7) An applicant's signature by mark requires two witnesses. The signatures of witnesses shall appear on the form and be identified by the department as witnesses.
- (8) The applicant may change a signed application for assistance only when the incorrect entry is stricken and the corrected entry is initialed and dated by the applicant. The applicant shall also initial any addition to the application.

**NEW SECTION**

**WAC 388-210-1050 Interview.**

- (1) The department shall include at least one face-to-face interview at each application for financial assistance with:
- (a) An applicant; or
  - (b) Someone representing an applicant, if direct contact with an applicant is impractical.
- (2) An applicant shall complete a written application before the department undertakes an investigation.
- (3) An applicant shall apply and interview for assistance at a site specified by the department, unless the department determines an interview in the applicant's home is necessary.
- (4) The department shall fully inform each applicant of the applicant's legal rights and responsibilities in connection with public assistance.
- (5) The department shall provide an applicant written information about the applicant's right to a fair hearing and a brief explanation of the procedures pertaining to fair hearings.

- (6) The department shall record pertinent facts about each application so that the department can audit the records to determine whether:
- (a) Department policies are followed;
  - (b) Continuity of service can be carried out;
  - (c) Case planning can be achieved; and
  - (d) The department can ascertain what services are needed and given.

**NEW SECTION**

**WAC 388-210-1100 Applicant to provide information.**

- (1) The department shall allow an applicant a reasonable time of not less than ten calendar days to provide information necessary to determine eligibility. This includes additional application forms, documents and statements needed for the department to verify eligibility.
- (2) The department shall extend the allowed time when:
- (a) The applicant has provided some, but not all, of the available information. In such a case, the department shall:
    - (i) Provide the applicant with written notification of the specified information required; and
    - (ii) Allow an additional ten calendar days, or a longer time, depending upon the specific circumstances.
  - (b) The department has previously completed the initial interview, or requested specific information, and subsequently determines the need for different or additional information. In such a case, the department shall:
    - (i) Provide the applicant with written notification of the specific additional information required; and
    - (ii) Allow an additional ten calendar days, or a longer time, depending upon the specific circumstances.
- (3) The applicant may request, orally or in writing, additional time to provide statements in support of the application under WAC 388-210-1200.

**NEW SECTION**

**WAC 388-210-1200 Time limit on disposition of application.**

- (1) The time limit from the date of application to the date of disposal action as specified in subsection (2) of this section is thirty days for Aid to Families with Dependent Children (AFDC) and forty-five days for General Assistance (GA). The department shall count as day one, the date following the date of application in applying this rule.
- (2) The date of application shall be the date a written request as specified in WAC 388-210-1010(1) is received by the department.
- (3) The department shall consider the date an application is disposed of as:
- (a) For approvals, the date the department correctly processes a document authorizing assistance; and
  - (b) For denials and withdrawals, the date written notice of the decision is given or mailed to the client, as provided under WAC 388-210-1400.

**NEW SECTION**

**WAC 388-210-1220 Good cause for disposition delay.**

- (1) The department shall act on each application as quickly as possible, and within applicable time limits as

specified under WAC 388-210-1200, unless exceptional circumstances require a longer period of time.

(2) Exceptional circumstances, subject to WAC 388-210-1230, considered good cause for delay in disposing of an application may include, but are not limited to:

(a) An applicant not providing requested verification within ten days of a written request;

(b) An eligibility decision depends on medical reports and there is delay in obtaining the reports or in securing medical information;

(c) An eligibility determination depends on correspondence with out-of-state or intercity contacts and no other verification is available for the eligibility factor; or

(d) An eligibility decision depends on extensive property appraisals.

#### NEW SECTION

**WAC 388-210-1230 Good cause for disposition delay—Department responsibility for an AFDC application.** Good cause for delay in processing an application for AFDC exists only when an exceptional circumstance exists. Good causes exist only if the department:

(1) Notifies the applicant in writing of specific information needed to determine eligibility within twenty days of the date of application; and

(2) Notifies the applicant in writing of the need for additional information or action within five calendar days; and

(3) Determines eligibility and disposes of the application within five working days of receiving all information necessary to determine eligibility; and

(4) Determines if good cause exists and documents the decision in the case record on, or before, the time limit for processing the application for AFDC has expired.

#### NEW SECTION

**WAC 388-210-1250 Evaluation of available information.** When the applicant fails to provide requested statements within the initially specified, or extended period, as provided under WAC 388-210-1100, the department shall:

(1) Evaluate all available information; and

(2) Dispose of the application for assistance according to WAC 388-210-1300.

#### NEW SECTION

**WAC 388-210-1300 Disposition action.** The department shall dispose of an application for assistance by:

(1) Approval;

(2) Denial; or

(3) Withdrawal.

#### NEW SECTION

**WAC 388-210-1310 Basis of withdrawal.** (1) The department shall dispose of an application by withdrawal if the applicant:

(a) Voluntarily requests, orally or in writing, that the department give no further consideration to the application;

(b) Fails to report for a scheduled interview and has not contacted the department to reschedule an interview within thirty days from the date of application; or

(c) Died before the department completed a determination of eligibility.

(2) The department shall note in the case record for all withdrawal requests that:

(a) The application has been withdrawn at the applicant's request; and

(b) Notice has been sent to the applicant as specified in WAC 388-210-1420.

#### NEW SECTION

**WAC 388-210-1320 Basis of denial.** (1) The department shall deny an application for benefits only when the department has not been able to establish the applicant's eligibility. See WAC 388-212-1200.

(2) The department shall not deny an application solely on the basis that an applicant failed to provide requested statements:

(a) In support of the application; or

(b) Within a reasonably allowed period.

(3) When the department cannot determine eligibility based on the information provided by the applicant, the denial notice must include the information specified under WAC 388-210-1420.

(4) If an applicant requests a fair hearing to contest the department's denial for inability to establish eligibility, the issue in the de novo hearing shall be whether the applicant can provide evidence to establish eligibility.

#### NEW SECTION

**WAC 388-210-1330 Limitations on denial.** (1) The department shall not deny assistance based on a delay in obtaining medical information essential to a determination of eligibility, if obtaining the information is beyond the control of both the applicant and the department.

(2) The department shall not deny assistance to the entire assistance unit under WAC 388-210-1320(2) unless information required to establish eligibility of the entire assistance unit is lacking.

(3) The department shall deny assistance only to an applicant, or applicants, affected when information is not provided, and the requested information affects only the eligibility of that applicant, or applicants, in the assistance unit.

#### NEW SECTION

**WAC 388-210-1340 Reconsideration of denied applications.** (1) The department shall allow the applicant thirty days from the date of the denial notice to provide all specified information that was not provided when assistance is denied according to WAC 388-210-1320(2).

(2) The department shall determine eligibility based on the specified information if the applicant, within such thirty-day period:

(a) Provides the specified information; and

(b) The applicant's circumstances have not changed to the extent additional information is needed to determine eligibility.

(3) The department shall rescind the denial and approve assistance based on the denied application if eligibility is established.

NEW SECTION

**WAC 388-210-1350 Effective date of eligibility for approved applications.** (1) The effective date of eligibility for federally matched assistance is the date of authorization, or the thirtieth day after application, if the department requires more than thirty days to determine eligibility.

(2) The effective date for state funded assistance is the date of authorization, or the forty-fifth day after application, if the department requires more than forty-five days to determine eligibility.

(3) The department shall not count the day application was made in determining the thirtieth or forty-fifth day.

(4) The effective date of eligibility for an applicant, except as provided under WAC 388-245-1210, who applies prior to the occurrence of an event which makes the applicant eligible, shall be the date the event occurs, if eligibility otherwise exists on that date.

(5) The department shall complete the authorization the first working day following the day the special event occurred when such event occurs on a nonworking day. The effective date of eligibility is the day the event occurred. The department shall apply this rule when:

- (a) The effective date of a reinstated grant occurs on a nonworking day as described under WAC 388-245-1410; or
- (b) The thirtieth day after date of application if the event occurs on a nonworking day.

NEW SECTION

**WAC 388-210-1400 Notification of application disposition.** The department's decision on an application is definite and conclusive and the department shall make this known to the applicant, together with the reasons for the decision, see WAC 388-210-1410 and 388-210-1420.

NEW SECTION

**WAC 388-210-1410 Approval notice.** (1) The department shall notify an applicant in writing when the department authorizes payment.

(2) The department shall notify an applicant residing in an institution of grant approval according to chapter 388-95 WAC.

NEW SECTION

**WAC 388-210-1420 Denial or withdrawal notice.** (1) The department shall give written notice to an applicant when the department denies or withdraws an application, except for a withdrawal due to an applicant's death.

(2) The department shall include in the notice the following information:

- (a) The reason or reasons for denial and the rules to support the denial action;
- (b) What information was requested and not provided, including the date of the request;
- (c) That eligibility for financial assistance has not been established based upon information which was provided by the applicant;
- (d) That the department shall redetermine eligibility and, if eligibility is established, rescind the denial and approve assistance if, within thirty days from the date of the denial notice, the applicant:

- (i) Provides all specified information previously requested but not provided; and
- (ii) The applicant's circumstances have not changed;
- (e) The date of the decision; and
- (f) The right to a fair hearing. The letter need not include notice of right to a fair hearing when the applicant gives written notice of withdrawal including a statement to that effect on the application form.

**Chapter 388-212 WAC  
VERIFICATION OF ELIGIBILITY**

NEW SECTION

**WAC 388-212-1000 Eligibility determined on a factual and objective basis.** (1) The department shall determine a client's eligibility for assistance on a factual and objective basis in accordance with department rules and procedures.

(2) The department shall support each eligibility decision for assistance based on information in the case record showing:

- (a) The client met each eligibility requirement; or
  - (b) The client did not meet one or more eligibility requirements.
- (3) The information in the case record shall include, but is not limited to:
- (a) Documents supporting a client's eligibility; and
  - (b) A statement of the reason or reasons for the department's eligibility decision.

NEW SECTION

**WAC 388-212-1050 Verification of eligibility.** (1) The department shall consider the client's statement of circumstances as the first source of information in determining the client's eligibility for financial assistance.

(2) The department shall require verification of all factors of eligibility, unless the department determines eligibility can be accurately determined without verifying one or more of the factors.

NEW SECTION

**WAC 388-212-1100 Client responsibility to provide verification.** (1) The department shall fully inform the client of:

- (a) The corroborating documentation needed to establish eligibility; and
  - (b) The client's obligation to:
    - (i) Secure the corroborating documentation whenever reasonably possible; or
    - (ii) Assist the department in obtaining sufficient information to establish the client's eligibility; and
    - (iii) The availability of the department to assist the client to secure the corroborating documentation if necessary.
- (2) The department shall state the time frame and notice requirement when requesting verification for:
- (a) Applicants, in chapter 388-210 WAC; and
  - (b) Recipients, in chapter 388-245 WAC.
- (3) The department shall request the client to provide verification documents based on the availability of the documents.

(4) The department shall request documents which can be obtained within three full working days first, if the department anticipates that the documents would be sufficient to determine the client's eligibility.

(5) The department shall authorize payment for any document fee charged for verification requested by the department.

#### NEW SECTION

##### **WAC 388-212-1140 Verification of age by affidavit.**

(1) Any person is permitted by law to make an affidavit before a judge of the superior court or the supreme court of the state of Washington to verify the person's birth date.

(2) The department shall accept such an affidavit as verification of age.

#### NEW SECTION

**WAC 388-212-1150 Obtaining verification from collateral sources.** (1) When the client is unable to provide verification necessary to establish eligibility, the department shall obtain substantiating evidence from other sources.

(2) The client's signature on the application, eligibility review form, or change of circumstance form attests to the client's consent for the department to obtain substantiating evidence from collateral sources.

#### NEW SECTION

**WAC 388-212-1200 Determination of eligibility using available verification.** (1) The department shall not deny, delay, or terminate financial assistance because of a client's failure to provide a specific type or form of verification.

(2) The department shall accept and consider all alternative verification for an eligibility factor when determining a client's eligibility.

(3) The department shall determine eligibility for assistance based on all available evidence when verification for one or more factors is not obtained.

(4) The department shall deny or terminate assistance if the department cannot reasonably establish eligibility with the information provided by the client.

#### NEW SECTION

**WAC 388-212-1250 Verification of eligibility after initial eligibility determination.** (1) The department shall not reverify previously verified factors which are not subject to change at a:

- (a) Subsequent application;
- (b) Reinstatement; or
- (c) Redetermination of eligibility.

(2) The department may request a higher form of verification, subsequent to approval and authorization of assistance, if eligibility was established on available verification. A client has a right to a fair hearing if aggrieved by the department's request.

## Chapter 388-215 WAC AID TO FAMILIES WITH DEPENDENT CHILDREN—CATEGORICAL ELIGIBILITY

### NEW SECTION

**WAC 388-215-1000 Summary of eligibility conditions.** (1) The department shall grant AFDC on behalf of a child who:

(a) Meets the age requirements under WAC 388-215-1025; and

(b) Is living in the home of a relative of specified degree including a parent or another relative as defined under WAC 388-215-1050 through 388-215-1080. For temporary absences, see WAC 388-215-1100 through 388-215-1110; and

(c) Is a citizen or an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States (see WAC 388-215-1200); and

(d) Is a resident of the state of Washington, or resides with a parent or other relative who is a resident of the state of Washington (see WAC 388-215-1225); and

(e) Is in financial need (see chapters 388-216 through 388-219 WAC); and

(f) Is deprived of parental support or care because of the death (see WAC 388-215-1300), continued absence (see WAC 388-215-1320 through 388-215-1335), incapacity (see WAC 388-215-1340 through 388-215-1360), or unemployment (see WAC 388-215-1370 through 388-215-1385) of a parent. A parent is a person meeting the criteria in WAC 388-215-1060.

(2) Each client of AFDC shall assign to the office of support enforcement any rights to support in his or her own behalf or in behalf of the other assistance unit members as required under WAC 388-215-1400 and shall cooperate with the office of support enforcement as required under WAC 388-215-1400 through 388-215-1490.

(3) The department shall require each applicant for, or recipient of assistance to furnish a Social Security number as specified in WAC 388-215-1500.

(4) All AFDC applicants and recipients shall be subject to job opportunities and basic skills program (JOBS) participation requirements as specified under WAC 388-215-1520.

(5) All AFDC clients are subject to the rules regarding participation in strikes as provided under WAC 388-215-1540.

(6) Certain AFDC recipients shall return a completed monthly report to the department as required under WAC 388-215-1560.

(7) The department shall establish assistance units of children and caretaker relatives eligible for AFDC as specified under WAC 388-215-1600 through 388-215-1620.

(8) The department shall determine eligibility for a minor child applying for herself or himself as required under WAC 388-215-1650.

### NEW SECTION

**WAC 388-215-1025 Age requirement.** (1) The department shall grant AFDC on behalf of an otherwise eligible needy child who meets the following age requirements:

- (a) Is under age eighteen; or
- (b) Is under age nineteen and a full-time student reasonably expected to complete a program of secondary school, or the equivalent level of vocational or technical training, before the end of the month in which the child reaches age nineteen; or

(c) Is unborn and there are no other eligible children in the household. In this case, the department shall grant AFDC only to the unborn's mother, provided:

(i) There is medical confirmation the woman is in the third trimester of pregnancy (the three calendar months preceding the expected month of birth); and

(ii) If the child were born and living in the same household as the woman, in the month of payment, they would otherwise be eligible for AFDC.

(2) Prior to authorizing AFDC, the department shall determine the birthdate of a minor child in whose behalf aid is requested, except:

(a) An otherwise eligible child may receive AFDC temporarily when it is obvious that the child's age is within the AFDC limits. The department shall determine the birthdate as soon as possible for continuing eligibility.

(b) When only the year of birth is determined, the department shall assign the arbitrary birthdate of July 1.

**NEW SECTION**

**WAC 388-215-1050 Living in the home of a relative of specified degree—Determination.** (1) The department shall determine a child is living with a relative of specified degree if the child's home is with a parent as specified under WAC 388-215-1060 or other relative as specified under WAC 388-215-1080.

(2) A home is the family setting maintained or in the process of being established, as evidenced by assumption and continuation of responsibility for day to day care of the child by the relative with whom the child is living.

(3) A home exists so long as the relative exercises responsibility for the care and control of the child, even though either the child or the relative is temporally absent from the customary family setting as specified under WAC 388-215-1100 through 388-215-1120.

**NEW SECTION**

**WAC 388-215-1060 Living in the home of a relative of specified degree—Child's parent defined.** The department defines a child's parent as:

(1) A natural parent, including:

- (a) The natural mother; and
- (b) The natural father as:

(i) Established under a judgment or order determining parent and child relationship entered pursuant to RCW 26.26.130; or

(ii) Presumed pursuant under the Uniform Parentage Act (see WAC 388-215-1070);

(c) A natural parent is no longer considered to be a parent for the purposes of determining eligibility for AFDC when parental responsibility has been terminated by the entry of decree of adoption. A natural parent whose rights are so terminated remains a nonparental relative of specified degree (see WAC 388-215-1080);

(2) A person who legally adopts a child; or

(3) A stepfather or stepmother. A stepfather or stepmother is no longer considered to be a parent for the purposes of determining eligibility for AFDC when parental responsibility has been terminated by death or the entry of decree of divorce or dissolution, but remains a nonparental relative of specified degree (see WAC 388-215-1080).

**NEW SECTION**

**WAC 388-215-1070 Living in the home of a relative of specified degree—Presumption of paternity.** A man is presumed to be the natural father of a child if:

(1) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his child; or

(2) He acknowledges his paternity of the child:

(a) By an affidavit which he and the child's mother complete at the time of the child's birth and which is filed with the local registrar pursuant to RCW 70.58.080; or

(b) In a writing filed with the state office of vital statistics, which shall promptly inform the mother of the filing of the acknowledgement, if she does not dispute the acknowledgement within a reasonable time after being informed thereof, in a writing filed with the registrar of vital statistics; or

(3) The United States Immigration and Naturalization Service made or accepted a determination that he was the father of the child at the time of the child's entry into the United States and he had the opportunity at the time of the child's entry into the United States to admit or deny the paternal relationship; or

(4) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or dissolution, or after a decree of separation is entered by a court; or

(5) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born within three hundred days after the termination of cohabitation; or

(6) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(a) He has acknowledged his paternity of the child in writing filed with the registrar of vital statistics; and

(b) With his consent, he is named as the child's father on the child's birth certificate; or

(c) He is obligated to support the child under a written voluntary promise or by court order.

**NEW SECTION**

**WAC 388-215-1080 Living in the home of a relative of specified degree—Nonparental relative defined.** Nonparental relatives of specified degree include:

(1) Blood relatives (including those of half-blood); brother, sister, uncle, aunt, grandparent, great-grandparent, first cousin, first cousin once removed, nephew, niece, great-

great-grandparent, great-uncle, great-aunt, great-great-uncle, great-great-aunt, or great-great-great-grandparent;

(2) A stepbrother or stepsister even though the marriage of the parent of the stepbrother or stepsister to the child's natural parent is terminated by death, divorce or dissolution;

(3) A natural parent when the parental relationship has been terminated by the entry of a decree of adoption;

(4) A stepparent when the marriage to the child's natural or adoptive parent is terminated by death, divorce or dissolution; and

(5) A person identified in a court judgment or order as the child's relative as specified in subsections (1) through (4) of this section.

#### NEW SECTION

**WAC 388-215-1100 Living in the home of a relative of specified degree—Temporary absence of child or caretaker relative.** The department shall determine a child is living with a relative of specified degree even though circumstances may require the temporary absence of either the child or the caretaker relative from the customary family setting, as long as the requirements under subsection (1) of this section are met. Such temporary separations include:

(1) The child or caretaker relative receive temporary care in a hospital or public or private institution when the illness is such that the department expects a return to the family within ninety days. If the temporary care exceeds ninety days, the monthly grant standard is as specified under WAC 388-250-1550.

(2) The child or caretaker relative receive temporary care in an alcohol or drug treatment facility when the department expects a return to the family within ninety days. If the care exceeds ninety days, the monthly grant standard shall be as specified under WAC 388-250-1600.

(3) Visits in which the child or caretaker relative plan to be away for ninety days or less, including visits of a child to a parent residing away from the child's customary family setting. If the responsible relative or child leaves for more than ninety days, eligibility is redetermined in accordance with the new circumstances.

(4) The child is placed in foster care while the parent is temporarily receiving care in a residential treatment facility, when such absences do not exceed thirty days.

(5) The child is a ward of the juvenile court, or other agency to whom the court has delegated authority.

(6) The child or caretaker relative attend school or vocational training as specified under WAC 388-215-1110.

(7) The caretaker relative is applying for AFDC on behalf of the child and the child is temporarily in foster care or with another relative as specified in WAC 388-215-1120.

#### NEW SECTION

**WAC 388-215-1110 Living in the home of a relative of specified degree—Temporary absence—Attendance in school or training.** As long as the requirements in WAC 388-215-1050 are met the department shall determine a child is living with a relative of specified degree even though the child or caretaker relative is temporarily absent to attend school or vocational training under the following circumstances:

(1) The caretaker relative attends a department-approved vocational training program, as described under WAC 388-47-120, for the period of time required to complete the training program; or

(2) The child attends school when:

(a) The caretaker relative retains full responsibility for the child and the child returns during a year's period, at least for summer vacation; and

(b) The need for specialized education or training is not available in the child's home community, and the education is recommended by local school authorities; or

(c) Isolation of the child's residence makes it necessary for him or her to be away from the relative to attend school; or

(d) The child is enrolled in an Indian boarding school administered through the Bureau of Indian Affairs.

#### NEW SECTION

**WAC 388-215-1120 Living in the home of a relative of specified degree—Application for AFDC when child is in foster care or another relative's home.** As long as the requirements in WAC 388-215-1050 are met the department shall determine a child is living with a relative of specified degree who applies for AFDC on behalf of the child even though the child is temporarily in foster care or with another relative, provided:

(1) The child is returned to the applying relative's care within thirty days subsequent to the authorization of AFDC; and

(2) No AFDC payments are being made for the child, either in another relative's home or through AFDC-FC in the same thirty-day period.

#### NEW SECTION

**WAC 388-215-1200 Citizenship and alienage.** The department shall grant AFDC to a person otherwise eligible under this chapter who is:

(1) A United States citizen; or

(2) A Canadian Indian (a North American Indian born in Canada) considered the same as a United States citizen because he or she:

(a) Has at least fifty percent Indian blood; or

(b) Has less than fifty percent Indian blood and entered the United States prior to December 24, 1951; and

(c) Has maintained residence since entry; or

(3) An alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law, including any alien who is lawfully present in the United States as a result of the application of the provisions of Section 203 (a)(7), Section 207(c), Section 208, or Section 212 (d)(5) of the Immigration and Nationality Act; or

(4) An alien attaining temporary resident status (TRS) or permanent resident status (PRS) under the Immigration Reform and Control Act of 1986 (IRCA); and

(a) A Cuban or Haitian entrant as defined in paragraph (1) or (2)(a) of Section 501(e) of Public Law 96-422; or

(b) Not a Cuban or Haitian entrant as defined under this section and adjusted to lawful temporary status more than five years prior to the application for AFDC.

NEW SECTION**WAC 388-215-1225 Washington residence—Establishing.** (1) A resident is a person who:

- (a) Voluntarily lives in the state of Washington; and
- (b) Intends to maintain his or her home in the state; or
- (c) Is not receiving assistance from another state; and
- (d) Entered the state with a job commitment or seeking employment in the state whether or not currently employed.

(2) Children reside in the state of Washington if they make their home in the state.

(3) The department is not required to find that an applicant is a resident of Washington if the department determines the applicant is a resident of another state and is only temporarily absent from that state.

NEW SECTION**WAC 388-215-1230 Washington residence—Maintaining.** (1) A person has maintained his or her residence in Washington if, since establishing it, the person has not left the state except as specified in subsection (2) of this section.

(2) Absences from the state prior to application do not interrupt residence when:

(a) The absences were enforced or beyond the control of the person; or

(b) The absences were for temporary periods and occurred for specific purposes not involving an intent to change residence and including a plan for return at a future date.

(3) Applicants meeting the residence requirements and otherwise eligible may not be disqualified from receiving assistance solely because they have received assistance from another state or political subdivision. The department may not use the fact that persons received assistance from another state as the basis to determine they are not residents of Washington.

(4) Persons who move out of the state of Washington for more than a temporary visit are assumed to no longer reside in the state of Washington unless they can present positive evidence to the contrary.

(a) The department shall not grant assistance to persons not residing in the state of Washington according to this assumption. See WAC 388-245-1000 pertaining to "visit."

(b) Recipients remaining out of the state for more than one month must supply adequate information to overcome the assumption they no longer intend to reside in the state of Washington.

(5) Assistance can only be continued to recipients temporarily absent from the state who:

- (a) Remain in need; and
- (b) Fulfill all eligibility requirements.

NEW SECTION**WAC 388-215-1245 Washington residence—Authorizing return of Washington resident.** When an inquiry is received regarding whether or not a person is a resident of the state of Washington, or should move to the state of Washington, the department shall:

- (1) Investigate the pertinent facts relative to the inquiry;
- (2) Furnish the other state with pertinent information;

(3) When appropriate, give social facts indicating whether residence in the state of Washington is or is not in the interest of the person's welfare; and

(4) Inform the inquiring state that the department has no legal authority to authorize the return of a person to the state or to pay costs of such return.

NEW SECTION

**WAC 388-215-1300 Deprivation—Death.** If either or both parents are deceased, a child is considered as deprived of parental support or care except that: Deprivation of parental support or care due to death is overcome by marriage or remarriage of the remaining parent. A stepparent is legally responsible for providing support and care to a stepchild except as specified in WAC 388-215-1060(3).

NEW SECTION

**WAC 388-215-1320 Deprivation—Absence—Requirement.** (1) The department shall determine whether a child is deprived of parental support or care due to the absence of a child's parent.

(2) The department shall determine that deprivation due to the continued absence of a parent exists, regardless of legal marital status, when:

(a) The parent is living out of the home in which the child resides; and

(b) The absence interrupts or terminates the parent's functioning as a provider of:

(i) Maintenance at least equal to the child's prorated share of the monthly need standard for the number of persons in the child's assistance unit as specified under WAC 388-250-1250; or

(ii) Physical care; or

(iii) Guidance for the child; and

(c) The known or indefinite duration of the absence precludes counting on the parent's performance of the function of planning for the present support or care of the child.

(3) When the parent is living out of the home in which the child resides, the department shall assume that one or more of the elements of parental functioning as specified in subsection (2)(b) of this section are interrupted sufficiently to establish deprivation. The assumption that parental functioning is interrupted can be rebutted only if the absent parent routinely visits the child, and continuously provides all elements of parental functioning as specified in subsection (2)(b) of this section. If the department determines that one or more of the elements of parental functioning is reduced due to the parent's absence, it shall establish that deprivation due to continued absence exists.

(4) Deprivation of parental support or care due to absence is overcome by marriage or remarriage of the remaining parent. A stepparent is legally responsible for providing support and care to a stepchild except as specified under WAC 388-215-1060(3).

NEW SECTION

**WAC 388-215-1325 Deprivation—Absence—Maintenance, physical care and guidance defined.** The following definitions shall apply:

(1) "**Maintenance**" means the financial support and in-kind contributions paid directly to the child's household, including:

- (a) Child support;
- (b) Food;
- (c) Clothing; and
- (d) Other necessities.

(2) "**Physical care**" means continuous care of the child on a day-to-day basis by performing tasks, depending on the age of the child, required in the child's daily life including, but not limited to:

- (a) Providing clean clothing and dressing the child;
- (b) Preparing meals and feeding;
- (c) Supervising bedtime; and
- (d) Assisting with other personal care needs.

(3) "**Guidance**" means day-to-day parental participation in, and responsibility for, the child's physical, emotional, and intellectual development including, but not limited to:

- (a) Accompanying the child to doctor visits;
- (b) Attending school conferences;
- (c) Disciplining; and
- (d) Participating in decisions concerning the child's well-being and extracurricular activities.

NEW SECTION

**WAC 388-215-1330 Deprivation—Absence—Exceptions.** The department shall not establish deprivation due to absence if:

(1) The reason for the parent's absence is due solely to serving on active duty in the uniformed military services of the United States; or

(2) For applicants, the department's best estimate based on available evidence is that an absent parent will return to live in the home at any time within the month of initial grant authorization. However, if the department's best estimate is that the absent parent will return to the home within the month following the month of initial grant authorization, deprivation may exist for the initial month of grant authorization, but not for the month following; or

(3) For recipients, after the first two months of eligibility, the department determines an absent parent will return to the home. Deprivation due to absence ceases the end of the month in which the parent returns to the home.

NEW SECTION

**WAC 388-215-1335 Deprivation—Absence—Parent serving jail sentence at home.** Deprivation due to continued absence exists when a parent convicted of an offense is permitted to live in the family home, but is required by the court to perform unpaid work or unpaid community service. In this situation, the department shall:

(1) Not include the needs of the convicted parent in the determination of eligibility or the payment of financial assistance; and

(2) Allocate income earned by the convicted parent outside of the hours of sentenced unpaid work or community service as required under WAC 388-218-1640.

NEW SECTION

**WAC 388-215-1340 Deprivation—Incapacity—Requirement.** The department shall consider a child deprived of parental support and care due to parental incapacity when:

(1) The child lives with two parents as defined under WAC 388-215-1050 and 388-215-1060; and

(2) One or both parents are substantially incapacitated as defined under WAC 388-215-1345.

NEW SECTION

**WAC 388-215-1345 Deprivation—Incapacity—Definition of incapacity.** To establish deprivation due to incapacity, the physical or mental incapacity of a parent shall be:

- (1) Supported by competent medical evidence; and
- (2) Expected to last at least thirty days; and
- (3) Of such a debilitating nature as to substantially reduce or eliminate the parent's ability to support or care for the child. In making the determination of ability to support, the department shall consider:

(a) The limited employment opportunities of the handicapped parent;

(b) The reason employers refuse to employ the parent for work the parent could do. Reasons may include behavioral disorders or impairments that interfere with securing and maintaining employment;

(c) Limitations that prevent the parent from working full time at a job he or she has been customarily engaged in or is equipped for by education, training, or experience, or can be learned by on-the-job training;

(d) If the parent, even though working full time, is paid on a reduced basis for accomplishing less on a job as a regular employee;

(e) If the parent qualifies for, and is placed in, a noncompetitive full-time job that is rehabilitative, therapeutic, or in a sheltered workshop; and

(f) A parent's ability to engage in activities necessary to carry on full-time specified responsibilities, such as employment, home management, and/or adequate care of children. Inability to understand, remember, follow instructions, or communicate appropriately with others may be sufficient to establish incapacity.

NEW SECTION

**WAC 388-215-1350 Deprivation—Incapacity—Medical evidence.** The department shall consider medical evidence as follows:

(1) The primary source for a physical incapacity shall be a written report from:

- (a) A physician;
- (b) A certified registered nurse (CRN) within the area of certification; or
- (c) The chief of medical administration, or designee, of the Veterans' Administration.

(2) The primary source for mental incapacity shall be a report from:

- (a) A psychiatrist;
- (b) A clinical psychologist;
- (c) A mental health professional designated by the local community mental health agency as defined in RCW 71.05.020; or

(d) A physician at the department's discretion.

(3) The primary source for incapacity due to alcoholism or drug addiction shall be any of those listed in subsections (1) and (2) of this section;

(4) Supplemental sources of evidence include:

- (a) A chiropractor;
- (b) Nurse;
- (c) Physician's assistant; or
- (d) DSHS institution or agency from which the parent has received services.

(5) Evidence shall include:

(a) A diagnosis and prognosis for the incapacitating condition; and

(b) The effect of the condition on the individual's ability to function; and

(c) Relevant medical history and documentation to support a conclusion of incapacity.

(6) The department shall review medical evidence and complete an objective appraisal of all factors relevant to the parent's situation. These include age, emotional health, aptitudes, adjustment to the incapacity, family circumstances, employment history, education, and ability to carry out responsibilities of employment or homemaking. Social or educational deficiencies do not establish incapacity but may impact the parent's ability to overcome an incapacity.

**NEW SECTION**

**WAC 388-215-1355 Deprivation—Incapacity—Review process.** To determine deprivation based on incapacity, the department shall:

(1) Confirm or deny the existence of incapacity within thirty days of the date of application, except in circumstances beyond the control of the agency;

(2) Request additional information when necessary;

(3) Consult with the medical consultant as necessary for evaluation of medical data;

(4) Determine how long the incapacity may be expected to last, based on the prognosis and supported by medical evidence. Duration shall not exceed twelve months without a redetermination of incapacity;

(5) Deny eligibility if the parent fails to cooperate in obtaining medical evidence for incapacity;

(6) Pay the cost of necessary medical reports, provided payment for such reports shall not be made to DSHS agencies; and

(7) Establish incapacity without further medical documentation if the parent is eligible for veteran's benefits based on disability of at least fifty percent or for any Social Security Administration disability benefit.

**NEW SECTION**

**WAC 388-215-1360 Deprivation—Incapacity—Medical treatment.** The department shall require the incapacitated parent to accept referrals for evaluation and available medical treatment, which include medical, surgical, psychiatric therapy, treatment in an alcoholism or drug treatment center, or any combination thereof.

(1) If a parent, whose incapacity deprives a child of parental support or care, refuses without good cause to accept available medical treatment which would reasonably be expected to render the parent employable, the department shall remove that parent's needs from the grant.

(2) The department shall determine if the recommended treatment can be expected to restore or substantially improve the parents' to carry out the responsibilities of employment or homemaking.

(3) The department shall determine that the parent is justified in refusing recommended medical treatment if the refusal is based on one or more of the following conditions:

(a) The parent is genuinely fearful of undergoing the treatment even if the fear seems to be unrealistic or irrational;

(b) The parent could lose a faculty, or use of a faculty, and refuses to accept the risk;

(c) The parent will not accept treatment because of religious beliefs;

(d) The parent is unable to participate in treatment due to another incapacity.

**NEW SECTION**

**WAC 388-215-1365 Deprivation—Unemployment—Requirement.** The department shall determine that a child who lives with two parents, neither of whom is incapacitated as defined under WAC 388-215-1345, is deprived of parental care or support of a qualifying parent as determined under WAC 388-215-1370 if that qualifying parent:

(1) Is unemployed, as defined under WAC 388-215-1375; and

(2) Has been unemployed for at least thirty days or meets the exceptions under WAC 388-215-1380, and during the same thirty-day period the qualifying parent has not:

(a) Refused a bona fide offer of employment; or

(b) Refused training for employment; or

(c) Voluntarily left a job without good cause; and

(3) Meets the work history requirements under WAC 388-215-1385; and

(4) Participates, as required, in the JOBS program as required under WAC 388-215-1520 or, if exempt due to remoteness as provided under WAC 388-47-100 and not participating in JOBS, registered with the employment agency of the state; and

(5) Has not refused to apply for or accept unemployment compensation.

**NEW SECTION**

**WAC 388-215-1370 Deprivation—Unemployment—Qualifying parent.** The department shall designate the qualifying parent as that parent earning the greater amount of income in the twenty-four calendar month period immedi-

ately preceding the month the application for assistance is filed. The department shall:

- (1) Designate the qualifying parent using the best evidence available;
- (2) Consider the earnings of both parents regardless of when the relationship began;
- (3) Continue the designation for each consecutive month the family remains on assistance based on the current application; and
- (4) Designate the qualifying parent if both parents earned an identical amount of income.

#### NEW SECTION

**WAC 388-215-1375 Deprivation—Unemployment—Defined.** The department shall consider the qualifying parent to be unemployed when the qualifying parent:

- (1) Is employed less than one hundred hours a month; or
- (2) Is employed one hundred hours or more for a particular month if:
  - (a) The qualifying parent was employed less than one hundred hours for each of the two previous months; and
  - (b) Is expected to be employed less than one hundred hours during the next month; or
- (3) Participates in institutional and work experience training under the JOBS program and is not otherwise employed over one hundred hours.

#### NEW SECTION

**WAC 388-215-1380 Deprivation—Unemployment—Exception to thirty-day rule.** The qualifying parent shall be unemployed as defined in WAC 388-215-1375 for thirty days or more before the date AFDC-E is authorized, except when:

- (1) AFDC-E is terminated due to employment of the qualifying parent;
- (2) The full-time employment ends within thirty days of termination; and
- (3) The qualifying parent reapplies and is found otherwise eligible for AFDC-E.

#### NEW SECTION

**WAC 388-215-1385 Deprivation—Unemployment—Work quarters.** The qualifying parent shall have one of the following:

- (1) Six or more quarters of work within any thirteen calendar quarter period ending within one year before the application for assistance.
  - (a) A "quarter of work" means a calendar quarter in which the parent earned or received earned income of fifty dollars or more, or participated in the OPPORTUNITIES program; FIP related education, training, or employment services; or JOBS program.
  - (b) A "calendar quarter" means three consecutive months ending March 31, June 30, September 30, or December 31.
- (2) Within one year before the application for AFDC, received, or had such work history as to be eligible to receive, unemployment compensation.

#### NEW SECTION

**WAC 388-215-1390 Deprivation—Redetermination of eligibility when deprivation ceases.** When deprivation due to death, absence, incapacity, or unemployment ceases and the child remains in need, the department shall determine if another basis for deprivation exists.

(1) If it appears that another basis for deprivation may exist, but additional information or verification is needed to establish eligibility, the department shall:

- (a) Request the necessary information or verification from the client following rules in chapter 388-212 WAC; and
  - (b) Continue assistance during the verification process.
- (2) If no other basis for deprivation exists, the department shall:
- (a) Determine the child ineligible for AFDC according to WAC 388-245-1510; and
  - (b) Terminate assistance following rules in chapter 388-245 WAC.

#### NEW SECTION

**WAC 388-215-1400 Support enforcement—Assignment of support rights—Cooperation with office of support enforcement.** (1) As a condition of eligibility, each client of AFDC shall assign to the office of support enforcement any rights to support in his or her own behalf or in behalf of the other assistance unit members, and any rights to support which has accrued prior to the time assignment is made.

(a) The department shall require the client to promptly remit to the office of support enforcement any support received directly after assignment is made.

(b) The department shall consider the client's signed application as an assignment of support rights. The client's acceptance of an AFDC payment shall constitute an agreement to the assignment of support rights.

(2) As a condition of eligibility, the department shall require each AFDC client to cooperate with the office of support enforcement as specified under WAC 388-14-200 unless the department has established good cause as specified under WAC 388-215-1440. Department IV-A staff shall base the determination of client cooperation on all evidence in its possession.

(3) If the relative with whom the child lives fails to comply with the requirements in this section, the department shall deny eligibility to that relative and provide any assistance payment the child is eligible for by protective payment as described under WAC 388-265-1350.

#### NEW SECTION

**WAC 388-215-1410 Good cause not to cooperate with support enforcement—Good cause claims.** When a client claims good cause for noncooperation due to one of the circumstances listed under WAC 388-215-1440, the department shall:

- (1) Determine:
  - (a) If evidence supplied by the client corroborates that cooperation would be against the best interest of the child; or

(b) Whether an investigation of the claimed circumstances can or should be conducted to confirm that cooperation would be against the best interest of the child.

(2) Not deny or delay assistance for a pending good cause determination if the client has provided corroborative evidence and information;

(3) Waive the requirement for client cooperation under WAC 388-215-1400 if the department determines cooperation would not be in the best interest of the child for whom support is sought; and

(4) When the department determines that good cause does not exist:

(a) Notify the client and afford the client an opportunity to cooperate, withdraw the application, or request a fair hearing; and

(b) If the client continues to refuse to cooperate, the client shall lose AFDC eligibility as specified under WAC 388-215-1400.

#### NEW SECTION

**WAC 388-215-1420 Good cause not to cooperate with support enforcement—Department responsibilities.** The department shall:

(1) Inform all clients of:

(a) How establishing paternity, collecting support, and collecting third-party medical coverage may benefit the child; and

(b) The client's right to claim good cause not to cooperate.

(2) Determine good cause as quickly as possible within thirty days from the day the good cause claim is made. The department may have additional time when the information required to verify the claim cannot be obtained within thirty days or when the client needs more than twenty days to provide corroborative evidence;

(3) Notify the client, in writing, of the department findings and basis of determination;

(4) Document the determination, department findings, and the basis for the determination in the client's record; and

(5) Review, at least every six months, all active good cause cases. If good cause no longer exists, the department shall require the client to cooperate.

#### NEW SECTION

**WAC 388-215-1430 Good cause not to cooperate with support enforcement—Client responsibilities.** The burden to substantiate the good cause claim shall be upon the client. The department shall deny a client's good cause claim when the client fails to take the following required actions:

(1) Specify the circumstances which may constitute a valid basis for a good cause claim;

(2) Provide at least some corroborative evidence supporting the existence of these circumstances within twenty days from the date the good cause claim was made, except the department shall:

(a) Give the client a reasonable additional period of time, when the department determines the client will have exceptional difficulty in obtaining corroborative evidence;

(b) Waive the requirement to provide corroborative evidence if the client meets the conditions in WAC 388-215-1470; and

(3) If requested by the department, provide enough information to permit the department to investigate the circumstance involved in the client's good cause claim.

#### NEW SECTION

**WAC 388-215-1440 Good cause not to cooperate with support enforcement—Good cause circumstances.** The department shall only determine cooperation is against the best interest of the child for whom support is sought if one of the following circumstances exists:

(1) The client's cooperation can reasonably be anticipated to result in serious physical or emotional harm which is detrimental to the:

(a) Child; or

(b) Caretaker relative to the extent the impairment reduces the caretaker relative's capacity to adequately care for the child; or

(2) Establishing paternity or securing support would be detrimental to the child for whom support is sought and:

(a) The child was conceived as a result of incest or forcible rape;

(b) Legal adoption proceedings of the child are pending before a superior court; or

(c) The parent is working with a public or licensed child placement agency to decide whether to keep or relinquish the child for adoption and the discussions have not gone on for more than three months.

#### NEW SECTION

**WAC 388-215-1450 Good cause not to cooperate with support enforcement—Evidence of good cause.** (1) The client may corroborate a good cause claim with the following types of evidence:

(a) Birth, medical, or law enforcement records which show the child was conceived as the result of incest or forcible rape;

(b) Court or other records which show proceedings for adoption are pending before a superior court;

(c) Court, medical, criminal, child protective services, social services, psychological, or law enforcement records which indicate that the absent parent might inflict emotional or physical harm on the caretaker relative or the child for whom support is sought;

(d) Medical records or written statements from a mental health professional, with a diagnosis or prognosis concerning the emotional health of the caretaker relative or the child for whom support is sought;

(e) Child placement agency verification, including the dates of counseling, regarding the issue of whether to keep or relinquish the child for adoption; or

(f) Sworn statements from persons other than the client, who have knowledge of the circumstances which provide the basis of the good cause claim.

(2) The department shall not approve good cause based on a claim of emotional harm until the department:

(a) Considers and documents whether the client's cooperation is reasonably anticipated to result in emotional

harm that substantially affects the functioning of a child or the caretaker relative; and

(b) Obtains the following information:

(i) Past and present emotional state of the person subject to emotional harm;

(ii) Degree and probable duration of the emotional upset;

(iii) Degree of cooperation required; and

(iv) Extent of the child's involvement in the paternity establishment or support enforcement activity.

(3) When the client requests, the department shall assist the client in obtaining any required evidence which the client cannot reasonably be expected to obtain without assistance.

(4) The department shall only approve good cause for noncooperation, based on the evidence supplied by the client, after such evidence has been examined and found to actually verify the client's good cause claim.

#### NEW SECTION

**WAC 388-215-1460 Good cause not to cooperate with support enforcement—Inconclusive evidence of good cause.** When the client provides evidence, but the client's claim and the evidence the client provides do not give the department sufficient basis for making a good cause determination, the department may:

(1) Request additional evidence from the client. The department shall notify the client of the specific type of document which is needed; or

(2) Conduct an investigation, if necessary.

#### NEW SECTION

**WAC 388-215-1470 Good cause not to cooperate with support enforcement—No evidence of good cause.** When a good cause claim is based on the anticipation of physical harm to the child or to the caretaker relative and corroborative evidence of the claim is not provided by the client, the department shall:

(1) Investigate the claim when the department believes:

(a) The claim is credible without evidence; and

(b) No evidence is available.

(2) Find good cause if the client's statement and the conducted investigation satisfies the department that the client has good cause for refusing to cooperate; and

(3) Subject good cause approved under these circumstances to supervisory approval.

#### NEW SECTION

**WAC 388-215-1480 Good cause not to cooperate with support enforcement—Investigating good cause claims.** When the department conducts an investigation of a client's good cause claim, the department shall:

(1) Contact the absent parent if such contact is necessary to establish the good cause claim; and

(2) Before such contact, notify the client and give the client the opportunity to:

(a) Present additional evidence or information that makes contact unnecessary;

(b) Have the application for assistance withdrawn or assistance terminated; or

(c) Have the good cause claim denied.

(3) Allow the client to request a fair hearing if the client chooses to have the good cause claim denied.

#### NEW SECTION

**WAC 388-215-1490 Good cause not to cooperate with support enforcement—Coordination with support enforcement.** (1) The department shall promptly report to the office of support enforcement staff those cases in which:

(a) A client claims good cause and a determination is pending;

(b) A determination of good cause exists;

(c) A determination that good cause does not exist; and

(d) A client requests a fair hearing to contest a good cause determination.

(2) Before a final determination of good cause, the department shall:

(a) Give the office of support enforcement staff the opportunity to review and comment on the finding and basis for the proposed determination;

(b) Consider the office of support enforcement staff comments or recommendations; and

(c) Provide the office of support enforcement staff the opportunity to participate in any fair hearing based on a good cause claim.

(3) The department shall determine if the office of support enforcement can proceed to collect support without involving the child or caretaker relative and without posing a risk or a detriment to the child or caretaker relative. If so, the department shall:

(a) Document this decision in the case file;

(b) Notify the client of this decision so the client may withdraw the application; and

(c) If the application is not withdrawn, provide available information about the absent parent to the office of support enforcement staff.

(4) If the department determines that any collection activity is reasonably anticipated to place the child or caretaker relative at risk, the office of support enforcement staff shall not attempt to establish paternity or secure support.

#### NEW SECTION

**WAC 388-215-1500 Enumeration.** (1) As a condition of eligibility, the department shall require each applicant for, or recipient of assistance to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number if the number is unknown or has not been issued; and

(c) Report any new or previously unknown Social Security number following its receipt.

(2) The department shall not deny, delay, or terminate assistance pending issuance of Social Security numbers.

(3) If any person in the assistance unit fails to furnish or apply for a Social Security number, the department shall determine such person to be ineligible.

(4) If a client needs help in obtaining a Social Security number, the department shall:

(a) Refer the client to the nearest Social Security office; and

(b) Furnish requested verification from department records.

NEW SECTION

**WAC 388-215-1520 Employment or training.** (1) All AFDC applicants and recipients shall be subject to job opportunities and basic skills program (JOBS) participation as provided in WAC 388-47-100.

(2) A mandatory JOBS participant failing to cooperate in appraisal shall be subject to provisions of chapter 388-47 WAC, unless the participant:

- (a) Is exempt from JOBS participation;
  - (b) Has not been notified of nonexempt status for JOBS participation; or
  - (c) Is a JOBS program volunteer participant.
- (3) A child's eligibility shall not be affected by the JOBS program participation requirement for the parent or needy caretaker relative.

(4) The eligibility of a nonqualifying parent not participating in JOBS shall be affected by the program participation requirements of the qualifying parent in the AFDC-E program.

(5) An individual determined exempt from participation in JOBS on the basis of documented incapacity shall be referred to DVR as described under WAC 388-52-150 through 388-52-155.

NEW SECTION

**WAC 388-215-1540 Strikers—Requirement.** (1) The department shall determine:

- (a) As ineligible, any AFDC or refugee assistance unit in which the parent(s) or only eligible child participates in a strike on the last day of the month; or
- (b) As eligible, only the otherwise eligible parent and sibling(s) of a child in the home who participates in a strike on the last day of the month.

(2) Strike shall mean any concerted stoppage, slow-down, or other interruption of work by employees, including a stoppage by reason of the expiration of a collective-bargaining agreement.

NEW SECTION

**WAC 388-215-1560 Mandatory monthly reporting—Requirement.** As a condition of continuing eligibility for AFDC, certain recipients must return a completed monthly report to the department by the fifth day of the month following the month for which the report describes the household circumstances, as required in WAC 388-245-2010 through 388-245-2040.

NEW SECTION

**WAC 388-215-1600 Assistance units.** Except as specified under WAC 388-215-1620, the department shall include, in a single assistance unit, the following persons living together:

- (1) A woman in her third trimester of pregnancy who has no other child; or
- (2) The child(ren); including all full, half, or adopted brothers and sisters of such child(ren); and
- (3) The parent(s), adoptive parent(s), or stepparent(s) with whom the child(ren); and
- (4) A minor parent's parent who claims to be the needy caretaker relative of:

- (a) The minor parent;
- (b) The minor parent's child; or
- (c) The minor parent's full or half brother or half sister.

NEW SECTION

**WAC 388-215-1610 Assistance units—Optional members.** Except as specified under WAC 388-215-1620, the department may include in the assistance unit at the option of the family:

- (1) One needy relative caretaker of specified degree whose eligibility depends solely on caring for the child(ren), if a parent does not reside in the family home;
- (2) The stepbrothers or stepsisters of a child included in the assistance unit, except as required in WAC 388-215-1600;
- (3) At the option of the family, the department shall exclude the sibling(s) of an SSI child.

NEW SECTION

**WAC 388-215-1620 Assistance unit—Persons excluded due to factors not related to need.** The department shall exclude from the assistance unit those persons ineligible due to factors not related to need. Exclusions include, but are not limited to:

- (1) A recipient of SSI benefits;
- (2) A child who is not deprived of parental support or care as defined under WAC 388-215-1300 through 388-215-1390;
- (3) An alien not meeting the citizenship and alienage requirements (see WAC 388-215-1200);
- (4) Adopted children receiving Title IV-E, state or local adoption assistance if inclusion of such children and their income will result in a decrease in benefits to the assistance unit;
- (5) Children who receive Title IV-E, state and local foster care maintenance payments except as provided for under WAC 388-215-1120;
- (6) A person under sanction for noncooperation with:
  - (a) The job opportunities and basic skills training (JOBS) program (see WAC 388-215-1520); or
  - (b) The department's office of support enforcement (see WAC 388-215-1400)

NEW SECTION

**WAC 388-215-1650 Assistance to a minor child.** (1) A minor is a person seventeen years of age and younger.

(2) Under state law, (chapter 74.13 RCW, Child welfare services), the department shall protect and care for homeless, dependent, or neglected children or children in danger of becoming delinquent.

(3) If a minor applies for assistance for himself or herself, the department shall determine eligibility for AFDC as required under this chapter. If an unmarried pregnant minor is requesting an abortion, parental consent is not required. The decision to proceed with an abortion rests solely with the minor. Involvement and/or consultation with parents in reaching this decision should be a matter of individual case judgment.

(4) Prior to authorizing assistance for a minor, the department shall determine the parent's ability to financially

support and willingness to contribute. See WAC 388-506-0610 (1) and (2) for responsibility for medical care. Parental contact is not required when the minor applicant:

- (a) Is married;
- (b) Is in the military service;
- (c) Has been declared emancipated by a court of competent jurisdiction prior to the application for assistance; or

(d) Is applying for medical assistance related to pregnancy.

(5) The minor's emancipation status is not an eligibility factor. The identification of emancipation status is necessary to determine if there is parental responsibility for support.

(6) The department shall inform the minor applicant that there will be communication with the minor's parents during the eligibility determination process in order to determine the parents' willingness to contribute to the support of the minor.

(7) If a minor parent and his or her child live with such minor's parent or parents, the department shall establish the assistance unit of the minor according to WAC 388-215-1600 through 388-215-1610. If the minor parent's parent is not included in the assistance unit of the minor parent, the department shall consider the income of such parent available to meet the needs of the minor parent as specified under WAC 388-218-1660 and 388-218-1680.

(8) If a minor parent's legal guardian has a court-ordered responsibility for the support of such minor parent, the department shall treat such legal guardian's income, with respect to determining the availability of such income to meet the needs of the minor parent, the same as the income of a minor parent's parent as specified in subsection (7) of this section.

### Chapter 388-216 WAC RESOURCE ELIGIBILITY

#### NEW SECTION

**WAC 388-216-2000 Resources—Eligibility.** (1) To be eligible for financial benefits, a client must be in financial need. When determining financial need, the department shall consider resources which are:

- (a) Owned by the client; and
- (b) Available to the client.

(2) A client may own and keep exempt resources, or the exempt portion of a resource, and be eligible for assistance. However, financial need is affected by any income produced by the use of the exempt resource.

(a) The resources listed in WAC 388-216-2450 and 388-216-2500 are totally exempt, regardless of the value of that resource.

(b) The resources listed in WAC 388-216-2650 are partially exempt, within a ceiling value.

(c) All other resources are nonexempt.

(3) The possession of available nonexempt resources affect eligibility, to the extent those resources decrease the need for public assistance.

(a) When determining financial need, the department shall:

(i) Treat any proceeds from the lease or rental of a nonexempt resource as income;

(ii) Treat excess real property as specified in WAC 388-216-2600; and

(iii) For nonexempt resources, other than excess real property, use the value of the client's nonexempt resources. The value of a nonexempt resource includes any proceeds from the sale or pledge of that nonexempt resource.

(b) A household may own available nonexempt resources up to the resource standard of one thousand dollars and remain eligible for assistance; and

(c) If the value of a client's nonexempt resources are in excess of the one thousand dollar standard, the client shall be ineligible.

(4) The department shall phase in any change to the one thousand dollar resource standard at the first opportunity, when the department first:

- (a) Takes a case action;
- (b) Determines eligibility; or
- (c) Redetermines eligibility.

#### NEW SECTION

**WAC 388-216-2050 Resources—Ownership.** (1) The department shall consider a client to be the owner of a resource when the client:

- (a) Holds record title to real or personal property; or
- (b) Is in possession of real or personal property which has no record title.

(2) The department shall presume the owner or title holder has the right and ability to use, dispose of, and control real or personal property.

#### NEW SECTION

**WAC 388-216-2075 Resources—Clarifying ownership or value.** (1) Unless a client can provide definite evidence to the contrary, the department shall presume the following types of evidence establishes the ownership of a resource:

- (a) Legally executed bills of sale;
- (b) Purchasing contracts;
- (c) Official tax records; or
- (d) Documents which specify an individual either as owner or as carrying the obligation attendant upon ownership.

(2) The client shall have the opportunity to rebut the presumption that he or she is the owner of a resource by producing additional evidence to clarify ownership.

(3) If there is evidence a client owns a resource but there is also some doubt about the ownership or value of that resource:

(a) Upon request by the department, a client shall, to the extent of his or her ability, clarify ownership or value of a resource;

(b) If a client is incapable of clarifying ownership or value, the department shall help the client do so;

(c) If the client cannot clarify the ownership or value of a resource within a reasonable period of time, as set by the department, continuing eligibility cannot be established; and

(d) If the client produces unreliable or inconclusive evidence regarding the ownership or value of a resource, the department shall attempt to directly obtain conclusive evidence.

**NEW SECTION**

**WAC 388-216-2100 Resources—Community and separate property—Effect on ownership of a resource.**

(1) The department shall presume real or personal property to be community property when the real or personal property is:

- (a) Held in the name of either the husband or wife or both; or
- (b) Subject to the disposition of either the client or his or her spouse.

(2) Resources which are community property constitute a resource owned by both or either spouse and the family unit for the purpose of determining eligibility. Both spouses shall have his or her eligibility determined on the basis of a family unit and on the basis of the total community property resource holdings, regardless of whether one or both are clients.

(3) The presumption that community property is owned by and an available resource to the family unit and both spouses shall stand until overcome by positive evidence to the contrary.

(4) The department shall consider real or personal property to be separate property, rather than community property, when the department establishes that the real or personal property:

- (a) Was acquired and paid for by either spouse before marriage;
- (b) Was acquired by one of the spouses as a result of a gift or inheritance; or
- (c) Was acquired and paid for entirely out of income from separate property.

(5) The department shall presume that the status of separate property is destroyed when a commingling of community and separate property occurs in the purchase or improvement of real or personal property.

**NEW SECTION**

**WAC 388-216-2150 Resources—Jointly owned resources.** When a client and another person jointly own a resource, the department shall determine the client's ownership interest as described below. The department shall use any portion of a resource which is owned by and available to a client to determine eligibility.

(1) When a client has less than full ownership or full title to real or personal property, the department shall use the client's equity in his or her fractional interest in the value of the resource to determine eligibility.

(2) A client has less than full title to real or personal property when the title is shared with some person other than a spouse, contract vendor, mortgage, or lien holder.

(3) The department shall determine whether a client owns part or all of any cash funds which are held by the client or held jointly by the client and any other person.

(a) Since the entire amount of the cash fund is at the client's disposal, the department shall presume a client owns all funds in:

- (i) A joint account;
- (ii) An account held by the client in the behalf of another person; or
- (iii) Funds held by the client in the behalf of another person.

(b) The client shall have the opportunity to rebut the presumption of full ownership when the client can show that all or a portion of the cash fund is:

- (i) Derived from funds belonging exclusively to the other holder; and
- (ii) Held and/or utilized solely for the benefit of that holder.

(c) The department shall not consider any cash fund as actually owned by or available to the client if the client can verify that the funds belong to and are held for the use of another person.

**NEW SECTION**

**WAC 388-216-2200 Resources—Availability.** (1) The department shall determine whether any resource owned, in whole or in part, by a client is available to meet the needs of the assistance unit. The department shall consider a resource available when the client has:

- (a) A legal interest in the resource; and
  - (b) The legal ability to make the resource available for support and maintenance.
- (2) Only resources which are available to meet the needs of the assistance unit shall affect current eligibility for public assistance.

(3) The department shall consider a resource available when any of the following criteria are met:

- (a) The resource is actually at hand for current use by the client;
- (b) The client is able to dispose of the resource by:
  - (i) Direct transfer to a buyer;
  - (ii) Conversion into cash; or
  - (iii) A pledge of the resource;
- (c) The client has title to the resource; or
- (d) The client has control over and can legally dispose of the resource.

**NEW SECTION**

**WAC 388-216-2250 Resources—Making resources available.** (1) To be eligible for assistance, a client must proceed to make available any resource potential which will reduce need.

(2) The department shall consider the factors involved in individual situations in deciding whether a client is proceeding with reasonable diligence to make a resource potential available to meet need.

(3) When a client has taken reasonable action to make a resource potential available, but without success:

- (a) The client's current eligibility is not affected; and
- (b) If there is reason to believe the resource potential will be available later, the client's continued eligibility is conditional and subject to review.

(4) The client is responsible for submitting evidence that the resource potential is unavailable, in the form of statements or letters. These statements or letters shall indicate:

- (a) The factors involved; and
- (b) The approximate time a final decision regarding the release of the potential resource could be expected.

(5) Based on the evidence provided by the client, the department shall:

- (a) Establish and record a definite date to review whether the resource continues to be unavailable; and

- (b) Make this review date known to the client.

#### NEW SECTION

**WAC 388-216-2300 Resources—Trusts as unavailable resources.** (1) If a lump sum is placed in trust for a client and is not under the client's control, the following rules apply:

(a) Funds kept in trust are not considered an available resource. However, the client must take reasonable action to make this resource potential available.

(b) For general assistance only, the department shall treat as a resource the first disbursement, if made within thirty days of the date the lump sum was received by the client. This may be done once for each lump sum placed in trust.

(2) Real property held in trust for an individual Native American is not an available resource.

(a) The department shall not require a Native American applying for or receiving public assistance to sell or attempt to sell allotted trust property as a condition of eligibility.

(b) Property which has lost its trust status is an available resource.

(3) The superintendent of a Native American agency may be authorized, under Title 25, Code of Federal Regulations, Part 115 to control disbursement of a Native American client's trust funds.

(a) Funds held in trust by the superintendent and not disbursed to the client are not available to meet need.

(b) The department shall determine whether any of the trust fund will be disbursed by the superintendent to meet the client's public assistance needs.

(i) When the trust is set up under 25 CFR 115(b), the trust funds cannot be disbursed by the superintendent until the client's eighteenth birthday.

(ii) When the trust is set up under 25 CFR 115(a), the trust funds may be disbursed, at the discretion of the superintendent.

(c) Disbursed 25 CFR 115 trust funds affects eligibility in the following manner:

(i) Any trust funds disbursed directly to the client are treated as newly acquired income.

(ii) Funds disbursed by the superintendent to third parties in payment for goods or services are not under the client's control, but may be available to meet need, depending on whether the disbursement duplicates basic requirements.

(A) Disbursements to third parties for items duplicating "basic requirements," as defined in WAC 388-22-030, are available to meet need as newly acquired income.

(B) Disbursements to third parties for items not duplicating basic requirements are available to meet need as a newly acquired resource.

#### NEW SECTION

**WAC 388-216-2350 Resources—Availability of alien sponsor's resources.** (1) The department shall apply the rules of this section to a sponsored alien who is applying for AFDC or GA and to the sponsor of that alien, unless the alien:

(a) Meets the definition of an asylee, Amerasian, or refugee in WAC 388-55-010;

(b) Is a Cuban or Haitian entrant, as defined in section 501(3) of the Refugee Education Assistance Act of 1980; or

(c) Is the dependent child of the sponsor or sponsor's spouse.

(2) A sponsor is defined as any person or public or private organization executing an affidavit or affidavits of support or similar agreement on behalf of an alien (who is not the child of the sponsor or the sponsor's spouse) as a condition of the alien's entry into the United States.

(3) Sponsorship shall affect the eligibility of an alien for a period of three years from the date of entry into the United States. When the sponsor of an alien is:

(a) A public or private agency or organization, the sponsored alien shall be ineligible for assistance throughout the sponsorship period, unless the agency or organization is either no longer in existence or has become unable to meet the alien's needs; or

(b) A private individual, the department shall deem the resources of the sponsor (and the sponsor's spouse if living with the sponsor) to be the resources of the sponsored alien throughout the sponsorship period.

(4) The alien who is sponsored by an individual shall:

(a) Provide the department with any information and documentation necessary to determine the resources of the sponsor that can be deemed available to the alien; and

(b) Obtain any cooperation necessary from the sponsor.

(5) The department shall calculate the monthly resources deemed available to the sponsored alien, as follows:

(a) Use the total amount of the resources of the sponsor, determined as if the sponsor was applying for AFDC in the alien's state of residence; minus

(b) One thousand five hundred dollars.

(6) In any case where a person is the sponsor of two or more aliens who are subject to the provisions in this section, the deable resources of the sponsor shall be divided equally among the aliens.

(7) Resources which are deemed to a sponsored alien shall not be considered in determining the need of other unsponsored members of the alien's family except to the extent the resources are actually available.

(8) Any sponsor of an alien and the alien shall be jointly and individually liable for any overpayment of assistance made to the alien during the three years after the alien's entry into the United States due to the sponsor's failure to provide correct information, except where such sponsors were without fault or where good cause existed.

(a) When the department finds a sponsor has good cause or is without fault for not providing information to the agency, the sponsor shall not be held liable for the overpayment and recovery will not be made from the sponsor.

(b) Good cause and no fault shall be defined as any circumstance beyond the control of the sponsor.

#### NEW SECTION

**WAC 388-216-2450 Resources—Exempt or disregarded income which is also exempt as a resource.** The department exempts or disregards as income all the funds listed in this section. The department shall also consider these funds as an exempt resource.

(1) The resources of a supplemental security income (SSI) recipient. The department shall not consider nonrecur-

ring lump sum SSI retroactive payments made to an AFDC client as income or as a resource in the month paid nor in the next following month;

(2) The monthly child support incentive payment from the office of support enforcement (OSE);

(3) AFDC benefits resulting from a court order modifying a department policy;

(4) Title IV-E, state and/or local foster care maintenance payments; and

(5) Adoption support payments if the adopted child is excluded from the assistance unit;

(6) Bona fide loans as specified in WAC 388-216-6230 and 388-216-7100. The department shall consider loans bona fide when the loan is a debt the borrower has an obligation to repay;

(7) Educational assistance, in the form of grants, loans, or work study, issued to a student from the following sources:

(a) Title IV-A of the Higher Education Amendments; or

(b) Bureau of Indian Affairs student assistance programs;

(8) Grants or loans made or insured under any programs administered by the department of education to an undergraduate student for educational purposes;

(9) Educational assistance in the form of grants, loans, or work study, issued under the Carl D. Perkins Vocational and Applied Technology Education Act (P.L. 100-391), for attendance costs as identified by the institution. For a student attending school:

(a) At least half-time, attendance costs include tuition, fees, costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study, books, supplies, transportation, dependent care, and miscellaneous personal expenses; or

(b) Less than half-time, attendance costs include tuition, fees, and costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study;

(10) Educational assistance in the form of grants, work study, scholarships, or fellowships, from sources other than those identified in subsections (7), (8), and (9) of this section for attendance costs as identified by the institution. Attendance costs include tuition, fees, costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study, books, supplies, transportation, dependent care, and miscellaneous personal expenses;

(11) Any remaining educational assistance, in the form of grants, work study, scholarships, or fellowships, not disregarded in subsections (7), (8), (9), or (10) of this section, as allowed under WAC 388-218-1540;

(12) The earned income disregards in WAC 388-218-1430 through 388-218-1480 for AFDC and WAC 388-219-1500 for GA-U to any work study earnings received and not disregarded in subsections (7), (8), (9), (10), and (11) of this section;

(13) Payment under Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646, section 216);

(14) The food coupon allotment under Food Stamp Act of 1977;

(15) Compensation to volunteers under the Domestic Volunteer Act of 1973 (P.L. 93-113, Titles I, II, and III);

(16) Benefits under Women, Infants and Children program (WIC);

(17) Food service program for children under the National School Lunch Act of 1966 (P.L. 92-433 and 93-150);

(18) Energy assistance payments;

(19) Indian trust funds or lands held in trust (including interest and investment income accrued while such funds are held in trust) by the Secretary of the Interior for an Indian Tribe, including but not limited to funds issued under the Maine Indian Claims Settlement Act of 1980 (P.L. 96-420);

(20) Per capita judgment funds under P.L. 97-408 to members of the:

(a) Blackfeet Tribe of the Blackfeet Indian Community, Montana;

(b) Gros Ventre Tribe of the Fort Belknap Reservation, Montana; and

(c) Assiniboine Tribe of the Fort Belknap Indian Community;

(21) Indian judgment funds or funds held in trust by the Secretary of the Interior distributed per capita under P.L. 93-134, as amended by P.L. 103-66, 94-114, 97-458, or 98-64. In addition:

(a) Real or personal property purchased directly with funds from the per capita payments, up to the amount of the funds from the per capita payment, are referred to as initial investments. These initial investments are exempt;

(b) Income derived either from the per capita payment or the initial investments shall be treated as newly acquired income;

(c) Appreciation in value of the initial investment shall be treated as a nonexempt resource at the time of eligibility review, unless the initial investment is a type of resource which is listed as exempt under WAC 388-216-2500 or 388-216-2650;

(d) The disregard does not apply to per capita payments or initial investments from per capita payments which are transferred or inherited;

(e) The department shall not consider up to two thousand dollars per year of income received by individual Indians, derived from leases or other uses of individually owned trust or restricted lands;

(22) Two thousand dollars per person per calendar year received under the Alaska Native Claims Settlement Act (P.L. 92-203 and 100-241);

(23) Veterans' Administration educational assistance for the student's educational expenses and child care necessary for school attendance;

(24) Housing and Urban Development (HUD) community development block grant funds that preclude use for current living costs;

(25) Restitution payments made under the Wartime Relocation of Civilians Act, P.L. 100-383. The department shall also disregard resources derived from restitution payments;

(26) A previous underpayment of assistance under WAC 388-260-1550 in the month paid nor in the next following month;

(27) Payment from the annuity fund established by the Puyallup Tribe of Indians Settlement Act of 1989 (P.L. 101-41), made to a Puyallup Tribe member upon reaching twenty-one years of age. In addition:

(a) Real or personal property purchased directly with funds from the annuity fund payment, up to the amount of the funds from the annuity fund payment, are referred to as initial investments. These initial investments are exempt;

(b) Income derived either from the annuity fund payment or the initial investments shall be treated as newly acquired income;

(c) Appreciation in value of the initial investment shall be treated as a nonexempt resource at the time of eligibility review, unless the initial investment is a type of resource which is listed as exempt under WAC 388-216-2500 or 388-216-2650;

(d) Proceeds from the transfer of the initial investments are treated as a transfer of exempt property, as specified in WAC 388-217-3350;

(28) Payments from the trust fund established by the P.L. 101-41 made to a Puyallup Tribe member;

(29) Payments made from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims (P.L. 101-201). The effective date of the disregard is retroactive to January 1, 1989;

(30) Payments made under the Disaster Relief Act of 1974 (P.L. 93-288), as amended by disaster Relief and Emergency Assistance amendments of 1988 (P.L. 100-707). This applies to assistance issued by federal, state, or local governments or by a disaster assistance organization;

(31) Payments from the Radiation Exposure Compensation Act (P.L. 101-426) made to an injured person, surviving spouse, children, grandchildren, or grandparents; and

(32) Income specifically excluded by any other federal statute from consideration as income and a resource.

#### NEW SECTION

**WAC 388-216-2500 Resources—Exempt as a resource with no ceiling value.** "Goodwill" means the reputation and patronage of a company. Goodwill can generally be valued as the amount a company would sell for over the value of its physical property, money owed it, and other assets.

(1) Irrespective of value, the department shall exempt the following resources:

(a) The client's home, subject to the conditions specified in sections WAC 388-216-2550 through 388-216-2590.

(b) Household furnishings and personal clothing essential for daily living. The department shall not exempt household furnishings and personal clothing in storage without evidence that these items are essential for daily living.

(c) One cemetery plot for each member of the assistance household.

(2) The department may declare real and personal property which will be used in a self-employment enterprise as an exempt resource:

(a) On the basis of an agreed plan; and

(b) When the department determines that the real or personal property:

(i) Is necessary to restore the client's independence; or

(ii) Will aid in rehabilitating the client or the client's dependents by providing self-employment experience which can reasonably be expected to lead to full or partial self-support.

(3) The department shall consider any increase in value to exempted stock, raw materials, or inventory as:

(a) Exempt, when the increase is necessary to the health of the enterprise; or

(b) Income, when such increase might reasonably be used towards the client's self-support.

(4) In the absence of an agreed plan, the department shall consider the business assets of a self-employment enterprise, if available and nonexempt, as available to the owner in the amount of the sale value minus encumbrances.

(5) Under an agreed plan, the department shall consider accounts receivable as:

(a) An exempt resource when:

(i) The client makes a diligent effort to collect; or

(ii) If efforts to collect are unsuccessful, the client turns the accounts over to a collection agency;

(b) A nonexempt resource when the client does not meet the requirements in (a) of this subsection; and

(c) Earned income from self-employment, when payment is received.

(6) The department shall consider goodwill as an unavailable resource until the business is sold.

#### NEW SECTION

**WAC 388-216-2550 Resources—Home.** (1) A home is defined as real property owned and used by a client as a place of residence, together with a reasonable amount of land surrounding and contiguous to the residence, including land normally considered and used as part of a home, such as:

(a) Yard and home garden space;

(b) Road to get to the home;

(c) Right of way to and land holding a water supply;

(d) Outbuildings and the land on which they are located, if they serve a normal and useful function of the home. Examples of these outbuildings include a garage, woodshed, chicken house, barn, or a pasture for a cow. In this connection, the use of necessary land and buildings to produce self-consumed products is considered as a reasonable part of the land surrounding the home.

(2) The department shall apply WAC 388-216-2000 or 388-216-2600 to any additional real or personal property which is not covered in subsection (1) of this section.

(3) The home is an exempt resource when used as a place of residence by the client or by his or her dependents.

(a) "**Dependents**" as used in this section means the client's spouse, the client's minor children and/or the client's disabled sons or daughters.

(b) "**Disabled sons or daughters**" means sons or daughters of the client who are:

(i) Unmarried;

(ii) Either natural, step, or adopted children;

(iii) Either minor or adult children;

(iv) Dependent on the client for their livelihood; and

(v) Disabled with a medically verified disability which significantly handicaps them in performing employment or homemaking activities.

(4) The department shall consider a home as a nonexempt resource when the home is not being used for residential purposes by either the client or by his or her dependents,

subject to the exceptions in WAC 388-216-2560 through 388-216-2590.

NEW SECTION

**WAC 388-216-2560 Resources—Temporary absence from home.** (1) The department shall consider a client who is absent from his or her home for temporary periods, as continuing to reside in his or her home, unless he or she expresses his or her intent to abandon the home as a residence.

(2) A temporary absence is defined as an absence that lasts ninety days or less.

NEW SECTION

**WAC 388-216-2570 Resources—Absence from home over ninety days.** (1) The department shall presume that a client absent from his or her home for more than ninety days without good cause has abandoned the home for residential purposes, except when the absence is due to:

- (a) Natural disaster; or
- (b) Hospitalization; or
- (c) Other health reasons.

(2) When the client is absent from his or her home for more than ninety days due to the exceptions listed in subsection (1) of this section, the department shall make a rebuttable assumption that the home is a nonexempt resource when:

(a) There is reason to believe that the client will be unable to return to his or her home; and

(b) The home is not occupied by the client's dependents; and

(c) The following conditions are met:

(i) The client provides a written statement that he or she does not intend to return to the home, to use the home as his or her place of residence, or to use the home as a residence for his or her dependents; or

(ii) The client does not meet the conditions listed in WAC 388-216-2580 for medical absences or in WAC 388-216-2590 for absences in response to a natural disaster.

NEW SECTION

**WAC 388-216-2580 Resources—Medical absence from home.** For medical absences, the department shall:

(1) Obtain an evaluation from three doctors, one of which may be the attending doctor to:

(a) Review the existing medical findings and history; and

(b) Provide the department with a signed statement indicating if, in their professional belief and opinion, the client's health will make the client unable to return to his or her home.

(2) The department shall continue to consider the home as an exempt resource if any of the three doctors indicates it is their medical opinion the client will be able to return to his or her home during his or her lifetime.

(3) The department shall consider the home as a nonexempt resource which can be made available to meet need if:

(a) The home is not occupied by the client's dependents; and

(b) The doctors unanimously indicate in their evaluations it is their medical opinion the individual will be unable to return to his or her home during the remainder of his or her lifetime.

NEW SECTION

**WAC 388-216-2590 Resources—Absence from home due to natural disaster.** (1) For absences resulting from natural disaster, the department shall determine whether the residence is accessible and inhabitable.

(2) When a home that is determined inaccessible or uninhabitable could, in the judgment of the department, become accessible and inhabitable with reasonable effort and expense to the client, the home is presumed to be a nonexempt resource.

NEW SECTION

**WAC 388-216-2600 Resources—Excess real property.** "Excess real property" means real property which:

Is not exempt as the client's home or under a self-employment plan; and

Has a net equity value in excess of the resource standard.

"Good-faith effort" means:

Listing real property with a multiple listing realtor; or

Using other reasonable means to sell real property, when a multiple listing is unavailable or the realtor refuses to list the real property.

"Net sale proceeds" means sale price less encumbrances and costs incurred in selling the real property.

(1) A client who owns excess real property may receive public assistance for a period not to exceed nine months provided the client:

(a) Is making a good-faith effort to sell the excess real property; and

(b) Signs a repayment agreement to repay the lesser of the amount of assistance received or the net proceeds of such sale.

(2) If public assistance is approved and the owner of excess real property ceases to make good-faith efforts to sell the excess real property:

(a) The entire amount of public assistance may become an overpayment; and

(b) The department shall advise clients of their right to a fair hearing and afford them the opportunity to challenge a decision that good-faith efforts to sell have ceased, prior to assessment of an overpayment under this section.

(3) At the time public assistance is authorized, the department shall file a lien without a sum certain on the specific excess real property.

NEW SECTION

**WAC 388-216-2650 Resources—Exempt within a ceiling value.** (1) The department shall exempt the equity value of the resources listed below up to the specified ceiling value. The department shall consider any equity value in excess of the ceiling value as a nonexempt resource.

(a) Term or burial insurance, up to a ceiling value of one thousand five hundred dollars per household member.

(b) One vehicle up to a ceiling value of one thousand five hundred dollars per household.

(2) The department shall phase in changes to the ceiling values at the first opportunity, when the department first:

- (a) Takes a case action;
- (b) Determines eligibility; or
- (c) Redetermines eligibility.

#### NEW SECTION

**WAC 388-216-2800 Resources—Value.** "Equity value" means fair market value minus encumbrances (legal debts).

(1) The department shall determine the value of all nonexempt resources according to the resource's equity value.

(2) The department shall reassess the fair market value if the client provides acceptable evidence that:

(a) A good-faith effort has been made to sell the resource at the fair market value determined by the department; and

(b) The current worth of the resource is less than the resource standard.

(3) The department shall:

(a) Use the *National Automobile Dealers Association Official Used Car Guide* to determine the resource value of automobiles. For automobiles listed in this guide, the department shall presume the "average loan" value in the current edition represents the resource value.

(b) Use the *Kelley Bluebook R.V. Guide* to determine the resource value of recreational vehicles. For vehicles listed in this guide, the department shall presume the "wholesale" value in the current edition represents the resource value.

(c) Document the method used to determine the resource value in the case record for vehicles not listed in these guides.

(d) Document evidence in the case record when the values listed in these guides can be overcome by positive evidence to the contrary.

(4) The equity value in the cash discount value of a chattel mortgage or sales contract represents the value of the resource.

#### NEW SECTION

**WAC 388-216-2850 Resources—Accumulation and depletion of allowable cash resource reserves.** (1) Clients may spend their cash reserves and rebuild these reserves with succeeding public assistance grants, with funds from other exempt sources, or other income which has been considered in computing financial need.

(2) Clients may place grants in accounts along with cash reserves and then spend out of those accounts during the month.

(3) A recipient's cash on hand may exceed the specified limits for a maximum of thirty days if the cash on hand has already been considered in computing financial need.

(4) For general assistance clients, see WAC 388-219-2500 for treatment of allowable cash reserves from nonrecurrent cash lump sum sources.

#### NEW SECTION

**WAC 388-216-2900 Resources—Newly acquired resources.** When a client obtains a newly acquired resource, the department shall:

(1) Apply the resource exemptions to newly acquired resources.

(2) Treat income tax refunds as follows:

(a) The department shall consider an income tax refund as a nonexempt resource in the month of receipt; and

(b) The department shall consider the Earned Income Tax Credit (EITC) portion of an income tax refund as an exempt resource in the month of receipt and in the month following the month of receipt. The department shall consider the EITC as a nonexempt resource in the second month following the month of receipt.

(3) Add the value of the client's newly acquired resources to the client's existing nonexempt resources. If the recipient's total nonexempt resources are in excess of the resource standard, the recipient is ineligible.

(4) Any increase in the value of a resource (such as interest on a savings account, stock dividends, or livestock births) affects eligibility only to the extent the increased value causes the total value of the client's nonexempt resources to exceed the resource standard.

### **Chapter 388-218 WAC AID TO FAMILIES WITH DEPENDENT CHILDREN—INCOME POLICIES**

#### NEW SECTION

**WAC 388-218-1010 Financial need—Rules and procedures.** (1) To be eligible for public assistance a client must be in financial need.

(2) Financial need exists when the client's payment level as adjusted for the maximum grant limitations plus authorized additional requirements exceeds the value of nonexempt resources currently possessed and the amount of the client's nonexempt recurrent and nonrecurrent income. The difference thus computed represents the extent of need which exists.

(3) The rules in chapter 388-218 WAC governing determination of an applicant's financial need for assistance also govern the determination of the continuing need of a recipient unless specifically stated otherwise.

(4) Need is subject to change whenever the client's financial circumstances change in such a way that the appropriate payment level or the client's income is increased or decreased in relation to the standards for assistance.

(5) The department shall take into account the net recurrent or nonrecurrent nonexempt income in cash or in-kind known at the time of application in computing eligibility for payment for an applicant and when determining the continuing grant amount of the recipient.

#### NEW SECTION

**WAC 388-218-1050 Definitions.** "Allocation" means the process of determining the amount of income possessed by someone outside the AFDC assistance unit considered available to meet the needs of legal dependents in the assistance unit, or the process of determining the amount of

income possessed by the assistance unit considered available to meet the needs of legal dependents outside the assistance unit.

**"Available income"** means any income which the client possesses and can currently use to supply all or part of his/her requirements.

**"Budget month"** means the second calendar month preceding the payment month.

**"Deeming"** means the process of determining the amount of an alien sponsor's income available to the alien.

**"Earned income"** means income in cash or in-kind earned as wages, salary, commissions, or profit from activities in which the client is engaged as a self-employed person or as an employee. Earned income may be derived from self-employment (such as business enterprise or farming), or derived from wages or salary received as an employee. Earned income also includes earnings over a period of time for which settlement is made at one time, for example, sale of farm crops, livestock, or poultry. Income from rentals is earned income, provided the client has managerial responsibility for the rental property.

The definition of **"earned income"** includes:

- \* Earnings under Title I of the Elementary and Secondary Education Act;
- \* All earnings received under the Economic Opportunity Act;
- \* Wages from on-the-job training and work experience; and
- \* Wages paid under the Job Training Partnership Act (JTPA).

The definition of **"earned income"** excludes:

- \* Returns from capital investment with respect to which the client is not actively engaged, as in a business. For example, under most circumstances, dividends and interest are excluded from "earned income."
- \* Benefits accruing as compensation or reward for service, or as compensation for lack of employment, for example, pensions and benefits from labor organizations, veterans' benefits, unemployment compensation, Social Security, etc.
- \* Income from incentive payments and training-related expenses derived from institutional or work experience training.
- \* Income received under the Job Training Partnership Act for training allowances, payments for support services, etc.

**"Earned income in-kind"** means the in-kind item is earned by work performed for another person by the client such as earning rent from a landlord, etc.

**"Entitlement"** means any claim or interest, payable in cash or in-kind, a client may have in the following:

- \* Benefit;
- \* Compensation;
- \* Insurance;
- \* Pension (retirement, military, etc.);
- \* Bonus;
- \* Allotment; and
- \* Allowance, etc.

**"Gross income"** means all income not specifically exempted by rule or regulation before applicable program disregards are applied.

**"Income"** shall include, but is not limited to, all types of:

- \* Real or personal property;
- \* Support from parent, stepparent, or other nonrelated adult;
- \* Stocks and bonds;
- \* Wages, including garnished wages;
- \* Interest in an estate;
- \* Income from farming;
- \* Benefits and entitlements from private and public agencies, such as OASDI, veterans' agencies, and U.C.;
- \* Gifts and prizes in the form of cash or marketable securities; and
- \* Lump sum payments.

**"Initial investments"** means real or personal property purchased directly with funds from an annuity fund or per capita payment up to the amount of the funds from the annuity fund or per capita payment.

**"Lump sum payment"** means a nonrecurring unearned income. Lump sum payments may include, but are not limited to:

- \* Lottery, bingo, or gambling winnings;
- \* An inheritance;
- \* Personal injury award;
- \* Workers compensation awards; or
- \* Social Security back payments.

**"Minor parent"** means a person who:

- \* Is seventeen years of age or younger; and
- \* Resides in the same household with an adult responsible for the minor parent's support.

**"Net income"** means gross income less applicable disregards and deductions for which the client is eligible.

**"Newly acquired income"** means any previously unreported or undiscovered income a client possesses or controls in whole or in part.

**"Payment month"** means the calendar month for which payment is made.

**"Process month"** means the calendar month between the budget month and the payment month.

**"Self-produced"** means an item made by a client for personal use.

**"Student"** means a client attending a school, college or university, or a course of vocational or technical training designed to fit the client for gainful employment. A full-time student must have a school schedule equal to a full-time curriculum. A part-time student must have a school schedule equal to at least one-half of a full-time curriculum. A student enrolled during the school term just completed and planning to return to school when school reopens shall retain status as a student during the summer vacation.

**"Supplied"** means the in-kind item is furnished to the client without work or cost.

**"Unearned income"** means income not directly resulting from a client's employment or self-employment.

NEW SECTION

**WAC 388-218-1100 Income—Ownership and use of income and income potentials.** (1) The department shall consider all income owned or possessed by the client as available to meet current need, including amounts garnished

to pay debts. See also WAC 388-218-1130 Community income, and WAC 388-218-1140 Separate income.

(2) WAC 388-218-1010 through 388-218-1940 cover policies and procedures used in computing income to determine financial need.

(3) The department shall compare the total nonexempt net income values with the appropriate payment level plus authorized additional requirements to determine financial need and, if it exists, the amount of the grant for which the client is eligible.

#### NEW SECTION

**WAC 388-218-1110 Income availability—Reduction of need.** (1) Income shall be considered available only when the income is actually at hand for current use and/or disposition by the client.

(2) A client must proceed to make available any income potential which will reduce need.

(3) In determining whether a client is proceeding with reasonable diligence to make an income potential available to meet need, the department is governed by the factors involved in individual situations.

(4) The client is responsible for submitting evidence in the form of statements or letters indicating the factors involved and the approximate time a final decision could be expected. A definite period of time is determined by the department, made known to the client, and recorded.

(5) When a client has taken reasonably required action to make an income potential available but without success, current eligibility is not affected.

(6) When there is reason to believe the income potential will be available later:

- (a) Continued eligibility is conditional; and
- (b) Subject to review at such later period at which time the appropriate policy herein is utilized.

#### NEW SECTION

**WAC 388-218-1120 Entitlements.** The department shall:

- (1) Determine the interest a client may have in any entitlement;
- (2) Refer the client to the proper agency to apply for such benefits;
- (3) Assist the client, when requested to do so, in obtaining such benefits; and
- (4) Deny or terminate the assistance unit when a member refuses to:
  - (a) Establish the existence of an entitlement and its value; or
  - (b) Receive an existing entitlement.

#### NEW SECTION

**WAC 388-218-1130 Community income.** (1) The department shall consider the following to be community income:

- (a) All income held in the name of either the husband or wife or both;
- (b) Any income received by either the husband or wife; or

(c) The earnings of the husband, or wife, or both, if not legally separated.

(2) The department shall consider income subject to the disposition of either the client or the client's spouse, to be community income for the purpose of determining eligibility. This presumption stands until overcome by positive evidence to the contrary.

(3) Community income is considered to constitute a benefit available to the family unit and hence to both or either spouse.

(4) Each member of the marital community shall have eligibility determined on the basis of a family unit and on the basis of the total community income, regardless of whether one or both are clients.

#### NEW SECTION

**WAC 388-218-1140 Separate income.** (1) The department shall consider income to be separate when the department establishes the income:

- (a) Was received by either spouse before marriage;
  - (b) Was received as a result of a gift or inheritance; or
  - (c) Was received from separate property.
- (2) A commingling of community income and separate income destroys the status of separate income.

#### NEW SECTION

**WAC 388-218-1200 Exempt income types.** The department shall exempt the following from consideration as income when determining need:

- (1) The income of a supplemental security income recipient. The department shall not count nonrecurring lump sum SSI retroactive payments made to an AFDC client as income in the month paid nor in the next following month;
- (2) AFDC benefits resulting from a court order modifying a department policy;
- (3) Title IV-E, state and/or local foster care maintenance payments;
- (4) Adoption support payments if the adopted child is excluded from the assistance unit;
- (5) Payment under Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, section 218;
- (6) The food coupon allotment under Food Stamp Act of 1977;
- (7) Compensation to volunteers under the Domestic Volunteer Act of 1973, P.L. 93-113, Titles I, II, and III;
- (8) Benefits under women, infants and children program (WIC);
- (9) Food service program for children under the National School Lunch Act of 1966, P.L. 92-433 and 93-150;
- (10) Energy assistance payments;
- (11) Housing and Urban Development (HUD) community development block grant funds that preclude use for current living costs;
- (12) Restitution payments made under the Wartime Relocation of Civilians Act, P.L. 100-383. The department shall disregard income and resources derived from restitution payments;
- (13) A previous underpayment of assistance under WAC 388-33-195. The department shall not consider such

retroactive corrective AFDC payments as income in the month paid nor in the next following month;

(14) Payments made from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims, P.L. 101-201. The effective date of the disregard is retroactive to January 1, 1989;

(15) Payments made under the Disaster Relief Act of 1974, P.L. 93-288, as amended by Disaster and Relief and Emergency Assistance Amendments of 1988, P.L. 100-707. This applies to assistance issued by federal, state, or local governments or by a disaster assistance organization;

(16) Payments from the Radiation Exposure Compensation Act, P.L. 101-426, made to an injured person, surviving spouse, children, grandchildren, or grandparents; and

(17) Income specifically excluded by any other federal statute from consideration as income.

**NEW SECTION**

**WAC 388-218-1210 Exempt and disregarded income—Educational assistance.** (1) The department shall exempt from consideration as income when determining need educational assistance, in the form of grants, loans, or work study, issued to a student from the following sources:

- (a) Title IV of the Higher Education Amendments; or
- (b) Bureau of Indian Affairs student assistance programs.

(2) The department shall take the following into consideration as income and disregard as specified when determining need:

(a) Grants or loans made or insured under any programs administered by the department of education to an undergraduate student for educational purposes.

(b) Educational assistance in the form of grants, loans, or work study, issued under the Carl D. Perkins Vocational and Applied Technology Education Act, P.L. 101-391, for attendance costs as identified by the institution. For a student attending school:

(i) At least half-time, attendance costs include tuition, fees, costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study, books, supplies, transportation, dependent care, and miscellaneous personal expenses; or

(ii) Less than half-time, attendance costs include tuition, fees, and costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study.

(c) Educational assistance in the form of grants, work study, scholarships, or fellowships, from sources other than those identified in subsections (1), (2)(a) and (b) of this section for attendance costs as identified by the institution. Attendance costs include tuition, fees, costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study, books, supplies, transportation, dependent care, and miscellaneous personal expenses.

(d) Any remaining educational assistance, in the form of grants, work study, scholarships, or fellowships, not disregarded in subsections (1), (2)(a), (b), and (c) of this section, as allowed under WAC 388-218-1540 Assistance from other agencies and organizations.

(e) Apply any applicable earned income disregards to any work study earnings received and not disregarded in subsections (1), (2)(a), (b), (c), and (d) of this section.

(f) Veterans' Administration educational assistance for the student's educational expenses and child care necessary for school attendance. Attendance costs include tuition, fees, costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study, books, supplies, transportation, dependent care, and miscellaneous personal expenses.

**NEW SECTION**

**WAC 388-218-1220 Disregarded income—Native American benefits.** The department shall take the following into consideration as income and disregard as specified when determining need:

(1) Two thousand dollars per individual per calendar year received under the Alaska Native Claims Settlement Act, P.L. 92-203 and 100-241;

(2) Indian trust funds or lands held in trust (including interest and investment income accrued while such funds are held in trust) by the Secretary of the Interior for an Indian tribe or individual tribal member;

(3) Indian judgment funds or funds held in trust by the Secretary of the Interior distributed per capita under P.L. 93-134 as amended by P.L. 97-458 and 98-64. In addition:

(a) Income derived either from the per capita payment or the initial investments shall be treated as newly acquired income.

(b) When the initial investments are nonexempt resources see WAC 388-216-2000.

(c) The disregard does not apply to per capita payments or initial investments from per capita payments which are transferred or inherited.

(4) Income received by Native Americans which is derived from leases or other uses of individually owned trust or restricted lands up to two thousand dollars per person per year (P.L. 103-66).

(5) Payment from the annuity fund established by the Puyallup Tribe of Indians Settlement Act of 1989, P.L. 101-41, made to a Puyallup Tribe member upon reaching twenty-one years of age.

(a) The department shall treat the income derived either from the annuity fund payment or the initial investments as newly acquired income.

(b) When the initial investments are nonexempt resources see WAC 388-216-2000.

(6) Payments from the trust fund established by the P.L. 101-41 made to a Puyallup Tribe member.

**NEW SECTION**

**WAC 388-218-1230 Disregarded income types.** The department shall take the following into consideration as income and disregard as specified when determining need:

(1) Child's earned income. Earned income of a child when student eligibility conditions in WAC 388-218-1410 Earned income of a child, have been met.

(2) Earned income tax credit (EITC).

(3) Foster care payments. Disregard as income a foster care payment made for the care of a child. See WAC 388-

218-1400 Earned income types, for the treatment of foster care retainer fees.

(4) Gifts:

(a) Cash gifts. Nonrecurring cash gifts up to thirty cumulative dollars received by each member of the AFDC assistance unit per calendar quarter. The department, unless otherwise specified by the donor, shall determine an individual's share in a gift to more than one person by dividing the amount of the gift by the number of persons receiving the gift.

(b) Noncash gifts. Gifts other than cash as defined under chapter 388-22 WAC provided such gifts are within the allowable program resource limits.

(5) Household cost funds. Funds representing another person's or family's share of household costs.

(6) Loans.

(a) Bona fide loans. The department shall consider a loan bona fide when the loan is a debt the borrower has an obligation to repay.

(b) Loan repayments. The department shall not consider as income to a client money received from loan repayment; however, the department shall consider any interest paid in the loan as newly acquired income.

(7) Office of support enforcement pass-through payments. The monthly child support incentive payment from the office of support enforcement (OSE);

(8) Overpayments recovered by source agency. Any overpayment amount withheld from a client's benefit in order to recover an overpayment by the source agency.

(9) Per diem and transportation. Per diem and transportation funds paid to AFDC advisory committee members.

(10) Settlements. Settlements for destroyed, stolen exempt property, or back medical bills when conditions in, WAC 388-218-1530 Determining net income—Other income, have been met.

(11) Self-produced or supplied items. The value of self-produced or supplied items except as specified in, WAC 388-218-1340 Self-produced or supplied items, when:

- (a) Self-produced items are sold for cash; or
- (b) The household's requirement for shelter is supplied.

#### NEW SECTION

**WAC 388-218-1300 Self-employment income.** (1) Earned income from self-employment is the amount left after deducting allowable business expenses from gross business income.

(2) Applicable earned income disregards are further deducted from self-employment earned income to determine the net amount available to meet need.

(3) In order to establish eligibility for public assistance, a self-employed client must maintain and make available to the department a record clearly documenting all business expenses and income.

#### NEW SECTION

**WAC 388-218-1310 Adult family home income.** The department shall consider adult family home payments as self-employment income when a public assistance client operates an adult family home.

#### NEW SECTION

**WAC 388-218-1320 Board, room rental, board and room income.** (1) The department shall determine the adjusted gross self-employment income from the operation of a rooming, boarding, or boarding and rooming home as follows:

(a) Boarder income. Consider the board payment received minus the current thrifty food plan for an assistance unit size equal to the number of boarders;

(b) Roomer income. Consider the room rental received minus expenses of maintaining the room;

(c) Boarder and roomer income. Consider the board and room payment received minus the current thrifty food plan for an assistance unit size equal to the number of boarders and expenses of maintaining the room.

(2) The department shall treat the adjusted gross income as computed in accordance with subsection (1) of this section as earned income.

#### NEW SECTION

**WAC 388-218-1330 Lease or rental of property.** The department shall treat income from lease or rental of property as self-employment income when the client performs regularly scheduled ongoing managerial labor in obtaining the income.

#### NEW SECTION

**WAC 388-218-1340 Self-produced or supplied items.** The department shall disregard the value of self-produced or supplied items except when:

(1) Self-produced items are sold for cash. When such a sale is made, the department shall treat the cash sale value as self-employment income; or

(2) The assistance unit's requirement for shelter is supplied. When the assistance unit's shelter is supplied, the department shall establish the payment level for the assistance unit as indicated in chapter 388-250 WAC.

#### NEW SECTION

**WAC 388-218-1350 Deductible self-employment expenses.** The department shall consider the following items as deductible business expenses in a self-employment enterprise:

- (1) Rental of business equipment or property.
- (2) Utilities.
- (3) Postage.
- (4) Telephone.
- (5) Office supplies.
- (6) Advertising.
- (7) Insurance.
- (8) Legal, accounting, and other professional fees.
- (9) The cost of goods sold, including wages paid to employees producing salable goods, raw materials, stock, and replacement or reasonable accumulation of inventory, provided inventory has been declared exempt on the basis of an agreed plan pursuant to WAC 388-216-2500.

(10) Interest on business indebtedness.

(11) Wages and salaries paid to employees not producing salable goods.

(12) Commissions paid to agents and independent contractors.

(13) Transportation essential to the business may be computed according to the actual documented work-related cost of operating the vehicle.

(a) The total operating cost of a vehicle shall be limited to gas, oil, and fluids; necessary services and repairs; replacement of worn items such as tires; registration and licensing fees; and interest on automobile loans.

(b) When the client chooses, eight cents per mile shall be allowed to cover the work-related costs of gas, oil, and fluids.

(c) The cost of tolls and parking related to the business shall be deducted as a business expense.

(d) If a vehicle is needed for both business and private purposes, the mileage and expenses attributable to the business must be documented in a daily log and is subject to verification by the department.

(e) Transportation to and from the place of business is not a business expense, but is a personal work expense and is covered by the work expense deduction.

(14) Nonpersonal taxes on the business and business property, including the employer's share of federal Social Security taxes on business employees and state and federal unemployment insurance contributions, if any. The self-employed person's personal income taxes and self-employment taxes are not business deductions, but are work expenses covered by the work expense deduction.

(15) Repairs to business equipment and property, excluding vehicles. An expenditure to maintain property in its usual working condition is deductible as a repair.

(16) Other expenditures reasonable and necessary to the efficient and profitable operation of the self-employment enterprise.

#### NEW SECTION

**WAC 388-218-1360 Nondeductible self-employment expenses.** The department shall not consider the following items as deductible business expenses in a self-employment enterprise:

(1) Capital expenditures. Capital expenditures are those made to acquire or increase the value of fixed assets. Fixed assets are items normally in use for one year or longer, such as land, buildings, vehicles, boats, machinery, tools, office equipment, furniture, and fixtures.

(2) Payments on the principal of loans to the business.

(3) Amounts claimed as depreciation.

(4) Any amount claimed as a net loss sustained in any prior period.

(5) Entertainment expenses.

#### NEW SECTION

**WAC 388-218-1400 Earned income types.** The department shall consider the following income types as earned income and treat accordingly:

(1) Employment partnership program wages.

(2) Foster care retainer fees received to reserve beds for foster children when a public assistance client operates a foster home for children.

(3) Earned income in-kind items shall be evaluated in terms of their cash equivalent.

(4) Self-employment income from the management and operation of a rooming, boarding, or boarding and rooming home. See WAC 388-218-1320 Board, room rental, board and room income, to determine net income.

(5) Wages, salary, commissions, or profit from activities in which a client is engaged as a self-employed person or as an employee earned in cash or in-kind.

#### NEW SECTION

**WAC 388-218-1410 Earned income of a child.** The department shall apply the following rules when determining the amount of a child's earned income available to meet the current need of the assistance unit of which the child is a member:

(1) The department shall disregard all of the child's monthly earned income when the following circumstances apply:

(a) When determining whether total family income exceeds one hundred and eighty-five percent of the need standard for a child who is a full-time student. This disregard is limited to six months per calendar year;

(b) When determining whether total family income exceeds one hundred percent of the need standard for:

(i) An applicant child, who is a full-time student, provided that such income is also disregarded under (a) of this subsection; or

(ii) A recipient child, who is a full-time student or a part-time student who is not a full-time employee;

(c) When determining the payment amount for an applicant or recipient child who is a full-time student or a part-time student who is not a full-time employee.

(2) A child earning income by working in a sheltered workshop or other training facility for handicapped children shall be considered, for purposes of income exemption, as being at least a part-time student working less than full time.

(3) To be employed full time, a child must be working thirty-five hours a week or the number of hours considered full time by the industry for which he or she works, whichever is less.

(4) Summer employment of students shall not be considered as full-time employment due to the temporary nature of such employment, even though the hours worked may exceed thirty-five hours a week.

(5) In determining the amount of a nonstudent child's earned income available to meet the current needs of the assistance unit, net income shall be computed without application of the disregards specified in this section.

#### NEW SECTION

**WAC 388-218-1420 Earned income disregards—General.** (1) For rules on treatment of the earned income of a full-time or part-time student, see WAC 388-218-1410 Earned income of a child. For rules on the treatment of income from training, see WAC 388-218-1520 Income from employment or training programs. For rules on the treatment of other income, see WAC 388-218-1530 Determining net income—Other income.

(2) When payment of income earned over a period of more than one month is delayed, the earned income disregards apply to the period during which the income was earned.

(3) Earned income disregards shall be deducted from the monthly gross earned income of each individual member of the AFDC assistance unit except as provided in WAC 388-218-1480 Circumstances where earned income disregards are not allowed.

(5) The cost for each dependent child or incapacitated adult, depending on the number of hours worked per month does not exceed the following:

| Hours Worked per month | Dependent Care Maximum Deductions   | Dependent Care Maximum Deductions |
|------------------------|-------------------------------------|-----------------------------------|
|                        | Dependent Two Years of Age or Older | Dependent Under Two Years of Age  |
| 0 - 40                 | \$ 43.75                            | \$ 50.00                          |
| 41 - 80                | 87.50                               | 100.00                            |
| 81 - 120               | 131.25                              | 150.00                            |
| 121 or More            | 175.00                              | 200.00                            |

**NEW SECTION**

**WAC 388-218-1430 Earned income disregards—Deduction sequence.** Earned income disregards shall be applied in the following sequence:  
 (1) Work expense disregard;  
 (2) Thirty dollars and one-third disregard; or  
 (3) Thirty-dollar disregard; and  
 (4) Dependent care disregard.

**NEW SECTION**

**WAC 388-218-1480 Circumstances where earned income disregards are not allowed.** (1) Earned income disregards shall not be applied for any month if the client within a period of thirty days preceding the month in which the income was received:

**NEW SECTION**

**WAC 388-218-1440 Work expense disregard.** Disregard the first ninety dollars of gross earned income for work expenses, regardless of the number of hours worked per month.

- (a) Terminated the client's employment or reduced the client's earned income without good cause; or
- (b) Refused without good cause to accept employment in which the client is able to engage which is offered through an employment security department, or is otherwise offered by an employer if the offer of such employment is determined by the department to be a bona fide offer of employment.

**NEW SECTION**

**WAC 388-218-1450 Thirty dollars and one-third disregard.** (1) For each nonstudent dependent child and adult found otherwise eligible to receive assistance or having received assistance in one of the four prior months, disregard thirty dollars and one-third of the remainder not already disregarded.  
 (2) The thirty dollars and one-third disregard shall be applied for a maximum of four consecutive months and cannot be applied again until the client has been a nonrecipient for twelve consecutive months.  
 (3) Months in which the client received the thirty dollars and one-third exemption in another state shall not apply toward the applicable time limits.

(2) Earned income disregards shall not be applied for any month the client failed without good cause to make a timely report of income. When a timely report is made under these circumstances, the thirty dollars and one-third exemption shall be counted in the applicable time limits. Good cause shall be determined by the department. Any circumstance beyond the control of the client shall constitute good cause.

**NEW SECTION**

**WAC 388-218-1460 Thirty-dollar disregard.** (1) After expiration of the disregard in WAC 388-218-1450 Thirty dollars and one-third disregard, disregard thirty dollars for a maximum of eight consecutive months, whether or not the client has earnings or is receiving assistance.  
 (2) The thirty-dollar disregard cannot be applied again until the client has been a nonrecipient for twelve consecutive months.

(3) To be considered timely, a report must be received by the department:

- (a) On or before the eighteenth day of the month following the month in which the income was received; or
- (b) By the first following work day if the eighteenth day of the month falls on a weekend or holiday.

**NEW SECTION**

**WAC 388-218-1470 Dependent care disregard.** Disregard the actual cost for care of each dependent child or incapacitated adult living in the same home and receiving AFDC provided:  
 (1) Conditions under WAC 388-51-110 (1)(c) are met for each dependent child;  
 (2) No disregard will be allowed for care provided by a parent or stepparent;  
 (3) The provider verifies the cost incurred;  
 (4) The cost is incurred for the month of employment being reported; and

(4) If a client requests termination in order to break the consecutiveness of the applicable time limits for the thirty dollars plus one-third exemption, and would have been eligible, the months of voluntary nonreceipt of assistance shall be counted toward the applicable time limits.

(5) If a client quits work without good cause, the thirty dollars and one-third exemption shall be deemed to have been received and shall be counted toward the applicable time limits.

(6) The following conditions when verified shall constitute good cause for refusal of an offer of employment or refusal to continue employment:

- (a) Physical, mental, or emotional inability of the client to satisfactorily perform the work required;
- (b) Inability of the client to get to and from the job without undue cost or hardship to the client;
- (c) The nature of the work would be hazardous to the client;

(d) The wages do not meet any applicable minimum wage requirements and are not customary for such work in the community;

(e) The job is available because of a labor dispute; or

(f) Adequate child care is not available to the AFDC household.

#### NEW SECTION

**WAC 388-218-1500 Unearned income types.** (1) Unearned income shall include but is not limited to the following types:

(a) Child support when not a pass-through payment or OSE assignment has not been completed;

(b) Gate money from adult corrections;

(c) Labor and industries benefits;

(d) Railroad retirement;

(e) Social Security disability and retirement;

(f) Unemployment compensation; and

(g) Veteran administration benefits.

(2) Unless specifically exempt or disregarded from consideration when determining need, unearned income shall be deducted in its entirety from the assistance grant.

#### NEW SECTION

**WAC 388-218-1510 Time-loss compensation—Lien.**

(1) The department shall file a lien and notice to withhold and deliver, with labor and industries or the self-insurer, to recover time-loss compensation payable to a public assistance client, for injury or illness.

(2) The department shall mail a copy of the notice to the client no later than the following work day.

(3) By accepting public assistance, adult and minor clients subrogate to the department the clients' right to recover time-loss compensation.

(4) The department shall compute payments for time-loss compensation and public assistance paid for less than a full month on the actual number of days paid.

(5) The department shall not make a further claim under this lien when:

(a) Duplicated benefits terminate; or

(b) Continued assistance is required to supplement time-loss compensation to bring the assistance unit up to the grant standard.

(6) When the client or client's attorney claims allowable attorney fees and costs, incidental to an increased award, the office of financial recovery, department of social and health services shall:

(a) Request an itemized billing from the attorney;

(b) Determine what portion of the award, if any, resulted directly from the attorney's involvement;

(c) Determine the department's proportionate share of attorney fees and costs applicable to the duplicate coverage period; and

(d) Deduct the department's share of cost in (c) of this subsection from the lien for duplicated assistance; or

(e) Issue the proportionate share refund to the attorney with a copy of the account summary to the client.

(7) The department shall advise a client of the provisions in this section and in WAC 388-218-1515 Time-loss compensation—Unmarried parents, when the client may be eligible for time-loss compensation.

(8) The department shall advise a client of the client's right to a fair hearing as provided in chapter 388-08 WAC.

#### NEW SECTION

**WAC 388-218-1515 Time-loss compensation—Unmarried parents.** (1) When an assistance unit consists of unmarried parents, the department shall determine financial need and recover time-loss benefits as though the injured worker and the injured worker's dependents comprise a separate assistance unit.

(2) The department shall:

(a) Consider any common children to be part of the injured worker's assistance unit; and

(b) Consider financial need of the children in common to exist when the time-loss benefits do not exceed the appropriate payment standard of the injured worker's separate assistance unit; or

(c) Consider financial need of the children in common not to exist when the time-loss benefits exceed the appropriate payment standard of the injured worker's separate assistance unit.

(d) Budget any income received by the injured worker's separate assistance unit against the related grant when financial need of the children in common exists; or

(e) Deny application or terminate assistance for the injured worker's separate assistance unit when financial need of the children in common does not exist.

#### NEW SECTION

**WAC 388-218-1520 Income from employment or training programs.** (1) Payments issued under the Job Training Partnership Act (JTPA) shall be treated as follows:

(a) Wages paid under the Job Training Partnership Act (JTPA) shall be considered earned income and treated accordingly. See WAC 388-218-1690 Allocation of the income of an ineligible child, for the treatment of the income of a child excluded from the grant. See WAC 388-218-1410 Earned income of a child, for the treatment of the income of a student.

(b) Needs based payments issued under the JTPA shall be evaluated as follows:

(i) Payments which cover special needs not covered in the department need standard shall be disregarded as duplication of need does not exist.

(ii) Payments which duplicate items contained in the department need standard shall be treated in accordance with the policies contained in WAC 388-218-1540 Assistance from other agencies and organizations.

(2) Wages paid from on-the-job training or work experience are considered earned income and treated accordingly.

#### NEW SECTION

**WAC 388-218-1530 Determining net income—Other income.** (1) Net income from any other nonexempt source shall be the gross amount less any cost of securing or maintaining the income.

(2) The department shall consider any payments on mortgages or contracts as income less any cost of securing or maintaining the income.

(3) The department shall consider a settlement covering destroyed or stolen exempt property as newly acquired nonexempt income unless the client, within sixty days of receipt:

(a) Expends the funds to repair or replace the destroyed or stolen exempt property for which the settlement was intended; or

(b) Pays medical bills for which the settlement was intended.

(4) The department shall consider funds deposited into a joint account or into an account held for another, or funds held for others as the income of the client since the entire amount is at the client's disposal, except when the client can show that all or a portion of the funds are:

(a) Derived from funds belonging exclusively to the other holder; and

(b) Held and/or utilized solely for the benefit of that holder. The department shall not consider all funds so verified as actually available to the client.

(5) When appointment of a legal guardian is required by the Social Security Administration or the Veterans Administration as a condition for receipt of a benefit from either agency, the necessary costs of securing a guardian shall be deducted from the benefit received to determine the client's net income.

#### NEW SECTION

**WAC 388-218-1540 Assistance from other agencies and organizations.** (1) Assistance from other agencies and organizations shall not be deducted when determining the amount of assistance to be paid provided that no duplication shall exist between such other assistance and that provided by the department.

(2) To assure nonduplication, aid from other agencies will be considered in relation to:

(a) The different purposes for which such aid is granted;

(b) The provision of goods and services not included in the department's standards; and

(c) Conditions that preclude its use for current living costs.

(3) If the assistance is available to meet need, the assistance shall be exempted up to the difference between the need standard and the payment standard.

#### NEW SECTION

**WAC 388-218-1600 Allocation of income—General.** The department shall allocate nonexempt net income to the assistance unit of which a person is a member. See:

(1) WAC 388-218-1605 for allocation of income to multiple assistance units.

(2) WAC 388-218-1610 for allocation of parental income and support.

(3) WAC 388-218-1620 for allocation of stepparent income for support.

(4) WAC 388-218-1630 for allocation of assistance unit income for support of legal dependents.

(5) WAC 388-218-1640 for allocation of nonassistance unit income for support of legal dependants.

(6) WAC 388-218-1650 for allocation of support for stepchildren.

(7) WAC 388-218-1660 for allocation of support for children by a nonresponsible adult.

(8) WAC 388-218-1670 for allocation of parental income to a minor parent.

(9) WAC 388-218-1680 for allocation of income to women in the third trimester of pregnancy.

(10) WAC 388-218-1690 for allocation of the income of an ineligible child.

(11) WAC 388-218-1695 for deeming the income of an alien's sponsor.

#### NEW SECTION

**WAC 388-218-1605 Allocation of income—Multiple assistance units.** (1) The department shall allocate all nonexempt net possessed by an assistance unit member to meet the needs of the assistance unit, except when families are comprised of two or more assistance units.

(2) The department shall allocate an equal portion of the total nonexempt net community income, including income in-kind, to meet the needs of each assistance unit unless:

(a) The family prefers some other division; and

(b) The preferred division does not increase the total amount of assistance, excluding medical care.

#### NEW SECTION

**WAC 388-218-1610 Allocation of parental income and support.** (1) Support payments made by or in behalf of an absent parent are income to the child(ren) and are to be treated in accordance with WAC 388-14-210 Support payments to office of support enforcement.

(2) When the custodial parent is not included in the assistance unit because of noncompliance with WAC 388-215-1400 Support enforcement—Assignment of support rights—Cooperation with office of support enforcement or WAC 388-47-210, JOBS program—Sanctions for refusal or failure to participate:

(a) The income of such parents is allocated according to WAC 388-218-1630 Allocation of income for support of legal dependents;

(b) Support payments paid directly to the parent and not forwarded to the office of support enforcement are income to the child(ren) and are to be taken into account in determining the need of the assistance unit.

#### NEW SECTION

**WAC 388-218-1620 Allocation of stepparent income and support.** (1) The income of a stepparent is allocated to meet the requirements of the stepchild and its parent in the same manner as the income of the natural or adoptive parent. See WAC 388-218-1610 Allocation of parental income and support.

(2) The stepparent's responsibility for support ceases when the marriage is terminated by death or divorce.

(3) The natural parent of the dependent child is not relieved of a legal obligation to support the child by this provision.

**NEW SECTION**

**WAC 388-218-1630 Allocation of assistance unit income for support of legal dependents.** (1) The department shall allocate the income of a parent or stepparent included in the assistance unit to meet the needs of the assistance unit after deducting an amount for:

- (a) Applicable work expense disregards to meet the cost of employment;
- (b) Support of other dependents not eligible for inclusion in the assistance unit for factors other than sanction or noncooperation, not to exceed the appropriate payment standard for an assistance unit of the same composition;
- (c) Court or administratively ordered support for a legal dependent not living in the parent or stepparent's home, not to exceed the lesser of the amount actually paid or the appropriate need standard for each dependent;

(2) The department shall consider a dependent to be one who:

- (a) Is or could be claimed for federal income tax purposes by the parent or stepparent; or
- (b) The parent or stepparent is legally obligated to support.

**NEW SECTION**

**WAC 388-218-1640 Allocation of nonassistance unit income for support of legal dependents.** The department shall allocate the income of an excluded assistance unit member to meet the needs of the assistance unit after deducting:

- (1) Ninety dollars per month for each employed excluded person to meet the cost of employment.
- (2) An amount for the support of the parent or stepparent and other dependents, ineligible for inclusion in the assistance unit for factors other than sanction or noncooperation, not to exceed the appropriate payment standard for an assistance unit of the same composition; and
- (3) An amount for court or administratively ordered support for a legal dependent not living in the parent's or stepparent's home, not to exceed the lesser of the amount actually paid or the appropriate need standard for each dependent. The department shall consider a dependent to be one who:

- (a) Is or could be claimed for federal income tax purposes by the parent or stepparent; or
- (b) The parent or stepparent is legally obligated to support.

**NEW SECTION**

**WAC 388-218-1650 Allocation of support for stepchildren.** (1) A stepchild may receive income as specified in WAC 388-218-1690 Allocation of the income of an ineligible child.

(2) According to WAC 388-215-1620 Assistance units—Persons excluded due to factors not related to need, when the assistance unit does not include a stepchild's sibling or half-sibling, the family shall have the option to:

- (a) Include the stepchild as a member of the assistance unit with all of the stepchild's income considered as available to the assistance unit; or

- (b) Exclude the stepchild from the assistance unit, with none of the stepchild's income considered as available to the assistance unit.

**NEW SECTION**

**WAC 388-218-1660 Allocation of support for child by nonresponsible adult.** (1) When a dependent child lives with one parent and another person who is not legally responsible to support the child:

- (a) The parent must declare those portions of the income of the nonresponsible adult provided voluntarily for the support of the child or children and the parent.
- (b) Only such income which has been stipulated by the parent to be actually available on a regular basis to meet the needs of the parent and child or children shall be considered in determining the income available to the parent and child or children.

(2) Unwillingness of the nonresponsible adult to contribute does not affect the child's eligibility for assistance.

(3) The needs of the nonresponsible adult may not be included in the assistance unit. See chapter 388-215 WAC Aid to Families with Dependent Children Categorical Eligibility.

(4) The natural parent is not relieved of a legal obligation to support his/her child by contributions from the nonresponsible adult toward the child's support.

**NEW SECTION**

**WAC 388-218-1670 Allocation of parental income to a minor parent.** The department shall allocate the income of a nonapplying parent or stepparent to meet the needs of the minor parent's assistance unit after deducting:

- (1) Ninety dollars per month for each employed parent or stepparent to meet the costs of employment;
- (2) An amount equal to the need standard under WAC 388-250-1200 of an assistance unit comprised of the nonapplying parent or stepparent and any other individuals who:

- (a) Are living in the home but whose needs are not taken into consideration when determining eligibility for AFDC, excluding sanctioned individuals or individuals who refuse to cooperate; and
- (b) Are or could be claimed by the nonapplying parent or stepparent for federal income tax purposes;
- (3) Amounts actually paid by the nonapplying parent or stepparent to meet the needs of individuals not living in the home who are or could be claimed as dependents for federal income tax purposes; and

(4) Payments of alimony or child support to meet the needs of individuals not living in the home.

**NEW SECTION**

**WAC 388-218-1680 Allocation of income to women in third trimester of pregnancy.** (1) The department shall use the need standard that reflects the number of people in the family as though the child were born when applying the WAC 388-218-1720 One hundred eighty-five percent of need test. Include the father when residing in the client's home.

(2) The department shall use the payment standard that reflects the number of people in the family as though the child were born when applying the WAC 388-218-1740 Payment standard test. Include the father when residing in the client's home.

(3) The department shall follow the rules specified in WAC 388-218-1640 Allocation of nonassistance unit income for support of legal dependents, for the allocation of income to a woman in the third trimester of pregnancy when the parents are married and the father resides in the client's home.

#### NEW SECTION

**WAC 388-218-1690 Allocation of the income of an ineligible child.** (1) A child may receive income paid to the parent or parents or other needy caretaker relative. Such income includes:

- (a) Earned income;
- (b) Allotments;
- (c) Retirement benefits;
- (d) Survivors and disability insurance;
- (e) Veterans' benefits;
- (f) Court-ordered support payments;
- (g) Trust fund payments; or
- (h) Other income legally designated for the benefit of an individual child.

(2) Such income of a child ineligible to be included as a member of the assistance unit shall be considered as follows:

(a) If the child is ineligible due to noncooperation with the Washington state employment opportunities programs, or with child support enforcement if the child is a minor parent, such child's income shall be considered available to meet the need of the assistance unit;

(b) If the child is ineligible due to any other factor of eligibility, none of the child's income shall be considered available to meet the need of the assistance unit.

(3) If the income of an ineligible child or stepchild, including a stepchild excluded from the assistance unit as specified in WAC 388-218-1650 Allocation of support for stepchildren, contains a portion for such child's caretaker relative, that portion shall be considered as available to the assistance unit.

#### NEW SECTION

**WAC 388-218-1695 Deeming of income—Alien sponsorship.** (1) For a period of three years following entry into the United States, an individually sponsored alien shall provide the state agency with any information and documentation necessary to determine the income of the sponsor that can be deemed available to the alien, and obtain any cooperation necessary from the sponsor.

(2) For all subsections in this section, the department shall deem the income of an individual sponsor (and the sponsor's spouse if living with the sponsor) to be the unearned income of an alien for three years following the alien's entry into the United States.

(3) Monthly income deemed available to the alien from the individual sponsor or the sponsor's spouse not receiving AFDC or SSI shall be:

(a) The sponsor's total monthly unearned income, added to the sponsor's total monthly earned income reduced by twenty percent (not to exceed one hundred seventy-five dollars) of the total of any amounts received by the sponsor in the month as wages or salary or as net earnings from self-employment, plus the full amount of any costs incurred in producing self-employment income in the month.

(b) The amount described in (a) of this subsection reduced by:

(i) The basic requirements standard for a family of the same size and composition as the sponsor and those other persons living in the same household as the sponsor claimed by the sponsor as dependents to determine the sponsor's federal personal income tax liability but who are not AFDC recipients;

(ii) Any amounts actually paid by the sponsor to persons not living in the household claimed by the sponsor as dependents to determine the sponsor's federal personal income tax liability; and

(iii) Actual payments of alimony or child support, with respect to persons not living in the sponsor's household.

(4) In any case where a person is the sponsor of two or more aliens, the department shall divide the income of the sponsor, to the extent they would be deemed the income of any one of the aliens under provisions of this section, equally among the aliens.

(5) The department shall not consider the income which is deemed to a sponsored alien in determining the need of other unsponsored members of the alien's family except to the extent the income is actually available.

#### NEW SECTION

**WAC 388-218-1700 Prospective eligibility.** The department shall determine eligibility based on the best estimate of income and circumstances existing in the payment month.

#### NEW SECTION

**WAC 388-218-1710 Income tests.** To be eligible for AFDC, a client shall meet the following income tests:

(1) One hundred eighty-five percent of need test, as specified in WAC 388-218-1720 One hundred eighty-five percent of need test;

(2) One hundred percent of need test, as specified in WAC 388-218-1730 One hundred percent of need test; and

(3) Payment standard test, as specified in WAC 388-218-1740 Payment standard test.

#### NEW SECTION

**WAC 388-218-1720 One hundred eighty-five percent of need test.** A client whose nonexempt gross income exceeds one hundred eighty-five percent of the standard of need for the appropriate household size plus additional requirements authorized for that assistance unit, shall not be eligible for AFDC from the date specified in WAC 388-218-1830 Treatment of income—Suspension of a grant.

(1) The department shall consider the income of all members of the assistance unit and the income of natural, adoptive, or stepparents of children in the assistance unit, residing in the same household, in this test except for

income specifically exempted or disregarded and in subsection (2) of this section.

(2) In determining the total income of the family, the department shall exclude:

(a) The earned income of a child who is a full-time student is excluded for six months per calendar year; and

(b) The first fifty dollars per month of the current monthly support obligation of any child support collected on the family's behalf or received by the family.

**NEW SECTION**

**WAC 388-218-1730 One hundred percent of need test.** (1) The assistance unit's monthly nonexempt unearned income plus monthly earned income, less allowable disregards, shall be below the appropriate state need standard plus additional requirements.

(2) This test does not apply if the assistance unit received assistance in one of the four months before the month of application.

**NEW SECTION**

**WAC 388-218-1740 Payment standard test.** The assistance unit's monthly nonexempt unearned income plus monthly nonexempt earned income shall be below the appropriate state payment standard plus additional requirements.

**NEW SECTION**

**WAC 388-218-1800 Treatment of newly acquired nonexempt income.** (1) Income affects the grant amount according to the provisions of:

- (a) WAC 388-218-1700 Prospective eligibility;
- (b) WAC 388-218-1710 Income tests;
- (c) WAC 388-218-1810 Treatment of recurring income;
- (d) WAC 388-218-1820 Treatment of nonrecurring income—Lump sums;
- (e) WAC 388-218-1830 Treatment of income—Suspension of a grant;
- (f) WAC 388-218-1900 Prospective budgeting; and
- (g) WAC 388-218-1910 Retrospective budgeting.

(2) When the value of the income is taken into account when determining the assistance payment, as specified in subsection (1) of this section, assistance is continued in the amount of the difference between the income value plus any other income amounts and the payment standard plus authorized additional requirements.

(3) If income is not taken into account when determining assistance payments but is subsequently discovered, an overpayment shall be established according to chapter 388-270 WAC.

(4) Rules and procedures in chapter 388-270 WAC are followed in respect to overpayments.

**NEW SECTION**

**WAC 388-218-1810 Treatment of recurring income.** If income is recurrent and equal to or in excess of one month's payment level plus authorized additional requirements minus other income, the client is ineligible from the effective date specified in WAC 388-218-1830 Treatment of

income—Suspension of a grant, and the grant is terminated, except for clients in institutions other than nursing homes.

**NEW SECTION**

**WAC 388-218-1820 Treatment of nonrecurring income—Lump sums.** (1) The department shall consider nonrecurring lump sum payments as income in the month received.

(2) When the assistance unit's nonrecurrent lump sum income, plus other income, after applicable disregards exceeds the payment standard, plus authorized additional requirements, the assistance unit shall be ineligible for assistance.

(3) The department shall also apply these requirements to the income of persons required to be included in the assistance unit but are excluded for reasons of sanction or noncooperation.

(4) Ineligibility shall exist for the number of full months derived by dividing this total income by the need standard plus authorized additional requirements.

(5) A minimum period of ineligibility shall be one month.

(6) The department shall treat any income remaining after this calculation is treated as income received in the first month following the period of ineligibility.

(7) The department may shorten the period of ineligibility when the following conditions are met:

(a) An event occurs which, had the assistance unit been receiving assistance, would result in an increase in the need standard; or

(b) The income received, or any part thereof, has become unavailable to the members of the assistance unit for reasons beyond their control; or

(c) Members of the assistance unit incur, become responsible for, and pay medical expenses.

(8) Assistance is authorized only after the events in subsection (7)(a), (b), or (c) of this section have been verified and current eligibility has been established.

**NEW SECTION**

**WAC 388-218-1830 Treatment of income—Suspension of a grant.** (1) See chapter 388-245 WAC for effective dates of ineligibility.

(2) The department shall suspend rather than terminate if:

(a) The department has knowledge of or reason to believe ineligibility would be only for one payment month; and

(b) Ineligibility for that one payment month was caused by income or other circumstances in the corresponding budget month.

(3) The department shall treat a person acquiring income during suspended status as a recipient in terms of eligibility, not as an applicant.

**NEW SECTION**

**WAC 388-218-1900 Prospective budgeting.** (1) Except as specified under subsection (5) of this section and WAC 388-218-1910 Retrospective budgeting, the department shall budget all income prospectively for the first two

months of initial eligibility, including income of an individual added to an existing assistance unit.

(2) The department shall budget income prospectively for:

(a) Assistance units in which all adult members are elderly or disabled, as defined in WAC 388-245-2020 Monthly reporting—Definitions, and do not have:

(i) Earned income; or

(ii) Recent work history as defined in WAC 388-245-2020 Monthly reporting—Definitions.

(b) Homeless assistance units as defined in WAC 388-245-2020 Monthly reporting—Definitions;

(c) Migrant assistance units as defined in WAC 388-245-2020 Monthly reporting—Definitions;

(3) The department shall compute the amount of the assistance payment based on the expected income and circumstances existing in the payment month.

(4) The department shall:

(a) Establish an overpayment if the income is underestimated; and

(b) Issue a corrective payment if the income is overestimated.

(5) The department shall budget income prospectively for one month if:

(a) The case has been closed less than one month; and

(b) The case was closed in the first prospective month.

#### NEW SECTION

##### **WAC 388-218-1910 Retrospective budgeting.** (1)

The department shall retrospectively budget all income for the first two months of initial eligibility if one of the following exists:

(a) A case is reopened as terminated in error;

(b) An individual having had income allocated to an assistance unit is added to that assistance unit;

(c) Assistance had been suspended as specified under WAC 388-218-1830 Treatment of income—Suspension of a grant, and:

(i) The initial month follows the month of suspension; and

(ii) The family's circumstances for the initial authorization month have not changed significantly from the circumstances reported in the budget month.

(d) A case is reopened that has been closed less than one month and was closed in the second prospective month; and

(e) A case is reopened that has been closed less than one month and was closed in a retrospective month.

(2) After the first two months of initial eligibility, the department shall budget all income retrospectively for all assistance units, except as specified under WAC 388-218-1900(2) Prospective budgeting, and subsection (5) of this section.

(3) The department shall compute the amount of assistance based on the income or circumstances existing in the budget month.

(4) The department shall consider all income received during the calendar month of application approval for retrospective budgeting purposes, except as specified under subsection (5) of this section.

(5) Noncontinuous income budgeted prospectively during the first two months of eligibility shall not be budgeted for the first and second payment month for which retrospective budgeting is used.

#### NEW SECTION

##### **WAC 388-218-1920 Determining grant amount—**

**General.** (1) The department shall deduct newly acquired income from the payment level plus authorized additional requirements to determine the grant amount unless otherwise specified in this section or under:

(a) WAC 388-216-2850 Resources—Accumulation and depletion of allowable cash resource reserves;

(b) WAC 388-218-1200 Exempt income types;

(c) WAC 388-218-1210 Exempt and disregarded income—Educational assistance;

(d) WAC 388-218-1220 Disregarded income—Native American benefits; or

(e) WAC 388-218-1230 Disregarded income types.

(2) The amount deducted shall equal the following:

(a) The net amount of the income if in cash or its equivalent; and

(b) At least the client's equity in the quick sale value of property other than cash.

(3) The department shall modify the rules in subsections (1) and (2) of this section as follows:

(a) Income from the following sources affect eligibility only to the extent the amount causes the total value of the resource possessed to exceed the ceiling values of the resource:

(i) Interest on exempt savings;

(ii) Dividends from exempt stocks;

(iii) Increase in life insurance cash surrender value; and

(iv) Livestock births, etc.;

(b) The excess is considered available income; and

(c) Exempt funds representing another person's share of household costs are exempt provided such payments are not legally obligated child support except as provided in WAC 388-218-1720 (2)(b) One hundred eighty-five percent of need test.

(4) The department shall apply WAC 388-218-1110 Income availability—Reduction of need, when income is only potentially available to meet the client's requirements.

#### NEW SECTION

##### **WAC 388-218-1930 Determining grant amount—**

**Applicants.** (1) The department shall determine the grant amount for the month of application by:

(a) Subtracting all nonexempt income, received or reasonably expected to be received during the calendar month, from the payment level plus authorized additional requirements; and

(b) Prorating the remainder for the number of days after grant authorization. This prorated figure is the grant amount for the first month of eligibility.

(2) The department shall determine the grant amount for the month following the month of initial eligibility by subtracting all nonexempt income, received or reasonably expected to be received during the calendar month, from the payment level plus authorized additional requirements. The

remainder is the grant amount for the second month of eligibility.

NEW SECTION

**WAC 388-218-1940 Determining grant amount—Recipients.** (1) The department shall base the grant amount for the third month of assistance and subsequent months upon income received in the budget and/or report month. WAC 388-218-1900 Prospective budgeting, is an exception to this rule.

(2) The department shall treat newly acquired income as specified under:

- (a) WAC 388-218-1700 Prospective eligibility;
- (b) WAC 388-218-1710 Income tests;
- (c) WAC 388-218-1800 Treatment of newly acquired nonexempt income;
- (d) WAC 388-218-1810 Treatment of recurring income;
- (e) WAC 388-218-1820 Treatment of nonrecurring income—Lump sums;
- (f) WAC 388-218-1830 Treatment of income—Suspension of a grant; and
- (g) WAC 388-218-1920 Determining grant amount—General.

**Chapter 388-219 WAC  
GENERAL ASSISTANCE—INCOME POLICIES**

NEW SECTION

**WAC 388-219-0100 General assistance for pregnant women.** The department shall use the income rules for the AFDC program in chapter 388-218 WAC to determine financial eligibility and payment amounts for general assistance for pregnant women (GA-S).

NEW SECTION

**WAC 388-219-0200 General assistance for children.** The department shall use the income rules for the AFDC program in chapter 388-218 WAC to determine financial eligibility and payment amounts for general assistance for children (GA-H) except, the department shall consider only the income of the eligible child.

NEW SECTION

**WAC 388-219-1000 General assistance-unemployable.** Except as specified in this chapter, the department shall use income rules for the AFDC program in chapter 388-218 WAC to determine financial eligibility and payment amounts for the general assistance-unemployable program (GA-U). The following areas are different for GAU:

- (1) Exempt income;
- (2) Earned income disregards;
- (3) Work expense disregards;
- (4) Training expense disregards;
- (5) Deeming of income of an alien's sponsor;
- (6) Allocation of income;
- (7) Exemption of lump sum payments;
- (8) Treatment of nonrecurring income; and
- (9) The income test.

NEW SECTION

**WAC 388-219-1100 GAU exempt income.** The department shall exempt income the same as in the AFDC program except:

- (1) Irregular income up to five dollars per month shall be exempted;
- (2) The income of an SSI recipient shall not be exempted;
- (3) The AFDC exemption for nonrecurring cash gifts up to thirty cumulative dollars received by each member of the assistance unit per calendar quarter shall not be allowed.

NEW SECTION

**WAC 388-219-1500 GAU earned income disregards.** (1) The department shall disregard the first eighty-five dollars plus one-half the remainder of total gross monthly earned income in determining eligibility for and the amount of assistance.

(2) The department shall not allow the thirty-dollar and one-third disregard in WAC 388-218-1450 nor the thirty-dollar disregard in WAC 388-218-1460.

(3) The department shall not apply WAC 388-218-1480, circumstances where earned income disregards are not allowed, to GAU income.

NEW SECTION

**WAC 388-219-1600 GAU work expense disregards.** (1) As chosen by the client, the department shall deduct work expenses from earnings using the "percentage method" or the "actual method."

(2) If the client chooses the "percentage method," the department shall deduct twenty percent of gross earnings or net self-employment income.

(3) If the client chooses the "actual method," the department shall deduct the actual cost of the following work-related expenses when verified in writing:

- (a) Personal work expenses in the form of self-employment taxes (FICA) and income taxes are deductible when paid;
- (b) Payroll deductions required by law or as a condition of employment in the amounts actually withheld;
- (c) The cost for transportation as provided under subsection (4) of this section;
- (d) Expenses which are necessary for continued employment.

(4) For transportation, the department shall allow:

- (a) The cost of public transportation if it is available and practical for the client's use:
  - (i) The cost includes only the charges from the recipient's home to the stop nearest the client's employment or training;
  - (ii) The amount allowed is the actual cost of the common carrier based upon any reduced quantity rates which may be available;
  - (iii) Public transportation includes scheduled intracity and intercity busses, trains, boats, etc. It does not include "for hire" vehicles, such as taxis and rental cars, unless no other means of public transportation is available; or
- (b) The cost of a private vehicle only when public transportation is not available or practical:

PROPOSED

(i) Shared rides shall be prorated on an equitable basis, depending on the travel plan;

(ii) The cost of a vehicle shall be limited to gas, oil, and fluids; necessary service and repairs; replacement of worn items such as tires; registration and licensing fees; and depreciation and interest on automobile loans;

(iii) The amount allowed shall be the total operating cost of the vehicle times the percentage of work-related miles driven during the month;

(iv) If the client chooses, eight cents per mile shall be allowed to cover the work-related expense;

(v) The cost of tolls and parking required for employment.

(5) The client shall have the option to change between the "percentage method" and the "actual method" whenever the client reports income to the department. If the client elects to change methods, the department shall effect the change the first day of:

(a) The month of receipt of the income, if the change causes ineligibility; or

(b) The payment month, if the change causes an increase or decrease in the grant amount.

(6) The department shall not allow the ninety-dollar work expense disregard in WAC 388-218-1440 nor the dependent care disregard in WAC 388-218-1470.

NEW SECTION

**WAC 388-219-1700 GAU training expense disregard.** (1) In determining net income from a training allowance, the department shall deduct applicable GAU earned income and work expense disregards from the gross training allowance received.

(2) For clients enrolled in a remedial education or vocational training course, the department shall deduct the actual cost of uniforms and/or special clothing as priced by the department.

NEW SECTION

**WAC 388-219-2000 Deeming of income of an alien's sponsor.** The department shall not deem the income of an alien's sponsor as available to the alien.

NEW SECTION

**WAC 388-219-2500 Exemption of nonrecurring income—Lump sum payments.** (1) The department shall exempt a nonrecurring lump sum payment received by the client and used to accumulate cash reserves:

(a) The department shall exempt the difference between the resource ceiling and the client's existing resources when the lump sum was received. Any excess shall be considered newly acquired income.

(b) In determining the client's existing resources, the department shall deduct any unexpended grant moneys received within thirty days of the date the lump sum was received.

(c) Such exemption shall apply once for each nonrecurring lump sum received.

(2) The department shall exempt a nonrecurring lump sum payment placed in trust for a recipient, if the lump sum is not under the recipient's control:

(a) The department shall exempt a disbursement made to the recipient from the trust if the disbursement is:

(i) Made within thirty days of the date the lump sum was received; and

(ii) Used by the client to accumulate allowable reserves;

(b) In exempting a disbursement from a trust, the department shall exempt the difference between the resource ceiling and the client's existing resources on hand when the lump sum was received. Any excess shall be considered newly acquired income.

(c) In determining the client's existing resources, the department shall deduct any unexpended grant moneys received within thirty days of the date the lump sum was received.

(d) Such exemption shall apply once for each lump sum placed in trust.

NEW SECTION

**WAC 388-219-2600 GAU treatment of nonrecurring income.** (1) The department shall consider nonexempt, nonrecurring lump-payments as newly acquired income in the month received.

(2) If the client's newly acquired income plus any other income, after applicable disregards is less than the payment standard plus authorized additional requirements, the department shall continue assistance in the amount of the difference.

(3) If the client's nonrecurrent newly acquired income, plus other income, after applicable disregards exceeds the payment standard plus authorized additional requirements, the department shall discontinue assistance:

(a) If such income is equal to or in excess of one months' payment level, but less than two months' payment level plus authorized additional requirements, the department shall suspend assistance:

(i) Effective the first day of the payment month; and  
(ii) Shall deduct the income in excess of one months' payment standard plus authorized additional requirements from the grant for the month following the month of suspension.

(b) If the income, plus other income, is in excess of two months' payment level plus authorized additional requirements, the department shall terminate assistance effective the first day of the month of receipt of the income:

(i) Ineligibility shall continue for two months;  
(ii) Upon completion of the two-month period of ineligibility, the department shall determine eligibility for those that reapply on the same basis as other new applicants.

(4) The department may shorten the period of ineligibility specified in subsection (3)(b) of this section, if the client has verifiable expenses such as medical care, unforeseen disaster or other changes in circumstances making it impossible for the applicant to live on the resource for the two-month period of ineligibility.

(5) The department shall treat a person acquiring income during suspended status as a recipient in terms of eligibility.

NEW SECTION

**WAC 388-219-3000 GAU allocation of income.** The department shall allocate nonexempt net income to the assistance unit of which the person is a member, except when:

(1) The family contains two or more assistance units. In such case, the department shall equally divide the total nonexempt net community income between the assistance units unless:

- (a) The family prefers some other division; and
- (b) The preferred division does not increase the total amount of assistance, excluding medical care.

(2) The person lives with a nonapplying spouse. In such case, the department shall consider the following available to the client:

(a) The nonapplying spouse's net income from wages, retirement benefits, or separate property to the extent that such income exceeds a one-person payment level. In computing the nonapplying spouse's net income, the department shall allow:

- (i) GAU earned income and work expense disregards; and
- (ii) Verified court or administratively ordered support payments made by the nonapplying spouse for legal dependents not living in the parent's home. The amount exempted shall be the amount paid up to the one person need standard for each such dependent.

(b) All the client's net income from wages, retirement benefits, or separate property; and

(c) Half of all other community income.

(3) The person is in a medical institution, alcohol/drug treatment center, congregate care facility, or adult family home. When a person in a medical institution, alcohol/drug treatment center, congregate care facility, or adult family home applies for or receives a general assistance grant, the department shall allocate income as follows:

(a) First to the appropriate payment level of the legal dependents in the family home as stated in chapter 388-250 WAC; and

(b) Then to the needs of the person according to the standards of assistance for each living arrangement.

(4) The person pays court or administratively ordered support for a legal dependent not living in the parent's home. In such case, the department shall allocate income to the assistance unit after deducting:

(a) Applicable earned income and work expense disregards; and

(b) Verified court or administratively ordered support payments made for a legal dependent not living in the parent's home. The amount exempted shall be the amount paid up to the one-person need standard for each legal dependent.

NEW SECTION

**WAC 388-219-3500 GAU income test.** (1) To be eligible for GAU, a client's total monthly nonexempt net income shall be below the appropriate monthly payment standard plus authorized additional requirements.

(2) The department shall not apply the AFDC one hundred and eighty-five percent of need test in WAC 388-

218-1720 nor the one hundred percent of need test in WAC 388-218-1730.

**Chapter 388-245 WAC  
MAINTENANCE OF GRANT PROGRAMS**

NEW SECTION

**WAC 388-245-1000 Definitions.** "Adequate notice" means a written statement of the action the department intends to take; reasons for the intended action; policy supporting the action; and client's rights to request a fair hearing, including the circumstances under which assistance is continued if a hearing is requested.

"Advance notice" means the department mails adequate notice at least ten days before the date of action.

"Change in circumstances" is any change affecting eligibility or continued payment of the grant previously authorized.

"Reside permanently" means the recipient remains in a new area for more than ninety days.

"Visit" means the absence of a recipient from his or her area of residence for not more than ninety days.

NEW SECTION

**WAC 388-245-1150 Periodic and special review of eligibility.** (1) The department shall redetermine the eligibility of financial assistance recipients at least once in every six months of continuous receipt of assistance. The redetermination shall include:

(a) A review of each eligibility factor and an evaluation of any change occurring since eligibility was previously established or reviewed; and

(b) For AFDC recipients, a face-to-face interview at least once every twelve months.

(2) At each periodic review of eligibility the department shall provide the recipient information regarding:

(a) Significant changes in public assistance laws or department rules not previously discussed which may affect the recipient; and

(b) The recipient's legal rights and responsibilities in connection with public assistance.

(3) The department shall complete a full review if a sufficient number of factors have changed to require a redetermination of eligibility.

NEW SECTION

**WAC 388-245-1160 Eligibility review forms.** The department shall designate the forms that the recipient shall complete and submit during the periodic eligibility review.

(1) The forms shall:

(a) Be the recipient's statement in support of continuing eligibility; and

(b) Contain the recipient's written declaration that the answers are made under the penalty of perjury.

(2) The recipient shall complete and submit the designated form to the department to continue receiving assistance.

(3) The department shall only require one completed form from a family consisting of two or more assistance units.

#### NEW SECTION

**WAC 388-245-1170 Department action on review of eligibility.** As a result of the review of eligibility, the department shall:

- (1) Take action so that all matters pertaining to incorrect past, current or future grants are brought into conformity with the rules of the department; and
- (2) Notify the recipient according to the rules and procedures in this chapter when the review results in a change in amount of grant, suspension, termination, or the discovery of an overpayment.

#### NEW SECTION

**WAC 388-245-1210 Program changes.** The department shall authorize assistance for a person receiving continuing assistance and applying for a grant in another program effective the first regular warrant roll for which the client:

- (1) Is eligible for payment from the new program; and
- (2) The grant under the old program is terminated.

#### NEW SECTION

**WAC 388-245-1300 Change of grant amount.** (1) The department shall adjust the grant of a continuing assistance recipient when a change of circumstances reduces or increases the recipient's need.

- (2) The department shall notify the recipient in writing when the department authorizes a change in grant amount.

#### NEW SECTION

**WAC 388-245-1310 Effective date of change in grant amount.** (1) The effective date of change shall be:

- (a) The date a person entered the household or the date a person is determined eligible, whichever is later, when a person is added to the grant.
- (b) The date a sanction is removed when a person's needs are added to a grant because he or she is being removed from a sanction status.
- (c) The date a person moves from a supplied shelter to a renting or owning situation.
- (d) The date a person moves from an institution or congregate care facility and is otherwise eligible for a grant.
- (e) The first of the month following the month in which a change occurred, when a change in circumstances other than income, results in an increase or reduction of the assistance grant.

- (2) The effective date of change shall never precede the date the circumstances actually changed.

(3) See chapter 388-218 WAC for effective dates used when budgeting income.

(4) See WAC 388-245-1510 for effective dates when a change causes ineligibility.

#### NEW SECTION

**WAC 388-245-1315 Effective date of grant amount—Monthly deduction of overpayment.** (1) The department shall start a deduction from the monthly grant when required by WAC 388-270-1400 effective the first regular warrant following the advance notice period provided in WAC 388-245-1700.

(2) The department shall not begin a deduction if the recipient requests a fair hearing regarding the monthly deduction of overpayment during the advance notice period. The department shall not make a monthly deduction until after the decision on the fair hearing has been made or the hearing request is withdrawn in writing or abandoned by the recipient.

(3) The department shall discontinue the monthly deduction upon timely receipt of a hearing request.

(4) The department shall discontinue the monthly deduction when restitution is completed.

(5) The department shall authorize payment expeditiously to compensate the recipient for an underpayment due to an erroneous monthly deduction.

#### NEW SECTION

**WAC 388-245-1320 Address changes to another local office area.** (1) The eligibility of a recipient who moves from one area to another within the state is affected only insofar as his or her need may change. A change in residence usually involves a change in living arrangements, requirements and/or income, and reauthorization of grant. See WAC 388-245-1310 for effective date.

(2) The department shall presume a client intends to reside permanently in another area when the client is absent from his or her former residence for more than ninety days. The department shall establish intent taking into account the plan, wishes and actions of the client.

(3) The client's declaration of intent to return to his or her former residence within ninety days after the date he or she left shall be prima facie evidence that he or she is on a visit.

#### NEW SECTION

**WAC 388-245-1350 Redirection of warrant.** (1) A recipient eligible for continuing assistance is entitled to regular and correct payment without undue interruption or delay. The department shall redirect a warrant only when:

- (a) An overpayment will occur; or
  - (b) The warrant will not be received by the recipient.
- (2) Factors which justify redirection of a warrant are limited to:

(a) The address of a recipient is unknown by the department or the recipient has reported that he or she has changed, or will change, his or her address prior to scheduled receipt of the warrant.

(b) A change in payee is required for correct receipt of the warrant.

(c) A proposed reduction, suspension, or termination of a grant as provided in WAC 388-245-1730.

(d) A recipient has entered an institution and the department has been notified by someone acting on his or her behalf.

(3) The department may redirect a warrant when an authorization has been submitted which cannot be processed before delivery date due to error in the authorization. The warrant is redirected so that necessary action can be immediately taken to continue payment in the correct amount.

(4) The department shall notify the recipient before action is taken to redirect a warrant for any reason other than death. Such notification shall include:

- (a) The reason for the redirect action; and
- (b) Assurance of correct payment, when appropriate, at the earliest possible date.

(5) The department shall determine the recipient's eligibility or ineligibility for the warrant at the earliest possible date, but not later than thirty days after the date of its issuance.

(6) The department shall:

- (a) Cancel the warrant if ineligibility is determined and notify the recipient in writing of the reason for cancellation.
- (b) Release the warrant, or promptly reauthorize payment in the correct amount if it is not in the correct amount, according to WAC 388-245-1310.

NEW SECTION

**WAC 388-245-1400 Suspension of grant.** The department shall suspend a grant when:

- (1) The amount of the monthly grant following the budgeting of income is less than ten dollars per month;
- (2) The recipient is in a congregate care facility, adult residential rehabilitation center, adult residential treatment facility, adult family home, or division of developmental disabilities group home and has income that exceeds the payment standard but is less than the eligibility standard;
- (3) The department has reason to believe ineligibility caused by income or other change of circumstance in the report month would be for one month only;
- (4) A general assistance recipient enters a state mental hospital; or
- (5) A general assistance recipient's income exceeds the payment standard for more than one month, but less than two months.

NEW SECTION

**WAC 388-245-1410 Reinstatement or termination of a suspended grant.** (1) The department shall determine eligibility for the month following the month of suspense according to WAC 388-218-1910.

- (2) The department shall reinstate a suspended grant when:
  - (a) The conditions in WAC 388-245-1400 cease to exist;
  - (b) The recipient completes a department initiated review of eligibility;
  - (c) The recipient requests reinstatement of a grant within:
    - (i) Fifteen days after leaving an institution; or
    - (ii) Fifteen days of completing restitution of an overpayment by monthly grant deduction; or
    - (iii) The end of the suspense month for all other suspense reasons; and
  - (d) The recipient is otherwise eligible.

(3) When reinstating a grant, the department shall not issue benefits for a time period prior to the date the recipient becomes eligible for payment.

(4) The department shall terminate a suspended grant when:

- (a) The conditions in subsection (2) of this section are not met;
- (b) The individual dies while the grant is suspended; or
- (c) The individual becomes ineligible for some other reason.

NEW SECTION

**WAC 388-245-1500 Termination of grant.** The department shall terminate the grant when the recipient does not meet the conditions required for continued eligibility.

NEW SECTION

**WAC 388-245-1510 Effective date of ineligibility for terminated grants.** (1) When a change in income, including the receipt of a lump-sum payment, causes ineligibility for more than one month, the recipient shall be ineligible effective the first day of the month of receipt.

(2) When the change causes ineligibility for one month only the department shall follow WAC 388-245-1400 and 388-245-1410.

(3) When a change of circumstances other than increased income renders the assistance unit or any member of the assistance unit ineligible, the effective date of the recipient's ineligibility shall be the first day of the month following the month in which the change occurred, except for:

- (a) Striking workers, see WAC 388-215-1540.
- (b) Clients who receive general assistance based on the relinquishment of a child for adoption.

NEW SECTION

**WAC 388-245-1520 Reinstatement of grant terminated in error.** (1) When the department changes its decision to reduce, terminate or suspend the grant, the department shall authorize assistance expeditiously.

(2) The department shall reauthorize a grant terminated in error effective the first of the month in which payment was erroneously discontinued.

NEW SECTION

**WAC 388-245-1600 Effective date adjusted by fair hearing or court decision.** (1) The fair hearing or court decision will specify the effective date of eligibility or change in the grant. Any regular grant change is made on the first possible regular warrant roll date. See WAC 388-255-1400 for payment of any adjusting grant due.

(2) When the initial or final hearing decision is favorable to the appellant, or when the department decides in favor of the appellant prior to the hearing, the department shall make corrective payments retroactively to the date an incorrect action was taken or such earlier date as is provided under department rules.

NEW SECTION

**WAC 388-245-1610 Effective date of law or rule change.** The department shall specify the effective date of eligibility when a change in law or departmental rules creates a change in eligibility date or the amount of a grant.

NEW SECTION

**WAC 388-245-1700 Written notice—Adverse actions for recipients.** (1) The department shall mail written advance notice to recipients, at least ten days before the date of action to terminate, suspend, or reduce benefits to recipients of AFDC, GA, or all medical assistance programs. The notice shall contain the:

- (a) Action the department intends to take;
- (b) Facts relating to the decision;
- (c) Policy supporting the action;
- (d) Recipient's right to request a fair hearing, including the circumstances under which assistance is continued if a hearing is requested; and
- (e) Full translation into the primary language of the limited English proficient recipient.

(2) The department shall provide written adequate notice, as specified in subsection (1) of this section, when the ten-day notice is not required per WAC 388-245-1710.

NEW SECTION

**WAC 388-245-1710 Dispensation of advance notice.** The department shall not be required to provide advance notice of action to terminate, suspend, or reduce assistance when:

(1) The department has factual information of the death of the client or of the assistance payee when there is no other person available to serve as payee.

(2) A recipient has been admitted or committed to an institution making the recipient ineligible.

(3) A client has been placed in skilled nursing or intermediate care or long-term hospitalization.

(4) The client's whereabouts are unknown and departmental mail directed to him or her has been returned by the post office indicating no known forwarding address.

(5) A client is receiving assistance in another state.

(6) An AFDC child is removed from the home as a result of a judicial determination or voluntarily placed in foster care by his or her legal guardian.

(7) Eligibility for emergent need or for an additional requirement is authorized for specific items for a one-month period only and the client has been so advised.

(8) The department received a statement from the recipient that he or she no longer wishes assistance. The department shall immediately send adequate notice to confirm the verbal or written request for termination.

(9) The department receives a clear statement from the recipient giving information requiring termination, suspension, or reduction of assistance. The recipient must indicate in writing that he or she understands the consequence of supplying such information. The department shall provide adequate notice stating the adverse action.

(10) The department takes action because of information the recipient reported on the monthly report by the AFDC recipient.

NEW SECTION

**WAC 388-245-1715 Recipient to provide information or take action to maintain continued eligibility for financial assistance.** The department shall allow a recipient of financial assistance not less than ten calendar days to provide information or take a specific action that affects continuing financial eligibility. Information necessary to determine the recipient's eligibility may include documents and statements verifying eligibility.

(1) The department shall request such information or action in writing. The written request may be given to the recipient in person or sent to the recipient's last known address. The request shall include a statement of:

(a) The information or specific action necessary to determine continuing eligibility;

(b) The date by which such information must be provided or action taken; and

(c) That failure to provide such information or take such action may result in termination or reduction of financial assistance.

(2) The department shall take appropriate action to reduce, suspend or terminate financial assistance, including providing the recipient with advance and adequate notice of adverse action as provided in WAC 388-245-1700 if, during the ten calendar day period of time, the recipient:

(a) Does not take the action or provide the information during the specified time period;

(b) Provides information or verification during the time period which is inadequate; or

(c) Provides adequate information or verification which results in reduction, suspension, or termination of financial assistance.

NEW SECTION

**WAC 388-245-1720 Recipient provides information or takes action during advance notice period.** (1) The department shall take appropriate action to continue financial assistance if, during the advance notice period, the recipient:

(a) Takes the requested action; or

(b) Provides adequate information which does not result in reduction, suspension or termination of financial assistance.

(2) The department shall provide an additional adequate notice to the recipient if, during the advance notice period, the recipient provides:

(a) Inadequate information; or

(b) Adequate information which results in termination, reduction, or suspension of financial assistance.

(3) Advance notice is not required under subsection (2) of this section.

NEW SECTION

**WAC 388-245-1730 Assistance during the advance notice period.** (1) Rules for advance and adequate notice, as provided under WAC 388-245-1000 and 388-245-1700 do not alter rules for effective dates of eligibility, and grant changes resulting from changes in circumstances.

(2) The department shall continue assistance unchanged at least until the end of a required advance notice period,

regardless of the effective dates specified in rules for eligibility and grant changes.

(3) The department shall establish an overpayment for assistance continued beyond the effective dates specified in rules for eligibility and grant changes.

**NEW SECTION**

**WAC 388-245-1740 Grant continuation pending fair hearing.** (1) The department shall not suspend, reduce, or terminate assistance when a recipient of medical benefits, AFDC, refugee assistance, general assistance and/or services files a request for fair hearing according to chapter 388-08 WAC and the request:

- (a) Is made within the advance notice period; and
- (b) The action is not solely the result of an automatic grant adjustment for classes of recipients required by state or federal law.

(2) The administrative law judge shall determine at the fair hearing whether the issue is one of policy, fact, or judgment when a recipient:

(a) Requests a fair hearing within the advance notice period to appeal the department's planned action to reduce, suspend, or terminate assistance; and

(b) The planned action is not solely a result of an automatic grant adjustment required by either state or federal law.

(3) Assistance shall continue through the month in which an initial fair hearing decision is rendered if there is an issue of fact or judgment, including the correctness of application of the department's rules and policy unless:

- (a) The appellant requests in writing that assistance not be continued;
  - (b) The request is withdrawn in writing by the client; or
  - (c) The request is abandoned.
- (4) The department shall promptly inform the client in writing if assistance will not be continued.

(5) Any assistance received pending a fair hearing or hearing decision is considered to be an overpayment when the fair hearing decision subsequently finds against the recipient.

**NEW SECTION**

**WAC 388-245-2010 Monthly reporting—General.** As a condition of continuing eligibility for AFDC, certain assistance units shall report their income and circumstances monthly.

**NEW SECTION**

**WAC 388-245-2020 Monthly reporting—Definitions.** "Disabled" means a person who meets one of the following criteria:

- \* Receives disability or blindness payments under Titles I, II, XIV, or XVI of the Social Security Act;
- \* Is a veteran;
- \* With service-connected or nonservice-connected disability rated or paid as total under Title 38 of the United States Code (USC); or
- \* Considered in need of regular aid and attendance, or permanently housebound under Title 38 of the USC.

\* Is a surviving spouse of a veteran and considered in need of aid and attendance, or permanently housebound; or a surviving child of a veteran and considered permanently incapable of self-support under Title 38 of the USC;

\* A surviving spouse or child of a veteran and entitled to compensation for service-connected death or pension benefits for a nonservice-connected death under Title 38 of the USC and has a disability considered permanent under section 221(i) of the Social Security Act;

\* Receives disability retirement benefits from a federal, state, or local government agency, because of a disability considered permanent under section 221(i) of the Social Security Act;

\* Receives an annuity payment as part of the Railroad Retirement Act of 1974 under:

\* Section 2 (a)(1)(iv) and is determined eligible to receive Medicare by the Railroad Retirement Board; or

\* Section 2 (a)(1)(v) and is determined disabled based on the criteria under Title XVI of the Social Security Act.

\* Is a recipient of disability-related medical assistance under Title XIX of the Social Security Act.

"Elderly" means a person sixty years of age or older.

"Homeless assistance unit" means an assistance unit lacking a fixed and regular night-time residence of whose primary night-time residence is a:

- \* Supervised shelter designed to provide temporary accommodations;
- \* Halfway house or similar institution providing temporary residence for persons needing institutionalization;
- \* Temporary accommodation in the residence of another person; or
- \* Place not designed for, or ordinarily used as, a regular sleeping accommodation for humans.

"Migrant assistance unit" means an assistance unit that works in seasonal agricultural employment which requires the assistance unit to be absent from its permanent place of residence overnight.

"Recent work history" means having received earnings in one of the two months prior to the payment month.

**NEW SECTION**

**WAC 388-245-2030 Monthly reporting—Requirements.** (1) Assistance units with earned income or with a recent work history are required to report monthly except:

- (a) Migrant assistance units;
- (b) Homeless assistance units;
- (c) Assistance units with a recent work history in which all adult members are elderly or disabled; or
- (d) Assistance units with earned income or recent work history received exclusively from college work study issued from the following sources:
  - (i) Title IV of the Higher Education Amendments; or
  - (ii) Bureau of Indian Affairs student assistance programs.

(2) Assistance units, for purposes of mandatory monthly reporting, include assistance units having earned income allocated to them from individuals living with them who have earned income or recent work history.

NEW SECTION

**WAC 388-245-2040 Monthly reporting—Time frames.** (1) Monthly reporting assistance units shall return to the department a completed monthly report by the fifth day of the month following the month for which the report describes the household circumstances.

(2) Assistance units with recent work history shall report for three months, including the last month of earnings.

(3) Newly approved assistance units with recent work history shall be required to report for two months beginning the month following the month of opening.

(4) The first report month for assistance units reporting new employment shall be the month following the month the department becomes aware of the earnings.

NEW SECTION

**WAC 388-245-2050 Monthly reporting—Adverse actions.** (1) The department shall terminate assistance when an assistance unit fails to return a completed report by the fifth day of the month except as provided in subsection (3) of this section.

(2) The department shall give advance and adequate notice to the assistance unit which does not submit a completed monthly report timely as defined in subsection (1) of this section.

(3) If the assistance unit furnishes a completed report to the department within ten days from the date of a termination notice pursuant to subsection (1) of this section and WAC 388-245-2040(1), Monthly reporting—Time frames, the department shall:

(a) Accept the replacement form; and

(b) Reinstate assistance if the information on the replacement form indicates the assistance unit is still eligible.

(4) If the information on the replacement form indicates the assistance unit is ineligible or eligible for an amount less than the prior month's payment, the department shall give adequate notice to the assistance unit.

### Chapter 388-265 WAC PAYMENT OF GRANTS

NEW SECTION

**WAC 388-265-1010 Grant payment—General provisions.** (1) The department shall require that:

(a) Each grant shall encompass only one assistance unit, even though there may be two or more assistance units in the same family group or household; and

(b) State-funded grant assistance programs which include general assistance - unemployable (GA-U), general assistance for pregnant women (GA-X), and Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) (GA-W) or any combination thereof, shall encompass one assistance unit, but may be paid in separate, prorated amounts to each person in the assistance unit.

(2) The department shall:

(a) Determine the payment amount of continuing grants using the monthly standards of assistance; and

(b) Make continuing grant payments in compliance with advance notification requirements, except as provided under WAC 388-245-1710.

(3) A client may request payment of less than the amount for which the client qualifies. The department shall limit the grant to the amount of the client's written stipulation.

(4) The department shall round down a grant to the next whole dollar amount except for a client:

(a) Receiving a clothing and personal incidental allowance; or

(b) Subject to a mandatory deduction for recoupment of an overpayment.

(5) The department shall not pay a grant of less than ten dollars, except for a:

(a) Grant which is subject to a mandatory deduction for recoupment of an overpayment;

(b) Clothing and personal incidental allowance with budgeted income; or

(c) Reimbursement grant authorized under a supplemental Social Security interim assistance agreement.

NEW SECTION

**WAC 388-265-1050 Grant authorization.** (1) The department shall authorize all grant payments and changes for public assistance grants.

(2) The department shall issue payment of the new, reopened, reinstated, or changed grant for the correct circumstances of the client.

(3) The department shall continue payment of a grant, in the amount authorized, until a change in the client's circumstances causes:

(a) A change in the amount of the grant;

(b) Suspension of the grant; or

(c) Termination of the grant.

(4) The department shall reauthorize, recompute, or terminate a grant when:

(a) Income, resource, or eligibility rules are amended; or

(b) Income amounts for a client are verified by the agency providing the income.

NEW SECTION

**WAC 388-265-1100 Grant payee.** The department shall make a grant payment directly to a client on the basis of "need" as defined under WAC 388-22-030, except when the payee is:

(1) Another person or agency acting as protective payee for a client;

(2) An ineligible parent, or other relative of specified degree, acting on behalf of a child eligible for AFDC;

(3) A guardian or agent;

(4) A vendor of goods and services supplied to the eligible client; or

(5) A facility acting as the protective payee for an Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) client, as specified under WAC 388-240-6100.

NEW SECTION

**WAC 388-265-1150 Protective payee—General.** (1) The person chosen as the protective payee may be:

(a) A relative, friend, neighbor, clergy, or member of a church or community service group;

(b) A person who serves with a voluntary social agency;

(c) A home economist with a public or private organization;

(d) A member of a practical nurse association, or other agency;

(e) For AFDC, a staff member of a public agency administering child welfare, health, rehabilitation, and housing programs;

(f) A department staff member of homemaker services, housekeeping aide program; or

(g) An employee of the department when another suitable person is not available.

(2) An employee of the department shall not serve as payee for a client in the employee's regular caseload.

(3) For a GAU client who is determined by the department to be actively addicted, the department shall select a:

(a) Department approved alcohol/drug treatment or assessment agency;

(b) Designated staff of a community mental health agency;

(c) Social service agency, individual, or corporation who has a written agreement with the department to provide protective payee services;

(d) Judicially appointed guardian or other legal representative when such appointment appears to serve the best interests of the client; or

(e) Department employee.

(4) The department shall give preference to a specialist in home and money management over other department staff.

(5) To avoid conflict of interest, the protective payee may not be:

(a) The office administrator;

(b) The employee determining the financial eligibility of the client;

(c) The employee recommending the protective payee plan;

(d) A vendor of goods and services dealing directly with the client;

(e) A special investigative or resource employee;

(f) The employee authorizing payment for the client; or

(g) For AFDC, any department employee, when the department has legal custody or the responsibility for placement and care of the child.

(6) Standards for selecting a protective payee include, but are not limited to:

(a) Interest and concern in the client's welfare;

(b) Ability to help the client make proper use of the assistance payment;

(c) Accessibility to the client or client's family;

(d) Ability to establish and maintain a positive relationship with the client and client's family; and

(e) Good character and reliability.

(7) To the extent possible, the client shall choose the protective payee, or participate in the selection of the protective payee.

#### NEW SECTION

**WAC 388-265-1200 Emergency AFDC protective payee.** (1) The department shall make AFDC payment on behalf of a child, in most circumstances, to the parent as the caretaker relative.

(2) The department may make payment to another person on behalf of a child, when the caretaker relative is not available, or does not have legal custody of the child.

(3) The department may pay AFDC to a person, other than a relative of specified degree, acting for the caretaker relative when the:

(a) Emergency situation is temporary;

(b) Person other than the caretaker relative, lives with, and assumes care and supervision of a child;

(c) Emergent situation deprives a child of the care and supervision of the caretaker relative with whom the child lives;

(d) Emergent situation requires the department to make and carry out new plans for the:

(i) Child's continuing care and support; and

(ii) Transfer of responsibility for the child to a more permanent arrangement.

(4) The emergency payee is not included in the AFDC assistance unit.

(5) The department shall provide the client with written notice of the protective payment as described under WAC 388-265-1550.

#### NEW SECTION

**WAC 388-265-1250 Protective or vendor payment due to mismanagement of grant.** (1) The rules in this section do not apply to protective payment for the caretaker relative sanctioned by the department due to the refusal or failure of the caretaker relative to cooperate with:

(a) The job and opportunities and basic skills training program (JOBS); or

(b) The office of support enforcement.

(2) The department shall use protective or vendor payment for cases in which the client:

(a) Has demonstrated severe difficulty in managing money; and

(b) For AFDC, has the capacity to learn, in a relatively short time, to manage assistance funds to assure the proper care of the child.

(3) The department shall authorize protective payment to help improve management and use of money for the best interest of the client.

(4) The department shall base a decision to establish a protective payment plan due to the mismanagement of funds on the evidence contained in the case record. The evidence must be specific and clearly establish the fact that the way in which the funds are used by the client threatens the well-being of the child for AFDC or the GAU/SSI client.

(5) Evidence of mismanagement includes, but is not limited to:

(a) Continued inability to plan and spread necessary expenditures over the usual payment period;

(b) Continued evidence that the child or GAU/SSI client is not properly fed and clothed;

(c) For AFDC, that expenditures are made in such a way as to threaten the chances for healthy growth and development of the child;

(d) Medical or psychological evaluations;

(e) An alcohol/drug assessment which establishes incapacity due to alcoholism or drug addiction;

(f) Observation of gross physical conditions such as extensive paralysis, serious mental retardation, continued disorientation, or severe memory loss;

(g) Persistent and deliberate failure to meet obligations for rent, food, and other essentials; and

(h) Repeated evictions or compiling of debts against current income.

(6) The department shall provide social services assistance to accomplish the educational and constructive purposes of the protective payment plan.

(7) The department shall not use protective or vendor payment when:

(a) The basic problem is insufficient funds rather than management of money; or

(b) A mental or physical limitation prevents the client from learning how to manage the client's affairs; or

(c) A financial problem is due only to an emergent situation.

(8) The department shall provide the client with written notice of the protective payment as described under WAC 388-265-1550.

(9) The department may request the attorney general file a petition in the superior court for the appointment of a guardian for a child eligible for AFDC when the caretaker relative is not using the grant adequately for the needs of the child. Such guardianship, as provided under RCW 74.12.250, shall be:

(a) Special and limited solely for the purpose of safeguarding the assistance grant made for the needs of a child; and

(b) Terminated by the department on termination of the assistance grant, or sooner, upon order of the court.

#### NEW SECTION

**WAC 388-265-1300 Protective payment—AFDC clients sanctioned for failure, or refusal to cooperate with the job opportunities and basic skills training program (JOBS).** (1) The department shall determine if a client certified to the JOBS program has refused, or failed to participate in the JOBS program without good cause.

(2) The department shall require protective payment for a client determined by the department to not have good cause for refusing, or failing to cooperate with the JOBS program.

(3) The department shall make direct payment to the sanctioned client if the department, after making a reasonable effort, is unable to locate a protective payee.

(4) The department shall select a protective payee following the criteria under WAC 388-265-1500.

(5) The department shall notify the client in writing of protective payment as described under WAC 388-265-1550.

(6) The department shall resume direct payment to the caretaker relative when:

(a) The department of employment security reports that the caretaker relative no longer refuses to participate in JOBS; or

(b) The department determines the client had good cause for refusal to participate.

#### NEW SECTION

**WAC 388-265-1350 Protective payment—AFDC clients sanctioned for failure or refusal to cooperate with the office of support enforcement.** (1) The department shall determine if an AFDC client failed, or refused to cooperate with the office of support enforcement, to obtain child support, without good cause, as required in WAC 388-215-1440.

(2) The department shall authorize assistance to the other eligible assistance unit members:

(a) By protective payment; or

(b) Directly to the sanctioned client, if the department, after making reasonable efforts, is unable to locate a protective payee.

(3) The department shall:

(a) Notify the client in writing of the establishment of a protective payment as described in WAC 388-265-1550;

(b) Select a protective payee in accordance with WAC 388-265-1150;

(c) Review, at least every three months, the manner in which the protective payee performs;

(d) Review the sanctioned client's circumstances as frequently as required, but at least every six months; and

(e) Notify the client of any change in cooperation status.

(4) The department shall promptly resume payment to the client when the department:

(a) Receives notice from the office of support enforcement that the client no longer refuses to cooperate with support collection efforts; or

(b) Determines that the client has good cause not to cooperate with the office of support enforcement.

(5) The client sanctioned for noncooperation with the office of support enforcement does not have a right to a fair hearing regarding:

(a) The person selected as protective payee; or

(b) The manner of disbursement.

#### NEW SECTION

**WAC 388-265-1400 Vendor payee.** (1) The department may pay assistance in whole, or in part, as a vendor payment directly to a person furnishing food, living accommodations or other goods or services to, or for, a client in the absence of a protective payee.

(2) The client shall select the vendor, or participate in the selection, to the extent possible.

(3) The vendor should be easily accessible to the client.

(4) The department may pay a vendor payment to provide assistance for a client when:

(a) A client has been served a written notice of eviction, and the department verifies that the landlord:

(i) Will not forestall eviction unless a vendor payment is received; and

(ii) Will not evict the client after receiving the vendor payment;

(b) A client has been served a utility shut-off notice, and the department verifies that the vendor:

(i) Will not forestall shut-off unless a vendor payment is received; and

(ii) Will not shut-off the utility after receiving the vendor payment;

(c) A client requests in writing that a vendor payment be made;

(d) A client dies before receiving or endorsing a warrant and the client owes for personal and household service, housekeeping service, or board and room. The department shall authorize vendor payment for the amount equal the portion of the canceled warrant actually owed to the vendor;

(e) The department determines that an AFDC client requires protective payment due to mismanagement of the grant under WAC 388-265-1250 and no protective payee is available;

(f) The department determines that a client certified to the JOBS program refused, or failed to participate, in the JOBS program without good cause and no protective payee is available;

(g) The department determines that a client refused, or failed to cooperate with the office of support enforcement without good cause and no protective payee is available.

(5) The department shall deduct the vendor payment from the initial or regular grant, unless issuing payment in place of a one-time grant as specified in WAC 388-255-1400.

#### NEW SECTION

##### **WAC 388-265-1450 Protective payee responsibility.**

(1) The department shall define the protective payee's responsibilities in writing. The department will provide a copy of the protective payee's responsibilities to:

- (a) The protective payee;
- (b) The client; and
- (c) The case record.

(2) The payee and the department share the responsibility for developing a plan to improve the client's capacity to handle money and to evaluate the client's progress.

(3) The protective payee shall have the authority and responsibility to make decisions about the expenditures of the assistance payment.

(4) The teaching component for AFDC protective payment requires that the caretaker relative participate in the decision making to the extent of the caretaker relative's ability to do so.

(5) The protective payee shall provide an accounting record to the department to verify that they are spending the assistance money on behalf of the client.

(6) The department shall review the protective payee's accounting record and determine the appropriateness of the expenditures.

(7) The protective payee shall return any remaining funds to the department when the protective payee relationship is terminated for any reason.

#### NEW SECTION

**WAC 388-265-1500 Protective payee or vendor payee plan.** (1) The department shall review the need for protective payment and the protective payee's performance of duties as frequently as indicated by the client's circumstances, but no less than every six months.

(2) The department shall approve a protective or vendor payment plan for AFDC which initially does not exceed a three-month period.

(3) The department may, after the initial review of the AFDC plan, authorize protective payment up to a maximum of twenty-four consecutive months. This plan must be reviewed no less than every six months.

(4) The review shall include an evaluation whether:

(a) Conditions justify continuation, or a modification of the plan;

(b) The protective payee's responsibilities are being carried out appropriately;

(c) The client can be expected to resume the payee function; or

(d) A court appointed guardian or foster care is needed because:

(i) The client cannot learn the payee functions; and

(ii) It appears the plan will continue beyond two years.

#### NEW SECTION

**WAC 388-265-1550 Client notification of protective payee or vendor payee.** (1) The department shall notify the client in writing when a protective or vendor payment plan is approved. The written notice shall include:

(a) That a decision has been made to authorize protective payment;

(b) The basis for decision;

(c) The name of the protective payee or the use of vendor payment;

(d) The effective date; and

(e) With the exception of noncooperation with the office of support enforcement, the client's right to appeal the decision.

(2) The department shall notify the client in writing of any changes in the protective payment plan. The notice shall include:

(a) The decision to change the protective payment plan;

(b) What the change is;

(c) The name of the new payee, if the change is a different payee;

(d) The effective date of the change; and

(e) With the exception of AFDC noncooperation with office of support enforcement, the right to a fair hearing.

(3) The department shall notify the principals in writing of the decision to terminate the plan. The notice shall include:

(a) That a decision was made to terminate the plan;

(b) The reason for the decision;

(c) The effective date of termination; and

(d) With the exception of noncooperation with the office of support enforcement, the client's right to appeal the decision.

#### NEW SECTION

**WAC 388-265-1600 Termination of protective payee or vendor payee payment.** (1) The department may remove a protective payee:

(a) Upon the payee's request;

(b) When a different payee is designated by the department;

(c) When the client is ready to resume the payee function; or

(d) When a judge has appointed a guardian or other legal representative.

- (2) Vendor payment is discontinued when:
  - (a) The department locates a person to serve as protective payee; or
  - (b) When the client is ready to resume the payee function.
- (3) If a guardian is appointed for the client the department shall change the protective payee plan and designate the guardian as the protective payee.

NEW SECTION

**WAC 388-265-1650 Protective payment—Fair hearing rights.** With the exception of noncooperation with the office of support enforcement, a client has the right to a fair hearing if the client is:

- (1) Dissatisfied with the department’s decision that a protective payment shall be made, continued, or changed; or
- (2) Dissatisfied with the protective payee selected.

NEW SECTION

**WAC 388-265-1700 Confidential information—Protective payee or vendor payee.** (1) The department shall confine the release of information from the public assistance record to the protective payee to only those facts pertinent to the fulfillment of the payee’s responsibility.

(2) The department shall explain to a prospective protective payee the need to respect the client’s right to confidentiality.

NEW SECTION

**WAC 388-265-1750 Protective payee fees.** (1) The department may authorize an additional fee, not to exceed the five percent of the monthly one-person payment standard, to cover administrative costs of the protective payee under the following conditions:

- (a) The person serving as protective payee is not a friend, relative, or department employee; and
- (b) The person is:
  - (i) A GA-U client; or
  - (ii) An AFDC recipient the department has determined unable to manage assistance funds as specified in WAC 388-265-1250.

(2) The department shall not allow the protective payee to withhold money from the client’s grant for payment of the protective payee’s costs or services.

NEW SECTION

**WAC 388-265-1800 Warrant endorsement.** (1) The department shall write assistance warrants to show the payee’s surname first, followed by given name and initial.

(2) Each warrant must bear the personal endorsement of the client, unless there is a power of attorney, who is authorized to endorse and cash the client’s warrant. If the client is unable to sign, the warrant must be endorsed by the client’s mark or thumb print. The mark shall be witnessed by two persons who give their name and address.

(3) The department cannot stop payment if someone other than the payee cashes the warrant when the warrant has been endorsed by the payee.

(4) A person having power of attorney may legally endorse a warrant only when:

- (a) The client has granted power of attorney on a properly prepared, legal document;
- (b) The document is recorded in the office of the county auditor; and
- (c) Two copies of the recorded document, certified by the county auditor, are on file with the department.

NEW SECTION

**WAC 388-265-1850 Warrant delivery.** (1) The client shall receive the warrant promptly, without interruption after the department has established eligibility and authorized a grant.

(2) The department shall mail the warrant to the client’s address except as provided in this section.

(3) When the department authorizes a warrant for a client whose address is unknown, the department shall mail a letter to the last known address of the client, requesting the client to provide the current address.

(4) A client may request in writing that the warrant be mailed in care of the local office.

(5) The department shall redirect delivery of a warrant to the local office as provided under WAC 388-245-1350.

NEW SECTION

**WAC 388-265-1900 Warrant cancellation.** (1) A warrant not endorsed by the payee before death shall not be endorsed by, or to, another person.

(2) A warrant payable to a deceased payee must be returned to the department for cancellation.

(3) When a payee with dependents in the assistance unit leaves home without endorsing a warrant, the warrant shall be:

- (a) Returned to the department for cancellation, unless it is feasible for the dependents to hold the warrant until the payee returns; or
- (b) Returned to the department for cancellation and reissuance to another eligible payee.

NEW SECTION

**WAC 388-265-1950 Loss, theft, or destruction of a client’s warrant.** (1) When the client requests issuance of a duplicate warrant the client shall:

- (a) Complete an affidavit attesting to the reported facts; and
- (b) File a report of a lost or stolen warrant with the police.

(2) The client may report a loss or nonreceipt of a warrant to the department prior to the filing of a police report.

(3) The client shall promptly report loss, theft, destruction, or nondelivery of a warrant by submittal of appropriate written report forms to the department within sixty days of the date the warrant was due the client.

- (4) The department shall:
  - (a) Secure all facts surrounding the report;
  - (b) Determine an appropriate course of action; and
  - (c) Inform the recipient of the action the department will take.

(5) The department shall promptly replace the warrant after receiving a report of loss, theft, destruction, or nonreceipt of an unendorsed warrant.

(6) The department shall replace an unendorsed, lost, stolen, nonreceived, or destroyed warrant:

(a) On or before the tenth of the month in which the warrant was due; or

(b) Within five working days of the report of loss, theft, nonreceipt, or destruction, whichever is later.

(7) The department shall replace an unendorsed warrant which is lost, stolen, or destroyed in full. Restrictively or specially endorsed warrants shall be deemed to be unendorsed warrants.

(8) When the client reports loss or nonreceipt sixty days or more after the mailing date, the department may:

(a) Inquire into the circumstances of the loss or nonreceipt prior to authorization of a replacement warrant; and

(b) Notify the recipient in writing if the inquiry resulted in a determination by the department not to replace the reported warrant. Written notice shall include:

(i) A statement of the determination;

(ii) The reason for the determination; and

(iii) A statement of the client's right to request a fair hearing to appeal the decision.

(9) When the client reports nonreceipt of a public assistance warrant within six months of a prior report of nonreceipt, the department shall:

(a) Secure all facts surrounding the report;

(b) Promptly replace the warrant;

(c) Verify the address;

(d) Send warrants to the client's new address, if there has been a change of address which better ensures receipt of the public assistance warrant;

(e) Redirect future warrants to the local office for a period of six months if there is no change of address, or assurance of receipt of the public assistance warrants at the current address.

(f) The department may waive redirection if there is hardship or other good cause not to redirect the warrant.

(10) If the client has accepted a warrant at the local office and then promptly reports the same warrant as lost, stolen, or destroyed the department shall:

(a) Secure all facts surrounding the report; and

(b) Evaluate the ability of the client to manage public assistance funds.

(11) The department shall take appropriate action to protect the state from loss if the original warrant is redeemed by the state treasurer as an endorsed warrant.

#### NEW SECTION

**WAC 388-265-2000 Loss, theft, or destruction of a vendor warrant.** (1) When a vendor payee reports to the department that a warrant was not received, or that an unendorsed warrant has been lost, stolen or destroyed, the vendor payee shall complete an affidavit attesting to the reported facts. The department shall:

(a) Secure all facts surrounding the report;

(b) Assess the reported facts and make a judgment as to the validity of the report; and

(c) Determine a course of action appropriate to the facts of the case.

(2) The department shall replace an unendorsed warrant in accordance with the requirements in WAC 388-265-1950.

(3) The department shall not replace an endorsed warrant, or cash proceeds of a warrant, lost by the vendor.

### **Chapter 388-500 WAC MEDICAL DEFINITIONS**

#### NEW SECTION

**WAC 388-500-0005 Medical definitions.** Unless defined in this chapter or specifically defined in other chapters of the *Washington Administrative Code*, the department shall use definitions found in the *Webster's New World Dictionary*. This section contains definitions of words and phrases the department uses in rules for medical programs. Definitions of words used for both medical and financial programs are defined under WAC 388-22-030.

"**AFDC-related programs**" means medical only programs for children, families and pregnant women based on Medicaid rules.

"**Application**" for eligibility for medical programs means a written request to the department of social and health services (DSHS) on a department form, from the applicant, an authorized representative, or if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant.

"**Assignment Medicare**" means the method by which the provider receives payment for services under Part B of Medicare.

"**Assignment of rights**" means the client gives the state the right to payment and support for medical care from a third party.

"**Assistance unit**" means a person or members of a family unit who are eligible for medical care.

"**Authorization**" means official approval for department action.

"**Base period**" means the time period used in the limited casualty program which corresponds with the months considered for eligibility.

"**Beneficiary**" means an eligible person who receives:

\* A federal cash Title XVI benefit; and/or

\* State supplement under Title XVI; or

\* Benefits under Title XVIII of the Social Security Act.

"**Benefit period**" means the time period used in determining whether Medicare can pay for covered Part A services. A benefit period begins the first day a beneficiary is furnished inpatient hospital or extended care services by a qualified provider. The benefit period ends when the beneficiary has not been an inpatient of a hospital or other facility primarily providing skilled nursing or rehabilitation services for sixty consecutive days. There is no limit to the number of benefit periods a beneficiary may receive. Benefit period also means a "spell of illness" for Medicare payments.

"**Cabulance**" means a for-hire vehicle designed and used to transport a person confined to a wheelchair or persons otherwise physically restricted.

"**Carrier**" means an organization contracting with the federal government to process claims under Part B of Medicare.

**"Categorical assistance unit (CAU)"** means one or more family members whose eligibility for medical care is determined separately or together based on categorical relatedness.

**"Categorically needy"** means the status of a person who is eligible for medical care under Title XIX of the Social Security Act and is:

\* A client receiving or eligible to receive cash assistance under:

\* Aid to families with dependent children (AFDC);

\* Supplemental security income (SSI), including a grandfathered person and a person with an essential spouse:

\* State supplement;

\* Continuing state-funded cash assistance who is blind or disabled under SSI criteria, as described under WAC 388-511-1115; or

\* Special categories.

\* A financially eligible person under twenty-one years of age who would be eligible for AFDC but does not qualify as a dependent child and who is in:

\* Foster care;

\* Subsidized adoption;

\* A nursing facility or intermediate care facility for mentally retarded; or

\* An approved inpatient psychiatric facility.

\* A person who would be eligible for cash assistance except for the person's institutional status.

\* A person who is SSI categorically related and would not be eligible for cash assistance if the person was not institutionalized and whose gross income does not exceed the three hundred percent SSI benefit cap.

\* A qualified severely impaired disabled person under sixty-five years of age who works.

\* A person during a temporary period who lost AFDC because of increased earnings, increased hours, loss of earned income disregards, or by receiving child or spousal support payments.

\* A pregnant woman:

\* Who meets AFDC financial eligibility standards;

\* Who would qualify for AFDC if the baby was already born;

\* Whose family income does not exceed one hundred eighty-five percent of the federal poverty level; or

\* Who was eligible for and receiving Medicaid while pregnant continues to be eligible for a sixty-day postpartum period that extends through the month that contains the sixtieth day after birth.

\* An infant until the infant's first birthday when the infant lives with the mother and the mother was Medicaid eligible at the time the infant was born;

\* An infant under one year of age whose family income does not exceed one hundred eighty-five percent of the federal poverty level;

\* A child under six years of age or until the child is no longer an inpatient if the inpatient stay began before six years of age and whose family income does not exceed one hundred thirty-three percent of the federal poverty level.

\* A child born after September 30, 1983, who has attained six years of age or until the child is no longer an inpatient if the inpatient stay began before eighteen years of age, but not attained eighteen years of age whose family

income does not exceed one hundred percent of the federal poverty level.

\* A child up to eighteen years of age or until the child is no longer an inpatient if the inpatient stay began before eighteen years of age, born before September 30, 1983, with income allowed by AFDC.

\* A certain widow, widower, and other qualified person who fails to meet SSI standards because of Social Security coverage or increase in Social Security coverage.

\* A Medicare-eligible person whose income does not exceed one hundred percent of the federal poverty level and whose resources do not exceed twice the SSI resource eligibility level.

\* A disabled working person entitled to enroll in Medicare Part A, whose income does not exceed two hundred percent of the federal poverty level and whose resources do not exceed twice the SSI resource eligibility level.

\* An alien as defined under WAC 388-510-1020; or

\* A person whose categorical eligibility is protected by statute.

**"Children's health program"** means a state-funded medical program for children under eighteen years of age:

\* Whose family income does not exceed one hundred percent of the federal poverty level; and

\* Who are not otherwise eligible under Title XIX of the Social Security Act.

**"Client"** means an applicant for or recipient of DSHS medical care programs.

**"Coinsurance-Medicare"** means the portion of reimbursable hospital and medical expenses, after subtraction of any deductible, which Medicare does not pay. Under Part A, coinsurance is a per day dollar amount. Under Part B, coinsurance is twenty percent of reasonable charges.

**"Community services office (CSO)"** means an office of the department which administers social and health services at the community level.

**"Copayment"** means a fixed dollar amount that is the responsibility of the client.

**"Couple"** means, for the purposes of an SSI-related client, an SSI-related client living with a person of the opposite sex and both presenting themselves to the community as husband and wife. The department shall consider the income and resources of such couple as if the couple were married.

**"Deductible-Medicare"** means an initial specified amount that is the responsibility of the client.

\* **"Part A of Medicare-inpatient hospital deductible"** means an initial amount of the medical care cost in each benefit period which Medicare does not pay.

\* **"Part B of Medicare-physician deductible"** means an initial amount of Medicare Part B covered expenses in each calendar year which Medicare does not pay.

**"Delayed certification"** means a department approval of a person's eligibility for medicaid made after the established application processing time limits.

**"Department"** means the state department of social and health services.

**"Early and periodic screening, diagnosis and treatment (EPSDT)"** also known as the "healthy kids" program, means a program providing early and periodic screening, diagnosis and treatment to persons under twenty-one years

of age who are eligible for Medicaid or the children's health program.

**"Electronic fund transfers"** means automatic bank deposits to a client's account.

**"Emergency medical condition"** means a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- \* Placing the patient's health in serious jeopardy;
- \* Serious impairment to bodily functions; or
- \* Serious dysfunction of any bodily organ or part.

**"Emergency medical expense requirement"** means a specified amount of expenses for emergency medical conditions that a client must incur prior to certification for the medically indigent program.

**"Essential spouse"** see **"spouse."**

**"Extended care patient"** means a recently hospitalized Medicare patient needing relatively short-term skilled nursing and rehabilitative care in a skilled nursing facility.

**"Garnishment"** means withholding an amount from earned or unearned income to satisfy a debt or legal obligation.

**"Grandfathered client"** means:

\* A noninstitutionalized person who meets all current requirements for Medicaid eligibility except the criteria for age, blindness, or disability; and

\* Was eligible for Medicaid in December 1973 as aged, blind, or disabled, whether or not the person was receiving cash assistance in December 1973; and

\* Continues to meet the criteria for blindness or disability and other conditions of eligibility used under the Medicaid plan in December 1973; and

\* An institutionalized person who was eligible for Medicaid in December 1973 or any part of that month, as an inpatient of a medical institution or resident of an intermediate care facility that was participating in the Medicare program and for each consecutive month after December 1973 who:

\* Continues to meet the requirements for Medicaid eligibility that were in effect under the state's plan in December 1973 for institutionalized persons; and

\* Remains institutionalized.

**"Health insuring organization (HIO)"** means an entity that arranges and pays for medical services provided to an eligible enrolled client in exchange for a premium or subscription charge paid by the department on a prepaid capitation risk basis.

**"Health maintenance organization (HMO)"** means an entity that provides comprehensive medical services directly to an eligible enrolled client in exchange for a premium paid by the department on a prepaid capitation risk basis.

**"Healthy kids,"** see **"EPSDT."**

**"Home health agency"** means an agency or organization certified under Medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence.

**"Hospital"** means an institution licensed as a hospital by the official state licensing authority.

**"Income"** means, for an SSI-related client, cash, property or service which the client can apply directly, by

sale, or conversion to meet the client's needs for food, clothing, and shelter.

\* **"Earned income"** means gross wages for services rendered or net wages from self-employment.

\* **"Unearned income"** means all other income.

**"Institution"** means an establishment which furnishes food, shelter, medically-related services, and medical care to four or more persons unrelated to the proprietor. This includes medical facilities, nursing facilities, and institutions for the mentally retarded, but does not include correctional institutions.

\* **"Institution-public"** means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

\* **"Institution for mental diseases"** means an institution primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases including medical attention, nursing care, and related services.

\* **"Institution for the mentally retarded or a person with related conditions"** means an institution that:

\* Is primarily for the diagnosis, treatment or rehabilitation of the mentally retarded or a person with related conditions; and

\* Provides, in a protected residential setting, on-going care, twenty-four hour supervision, evaluation, and planning to help each person function at the greatest ability.

\* **"Institution for tuberculosis"** means an institution for the diagnosis, treatment, and care of a person with tuberculosis.

\* **"Medical institution"** means an institution:

\* Organized to provide medical care, including nursing and convalescent care;

\* With the necessary professional personnel, equipment and facilities to manage the health needs of the patient on a continuing basis in accordance with acceptable standards;

\* Authorized under state law to provide medical care; and

\* Staffed by professional personnel. Services include adequate physician and nursing care.

**"Intermediary"** means an organization having an agreement with the federal government to process Medicare claims under Part A.

**"Legal dependent"** means a person whom another person is required by law to support.

**"Limited casualty program (LCP)"** means a medical care program for medically needy as defined under WAC 388-500-0320 and for medically indigent as defined under WAC 388-500-0370.

**"Medicaid"** means the federal aid Title XIX program under which medical care is provided to:

\* Categorically needy as defined in WAC 388-500-0310 and 388-500-1100; or

\* Medically needy as defined in WAC 388-500-0320.

**"Medical assistance"** means the federal aid Title XIX program under which medical care is provided to the categorically needy as defined in WAC 388-500-0310 and 388-500-1100.

**"Medical assistance administration (MAA)"** means the unit within the department of social and health services authorized to administer the Title XIX Medicaid and the state-funded medical care programs.

**"Medical assistance unit (MAU)"** means one or more family members whose eligibility for medical care is determined separately or together based on financial responsibility.

**"Medical care services"** means the limited scope of care financed by state funds and provided to general assistance (GAU) and ADATSA clients.

**"Medical consultant"** means a physician employed by the department.

**"Medical facility"** see **"Institution."**

**"Medically indigent (MI)"** means a state-funded medical program, part of the limited casualty program, for a person with limited income and resources who has an emergency medical condition.

**"Medically necessary"** is a term for describing requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent worsening of conditions in the client that endanger life, or cause suffering or pain, or result in an illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the client requesting the service. For the purpose of this section, "course of treatment" may include mere observation or, where appropriate, no treatment at all.

**"Medically needy (MN)"** is the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income and/or resources above the categorically needy level, would be eligible as categorically needy.

**"Medicare"** means the federal government health insurance program for certain aged or disabled clients under Titles II and XVIII of the Social Security Act. Medicare has two parts:

- \* **"Part A"** covers the Medicare inpatient hospital, post-hospital skilled nursing facility care, home health services, and hospice care.

- \* **"Part B"** is the supplementary medical insurance benefit (SMIB) covering the Medicare doctor's services, outpatient hospital care, outpatient physical therapy and speech pathology services, home health care, and other health services and supplies not covered under Part A of Medicare.

**"Month of application"** means the calendar month a person files the application for medical care unless the application is for the medically needy program, then, at the person's request and if the application is filed in the last ten days of that month, the month of application may be the following month.

**"Nursing facility"** means any institution or facility the department of health licenses as a nursing facility, or a nursing facility unit of a licensed hospital, that the:

- \* Department certifies; and
- \* Facility and the department agree the facility may provide skilled nursing facility care.

**"Outpatient"** means a nonhospitalized patient receiving care in a hospital outpatient or hospital emergency department, or away from a hospital such as in a physician's office, the patient's own home, or a nursing facility.

**"Patient transportation"** means client transportation to and from covered medical services under the federal Medicaid and state medical care programs.

**"Physician"** means a doctor of medicine, osteopathy, or podiatry who is legally authorized to perform the functions of the profession by the state in which the services are performed.

**"Professional activity study (PAS)"** means a compilation of inpatient hospital data by diagnosis and age, conducted by the commission of professional and hospital activities, to determine the average length of hospital stay for patients. These data were published in a book entitled, *Length of Stay in PAS Hospitals, Western*. The department has adopted this book as the basis for authorizing payment for the maximum number of inpatient hospital days for clients of state-funded programs, or where no memorandum of understanding with a professional review organization (PRO) exists.

**"Professional review organization for Washington (PRO-W)"** means the state level organization responsible for determining whether health care activities:

- \* Are medically necessary;
- \* Meet professionally acceptable standards of health care; and
- \* Are appropriately provided in an outpatient or institutional setting for beneficiaries of Medicare and clients of Medicaid and maternal and child health.

**"Prosthetic devices"** mean replacement, corrective, or supportive devices prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice as defined by state law to:

- \* Artificially replace a missing portion of the body;
- \* Prevent or correct physical deformity or malfunction;

or

- \* Support a weak or deformed portion of the body.

**"Provider"** or **"provider of service"** means an institution, agency, or person:

- \* Having a signed agreement with the department to furnish medical care and goods and/or services to clients; and
- \* Eligible to receive payment from the department.

**"Retroactivity"** means the period of no more than three calendar months before the application month of an otherwise eligible person under the Federal aid Title XIX program.

**"Spell of illness"** see **"benefit period."**

**"Spendedown"** means the process by which a person uses incurred medical expenses to offset income and/or resources to meet the financial standards established by the department.

**"Spouse"** means:

- \* **"Community spouse"** means a person living in the community and married to an institutionalized person or to a person receiving services from a home and community-based waiver program.

- \* **"Eligible spouse"** means an aged, blind or disabled husband or wife of an SSI-eligible person with whom such spouse lives.

- \* **"Essential spouse"** means, for the purposes of SSI, a spouse whose needs were taken into account in determining the need of an old age assistance (OAA), aid to the blind (AB), or disability assistance (DA) client for December

1973, who continues to live in the home and to be the spouse of such client.

\* **"Ineligible spouse"** means the husband or wife of an SSI-eligible person, who lives with the SSI-eligible person and who has not applied or is not eligible to receive SSI.

\* **"Institutionalized spouse"** means a married person in an institution or receiving services from a home or community-based waived program.

\* **"Nonapplying spouse"** means the husband or wife, who has not applied for assistance, of an SSI-eligible person.

**"SSI-related"** means an aged, blind or disabled person.

**"State office or SO"** means the medical assistance administration of the department of social and health services.

**"Supplemental security income (SSI) program, Title XVI"** means the federal grant program for aged, blind, and disabled established by section 301 of the Social Security amendments of 1972, and subsequent amendments, and administered by the Social Security Administration (SSA).

**"Supplementary payment (SSP)"** means the state money payment to persons receiving benefits under Title XVI, or who would, but for the person's income, be eligible for such benefits, as assistance based on need in supplementation of SSI benefits. This payment includes:

\* **"Mandatory state supplement"** means the state money payment to a person who, for December 1973, was a client receiving cash assistance under the department's former programs of old age assistance, aid to the blind and disability assistance; and

\* **"Optional state supplement"** means the elective state money payment to a person eligible for SSI benefits or who, except for the level of the person's income, would be eligible for SSI benefits.

**"Third party"** means any entity that is or may be liable to pay all or part of the medical cost of care of a federal Medicaid or state medical care client.

**"Title XIX"** is the portion of the federal Social Security Act that authorizes grants to states for medical assistance programs. Title XIX is also called Medicaid.

**"Transfer"** means any act or omission to act when title to or any interest in property is assigned, set over, or otherwise vested or allowed to vest in another person; including delivery of personal property, bills of sale, deeds, mortgages, pledges, or any other instrument conveying or relinquishing an interest in property. Transfer of title to a resource occurs by:

\* An intentional act or transfer; or

\* Failure to act to preserve title to the resource.

**"Value-fair market"** means, for SSI-related medical eligibility, the current value of a resource at the going price for which the resource can reasonably be expected to sell on the open market in the particular geographic area involved.

**"Value of compensation received"** means, for SSI-related medical eligibility, the gross amount paid or agreed to be paid by the purchaser.

**"Value-uncompensated"** means, for SSI-related medical eligibility, the fair market value of a resource minus the amount of compensation received in exchange for the resource.

## Chapter 388-501 WAC ADMINISTRATION OF MEDICAL PROGRAMS— GENERAL

### NEW SECTION

**WAC 388-501-0105 Applicability.** These rules are applicable to determination of eligibility under medical care programs authorized through chapter 74.09 RCW.

### NEW SECTION

**WAC 388-501-0110 Purpose of the medical care program.** The department of social and health services through the medical assistance administration (MAA) provides medical care programs to meet the health care needs of:

(1) Categorically needy eligible persons as defined in WAC 388-503-0310.

(2) Medically needy eligible persons as defined in WAC 388-503-0320.

(3) Medically indigent eligible persons as defined in WAC 388-503-0370.

(4) General assistance-unemployable (GAU) cash assistance clients as defined in WAC 388-503-0350.

(5) ADATSA cash assistance clients and ADATSA medical eligible persons as defined in WAC 388-503-0350.

(6) Children's health eligible persons as defined in WAC 388-509-0920.

### NEW SECTION

**WAC 388-501-0125 Requirements for advance directives.** (1) Each hospital, nursing facility, provider of home health care or personal care services, hospice program, or health maintenance organization receiving Medicaid funds shall as providers under this section:

(a) Maintain written policies and procedures concerning a person's right to make medical decisions including advance directives;

(b) Provide written information to all adults as defined in RCW 26.28.010 and 26.28.015 receiving medical care by or through the provider or organization to include the person's right to:

(i) Make decisions concerning the person's medical care;

(ii) Accept or refuse surgical or medical treatment; and

(iii) Formulate advance directives.

(c) Provide written information to all adults on policies concerning implementation of these rights;

(d) Document in the person's medical record whether or not the person has executed an advance directive;

(e) Not condition the provision of care or otherwise discriminate against a person based on whether or not the person has executed an advance directive;

(f) Ensure compliance with the requirements of chapters 11.94, 68.50, and 70.122 RCW concerning advance directives.

(g) Provide for educating staff and the community on the requirements for advance directives.

(2) For the purpose of this section, the term "advance directive" means a voluntarily written instruction, such as a living will, durable power of attorney for health care, or

anatomical gift recognized under state law (whether statutory or as recognized by the courts of the state) and relating to the provision of such care when the person is incapacitated.

(3) The written material distributed by the providers as defined concerning medical decision making shall summarize state law found in statute and case law and may include the actual law, copies of the statute, case law, or forms.

(4) The provider as defined shall give information concerning these rights to adults as follows:

(a) Hospitals at the time of the person's admission as an inpatient;

(b) Nursing facility at the time of the person's admission as a resident;

(c) Provider of home health care or personal care services before the person comes under the care of the provider;

(d) Hospice program at the time of the initial receipt of hospice care by the person in the program; and

(e) Health maintenance organization at the time of enrollment of the person with the organization.

(5) This section shall not be construed to require any physician to implement an advance directive, when the physician objects on the basis of conscience. When the physician refuses to implement the directive, the physician shall make a good faith effort to transfer the person to another physician who will implement the person's directive.

(6) When a person in a comatose or otherwise incapacitated state, unable to receive information or to say whether an advance directive has been executed, comes under the care of a provider, the provider shall include information concerning advance directives with materials about the provider's policies and procedures to the families or to the surrogates or other concerned persons of the incapacitated person as specified under RCW 7.70.065. The provider shall be obligated to provide this information to the person once the person is no longer incapacitated.

(7) When a person is incapacitated or otherwise unable to receive information or articulate whether such person has executed an advance directive and no one comes forward with a previously executed advance directive, the provider shall document in a person's file that the person was unable to receive information and was unable to communicate whether an advance directive exists.

(8) When the patient or a relative, surrogate, or other interested person presents the provider with a copy of the person's advance directive, the provider shall comply, except as specified under subsection (5) of this section, with the advance directive.

#### NEW SECTION

**WAC 388-501-0130 Administrative controls.** The department shall establish and enforce such administrative controls as may be necessary to prevent abuses by vendors or clients including, but not limited to, determination of need for and duration of services, assurance of justification of services, reasonableness of costs, and operation of the program within limits of the legislative appropriation.

(1) The department shall conduct audits and investigations of providers of medical and other services provided as authorized by chapter 74.09 RCW to determine compliance with the rules and regulations of the program.

(a) In the conduct of such audits or investigations, the secretary or authorized representative may examine only those records or portion thereof, including patient records, pertaining to services rendered by a health care provider and reimbursed by the department. Copies of, but not original, records shall be removed from the premises of the health care provider. The secretary shall destroy all copies of client medical records made during an audit or investigation. This destruction will take place not later than ninety days after the date when no further actions, concerning a particular audit, can be taken or are going to be taken by the department, the provider, or the courts. The department shall notify the provider in writing that such destruction has taken place.

(b) The department shall give twenty days advance notice to a provider that the patient medical records are to be audited for compliance with program rules and standards. This notice shall not:

(i) Apply to provider investigations for fraudulent or abusive practices; and

(ii) Include names of patient files to be reviewed. For the purposes of this section, prescriptions or records of drugs dispensed are not to be defined as patient medical records.

(c) The department shall work with the provider to minimize inconvenience and disruption of health care delivery.

(2) Based upon the findings of an audit, investigation, or other proceeding, the secretary or authorized representative may order repayment of excess benefits or payments received by the provider, plus interest on the amount of excess benefits and assess civil penalties as provided for in chapter 74.09 RCW. The department shall assess civil penalties in an amount not to exceed three times the amount of excess benefits or payments received by the provider.

(3) When the department imposes a civil penalty or suspends or terminates a provider from the program, the department shall give written notice of the action taken to the appropriate licensing agency and/or disciplinary board. The department may refer to the appropriate disciplinary board providers who have demonstrated a significant noncompliance with the provisions of the medical care program through the results of an audit, investigation, or utilization review function. The Washington state medical disciplinary board shall generally serve in an advisory capacity to the secretary in the conduct of audits or investigations of physicians.

(4) The secretary or authorized representative shall refer all cases to the appropriate prosecuting authority for possible criminal action where the department finds substantial evidence supporting a finding of fraud. Prima facie evidence does not, in itself, provide a substantial basis for criminal prosecution.

#### NEW SECTION

**WAC 388-501-0135 Patient requiring regulation.** (1) The department shall operate a patient requiring regulation (PRR) program to identify a client overutilizing, unnecessarily, or inappropriately obtaining medical care under the federally funded and state-funded medical programs. The department may restrict such a client to a single primary care provider and pharmacy for medical care.

(2) The purpose of the PRR program shall be to:

- (a) Protect the client's health and safety;
- (b) Provide continuity of medical care;
- (c) Avoid duplication of services by providers;
- (d) Avoid excessive, contraindicated, or potentially harmful use of prescription medications.

(3) For the purposes of this section, "primary care provider (PCP)" means a:

(a) Physician specializing in internal or general medicine; or

(b) Physician or advanced registered nurse practitioner specializing in adult health care or family practice who agrees to provide, manage, and coordinate an eligible client's medical care.

(4) The department shall designate staff to determine the client's overuse, inappropriate, or unnecessary usage of medical care by reviewing medical assistance administration (MAA) payment records and other medical information.

(5) Nurse advisors, physicians and pharmacy consultants, and the drug utilization and education (DUE) council shall establish the medical review guidelines and reference sources that the department uses for such determinations.

(6) The department established the following levels of utilization during a three-month period as medical review guidelines for the PRR program:

- (a) Services from four different physicians;
- (b) Prescriptions from four different pharmacies;
- (c) Ten prescriptions received;
- (d) Two emergency room visits;
- (e) Four prescribers.

(7) Medical assistance administration shall notify the client in writing that the client is assigned to PRR, when the information indicates the client overuses medical services, or uses medical services inappropriately or unnecessarily as determined by the department's review of the:

(a) Records which indicate a client's use of medical services exceed the guidelines under subsection (6) of this section; and

(b) Client's diagnoses, the history of services provided or other medical information supplied by the health care provider.

(8) The department shall notify the client of the right to:

(a) A fair hearing as required under chapter 388-08 WAC; and

(b) Continue not restricted when a fair hearing is timely requested.

(9) A client shall respond to the department's notice within twenty calendar days by:

- (a) Selecting a PCP and pharmacy;
- (b) Requesting assistance in selecting a PCP and pharmacy; or
- (c) Submitting additional medical information.

(10) The department shall assign a PCP and pharmacy for any client who fails to select a PCP and pharmacy within twenty calendar days, unless the client requests a fair hearing. The selected or assigned PCP and pharmacy shall be located in the client's local geographic area or be reasonably accessible to the client.

(11) The client shall not change a selected PCP or pharmacy for six months except when the:

(a) Client moves to a new residence outside the designated geographic area of the providers;

(b) PCP or pharmacy moves from the client's geographical area;

(c) PCP or pharmacy refuses to continue as the designated provider; or

(d) Client selects a PCP or pharmacy other than the department-assigned PCP or pharmacy under subsection (9) of this section.

(12) The department shall assign a client to the program for a period of twenty-four months and shall review the client's utilization at the end of the twenty-four-month period. The client shall remain restricted if the client continues to meet the overutilization criteria in subsection (6) of this section and shall be reviewed at least twenty-four months thereafter.

(13) When the department designates a PCP and pharmacy for the client, the department shall issue a medical identification card identifying the client as a patient requiring regulation.

(14) When an emergency occurs as defined under WAC 388-500-0005, a provider other than the selected PCP may see the client.

(15) The PCP may refer the client to a specialist.

(16) The department shall only pay for MAA-covered services authorized by the PCP, referred specialist, or selected pharmacy. The department shall apply billing limitations as described under WAC 388-87-010 and 388-87-015.

(17) The client shall be responsible for payment of covered services not authorized by the PCP, referred specialists or selected pharmacist.

#### NEW SECTION

**WAC 388-501-0140 Fraud.** Any person who by means of willfully false statement or representation or by impersonation or other fraudulent device or failure to reveal resources as required obtains or attempts to obtain medical care to which the person is not entitled shall be guilty of larceny. See WAC 388-22-030 for the meaning of "intentional overpayments."

#### NEW SECTION

**WAC 388-501-0150 Confidential records.** The department shall consider medical and administrative records pertaining to applications and services rendered to clients confidential. The department shall prohibit disclosure of information contained in such records, files, papers and communications except for purposes directly connected with the administration of the public assistance and medical care programs.

#### NEW SECTION

**WAC 388-501-0160 Exception to policy.** A client request for an exception to policy for medical care services denied by strict application of a rule or regulation shall require approval by medical assistance administration. See WAC 388-200-1150 for exception to policy procedures.

NEW SECTION

**WAC 388-501-0165 Medical services request.** (1) The department shall evaluate the request for medical services described under WAC 388-529-2910.

(2) The department shall base a decision to approve or deny a service on obtainable evidence that establishes whether the service is "medically necessary" as defined under WAC 388-500-0005.

(a) In each case, the department shall:

(i) Make an individualized decision whether a requested service is "medically necessary"; and  
(ii) Base such decision only on information contained in the client's file.

(b) The evidence must be sufficient to determine that the requested service is or is not "medically necessary," and may include:

(i) A physiological description of the disease, injury, impairment, or other ailment;  
(ii) Pertinent laboratory findings;  
(iii) X-ray reports;  
(iv) Patient profiles; and  
(v) Other objective medical information, including but not limited to medically acceptable clinical findings and diagnoses resulting from physical or mental examinations.

(3) In deciding to approve or deny a durable medical equipment or prosthetic device request, the department shall give substantial weight to objective medical information, and conclusions based thereon, from an examining physician responsible for the client's diagnosis or treatment or both when:

(a) There is an uncontradicted and adequately substantiated conclusion of an examining physician that the requested service is "medically necessary." The department shall accept the examining physician's conclusion unless the department presents specific detailed reasons for rejecting that conclusion that are consistent with sound medical practice and supported by objective medical information in the client's file.

(b) Two or more examining physicians provide conflicting medical information on conclusions about whether the requested durable medical equipment or a prosthetic device is "medically necessary." The department may conclude the durable medical equipment or a prosthetic device is not "medically necessary" only if the department enumerates specific reasons for its conclusion that are supported by objective medical information in the client's file.

(4) The department shall deny a requested service when the service is:

(a) Not medically necessary as defined under WAC 388-500-0005;  
(b) Generally regarded by the medical profession as experimental in nature or as unacceptable treatment; or  
(c) Unless the client demonstrates through sufficient objective clinical evidence the existence of particular circumstances rendering the requested service medically necessary; or  
(d) Not a covered service.  
(5) The department shall:  
(a) Approve or deny all requests for medical services within fifteen days of the receipt of the request; or

(b) Return a request to the requesting provider when the information submitted is insufficient for a determination of medical necessity and the requested service is a covered service. The department shall make a request for justifying additional information from the requesting provider within fifteen calendar days of the original receipt. If additional information is:

(i) Not received by the department within thirty days of the date requested, the department shall deny the original request within five days after the thirty-day period on the basis of insufficient justification of medical necessity;

(ii) Received by the department, the department shall make a final determination on the request within five working days of the receipt of the additional information.

(c) Send to the client a copy of the request for additional information justifying medical necessity for durable medical equipment or a prosthetic device.

(6) When the department denies a request for medical services, including all or part of a requested service, the department shall, within five working days of the decision, give the client and the provider written notice of the denial. The department shall ensure the notice states:

(a) The WAC references used as a basis for the decision;

(b) A summary statement of the specific facts the department relied upon for the decision;

(c) An explanation of the reasons for the denial, including the reasons why the specific facts relied on did not meet the requirements for approval;

(d) When required under subsection (3) of this section, a specific statement of the reasons and supporting facts for rejecting any medical information or conclusions of an examining physician;

(e) The client's right to a fair hearing if the request is made within ninety days of the receipt of the denial;

(f) The instructions on how to request the hearing;

(g) The client may be represented at the hearing by legal counsel or other representative;

(h) Upon the client's request, the name and address of the nearest legal services office; and

(i) If a fair hearing is requested, a medical assessment from other than the person involved in making the original decision may be obtained at the department's expense.

NEW SECTION

**WAC 388-501-0170 Third party resources.** (1) A client shall use all third party resources available to the client for the payment of medical care to the fullest possible extent before the department pays for medical care.

(2) Supplemental services:

(a) Are services beyond those covered by the medical care programs;

(b) Are not to be required, implied, or otherwise by the provider for the client to receive services covered by the medical care program.

(c) Funds for payment of the supplemental services from a source other than the client are not considered as income available to the client for the purposes of eligibility if the funds:

(i) Are paid directly to the provider; and

(ii) Do not at any time come under the control of the client.

#### NEW SECTION

**WAC 388-501-0175 Medical care provided in bordering cities.** (1) The department shall provide medical care to eligible Washington state residents in a bordering city on the same basis as in-state care.

(2) The only recognized bordering cities are:

(a) Coeur d'Alene, Moscow, Sandpoint, Priest River and Lewiston, Idaho; and

(b) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater, and Astoria, Oregon.

#### NEW SECTION

**WAC 388-501-0180 Out-of-state medical care.** (1) A resident of the state of Washington temporarily out of the state may be provided medical care within the scope of the Medicaid program.

(a) Residency requirements in WAC 388-215-1225 must be met.

(b) Medical assistance may be provided only in areas of Canada that border on the United States when no other resource is available.

(2) Persons eligible for the medically needy program may be provided medical care within the scope of that program.

(3) When an eligible person goes to another state, excluding bordering cities, expressly to obtain medical care that is available within the state of Washington, medical assistance will only be provided on an emergency basis.

(4) Medical assistance will be provided to persons who enter the state and are determined to be financially eligible, provided the residency requirements in WAC 388-505-0510 are met.

(5) The department shall not provide state-funded medical care out-of-state except in designated bordering cities.

#### NEW SECTION

**WAC 388-501-0190 Maternity care distressed area.**

(1) "A **maternity care distressed area**" means a county where women eligible for medical assistance are not able to obtain adequate maternity care.

(2) The department shall conduct a review of each county in the state to determine if the county is a maternity care distressed area. The department shall include the following factors in the department's determination:

(a) Higher than average percentage of eligible women receive late or no prenatal care;

(b) Higher than average percentage of eligible women go out of the area to receive maternity care;

(c) Higher than average ratio of medical assistance births to obstetrical care providers;

(d) Higher than average percentage of infants are born to eligible persons per obstetrical care provider; and

(e) Higher than average percentage of infants are of low birth weight born to eligible women. Low birth weight means less than five and one-half pounds, or less than two thousand five hundred grams.

(3) The department shall notify the relevant county authority, for example, board of county commissioners, county council, or county executive, when the department determines a maternity care distressed area exists.

(4) The county authority shall, within one hundred twenty days from the date notified, submit a brief report to the department recommending remedial action.

(a) The county authority shall prepare the report in consultation with:

(i) The department and the department's local community service office;

(ii) The local public health officer;

(iii) Community health clinics;

(iv) Health care providers;

(v) Hospitals;

(vi) The business community;

(vii) Labor representatives;

(viii) Low-income advocates in the distressed area.

(b) The county authority may contact with a local nonprofit agency to develop the report.

(c) The county authority shall notify the department within thirty days if the county authority is unable or unwilling to develop the report.

(5) The department shall develop the report for the distressed area if the department is notified that the county authority is unable or unwilling to develop the report.

(6) The department shall review the report and use the report in developing strategies to improve maternity care access in the distressed area.

#### NEW SECTION

**WAC 388-501-0195 Medical care client co-payment.**

(1) The department shall require a client to pay one dollar for each office call, eyeglasses or contact lens fitting fee, and prescription drug dispensing fee to the following providers, unless the client meets an exemption in subsection (2) of this section:

(a) Physicians and persons working under the physician's supervision, advanced registered nurse practitioners, podiatrists, and optometrists;

(b) Dentists and hygienists;

(c) Opticians, optometrists, and ophthalmologists when providing eyeglasses and contact lenses;

(d) Health departments; and

(e) Pharmacists.

(2) The following services do not require client co-payments:

(a) Family planning services;

(b) Services provided to a client under twenty-one years of age;

(c) Services provided to a client who resides in a medical institution;

(d) Hospice services;

(e) Services provided to a pregnant woman, including services during the sixty-day postpartum;

(f) Emergency services as defined under WAC 388-500-0005;

(g) Services provided in a certified rural health clinic or Indian health clinic;

(h) Services covered by private insurance or Medicare; and

(i) Services provided by a community mental health or chemical dependency treatment center.

(3) For clients enrolled in a department managed care plan or the primary care case management program under chapter 388-538 WAC, co-payments shall apply for dental services.

(4) The provider shall be responsible for determining when a client meets the criteria listed in subsection (2) of this section.

(5) The provider shall not deny services based on the client's inability to pay the co-payment.

**Chapter 388-502 WAC  
ADMINISTRATION OF MEDICAL PROGRAMS—  
PROVIDERS**

**NEW SECTION**

**WAC 388-502-0205 Civil rights.** (1) The department shall ensure all participating providers will not discriminate against any client because of race, creed, color, handicap or national origin in providing approved services.

(2) A provider shall not discriminate against any employee or applicant for employment because of race, creed, color, handicap, or national origin, except to the extent permitted by a bona fide occupational qualification.

**NEW SECTION**

**WAC 388-502-0210 Statistical data-vendor reports.**

(1) When requested by the department, all vendors under the program shall submit full reports of goods furnished and services rendered to the department in the manner specified. The department shall provide the vendor with standardized forms to report these data.

(2) The department shall tabulate and analyze the data collected to secure statistics on costs of and the services rendered in the various phases of the program. The department shall make available such tabulations and analyses to the department's advisory committee, state welfare medical care committee, official organizations of vendor groups participating in the program, and other appropriate persons or groups.

**NEW SECTION**

**WAC 388-502-0220 Dispute conferences.** (1) Any enrolled contractor/provider of medical services, except nursing homes governed by WAC 388-96-904, shall have a right to an administrative appeal when the department:

(a) Finds a contractor/provider liable for receipt of excess payments under RCW 74.09.220 or otherwise is served with notice that repayment of excess benefits is due under the statute;

(b) Changes the contractor/provider reimbursement rate and the contractor/provider disagrees with the change; and

(c) Initiates contract action, such as termination, with which the contractor/provider disagrees.

(2) First level of appeal. A contractor/provider wishing to contest an action described in subsection (1) of this section files an appeal with the appropriate program or audit manager.

(a) Audit disputes. When the department finds a hospital contractor/provider liable for receipt of excess payments, the contractor/provider shall appeal such findings to the office of nursing home audit, administrative services. All other medical service contractors/providers shall appeal to the office of operations review, administrative services.

(i) Unless otherwise specified, the audited contractor/provider shall submit such an appeal within forty-five days after the receipt of the draft audit report. If the audited contractor/provider does not submit the appeal timely, the department shall not consider the appeal and the contractor/provider forfeits any right to a dispute conference.

(ii) The audited contractor's/provider's appeal shall include a statement specifying which portions of the audit findings are disputed, with supporting justification. Administrative services may request additional documentation to complete a review.

(iii) Administrative services shall issue a decision or request additional information within ninety days of receipt of the appeal. When additional information is necessary, administrative services shall issue a decision within sixty days of receipt of complete information. Publication of the final audit report and identification of a sum certain due the department shall constitute the department's final audit position.

(iv) Administrative services may grant discretionary extensions of time to the audited contractor/provider. The audited contractor/provider shall request an extension within the forty-five day period referenced under (a)(i) of this subsection.

(b) Rate disputes. A contractor/provider may appeal its rates by submitting a written notice of appeal to the rate analysis section, medical assistance administration (MAA).

(i) Unless the written rate notification specifies otherwise, the contractor/provider shall file a rate appeal requesting retroactive rate adjustments within sixty days after being notified of an action or determination the contractor/provider wishes to challenge. The notification date of an action or determination is the date of the written rate notification letter. The department shall not consider a contractor/provider rate adjustment appeal, filed after the sixty-day period described in this subsection, for retroactive adjustments.

(ii) The appeal shall include a statement of the issue being appealed, supporting documentation, and a request for recalculation of the rate. MAA may request additional documentation to complete the review. MAA may conduct an audit of the documentation provided in order to complete the review.

(iii) When any portion of a rate is appealed, MAA may review all components of the reimbursement rate.

(iv) MAA shall issue a decision or request additional information within sixty days of the receipt of the rate appeal request. When additional information is necessary, the contractor/provider shall have forty-five days to submit the information. MAA shall issue a decision within thirty days of receipt of complete information.

(v) Unless the written rate notification specifies otherwise, increases in rates resulting from an appeal, filed within sixty days after the written notification letter that the contractor/provider is challenging, shall be effective retroactively to the effective date of the rate change as specified in

the notification letter. Increases in rates, resulting from a rate appeal filed after the sixty-day period described in (b)(i) of this subsection, shall be effective the date the appeal is filed with MAA. Appeals resulting in rate decreases shall be effective on the date specified in the appeal decision notification. Rate changes subject to the provisions of fraudulent practices under RCW 74.09.210 are exempt from these provisions.

(vi) MAA may grant extensions of time at MAA's discretion if requested within the sixty-day period referenced under (b)(i) of this subsection.

(c) Contract disputes. The contractor/provider may appeal contract action involving termination or nonrenewal to the MAA medical director.

(i) Unless otherwise specified, the contractor/provider shall submit such an appeal within thirty days of the department's notification of contract action. If the contractor/provider does not appeal timely, the department shall not consider the appeal and the contractor/provider forfeits the right to a dispute conference.

(ii) The contractor's/provider's appeal shall include a statement of the actions appealed and supporting justification.

(iii) MAA shall issue a decision or request additional information within sixty days of receipt of the appeal. When additional information is necessary, the contractor/provider shall have forty-five days to submit the information. MAA shall issue a decision within thirty days of the receipt of complete information.

(iv) MAA may grant extensions of time at MAA's discretion if requested within the thirty-day period referenced under (c)(i) of this subsection.

(3) Second level of appeal. If the contractor/provider disagrees with an adverse audit, rate, or contract review decision, the contractor/provider may file a request for a dispute conference with the MAA assistant secretary or designee. "Dispute conference" means an informal administrative hearing for the purpose of resolving contractor/provider disagreements with any of the department's actions, described under subsection (1)(a), (b), and (c) of this section, not resolved at the first level of appeal.

(a) A contractor/provider shall file a request for a dispute conference within thirty days following receipt of the adverse review decision. The department shall not consider dispute conference requests submitted after thirty days.

(b) MAA shall conduct the dispute conference within ninety days of the receipt of request.

(c) The MAA assistant secretary or designee shall chair the conference when issues regarding medical policy, program policy, or program regulation are in dispute. A contracts officer, office of vendor services, shall chair the conference if contract compliance issues are disputed. The MAA assistant secretary shall determine who chairs the dispute conference.

(d) The conference chairperson shall issue the final decision within thirty days of the conference.

(e) The MAA assistant secretary may grant extensions of time for extenuating circumstances.

(f) The department's effective date of dispute conference decisions regarding rate changes shall be the same as specified under subsection (2)(b)(v) of this section.

(g) The department's dispute conference shall be the final level of administrative appeal within the department.

(4) MAA shall construe failure on the part of the contractor/provider to attempt to resolve disputed issues as provided in this section as an abandonment of the dispute.

#### NEW SECTION

**WAC 388-502-0230 Fair hearing—Providers.** A certified provider of medical care services who is assessed a civil penalty under RCW 74.09.210 or otherwise served with notice that repayment of excess benefits is due under RCW 74.09.210, shall have the right to a fair hearing as provided by chapter 388-08 WAC.

#### NEW SECTION

**WAC 388-502-0250 Interest penalties—Providers.** (1) The department shall assess interest on amounts of excess benefits or payments a certified provider of medical services receives:

(a) Who is found liable for receipt of excess payments under RCW 74.09.220;

(b) Otherwise served with notice that repayment of excess benefits is due under RCW 74.09.220; or

(c) Except for nursing homes which are governed by WAC 388-96-310.

(2) Under RCW 74.09.220, the department shall assess interest on excess benefits or payments at the rate of one percent each month from the date upon which payment was made to the date upon which repayment is made to the state. Interest does not apply when the excess benefits or payments were obtained as a result of errors made by the department.

(3) The department shall ensure:

(a) Interest amounts will be clearly identified in all overpayment communications; and

(b) A daily interest accrual amount will be identified and accrued until the day immediately preceding the day the full repayment check is mailed to the state.

(4) When repayment is made through the recoupment process (payments are withheld from current bills until the overpayment amount is met), the department shall ensure interest accrues to the date recoupment is finalized.

#### **Chapter 388-503 WAC**

#### **PERSONS ELIGIBLE FOR MEDICAL ASSISTANCE**

#### NEW SECTION

**WAC 388-503-0305 Program priorities.** The department shall consider eligibility for all federal medical programs before determining eligibility for state-funded medical programs.

#### NEW SECTION

**WAC 388-503-0310 Categorically needy eligible persons.** The department shall determine eligible for categorically needy medical assistance a client who is:

(1) Receiving or eligible to receive a cash assistance payment under:

(a) Aid to families with dependent children (AFDC); or

(b) Supplemental security income (SSI) including a grandfathered person and a person with an essential spouse; or

(c) State supplemental payment (SSP) to a person as assistance based on need in supplementation of SSI benefits. This payment includes mandatory state supplement or optional state supplement as defined under WAC 388-500-0005. The ineligible spouse of an SSI beneficiary receiving a state supplement payment for the ineligible spouse is not eligible for categorically needy medical assistance.

(2) A person twenty years of age or younger who meets the:

(a) One-person AFDC financial requirements and is in:  
 (i) Foster care; or  
 (ii) Subsidized adoption; or  
 (iii) A nursing facility or intermediate care facility for mentally retarded (ICF/MR); or

(iv) An approved inpatient psychiatric facility.  
 (b) Eligibility requirements under chapter 388-509 WAC.

(3) A current client of Title II, Social Security Administration (SSA) benefits who:

(a) Was a concurrent client of Title II and SSI benefits;  
 (b) Is ineligible for SSI benefits and/or state supplementary payments; and

(c) Would be eligible for SSI benefits if the department deducts the following from the current Title II benefit amount:

(i) All Title II cost-of-living benefit increases under P.L. 94-566, Section 503 received by the client since termination from SSI/SSP; and

(ii) All Title II cost-of-living benefit increases received during the time period in (c)(i) of this subsection by the client's spouse and/or other financially responsible family member living in the same household.

(4) An SSI client, after January 1, 1981, who continues to be eligible for medical assistance under P.L. 96-265 and 99-643;

(5) A currently disabled client receiving widow's or widower's benefits under Section 202 (e) or (f) of the Social Security Act if the disabled client:

(a) Was entitled to a monthly insurance benefit under Title II of the Social Security Act for December 1983; and

(b) Was entitled to and received a widow's or widower's benefit based on a disability under Section 202 (e) or (f) of the Social Security Act for January 1984;

(c) Became ineligible for SSI/SSP in the first month in which the increase provided under Section 134 of P.L. 98-21 was paid to the client;

(d) Has been continuously entitled to a widow's or widower's benefit under Section 202 (e) or (f) of the act;

(e) Would be eligible for SSI/SSP benefits if the amount of that increase, and any subsequent cost-of-living increases provided under Section 215 (i) of the act, were disregarded;

(f) Is fifty through fifty-nine years of age; and

(g) Filed an application for Medicaid coverage before July 1, 1988.

(6) Effective January 1, 1991, any person receiving Title II disabled widow/widower benefits (DWB) under Section 202 (e) or (f) of the SSA, if the person:

(a) Is not eligible for the hospital insurance benefits under Medicare Part A of Title XVIII;

(b) Received SSI/SSP payments in the month before receiving such Title II benefits;

(c) Became ineligible for SSI/SSP due to receipt of or increase in such Title II benefits; and

(d) Would be eligible for SSI/SSP if the amount of such Title II benefits or increase in such Title II benefits under Section 202 (e) or (f) of the SSA, and any subsequent cost-of-living increases provided under Section 215 (i) of the act were disregarded.

(7) A disabled or blind client receiving Title II Disabled Adult Childhood (DAC) benefits under Section 202 (d) of the SSA if the client:

(a) Has attained eighteen years of age;  
 (b) Lost SSI/SSP on or after July 1, 1988, due to receipt of or increase in DAC benefits; and

(c) Would be eligible for SSI/SSP if the amount of the DAC benefits or increase under Section 202 (d) of the SSA and any subsequent cost-of-living increases provided under Section 215 (i) of the SSA Act were disregarded.

(8) A client who:

(a) In August 1972, received:

(i) Old age assistance (OAA);

(ii) Aid to blind (AB);

(iii) Aid to families with dependent children (AFDC); or

(iv) Aid to the Permanently and totally disabled (APTD); and

(b) Was entitled to or received retirement, survivors, and disability insurance (RSDI) benefits; or

(c) Is ineligible for OAA, AB, AFDC, FIP, SSI or APTD solely because of the twenty percent increase in Social Security benefits under P.L. 92-336.

(9) A pregnant woman whose family income is at or below one hundred eighty-five percent of the Federal Poverty Level (FPL);

(10) A child, born to a woman eligible for and receiving medical assistance on the date of the child's birth, from the date of birth for a period of one year when the child remains a member of the mother's household;

(11) A child meeting residence, citizenship, and Social Security number requirements whose family income is:

(a) Under one hundred eighty-five percent of the Federal Poverty Level (FPL) for a child under one year of age; or

(b) Under one hundred thirty-three percent of the FPL for a child five years of age or younger; or

(c) Under one hundred percent of the FPL for a child eighteen years of age or younger.

(12) In a family unit ineligible for AFDC financial assistance as a result (wholly or in part) of the collection or increased collection of child or spousal support shall be eligible for medical assistance for four months beginning with the month of ineligibility, if the family unit received AFDC financial assistance in at least three of the six months immediately preceding the month of ineligibility;

(13) In a family unit which becomes ineligible for AFDC before April 1, 1990, solely because of increased hours or increased income from employment shall remain categorically eligible for medical assistance for four calendar months beginning with the month of ineligibility, provided:

(a) The family received AFDC in at least three of the six months immediately preceding the month of ineligibility; and

(b) A member of such family continues to be employed; and

(c) The department considers earned income tax credits (EITC) as income for the purposes of this subsection.

(14) Denied AFDC cash payments solely because of a departmental recovery of an overpayment;

(15) In a medical facility and:

(a) Who would be eligible for cash assistance if the person was not institutionalized; or

(b) Is SSI categorically related and would not be eligible for cash assistance if the person was not institutionalized, and the person's gross income does not exceed the three hundred percent SSI benefit cap.

(16) Sixty-five years of age or older, a patient in an institution for mental diseases (IMD), and is resource and income eligible as described under subsection (15)(a) or (b) of this section;

(17) A person eligible for and accepting hospice services as described under WAC 388-86-047 and who shall be:

(a) SSI categorically related with gross income less than three hundred percent of the SSI Federal Benefit Rate; or

(b) AFDC categorically related.

(18) Blind or presumptively disabled under SSI criteria, as described under WAC 388-511-1105, and the person receives continuing general assistance - unemployable (GA-X) cash assistance;

(19) An alien ineligible for AFDC or SSI cash assistance solely because of deeming of income of the alien's sponsors;

(20) Not an inmate of a public institution; and

(21) Not receiving cash assistance because of special situations as defined under WAC 388-506-0630.

**NEW SECTION**

**WAC 388-503-0320 Medically needy eligible persons.**

The department shall determine as medically needy a resident of the state of Washington who meets or exceeds the medically needy income level and meets resource standards in WAC 388-507-0710 and 388-507-0720 and who:

(1) Would be categorically needy as defined under WAC 388-503-0310 but has excess income; or

(2) Is the aged, blind, or disabled ineligible spouse of an SSI beneficiary; or

(3) Is a child eighteen years of age or younger as defined under WAC 388-509-0910 who has excess income; or

(4) Is a pregnant woman the department would consider categorically needy but who has excess income. For the purposes of this subsection, the department shall increase the number in the household by the number of unborn children before comparing the pregnant woman's income to the medically needy income level in WAC 388-507-0710; and

(5) Is not an inmate of a public institution.

**NEW SECTION**

**WAC 388-503-0350 Medical care services—GAU/ADATSA.** (1) The department shall provide state-funded medical care services within the limitations set forth under

these rules and regulations to any person who has been certified to receive:

(a) Continuing general assistance - unemployable (GA-U) and who has not been determined to be blind or presumptively disabled under SSI criteria; or

(b) Alcohol and drug addiction services provided under the Alcoholism and Drug Addiction Treatment and Support Act, chapter 74.50 RCW.

(2) The department shall provide medical care services to continuing general assistance clients in nursing facilities or intermediate care facilities for mentally retarded to the same extent as a client of medical assistance.

**NEW SECTION**

**WAC 388-503-0370 Medically indigent eligible persons.** For applications filed on or after July 1, 1991, the department shall determine a person eligible for the medically indigent program when the person:

(1) Has an emergency medical condition.

(a) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in serious:

(i) Jeopardy to the patient's health;

(ii) Impairment to bodily functions; or

(iii) Dysfunction of any bodily organ or part.

(b) For the purposes of this section, the department shall consider pregnancy and treatment under the Involuntary Treatment Act (ITA) as emergency medical conditions.

(2) Meets the financial eligibility, emergency medical expense and spenddown requirements under WAC 388-518-1800;

(3) Meets an emergency medical expense requirement of one thousand five hundred dollars. See WAC 388-518-1810(2); and

(4) Is not an inmate of a federal or state prison.

**Chapter 388-504 WAC  
FILING A MEDICAL APPLICATION**

**NEW SECTION**

**WAC 388-504-0405 Filing a medical application.** (1) The department shall accept and process applications for medical programs as described under chapter 388-210 WAC except as specified under this section.

(2) A Washington state resident temporarily out of the state may make application to the CSO in the resident's area of the state through a person or agency acting in the client's behalf.

(3) An aged, blind, or disabled client ineligible for SSI benefits solely because of the spouse's income level shall apply for a medical program.

(4) The department shall find clients who receive continuing cash assistance eligible for a medical program without a separate application.

(5) The department shall accept applications for medical care programs without delay.

(6) The department shall provide clients with:

(a) A Civil Rights Act explanation;

(b) Fair hearing information;

- (c) Early and periodic screening, diagnosis, and treatment (EPSDT) information also known as the healthy kids program, when appropriate;
- (d) Family planning information, when appropriate;
- (e) Special supplemental food program for women, infants and children (WIC) information, when appropriate;
- (f) Managed care information, when appropriate.

NEW SECTION

**WAC 388-504-0410 Authorized representative.** A relative or representative may complete an application for medical programs on a client's behalf, when the client is unable to complete the application or if the client dies.

NEW SECTION

**WAC 388-504-0420 Interview process.** (1) The department shall complete the application process by conducting a face-to-face interview in the local community services office (CSO), unless the client:

- (a) Or the client's representative requests the face-to-face interview be waived and the:
    - (i) Client is unable to come to the CSO; and
    - (ii) Client does not have a representative to complete the interview; or
    - (iii) Client is unable to name a representative to complete the interview; and
    - (iv) Department has adequate information to determine eligibility for medical programs without a face-to-face interview.
  - (b) Is a pregnant woman and the application is for a pregnancy-related medical program.
  - (c) Is a child eighteen years of age or younger and the application is for a medical program for children.
- (2) When the client meets the requirements of subsection (1)(a), (b), or (c) of this section, the department may complete the application process through:
- (a) A face-to-face interview in the client's home;
  - (b) A telephone interview; or
  - (c) The mail.

NEW SECTION

**WAC 388-504-0430 Client's rights.** A person applying for or receiving medical assistance, limited casualty programs, medical care services, or children's health services shall have the same rights as for cash assistance clients.

NEW SECTION

**WAC 388-504-0440 Client's responsibilities.** (1) A client shall furnish the medical care provider with a medical identification card or other adequate notification of eligibility from the department.

(2) The client shall report to the department, within twenty calendar days, any change of circumstances relating to eligibility.

NEW SECTION

**WAC 388-504-0450 Department's responsibilities.** The department shall provide a client medical care within the limitations set forth under chapter 388-529 WAC to any client certified eligible to receive medical care.

NEW SECTION

**WAC 388-504-0460 Verification.** The department shall, when determining or redetermining a client's eligibility for a medical care program, follow the same rules of verification as used for cash assistance clients as defined under chapter 388-210 WAC unless medical rules and regulations provide for an exception or exemption from cash assistance verification rules.

NEW SECTION

**WAC 388-504-0470 Application disposition.** (1) The department shall act on a request for medical care within:

- (a) Sixty calendar days for a client requiring a disability decision;
  - (b) Forty-five calendar days for all other categories except a pregnant woman as described under (c) of this subsection; and
  - (c) Fifteen working days for a pregnant woman, including an interview within five working days if an interview is requested by the client;
  - (d) When applying (a), (b), or (c) of this subsection, the department shall count as day one the date following the date of application.
- (2) The department shall:
- (a) Act on each application as quickly as possible; and
  - (b) Not use the standards for timely processing of applications as a waiting period for determining eligibility.

NEW SECTION

**WAC 388-504-0480 Delayed and pended application.** When the department has acted promptly at all stages of the application process, the department may extend the time standard if the department cannot reach a timely eligibility decision because the:

- (1) Client or an examining physician delays or fails to provide information or fails to take a required action; or
- (2) Eligibility determination depends on out-of-state or intercity correspondence and no other verification is available to establish the eligibility factor at issue; or
- (3) Eligibility determination depends on receipt of medical expense documentation as described under WAC 388-519-1930 and 388-521-2140.

NEW SECTION

**WAC 388-504-0485 Approval of previously denied application.** The department shall rescind a denial and approve a client's eligibility for medical care based on a previously denied application when:

- (1) The client, within thirty days from the date of denial, provides additional information needed to establish eligibility; or
- (2) Following this thirty day period, the client:

- (a) Timely requests a fair hearing to appeal the denial; and
- (b) Provides the additional information needed to establish eligibility.
- (3) Following a spenddown denial, the department shall reopen and process the case when a client, more than thirty days after the denial:
- (a) Presents bills sufficient to meet spenddown and shows reasonable cause for the delay in providing the bills; and
- (b) Timely requests a fair hearing to appeal the denial.

**Chapter 388-505 WAC  
ELIGIBILITY FACTORS COMMON TO MEDICAL  
PROGRAMS**

**NEW SECTION**

**WAC 388-505-0501 Eligibility—General.** Applicants for the medical care programs administered by the department of social and health services pursuant to chapter 74.09 RCW are required to meet the eligibility criteria of chapter 388-505 WAC appropriate to the program for which the client is applying.

**NEW SECTION**

**WAC 388-505-0505 Age.** The department shall consider the age of a client to determine the appropriate category of medical program or services.

**NEW SECTION**

**WAC 388-505-0510 Residence.** (1) A client receiving medical care program benefits other than medically indigent shall be a resident of the state of Washington. 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 temporarily entering the state, for the sole purpose of obtaining medical care, as a resident.

(4) The department shall consider a client's residence the state:

(a) Making a state supplemental security income (SSI) supplementary payment; or

(b) Making federal payments for foster or adoption assistance under Title IV-E of the Social Security Act; or

(c) Of residence of the parent or legal guardian, if one has been appointed, for an institutionalized minor child; or

(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; or

(e) Where a client is residing if the person becomes incapable before twenty-one years of age; or

(f) Making a placement in an out-of-state institution.

(5) The department shall determine the state of residence of a noninstitutionalized child, unless married or emancipated, following the rules under chapter 388-215 WAC.

(6) The department shall ensure married or emancipated minor children follow the rules of subsections (1), (2), (3) and (4) of this section.

(7) When two or more states cannot agree which state is the client's state of residence, the department shall require the state in which the client is physically located to be the state of residence.

**NEW SECTION**

**WAC 388-505-0520 Citizenship and alien status.** (1) The department shall provide Medicaid to an otherwise eligible person who is:

(a) A citizen of the United States; or

(b) A North American Indian born in Canada claiming fifty percent:

(i) Indian blood; or

(ii) Or less Indian blood and who has maintained United States residency since before December 25, 1952.

(c) An alien lawfully admitted for permanent residence or otherwise permanently residing under color of law (PRUCOL) in the United States; or

(d) An alien lawfully present in the United States according to sections 203 (a)(7), 207(c), 208, and 212 (d)(5) of the Immigration and Nationality Act (INA); or

(e) An alien granted lawful temporary residence, or permanent residence according to sections 245(a), 210, 210(f), and 210A of INA and sections 202 and 302 of the Immigration Reform and Control Act (IRCA), unless five years from the date Immigration and Naturalization Service (INS) grants lawful temporary resident status has not passed; or

(f) An alien approved by the INS under the family unity program, unless five years from the date INS grants lawful temporary resident status for the petitioning relative has not passed.

(2) When an alien as described under subsection (1)(e) or (f) of this section has not passed the five-year disqualification period, the department shall provide Medicaid to an otherwise eligible person when the alien is:

(a) Aged, blind, or disabled; or

(b) Seventeen years of age or under; or

(c) Pregnant; or

(d) A Cuban/Haitian entrant as defined in sections 501(e)(1) and (2)(A) of P.L. 96-422.

(3) When an alien as described under subsection (1)(e) or (f) of this section is still under the five-year disqualification period, and is not described under subsection (2) of this section, the department shall provide medical care and services as necessary for treatment of the alien's emergency medical condition as defined under WAC 388-500-0005.

(4) For all other aliens, when such alien meets the eligibility requirements of a Medicaid program other than citizenship or alien status requirements, the department shall provide Medicaid as follows:

(a) Full scope medical services for a pregnant woman; or

(b) Medical care and services as necessary for treatment of the alien's emergency medical condition as defined under WAC 388-500-0005.

NEW SECTION

**WAC 388-505-0530 Social Security number.** (1) As a condition of eligibility, each medical program client shall:

- (a) Furnish the client's Social Security number; or
- (b) Apply for a Social Security number if the number is unknown or has not been issued.

(2) The department shall provide Medicaid for a period of one year for a child born to a woman eligible for and receiving medical assistance on the date of the child's birth, before the department shall require an application for the child's Social Security number, if:

- (a) The child remains a member of the mother's household; and
  - (b) The mother continues to live in Washington state.
- (3) The client shall report a new Social Security number to the department within twenty days of its receipt.

(4) The department shall not deny, delay, or terminate medical care pending issuance of a Social Security number when the client meets the requirement in subsection (1)(b) of this section.

(5) When the client fails or refuses to comply with the requirement in subsection (1) of this section for each person included in the assistance unit, the department shall not determine eligibility for such person. The department shall exclude such person from the assistance unit and deny medical care for that person. See WAC 388-509-0920 for a child not eligible for a Medicaid program because the child does not have a Social Security number.

(6) The department shall assist a client in obtaining a Social Security number by:

- (a) Referring the client to the nearest Social Security office; and
- (b) Furnishing to the client from department records any verification requested by the Social Security Administration.

NEW SECTION

**WAC 388-505-0540 Assignment of medical support rights.** (1) As a condition of eligibility for any medical program, a client shall assign to the state of Washington all right, title, and interest to any medical care support available as a result of:

- (a) A court order; or
- (b) An administrative agency order; or
- (c) Any third-party payments for medical care.

(2) The client shall assign rights of payment to any medical care support the client may have in the client's own behalf or on the behalf of any other client for whom the client can legally assign such rights.

(3) As assignee of the eligible client's right to receive medical support payments, the department may sign coordination of benefit forms or other forms, as necessary, to ensure the efficient and proper payment of medical care support.

NEW SECTION

**WAC 388-505-0560 Cooperation in securing medical support.** (1) As a condition of eligibility for Medicaid, the department shall require a client, unless pregnant, or a child under one year of age and automatically eligible for medical assistance, or a client for whom there is a finding of good cause, to cooperate with the department in:

- (a) Obtaining medical support, as defined under WAC 388-11-011, for the client or for any other client other than an unborn for whom the client can legally assign rights; and
- (b) Identifying and providing information to assist the department in pursuing any liable third party; and
- (c) Establishing paternity of the client's child.

(2) The department shall require a Medicaid client to cooperate as described under WAC 388-14-200 (2)(a), (b), (c), (3), (4), (5), (6), (7), (8), (9), and (16) unless:

- (a) The client is pregnant; or
- (b) Good cause is found as described under WAC 388-215-1410 through 388-215-1490.

(3) The department shall waive such client's cooperation requirements if the department finds the client has good cause for noncooperation under WAC 388-505-0570.

(4) Unless the department finds good cause for noncooperation under WAC 388-215-1410 through 388-215-1490 or WAC 388-505-0570, the department shall find the client, who refuses to cooperate under subsection (1) of this section, ineligible to receive Medicaid.

(5) The department shall provide Medicaid to an otherwise eligible client when the person having the legal authority to cooperate on behalf of the client refuses such cooperation.

(6) Effective March 1, 1991, the department shall not establish an obligation to collect a client's birth costs that are:

- (a) Paid or expected to be paid by the department; and
- (b) Defined under WAC 388-11-011.

(7) The department may seek reimbursement of a client's birth costs covered by available insurance or other liable third party.

NEW SECTION

**WAC 388-505-0570 Good cause for noncooperation—Medical care support.** (1) The department shall waive the cooperation requirement under WAC 388-505-0560(1), if the client claims and the department determines cooperation is not in the best interest of the:

(a) Medical care client for whom assignment is made; or

- (b) Person responsible for cooperating.

(2) The department shall inform a client of the right to claim good cause for not cooperating.

(3) The department shall make a final determination of the existence of good cause using the time limits and exceptions described under WAC 388-504-0470.

(4) The department shall find good cause if the cooperation is not in the best interest of the client or the person responsible for cooperating. Circumstances constituting good cause for noncooperation include, but are not limited to:

- (a) Anticipated or actual physical harm or an emotional impairment substantially affecting the ability to function of the:

- (i) Medical care client for whom assignment is made; or
- (ii) Person responsible for cooperating;
- (b) Rape or incest resulting in the conception of a person for whom support is sought;
- (c) Legal proceedings for adoption are pending;
- (d) Active consideration of placement of the child for adoption; or
- (e) A department finding of good cause for an AFDC client, for not cooperating under WAC 388-215-1440 in establishing paternity for a child or a medical care support resource.

(5) The department shall not deny, delay, or discontinue medical assistance pending a determination of good cause for a client refusing to cooperate.

(6) At each reapplication or eligibility evaluation, the department shall review all cases in which the department found good cause for refusing to cooperate. If good cause no longer exists, the department shall rescind the decision and require cooperation by the client.

(7) When the department determines good cause does not exist, the department shall:

- (a) Notify the client, in writing, and provide the client the opportunity to:
  - (i) Cooperate;
  - (ii) Have the case closed; or
  - (iii) Request a fair hearing; and
- (b) Terminate medical assistance if the client refuses to cooperate under WAC 388-505-0560.

#### NEW SECTION

**WAC 388-505-0580 Resources.** (1) To be eligible for a medical care program, a person's resources shall not exceed the specified limits of the appropriate eligibility standards for the appropriate medical care programs.

(2) The department shall consider resources available when the client or spouse:

- (a) Owns the resource; and
- (b) Has the authority to convert the resource to cash; and
- (c) Is not legally restricted from using the resource for the person's support and maintenance.

(3) The department shall exempt noncash resources when the client:

- (a) Applies for categorically needy or medically needy medical assistance; and
- (b) Cannot convert the noncash resource to cash within twenty work days; and
- (c) Makes an ongoing attempt to convert the noncash resources to cash.

(4) The department shall consider the availability of a sales contract under WAC 388-511-1160(2) for an SSI-related client.

#### NEW SECTION

**WAC 388-505-0590 Income.** (1) For continuing cash assistance clients the department shall find a person eligible for medical care programs without a separate eligibility determination.

(2) For a noncash assistance medical client, the department shall determine countable income according to AFDC or SSI methodology; except, the department shall:

(a) Consider the financial responsibility of relatives as described under WAC 388-506-0610 and 388-506-0620, and the financial responsibility of an alien sponsor under WAC 388-510-1030;

(b) Require a client to take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits to which a client is entitled, unless the client can show good cause for not doing so. The client's annuities, pension, retirement, and disability benefits include, but are not limited to, veteran's compensation and pensions, OASDI benefits, railroad retirement benefits, and unemployment compensation;

(c) Allow child care expenses the client pays as an income deduction;

(d) Exempt earned income tax credit refunds and payments, received on or after January 1, 1991, during the month of receipt and the following month; and

(e) Consider trusts as described under WAC 388-505-0595.

(3) For an SSI-related client, the department shall determine countable income using SSI methodology except:

(a) Exclude lump sum payments as described under WAC 388-511-1160;

(b) Consider the principal and interest payment from a sales or real estate contract as described under WAC 388-511-1160 (2)(a) as unearned income;

(c) Consider the interest payment from a sales or real estate contract as described under WAC 388-511-1160 (2)(b) as unearned income.

(4) For a noncash assistance medical client, the department shall determine countable income according to AFDC methodology; except, the department shall:

(a) Budget income prospectively as defined under WAC 388-218-1900;

(b) Not use mandatory monthly income reporting;

(c) Consider the AFDC earned income exemption as described under WAC 388-507-0710.

#### NEW SECTION

**WAC 388-505-0595 Trusts.** (1) For the purposes of this section, the department shall ensure a trust includes any legal instrument similar to a trust.

(2) The department shall ensure this section shall not apply to any trust or initial trust decree established:

(a) On or before April 6, 1986; and

(b) Solely for the benefit of a client who lives in an intermediate care facility for the mentally retarded (ICFMR).

(3) For trusts established on or before August 10, 1993, the department shall:

(a) Determine if the trust is established by the client, client's spouse, or the legal guardian for a client under which:

(i) The client may be the beneficiary of all or part of the payments from the trust;

(ii) The distribution of such payments is determined by one or more of the trustees; and

(iii) The trustees are permitted to use discretion with respect to the distribution of payments to the client;

(b) Consider available to the client the greatest amount of payments permitted to be distributed under the terms of

the trust when the conditions defined under (a) of this subsection exist;

(c) Apply (b) of this subsection whether or not:

(i) The trust:

(A) Is irrevocable; or

(B) Is established for purposes other than to establish eligibility for medical assistance;

(ii) The trustees actually use the discretion permitted by the trust.

(d) For an irrevocable trust not meeting the description under (a) of this subsection, consider:

(i) The trust as an unavailable resource when the client establishes the trust for a beneficiary other than the client or the client's spouse;

(ii) As an available resource the amount of the trust's assets:

(A) The client may access; or

(B) The trustee of the trust distributes as actual payments to the client.

(iii) Referencing WAC 388-513-1365 for regulations concerning the transfer of assets;

(e) For a revocable trust, consider:

(i) The full amount of the trust as an available resource of the client when the trust is established by:

(A) The client;

(B) The client's spouse and the client lives with the spouse;

(C) A person other than the client or the client's spouse only to the extent the client has access to the assets of the trust.

(ii) Only the amounts paid to the client from the trust as an available resource when the trust is established by:

(A) The client's spouse and the client does not live with the spouse; or

(B) A person other than the client or the client's spouse and payments are distributed by a trustee of the trust.

(f) Not consider client withdrawal of funds from a trust as described under (e) of this subsection as income;

(g) Waive the requirements of this subsection (3) if undue hardship exists. Undue hardship includes but is not limited to situations in which:

(i) The trustee refused to disburse the funds from the trust and the client has filed and is actively pursuing litigation to require the trustee to disburse said funds; or

(ii) The client would be forced to go without life sustaining services because trust funds are not made available to pay for the services.

(4) For trusts established on or after August 11, 1993, the department shall follow subsection (3) of this section to determine eligibility for medical services received on or before September 30, 1993.

(5) For trusts established on or after August 11, 1993, the department shall follow subsections (6) through (14) of this section to determine eligibility for medical services received on or after October 1, 1993.

(6) The department shall consider a trust established by the client when:

(a) All or part of the assets, as defined under WAC 388-513-1365, of the trust were from the client; and

(b) The trust was established, other than by will, by:

(i) The client or the client's spouse;

(ii) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(iii) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(7) The department shall consider available to the client only the assets contributed to the trust by the client when part of the trust assets were contributed by any other person.

(8) The department shall not consider:

(a) The purposes for which a trust is established;

(b) Whether the trustees have or exercise any discretion under the terms of the trust;

(c) Restrictions on when or whether distributions may be made from the trust; or

(d) Restrictions on the use of distributions from the trust.

(9) For a revocable trust established as described under subsection (6) of this section, the department shall consider:

(a) The full amount of a revocable trust as an available resource of the client;

(b) Payments from the trust to or for the benefit of the client as income of the client; and

(c) Any payments from the trust other than payments described under (b) of this subsection as a transfer of client assets.

(10) For an irrevocable trust established as described under subsection (6) of this section, the department shall consider:

(a) As an available resource to the client, the portions of a trust or the income from the trust from which payment can be made to or for the benefit of the client. When payment is made from such irrevocable trust, the department shall consider such payments as:

(i) Income to the client when payment is to or for the client's benefit; or

(ii) The transfer of an asset when payment is made to any person for any purpose other than the client's benefit;

(b) As a transfer of assets, a trust from which a payment cannot be made to or for the client's benefit. For such trust the department shall find:

(i) The transfer of assets is effective the date:

(A) Of the establishment of the trust; or

(B) On which payment to the client is precluded, if later;

(ii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(11) For a revocable or irrevocable trust established by persons or with funds other than as described under subsection (6) of this section, the department shall consider such trust under subsection (3)(e) of this section.

(12) The department shall not follow subsections (6) through (11) of this section for a trust containing the assets of a person sixty-four years of age and younger who is disabled as defined by SSI criterion and the trust:

(a) Is established for the benefit of such person by such person's parent, grandparent, legal guardian, or a court; or

(b) Is managed by a nonprofit association and the nonprofit association:

(i) Maintains separate accounts for each trust beneficiary; and

(ii) May pool such separate accounts for investment and management of fund purposes; and

(c) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client up to the amount of Medicaid expended on the client's behalf.

(13) The department shall waive the application of this section if the client establishes undue hardship exists. Undue hardship includes, but is not limited to, situations where the client would be forced to go without life sustaining services.

(14) See WAC 388-513-1365 for trusts the department determines is a transfer of assets under this section.

**Chapter 388-506 WAC  
MEDICAL FINANCIAL RESPONSIBILITY**

**NEW SECTION**

**WAC 388-506-0610 AFDC related medical programs.** (1) When determining eligibility for medical programs, the department shall consider:

(a) The family unit living in the same household as including all family members when determining program relationship;

(b) A relative financially responsible only as follows:

(i) The natural or adoptive parent or stepparent to a child eighteen years of age or younger living in the same household; and

(ii) Spouse to spouse living in the same household.

(c) As a separate medical assistance unit (MAU) the following family member living in the same household, when all family members are not eligible for a categorically needy medical care program:

(i) A child with countable income or resources;

(ii) A child in common of unmarried parents;

(iii) Each unmarried parent of a child in common with such parent's separate children, if any; or

(iv) A nonresponsible caretaker relative.

(d) Categorically related family members, other than those described under (c) of this subsection, in the same MAU; and

(e) A pregnant minor as not living in the same household as her parent regardless of whether she lives with her parent. See subsections (4)(b) and (5)(b) of this section.

(2) The department shall consider income and resources jointly for spouses and spouses' children living in the same household unless the exceptions in this section are met. See WAC 388-506-0620 for the financial responsibility requirements for SSI-related clients.

(3) When determining eligibility for medical care, the department shall not consider the countable income or resources of a child available to any person other than the child.

(4) The department shall consider the income of a parent of a child eighteen years of age or younger:

(a) Living in the same household, available to the child whether or not actually contributed. The department shall:

(i) Allow a parent one hundred percent of the Federal Poverty Level (FPL) for the parent and other members of the parent's MAU; and

(ii) Allocate income in excess of one hundred percent of the FPL on a prorated basis to all children eighteen years of

age or younger in separate MAUs for whom the parent is financially responsible.

(b) Not living in the same household, only to the extent the parent's income is actually contributed to the child.

(5) The department shall consider the resources of a parent of a child eighteen years of age or younger:

(a) Living in the same household, available to the child whether or not actually contributed. The department shall ensure a parent's countable resources are:

(i) Prorated; and

(ii) Allocated in equal shares to:

(A) The parent; and

(B) Each person for whom the parent is financially responsible.

(b) Not living in the same household, only to the extent the parent's resources are actually contributed to the child.

(6) When determining medical care eligibility, the department shall not consider available, unless actually contributed to the client, the income and resources of a:

(a) Stepparent not legally liable for support of the stepchildren;

(b) Legal guardian other than the parent of the client;

(c) Caretaker other than the parent of the client;

(d) Alien sponsor;

(e) Sibling or child of the client; or

(f) Spouse not living in the same household as the client.

(7) The department shall determine each MAU's medical care eligibility using:

(a) The MAU's countable income and resources; and

(b) Household size for the number of persons in the MAU.

(8) For each separate MAU, the department shall exempt one vehicle as described under WAC 388-216-2650.

**NEW SECTION**

**WAC 388-506-0620 SSI-related medical clients.** (1) When determining program eligibility for medical care, the department shall limit relative financial responsibility from:

(a) The natural or adoptive parent or stepparent to a child seventeen years of age or younger living in the same household; and

(b) Spouse to spouse living in the same household.

(2) The department shall consider income and resources jointly for spouses when both spouses are SSI-related and live in the same household.

(3) The department shall consider income and resources for an institutionalized:

(a) Child as described under WAC 388-513-1315(6); or

(b) Spouse as described under WAC 388-513-1330 and 388-513-1350.

(4) The department shall consider the income and resources of spouses as available to each other through the month in which the spouses stopped living together. See WAC 388-513-1330 and 388-513-1350 when a spouse is institutionalized.

(5) The department shall follow WAC 388-515-1505, 388-515-1510, or 388-515-1530 when one or both spouses are receiving community options program entry system (COPES), community alternatives program (CAP), outward bound residential alternatives (OBRA), or coordinated

community aids service alternatives (CASA) waived service program.

(6) The department shall allow a community spouse applying for medically needy a spousal deduction equal to the one-person medically needy income level (MNIL) less the spouse's income when:

(a) The community spouse is living in the same household as the spouse; and

(b) The spouse is receiving home-based and community-based services.

(7) The department shall consider income and resources separately as of the first day of the month following the month of separation when spouses stop living together because of placement into a congregate care facility (CCF), adult family home (AFH), adult residential rehabilitation center/adult residential treatment facility (ARRC/ARTF), or division of developmental disability-group home (DDD-GH) facility when:

(a) Only one spouse enters the facility;

(b) Both spouses enter the same facility but have separate rooms; or

(c) Both spouses enter separate facilities.

(8) The department shall consider income and resources jointly when spouses are placed in a CCF, AFH, ARRC/ARTF, or DDD-GH facility and share a room.

after allowing the income deductions in (b)(i) and (ii) of this subsection; or

(B) All the financially responsible spouse's income when the income exceeds one-half of the FBR after allowing the income deductions in (b)(i) and (ii) of this subsection.

(c) Medically needy Medicaid for an SSI-related spouse. The department shall:

(i) Allow the financially responsible spouse the income deductions in (b)(i) and (ii) of this subsection;

(ii) Deem from the financially responsible spouse:

(A) Zero income when the financially responsible spouse's income equals or is less than the one-person medically needy income level (MNIL) after allowing the income deductions in (b)(i) and (ii) of this subsection;

(B) The financially responsible spouse's income above the MNIL after allowing the income deductions in (b)(i) and (ii) of this subsection;

(iii) From the SSI-related spouse's income, allow an amount needed to bring the financially responsible spouse's income up to the MNIL.

(2) The department shall consider a person eligible for Medicaid when the person is denied SSI cash assistance solely because of income or resources deemed available from an alien sponsor.

#### Chapter 388-507 WAC

#### AFDC-RELATED MEDICAL ELIGIBILITY

#### NEW SECTION

##### WAC 388-506-0630 SSI-related income deeming. (1)

At the client's option, the department shall consider an SSI-related person, living with a spouse or parent who is ineligible for SSI, as a separate MAU. The department shall deem income from a financially responsible spouse or parent to the SSI-related person as follows when determining:

(a) Categorically needy or medically needy eligibility for an SSI-related child. The department shall consider the income of the parents available to the SSI-related child except for:

(i) Income exemptions under WAC 388-511-1140, including the twenty dollar deduction and the sixty-five dollars plus one-half of the balance earned income deduction; and

(ii) A child's allowance for each SSI-ineligible child equal to one-half of the Federal Benefit Rate (FBR) minus any income of that child; and

(iii) A parent's allowance equal to:

(A) One-person FBR for a single parent; or

(B) Two-person FBR for two parents.

(b) Categorically needy Medicaid for an SSI-related spouse. The department shall:

(i) Allow the financially responsible spouse the income exemptions under WAC 388-511-1140 except the:

(A) Twenty dollars deduction; and

(B) Sixty-five dollars plus one-half earned income deduction.

(ii) Deduct from the financially responsible spouse's income, a child's allowance for each SSI ineligible child equal to one-half of the FBR minus any income of that child;

(iii) Deem from the financially responsible spouse:

(A) Zero income when the financially responsible spouse's income equals or is less than one-half of the FBR

#### NEW SECTION

**WAC 388-507-0710 AFDC-related medical income standards.** (1) The department shall determine income standards for AFDC-related clients as described under WAC 388-505-0590 (1) and (2).

(2) Effective January 1, 1993, the department shall set the medically needy income level (MNIL) at:

|                           |          |
|---------------------------|----------|
| (a) One person            | \$ 467   |
| (b) Two persons           | \$ 592   |
| (c) Three persons         | \$ 667   |
| (d) Four persons          | \$ 742   |
| (e) Five persons          | \$ 858   |
| (f) Six persons           | \$ 975   |
| (g) Seven persons         | \$ 1,125 |
| (h) Eight persons         | \$ 1,242 |
| (i) Nine persons          | \$ 1,358 |
| (j) Ten persons and above | \$ 1,483 |

#### NEW SECTION

**WAC 388-507-0720 Resource standards.** (1) The department shall ensure the total value of nonexempt resources will not exceed:

(a) Two thousand dollars for a single person; or

(b) Three thousand dollars for a married couple;

(c) Fifty dollars for each additional family member.

(2) For regulations on transfer of resources:

(a) For a client who is not institutionalized, see WAC 388-507-0740; or

(b) For an institutionalized client, see WAC 388-513-1365.

(3) The department shall deny or terminate eligibility for the categorically needy or medically needy programs when a family unit's nonexempt resources are in excess of subsection (1) of this section.

**NEW SECTION**

**WAC 388-507-0730 Resource availability.** (1) The department shall consider resources:

- (a) Available as described under WAC 388-505-0580;
- (b) For SSI-related medically needy, according to chapter 388-511 WAC;
- (c) For AFDC-related medically needy as in determining AFDC financial eligibility.

(2) For households with more than one assistance unit, the department shall consider resources for each assistance unit according to the related program.

(3) The department shall consider only resources available during the period for which income is computed.

**NEW SECTION**

**WAC 388-507-0740 Special situations.** (1) The department shall not allow the AFDC thirty dollars plus one-third earned income exemption for clients applying solely for medical assistance, unless the conditions under subsection (2) of this section apply.

(2) The department shall allow the exemption in subsection (1) of this section when the family has:

- (a) Received AFDC cash assistance in one of the four preceding months; and
- (b) Not already received the exemption for a maximum of four consecutive months; or
- (c) Already received the exemption for the maximum period, but has subsequently not received AFDC cash assistance for at least twelve consecutive months.

(3) The department shall consider an AFDC client terminated from cash assistance as eligible for Medicaid when termination was solely due to an AFDC client:

- (a) Ceasing to attend school; or
- (b) Refusing to participate in the job opportunities and basic skills (JOBS) training program.

(4) The department shall not consider the transfer of a resource when determining Medicaid eligibility for a person who is not institutionalized. For an institutionalized client, refer to WAC 388-513-1365.

**Chapter 388-508 WAC  
PREGNANT WOMEN MEDICAL ELIGIBILITY**

**NEW SECTION**

**WAC 388-508-0805 Pregnant woman—Income standards.** (1) The department shall find a pregnant woman eligible for Medicaid as categorically needy when the pregnant woman meets the income requirements of this section.

(2) The department shall ensure total family income will not exceed one hundred eighty-five percent of the Federal

Poverty Level (FPL). One hundred eighty-five percent of the current FPL is:

| Family Size | Monthly Income |
|-------------|----------------|
| (a) One     | \$1,135        |
| (b) Two     | \$1,517        |
| (c) Three   | \$1,900        |
| (d) Four    | \$2,282        |
| (e) Five    | \$2,664        |
| (f) Six     | \$3,047        |
| (g) Seven   | \$3,429        |
| (h) Eight   | \$3,811        |

(i) For family units with nine members or more, add \$383 to the monthly income for each additional member.

**NEW SECTION**

**WAC 388-508-0810 Pregnant woman—Resource standards.** The department shall not consider resources in determining a pregnant woman's eligibility.

**NEW SECTION**

**WAC 388-508-0820 Pregnant woman—Eligibility.** (1) The department shall find a verifiably pregnant woman eligible for Medicaid as categorically needy when the pregnant woman meets:

- (a) The income requirements under WAC 388-508-0805; and
- (b) Citizenship, Social Security number, and residence requirements under chapter 388-505 WAC.

(2) The department shall determine family income according to AFDC methodology, except the department shall:

- (a) Exclude the income of the unmarried father of the unborn unless the income is actually contributed; and
- (b) Determine eligibility as if the unborn is born.

(3) The department shall consider the provisions of WAC 388-506-0610 (2)(a) and (b) in determining countable income for a pregnant minor.

(4) The department shall exempt a pregnant, undocumented alien woman from citizenship, alien status and Social Security number requirements.

**NEW SECTION**

**WAC 388-508-0830 Pregnant woman—Continuation of eligibility.** The department shall continue Medicaid eligibility for a woman eligible for and receiving Medicaid on the last day of pregnancy through the end of the month in which the sixtieth day from the end of pregnancy occurs.

**NEW SECTION**

**WAC 388-508-0835 Postpregnancy family planning extension.** A woman eligible for medical care from the department during her pregnancy shall continue to be eligible for family planning services until the end of the twelfth month following the date the pregnancy ends.

**NEW SECTION**

**WAC 388-508-0840 Pregnant woman—Change of circumstances.** The department shall require changes in family income not affect medical eligibility for the pregnant woman:

- (1) Once the department determines a pregnant woman eligible under WAC 388-508-0800; or
- (2) If, at any time while eligible for and receiving medical assistance, a pregnant woman meets the eligibility requirements under WAC 388-508-0800.

**Chapter 388-509 WAC  
CHILDREN'S MEDICAL ELIGIBILITY**

**NEW SECTION**

**WAC 388-509-0905 Infants and newborns.** The department shall:

- (1) Determine an infant under one year of age eligible as categorically needy when the infant:
  - (a) Is born to a woman eligible for and receiving medical assistance on the date of the infant's birth; and
  - (b) Remains a member of the mother's household.
- (2) Not consider citizenship, Social Security number requirements, income, or resource requirements for infants under this chapter.

**NEW SECTION**

**WAC 388-509-0910 Children—Eligible to nineteen years of age.** The department shall find a child eighteen years of age or younger eligible for Medicaid when the child meets:

- (1) Citizenship, residence, and Social Security number requirements under WAC 388-504-0400; and
- (2) Income requirements corresponding to the age level of the child under WAC 388-509-0960 (1), (2), and (3); and
- (3) Resource requirement under WAC 388-509-0940.

**NEW SECTION**

**WAC 388-509-0920 Children's health program.** (1) The department shall consider a child seventeen years of age or younger, eligible for state-funded medical services with the same coverage as categorically needy, when:

- (a) The child is not eligible for a federally-funded Medicaid program; and
  - (b) The child's nonexempt family income does not exceed one hundred percent of the current FPL. See income guidelines as described under WAC 388-509-0960(3).
- (2) The department shall determine nonexempt family income by:
- (a) Following AFDC methodology; and
  - (b) Applying the medical income rules as described under WAC 388-506-0610, 388-506-0630 and 388-507-0710.
- (3) The department shall not require a child to meet the following eligibility factors:
- (a) Citizenship;
  - (b) Social Security number; or
  - (c) Resources limits.

**NEW SECTION**

**WAC 388-509-0940 Children's resource standards.** The department shall not consider resources when determining eligibility of a child eighteen years of age or younger.

**NEW SECTION**

**WAC 388-509-0960 Children's income standards.** The department shall determine:

- (1) An infant under one year of age eligible as categorically needy when the infant is a member of a family whose total family countable income does not exceed one hundred eighty-five percent of the current federal poverty level (FPL). See income guidelines as described under WAC 388-508-0805.
- (2) A child one year of age, but under six years of age, eligible as categorically needy when the total family countable income does not exceed one hundred thirty-three percent of the FPL. One hundred thirty-three percent of the current FPL is:

| Family Size | Monthly Income |
|-------------|----------------|
| (a) One     | \$ 816         |
| (b) Two     | \$1,091        |
| (c) Three   | \$1,366        |
| (d) Four    | \$1,641        |
| (e) Five    | \$1,916        |
| (f) Six     | \$2,191        |
| (g) Seven   | \$2,465        |
| (h) Eight   | \$2,740        |

(i) For family units with more than eight members, add \$275 to the monthly income for each additional member.

(3) A child eighteen years of age or younger eligible as categorically needy when the total family countable income does not exceed one hundred percent of FPL. One hundred percent of the current FPL is:

| Family Size | Monthly Income |
|-------------|----------------|
| (a) One     | \$ 614         |
| (b) Two     | \$ 820         |
| (c) Three   | \$1,027        |
| (d) Four    | \$1,234        |
| (e) Five    | \$1,440        |
| (f) Six     | \$1,647        |
| (g) Seven   | \$1,854        |
| (h) Eight   | \$2,060        |

(i) For family units with more than eight members, add \$207 to the monthly income for each additional member.

**NEW SECTION**

**WAC 388-509-0970 Closing dates.** (1) A child shall remain eligible under this section until the later of the end of the month:

- (a) Of the child's birthday that exceeds the age requirement; or
- (b) In which the child receives inpatient services if:
  - (i) The child is receiving inpatient services on the last day of the month of the child's birthday that exceeds the age requirement; and
  - (ii) The stay for inpatient services continues into the following month or months; and

(iii) Except for the age requirement, the child would be eligible for medical care under this section.

(2) A child eligible for the children's health program under WAC 388-509-0920 if pregnant, shall remain eligible:

- (a) Regardless of changes in family income; and
- (b) Through the end of the month including the sixtieth day from the day the pregnancy ends.

**Chapter 388-510 WAC  
ALIEN MEDICAL ELIGIBILITY**

**NEW SECTION**

**WAC 388-510-1020 Alien—Eligibility.** The department shall provide Medicaid to an otherwise eligible person who meets the criteria as described under WAC 388-505-0520.

**NEW SECTION**

**WAC 388-510-1030 Alien—Deeming.** (1) The department shall consider an alien eligible for Medicaid when:

- (a) The alien is denied AFDC or SSI cash assistance; and
- (b) Income and resources are deemed available from an alien sponsor who is not a member of the assistance unit; and
- (2) The department shall consider income and resources actually contributed by the alien sponsor available to the alien assistance unit.

**Chapter 388-511 WAC  
SSI RELATED MEDICAL ELIGIBILITY**

**NEW SECTION**

**WAC 388-511-1105 SSI-related eligibility requirements.** (1) For the purposes of SSI-related medical assistance, the client shall be:

- (a) Sixty-five years of age or over; or
- (b) Blind with:
  - (i) Central visual acuity of 20.200 degrees or less in the better eye with the use of a correcting lens; or
  - (ii) A limitation in the fields of vision so the widest diameter of the visual field subtends an angle no greater than twenty degrees.
- (c) Disabled.
  - (i) Decisions on SSI-related disability are the responsibility of the medical assistance administration (MAA) and shall be subject to the authority of:
    - (A) Federal statutes and regulations codified at 42 U.S.C. Sec 1382c and 20 C.F.R. Parts 404 and 416, as amended; or
    - (B) Controlling federal court decisions which define the OASDI and SSI disability standard and determination process.
  - (ii) For MAA's purposes, disabled means unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which:
    - (A) Can be expected to result in death; or

(B) Has lasted or can be expected to last for a continuous period of not less than twelve months.

(iii) In the case of a child seventeen years of age or younger, if the child suffers from any medically determinable physical or mental impairment of comparable severity.

(2) When a person has applied for Title II or Title XVI benefits and the SSA has denied the person's application solely because of a failure to meet Title II and Title XVI blindness or disability criteria, the SSA denial shall be binding on the department, unless the applicant's:

- (a) SSA denial is under appeals in the reconsideration stage, the SSA's administrative hearing process, or the SSA's appeals council; or
- (b) Medical condition has changed since the SSA denial was issued.
- (3) The ineligible spouse of an SSI beneficiary receiving a state supplement payment for the ineligible spouse shall not be eligible for Medicaid as categorically needy. Such ineligible spouse may be eligible for medically needy.
- (4) The client shall be resource eligible under WAC 388-511-1110 on the first day of the month to be eligible for any day or days of that month. The department shall make a resource determination of the first moment of the first day of the month. The department shall determine changes in the amount of a client's countable resources during a month do not affect eligibility or ineligibility for that month.
- (5) The department shall consider a client under 1619 (b) of the Social Security Act as eligible for SSI.
- (6) The department shall provide a resident of Washington requiring medical assistance outside the United States care according to WAC 388-501-0180.

**NEW SECTION**

**WAC 388-511-1110 SSI-related resource standards.** The department shall establish the resource limit for a:

- (1) Single person shall be two thousand dollars; and
- (2) Couple shall be three thousand dollars.

**NEW SECTION**

**WAC 388-511-1115 SSI-related income standards.** The department shall use:

- (1) The state supplement standard for a single person as the monthly standard for an SSI-related person under WAC 388-250-1700;
- (2) The state supplement standard for a couple as the monthly standard for SSI-related couples who are both applying as described under WAC 388-250-1700. See WAC 388-506-0630 when one spouse of a couple is applying;
- (3) The monthly standard in WAC 388-507-0705 for an SSI-related client eligible for medically needy; and
- (4) See WAC 388-513-1300 for an institutionalized client.

**NEW SECTION**

**WAC 388-511-1130 SSI-related income availability.** The department shall:

- (1) Consider client checks received in advance of the month the checks are normally received as income in the month of normal receipt;

(2) Consider electronically transferred client funds available as income in the month of normal receipt, regardless of whether the banking institution posted the funds to the client's bank account before or after the month the funds are payable;

(3) Include as earned income the earned income amounts withheld due to garnishment. See WAC 388-511-1140(4) for garnishment of unearned income; and

(4) As a condition of eligibility, require a client to take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits to which the client is entitled, unless the client can show good cause for not doing so. Annuities, pensions, retirement, and disability benefits include, but are not limited to, veteran's compensation and pensions, OASDI benefits, railroad retirement benefits, and unemployment compensation.

### NEW SECTION

#### **WAC 388-511-1140 SSI-related income exemptions.**

(1) The department shall exempt:

(a) Any public agency's refund of taxes paid on real property or on food;

(b) State public assistance and supplemental security income (SSI) based on financial need;

(c) Any portion of a grant, scholarship, or fellowship used to pay tuition, fees, or other necessary educational expense at an educational institution;

(d) Income that a client does not reasonably anticipate, or receives infrequently or irregularly, when such income does not exceed twenty dollars per month if unearned, or ten dollars per month if earned;

(e) Any amount a client receives for the foster care of a child who lives in the same household, if the child is not SSI-eligible and was placed in such home by a public or nonprofit child placement or child care agency;

(f) One-third of any payment for child support a parent receives from an absent parent for a minor child who is not institutionalized;

(g) The first twenty dollars per month of earned or unearned income, not otherwise excluded in subsection (1)(a) through (f) of this section, for a client at home. The department shall consider the exemption only once for a husband and wife. The department shall not apply such exemption on income paid on the basis of an eligible person's needs, which is totally or partially funded by the federal government or a private agency;

(h) Tax exempt payments Alaska natives receive under the Alaska Native Claims Settlement Act;

(i) Tax rebates or special payments exempted under other statutes;

(j) Compensation provided to volunteers in ACTION programs established by P.L. 93-113, the Domestic Volunteer Service Act of 1973;

(k) From the income of a single SSI-related parent or a married SSI-related parent whose spouse has no income, an amount to meet the needs of an ineligible minor child living in the household of SSI-related parent. See WAC 388-506-0630 when the SSI-related client has a spouse with income. The exemption is one-half of the one-person Federal Benefit Rate (FBR) less any income of the child;

(l) Veteran's benefits designated for the veteran's:

(i) Dependent; or

(ii) Aid and attendance/housebound allowance and unusual medical expense allowance (UME). For an institutionalized client, see WAC 388-513-1345;

(m) Title II Social Security Administration benefits. The department shall:

(i) Determine current client eligibility for categorically needy medical assistance under WAC 388-503-0310(4), including all Title II cost-of-living adjustment (COLA) benefit increases received by the:

(A) Client since termination from SSI/SSP; or

(B) Client's spouse and/or other financially responsible family member living in the same household during the time period under (m)(i) of this subsection; and

(ii) Consider the total of the COLA benefit increases and the Title II Social Security Administration benefits in computing the client's participation in the cost of the institutionalized client's care;

(n) A fee a guardian charges as reimbursement for providing services, when such guardianship services are a requirement for the client to receive payment of the income;

(o) Income an ineligible or nonapplying spouse receives from a governmental agency for services provided to an eligible client such as chore services;

(p) Certain cash payments a client receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;

(q) Restitution payment to a civilian of Japanese or Aleut ancestry under P.L. 100-383 and any interest earned from such payment;

(r) The amount of the expenses directly related to a client's impairment that allows the permanently and totally disabled client to continue to work;

(s) The amount of the blindness-related work expenses of a blind client;

(t) Interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement which are left to accumulate and become part of the separately identified burial funds set aside on or after November 1, 1982;

(u) Earned income tax credit (EITC);

(v) Crime victim's compensation funds;

(w) Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims under P.L. 101-201;

(x) Payments to certain survivors of the Holocaust under the Federal Republic of Germany's Law for Compensation of National Socialist Persecution or German Restitution Act. Interest earned on this income is not exempt;

(y) Payments to the injured person, the surviving spouse, children, grandchildren, or grandparents under the Radiation Exposure Compensation Act; and

(z) Payments under section 500 through 506 of the Austrian General Social Insurance Act. The department shall consider the earned interest from such payments as countable income.

(2) Unless income is contributed to the client, the department shall exempt all earned income of an ineligible or nonapplying person twenty years of age and under who is a student regularly attending a school, college, university, or pursuing a vocational or technical training designed to prepare the student for gainful employment.

(3) For the SSI-related client, the department shall exempt the first sixty-five dollars per month of earned income not excluded according to subsection (1) of this section, plus one-half of the remainder.

(4) The department shall exempt as income the unearned income amounts withheld due to garnishment under a court, administrative, or agency order.

**NEW SECTION**

**WAC 388-511-1150 SSI-related resource availability.**

In establishing eligibility for medical assistance, the department shall consider resources as described under WAC 388-505-0580.

**NEW SECTION**

**WAC 388-511-1160 SSI-related resource exemptions.**

(1) The department shall exempt the following resources in determining eligibility for medical care programs:

- (a) Home;
  - (i) "Home" means any shelter;
  - (A) In which a client has ownership interest; and
  - (B) The client uses as the principal place of residence.

The department shall only consider one home as the client's principal place of residence.

(ii) The client's absence from the home shall not affect the home exemption. The client's home shall remain the principal place of residence as long as:

(A) The client intends to return home. The department shall accept the client's statement of intent without challenge; or

(B) A client's spouse or dependent relative uses the home during the client's absence. The department shall:

(I) Consider a person a dependent relative when such a person is either financially or medically dependent on the client; and

(II) Accept the client's or dependent relative's written statement of dependency or relationship unless the department has reason to question such statement.

(iii) The department shall exempt the proceeds from the sale of the home providing the client uses the proceeds to purchase another home within three months of the receipt of the proceeds. Proceeds include real estate contracts, or any similar home financing arrangements, and the income produced.

(iv) The department shall evaluate transfers of the home by an institutional client or client's spouse under WAC 388-513-1365;

- (b) Household goods and personal effects;
- (c) Vehicle; the department shall:

(i) Exempt one vehicle regardless of its value if, for the client or a member of the client's household, the vehicle is:

- (A) Necessary for employment; or
- (B) Necessary for the treatment of a specific or regular medical problem; or

(C) Modified for operation by, or transportation of, a handicapped person; or

(D) Necessary due to climate, terrain, distance, or similar factors to provide the client transportation to perform essential daily activities;

(ii) Exempt one of the client's vehicles to the extent its current market value does not exceed four thousand five hundred dollars;

(iii) Count any excess against the resource limit;

(iv) Exempt a vehicle under this subsection only if a vehicle is not exempt under (c)(i) of this subsection;

(v) Treat the client's ownership of other vehicles as nonexempt resources and count the equity value toward the resource limit;

(d) Property essential to self-support. The department shall exempt:

(i) Property regardless of value, when the client uses the property:

- (A) In a trade or business;
- (B) As an employee for work; or
- (C) As authorized by the government for income-producing activity;

(ii) Nonbusiness property up to six thousand dollars equity, when the client uses the property for producing goods or services essential to daily activities, solely for the client's household;

(iii) Nonbusiness property up to six thousand dollars equity, when the client uses the property to produce an annual income return of six percent or more of the exempt equity or is expected to produce at least a six percent return within a twenty-month period as long as the client:

(A) Currently uses the property in the activities described in (d) of this subsection; or

(B) Is expected to resume using the property in the activities described in (d) of this subsection within twelve months;

(e) Resources necessary to fulfill an approved plan for a blind or disabled client to achieve self-support as long as such plan remains in effect;

(f) Alaska Native Claims Settlement Act;

(i) Shares of stock held in a regional or village corporation;

(ii) Cash received from a native corporation, including cash dividends on stock received from a native corporation to the extent the cash does not exceed two thousand dollars per person per year;

(iii) Stock issued or distributed by a native corporation as a dividend or distribution on the stock;

(iv) A partnership interest;

(v) Land or an interest in land, including land or an interest in land received from a native corporation, as a dividend or distribution on stock;

(vi) An interest in a settlement trust;

(g) Life insurance:

(i) The department shall exempt the total cash surrender value when the total face value of all policies held by each person is one thousand five hundred dollars or less.

(ii) The cash surrender value applies to the resource limit if the face value of all policies held by each person is over one thousand five hundred dollars.

(iii) When determining total face value in (g)(i) of this subsection, the department shall not include term or burial insurance with no cash surrender value;

(h) Restricted allotted land owned by an enrolled tribal member and spouse, if married, if such land cannot be sold, transferred, or otherwise disposed of without the permission

of other persons, the tribe, or an agency of the federal government;

(i) Insurance settlements the client receives from an insurance company for purposes of repairing or replacing a resource providing the client uses the total amount of the cash to repair or replace the exempt resource within nine months. The department may extend the nine-month period based on circumstances beyond the control of the client to a maximum of nine additional months. The department shall consider any cash not used within the time period as an available resource;

(j) Burial spaces for the client, the client's spouse, or any member of the client's immediate family.

(i) Burial spaces shall include conventional grave sites, crypts, mausoleums, urns, and other repositories customarily and traditionally used for the remains of deceased persons.

(ii) Burial spaces include a burial space purchase agreement as well as any interest accrued on and left to accumulate as part of the value of the burial space purchase agreement.

(iii) For purposes of (j) and (k) of this subsection, "immediate family" means a client's minor and adult children, including adopted children and stepchildren; a client's brothers, sisters, parents, adoptive parents, and the spouses of those persons. The department shall not consider dependency or living-in-the-same-household as factors in determining whether a person is an immediate family member;

(k) Burial funds:

(i) The department shall ensure funds specifically set aside for the burial arrangements of a client or the client's spouse not exceed one thousand five hundred dollars for each spouse. The department shall count burial funds in excess of this limit toward the resource limit in WAC 388-511-1110.

(ii) The department shall require funds set aside for burial expenses to be kept separate from all other resources and separately identified and designated as set aside for burial. If the exempt burial funds are mixed with other resources, the department shall not apply this exemption to any portion of the funds. The department may exempt designated burial funds retroactively back to the first day of the month in which the person intended the funds to be set aside for burial.

(iii) Funds set aside for burial include revocable burial contracts, burial trusts, other burial arrangements, cash, accounts, or other financial instruments with a definite cash value the person clearly designates as set aside for the person's or spouse's burial expenses.

(iv) The department shall reduce the one thousand five hundred dollar exemption by:

(A) The face value of the person's insurance policies owned by the person or spouse on the life of the person if the policies have been exempted as provided in (g) of this subsection; and

(B) Amounts in an irrevocable burial trust.

(v) The department shall exempt the interest earned on exempt burial funds and appreciation in the value of exempt burial arrangements if the exempt interest and appreciation are left to accumulate and become part of the separately identified burial fund.

(vi) When used for other purposes, the department shall consider as available income any exempt burial funds, interest, or appreciated values set aside for burial expenses if, at the first of the month of use, when added to other nonexempt resources, the total exceeds the resource limit;

(l) Other resources considered exempt by federal statute;

(m) Retroactive SSI payments, including benefits a client receives under the interim assistance reimbursement agreement with the Social Security Administration, or OASDI payments for six months following the month of receipt. This exemption applies to:

(i) Payments received by the client, spouse, or any other person received that the department considers available to meet the client's needs;

(ii) SSI payments made to the client for benefits due for a month before the month of payment;

(iii) OASDI payments made to the client for benefits due for a month that is two or more months before the month of payment; and

(iv) Payments that remain in the form of cash, checking accounts, or saving accounts. The department shall not apply this exemption once the retroactive payment has been converted to any other form;

(n) Payments for medical or social services, for one-calendar month following the month of receipt, certain cash payments an SSI person receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;

(o) Payments to persons of Japanese or Aleut ancestry for restitution to civilians relocated and interned during war time, under P.L. 100-383;

(p) The annuity payment of trust funds to Puyallup Tribal Indians received under P.L. 101-41;

(q) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims under P.L. 101-201;

(r) Payments to certain survivors of the Holocaust under the Federal Republic of Germany's Law for Compensation of National Socialist Persecution or German Restitution Act. Interest earned on conserved payment is not exempt;

(s) Unspent assistance payments the client receives because of a presidential declaration of a major disaster, under P.L. 93-288, are exempt for nine months from the date of receipt.

(i) The exemption may extend an additional nine months, if circumstances beyond the client's control:

(A) Prevents the client from repairing or replacing the damaged or destroyed property; or

(B) Keeps the client from contracting for such repair or replacement.

(ii) Interest earned on the exempt resource is exempt for the period the exemption applies;

(t) Earned income tax credit refunds and payments are exempt during the month of receipt and the following month;

(u) Payments from a state administered victim's compensation program for a period of nine calendar months after the month of receipt;

(v) Payments, or interest accrued on payments received under the Radiation Exposure Compensation Act received by the injured person, the surviving spouse, children, grandchildren, or grandparents;

(w) Payments under section 500 through 506 of the Austrian General Social Insurance Act. The department shall:

(i) Not consider such payments as income or resources for determining eligibility or post-eligibility.

(ii) Count the earned interest from such payments as income for the client.

(2) The department shall consider a sales contract:

(a) An exempt resource when the current market value of the contract:

(i) Is zero or the contract is unsalable; or

(ii) When combined with other resources, exceeds the resource limit; and

(A) The sales contract was executed on or before November 30, 1993; or

(B) The sales contract was executed on or after December 1, 1993; and

(I) Was received as compensation for the sale of the client's principal place of residence. For an institutionalized client, this rule shall apply only to the client's principal place of residence before institutionalization of the client; and

(II) Provides for an interest rate within prevailing rates at the time of the sale; and

(III) Requires the repayment of a principal amount equal to the fair market value of the property; and

(IV) Payment on the amount owed does not exceed thirty years;

(iii) The department shall consider payment of principal and interest on a sales contract meeting the criteria of (a)(i) or (ii) of this subsection under WAC 388-505-0590 (2)(f);

(b) An available resource when the current market value of a sales contract does not meet the requirements in (a)(i) or (ii) of this subsection. For a sales contract the department determines to be an available resource, the department shall consider the payment that represents:

(i) Principal, an available resource.

(ii) Interest, under WAC 388-505-0590 (2)(g);

(c) An available resource when transferred by the client to a person other than the client's spouse. See WAC 388-513-1365.

(d) An exempt resource to the extent the proceeds from the sale of a home are used to purchase another home. Payments received under such sales contract shall not be considered as income as described under subsection (1)(a)(iii) of this section.

(3) The department shall consider cash received from the sale of an exempt resource as a nonexempt resource to the extent that the cash is not:

(a) Used to replace an exempt resource; or

(b) Invested in an exempt resource within the same month, unless specified differently under this section.

**NEW SECTION**

**WAC 388-511-1170 SSI—State data exchange.** (1) "SSI—State data exchange (SDX)" means a computer system for exchanging information between SSA and the department regarding SSI clients.

(2) The department shall authorize a medical identification card and Medicare buy-in for a person eligible for SSI using SDX information.

**Chapter 388-512 WAC  
SSI-RELATED GRANDFATHERED RECIPIENTS**

**NEW SECTION**

**WAC 388-512-1210 Program description.** The department shall provide medical assistance within limitations set forth in these rules and regulations to a person who is a grandfathered client.

**NEW SECTION**

**WAC 388-512-1215 General eligibility.** (1) There is no requirement of citizenship as a condition of eligibility for benefits under the medical care program.

(2) Residence; see WAC 388-504-0470.

(3) Medical need. The grandfathered client must have a medical need to remain eligible for medical assistance under Title XIX of the Social Security Act. Disability shall not constitute a medical need; treatment of disability does.

(4) The grandfathered client shall be:

(a) Age sixty-five or older; or

(b) Disabled as defined in WAC 388-512-1225; or

(c) Blind as defined in WAC 388-512-1220 and not publicly soliciting alms by wearing, carrying or exhibiting signs denoting blindness, carrying receptacles for the reception of alms or doing the same by proxy or by begging. It shall be assumed that a person is not soliciting alms unless there is evidence to the contrary.

**NEW SECTION**

**WAC 388-512-1220 Eligibility—Blindness.** "Blindness" is defined in terms of ophthalmic measurements as:

(1) Central visual acuity of 20/200 or less in the better eye with the best possible corrective glasses; or

(2) Contraction of the peripheral field of vision to within twenty degrees of the fixation point in all quadrants as determined by standard parametric testing; or

(3) Muscle function, measured in all parts of the motor field and charted upon 20 rectangles, 4 x 5 degrees in size, equal to 18/20 binocular or monocular.

**NEW SECTION**

**WAC 388-512-1225 Permanently and totally disabled.** (1) In general, "permanently and totally disabled" means that a person has some permanent physical or mental impairment, disease or loss that substantially precludes a person from engaging in a useful occupation within a person's competence, such as holding a substantially gainful job or homemaking. The impairment may be physical or mental, organic or functional, and of such degree as to interfere with the person's faculties, such as senses, reasoning, or mobility. It may exist from birth, be acquired during the lifetime of the person, or result from an accident. It may be obvious, such as the loss of a limb, or it may be such that it can be revealed only by medical examination. It may exist singly or in combination.

(2) The term "permanently disabled" refers to the existence of a physiological, anatomical, emotional and/or mental impairment verified by medical findings, which is of major importance, and is a condition not likely to improve, but will continue throughout the lifetime of the person. Any

condition which is considered by the medical reviewer as not likely to respond to any known therapeutic procedure shall be deemed to be a permanent impairment. Any condition which is considered as likely to remain static or to become worse unless certain therapeutic measures are carried out shall be deemed to be permanent so long as treatment is unavailable, inadvisable, or the person refuses treatment and his decision is unreasonable. See WAC 388-512-1230.

(a) A decision that an impairment is permanent can be made even though recovery from the impairment is possible. The discovery of new drugs or other advances in medical treatment is always a potential which may change a permanent situation; pending the actual physical improvement, the classification is proper. Therefore, the term "permanent" need not be everlasting or unchangeable, but is used in the sense of continuing indefinitely as distinct from temporary or transient.

(b) A physician's medical report must be used to establish the existence of an impairment and its permanency.

(3) The term "**totally disabled**" refers to a person's ability to perform those activities necessary to carry out specified responsibilities such as those necessary to employment or homemaking. Totality involves considerations in addition to those verified through the medical findings such as age, training, skills, and work experience, and the functioning of a person's particular situation involving the impairment. Such social data will describe the person's education and work history, the activities required of the person at home or at work, living conditions, interests, capacity and limitations, and the extent to which the person has adjusted to the impairment.

(a) Job training may enable a permanently and totally disabled person to acquire a new skill in spite of the impairment. The person continues to be totally disabled during a reasonable period of training and until job competence is acquired.

(b) The social summary must show how the person reacts in social situations in order to illustrate that the disability substantially precludes the person from engaging in employment or homemaking in the foreseeable future. The social worker carries the major responsibility for providing the state office review team with the recorded objective social information bearing on the totality factor.

(4) The term "**substantially precludes**" relates to the extent to which a person's permanent impairment has left a person unable to engage in those activities necessary to carry on specified responsibilities such as employment and homemaking. If a person is able to perform such activities well enough and with sufficient regularity to receive substantial payment for such effort or to carry on homemaking responsibilities on a continuing basis, the person is not considered as precluded from engaging in "useful occupations" and cannot be found to be permanently and totally disabled.

(5) The term "**useful occupations**" means productive activities which add to the economic wealth, or produce goods or services to which the public attaches a monetary value. The person whose impairment is so severe that it results in being unable to leave bed, leave home, or maintain body hygiene without the help of another person, and for whom the assumption would commonly be made that the person could not engage in any useful occupation, but in

fact, through supreme effort the person does some work shall have ability to work evaluated in light of:

(a) The extent to which sympathy or compassion enters into the opportunity to engage in remunerative work. In other words, is the person able to do something because family, friends, or neighbors help more than is usual; for example, running errands, bringing materials, "engineering" the job, helping devise and create special tools, creating a market based more on sympathy than intrinsic value received, selling through church or other organization without charging the usual commission, etc.; and

(b) The extent to which the energy which must be discharged by the person is far beyond that which is ordinarily required for that activity. For example, does it take six or seven hours to do what most workers could do in an hour.

(c) If through careful consideration of such facts, in addition to the medical and social reports, it can be reasonably concluded that this person is doing more than can ordinarily be expected from persons with the impairments of similar severity, but activity is not substantially gainful, a finding of permanent and total disability may be reached.

(6) The term "**homemaking**" involves the ability to carry the home management and decision-making responsibilities and provide essential services within the home for at least one person in addition to oneself. This may be either a man or a woman. If homemaking is such that children are neglected or the other person receives practically no benefit from the homemaking efforts, these facts should be clearly shown in the social summary. If the homemaker must have the help of other persons to complete the essential household tasks, it may be shown that the person is not actually able to perform as a homemaker. The following activities are important to successful performance of the occupation of homemaking: Shopping for food and supplies; planning and preparing meals; washing dishes; cleaning house; making beds; washing and ironing clothes and, if the care of young children is within the homemaking responsibility, lifting and carrying infants; bathing and dressing young children; training and supervising children; accompanying children to community activities and to sources of medical care. A finding that a person is unable to perform the occupation of homemaking would require that the person is unable to perform a significant combination or grouping of these activities because of permanent impairment. When homemaking is the responsibility of the applicant, determination shall be made as to whether a permanent impairment prevents the client from totally meeting such responsibility.

(7) Special emotional problems.

(a) Alcoholism. For alcoholism to be considered permanently and totally disabling, at least one of the following criteria are required for approval of permanent and total disability.

(i) Evidence that a pathological or demonstrable organic damage has resulted from chronic alcoholism, such as neuritis or cirrhosis of the liver; or

(ii) Evidence that the alcoholism has reached the addiction state as shown by marked ethical deterioration, the obsessive character of the drinking, the approaching loss of alcohol tolerance, prolonged bouts, and a breakdown of the rationalization pattern; or

(iii) A history of several years of excessive drinking to the extent that it has adversely affected interpersonal relationships and social and economic functioning—loss of employment and inability to sustain employment because of excessive drinking.

(b) Personality inadequacy. Even though the medical report does not show a physical ailment which of itself is permanently disabling, a person may be found to be permanently and totally disabled if the medical or psychiatric report together with the social report supplemented with a psychological report, if indicated, shows an extended history of a combination of personality problems, character disorders or social inadequacies including unusual behavior, which prevents the person from making the adjustment required for an employable person or homemaker.

(i) This would include the person whose responses to the environment are habitually inadequate and who seems to have limited or no voluntary control over reactions. The symptoms of this emotionally unstable personality usually are demonstrated in antisocial or unconventional behavior; for example, drug addiction or alcoholism. The person does not get along with other people and may break many of society's rules. Most of these persons have had one difficulty after another since childhood with the typical lack of awareness and lack of remorse that is associated with this kind of behavior. The repetitive nature of their problems coupled with lack of motivation for change produces a person whose pattern provides a serious permanent impairment that can be totally disabling. Examples of this kind of personality might be:

(A) A patient returning from a mental hospital who is no longer psychotic but whose behavior would be unacceptable to a prospective employer or to family;

(B) The person who has never been able to hold a job due to a pattern of emotional instability, or other unusual behavior which shows that the person is unable, for an extended period, to substantially engage in any gainful occupation or homemaking;

(C) Drug addiction over an extended period of time.

(ii) In all cases of personality inadequacy, the reports specified in (b) of this subsection are required.

#### NEW SECTION

**WAC 388-512-1230 Refusal to accept medical treatment.** (1) A disabled client who refuses without good cause to accept available medical treatment which can reasonably be expected to render the client able to work or do homemaking shall become ineligible.

(2) "Available medical treatment" shall mean medical, surgical or psychiatric therapy, or any combination of these treatments.

(3) "Reasonably be expected to render the client able to work or do homemaking" shall mean that, in the opinion of the state review team, the recommended medical, surgical, or psychiatric therapy is of such a nature and prognosis that, in the specific instance of the person involved, medical experience indicates that the recommended treatment will restore or substantially improve the person's ability to work for pay in a regular and predictable manner or to engage in homemaking.

(4) A client has good cause to refuse recommended medical treatment when, according to the best objective judgment of the state office review team, such refusal is based upon one or more of the following conditions:

(a) The person is genuinely fearful of undergoing recommended treatment. Such fear may appear to be unrealistic, or entirely emotional in origin, or irrational; however, fear exists in such a degree that treatment would be adversely affected and the doctor may therefore be dubious about undertaking to treat the person;

(b) The person could lose a faculty, or the remaining use of faculty the client now has, and refuses to accept the risk; or

(c) The person will not accept recommended medical treatment because of definitely stated religious scruples.

(5) The controlling principle in determining whether refusal was for or without good cause rests with the state office review team which will be guided by whether a reasonable, prudent person under similar circumstances would accept the recommended treatment. The determination will be made only after considering all social and medical evidence, including that furnished by the person, who will be provided with an opportunity to set forth in writing objective reasons for declining recommended treatment. A determination that a refusal to accept treatment without good cause is a decision which the client may appeal according to chapter 388-08 WAC.

#### NEW SECTION

**WAC 388-512-1235 Review for disability or blindness.** (1) The grandfathered client's blindness or permanent and total disability shall be reviewed when a significant change has occurred.

(2) When a change in blindness occurs, an eye examination shall be secured from an ophthalmologist or optometrist and evaluated by the department's ophthalmological consultant. The ophthalmological consultant shall determine and certify whether legal blindness continues to exist.

(3) When a change in disability has occurred, a medical examination shall be secured. The medical reports shall be evaluated by the office of disability insurance to determine whether permanent and total disability continues to exist.

#### NEW SECTION

**WAC 388-512-1240 Computation of available income.** (1) Income and net income shall be as defined in WAC 388-22-030. Total income of a beneficiary of supplementary security income is not considered an available resource except for institutionalized clients.

(2) To determine available income, deduct the following items from net income:

(a) Support payments being paid by the client under court order;

(b) Special nonmedical needs, such as payment to a wage earner's plan (specified by the court in a bankruptcy proceeding), or previously contracted major household repairs if failure to make payments would result in garnishment of wages and loss of employment;

(c) Tax rebates or special payments exempted by federal regulations and publicized by numbered memoranda from the state office.

(3) The exempt earned income shall be:

(a) For a former recipient of old age assistance or of disability assistance—the first twenty dollars plus one-half of the next sixty dollars;

(b) For a former recipient of aid to the blind—the first eighty-five dollars plus one-half of the amount over eighty-five dollars.

(4) Personal and nonpersonal work expense shall be deducted from earned income as follows:

(a) Mandatory deductions as required by law or as a condition of employment;

(b) Necessary cost of public transportation or eight cents a mile for private car to and from place of employment;

(c) Expenses of employment which are necessary to that employment such as tools, materials, union dues;

(d) Additional clothing costs. For a person doing clerical work, five dollars and seventy cents; for a person doing manual work, three dollars and sixty cents; for persons enrolled in remedial education or vocational training course, the actual cost of uniforms and/or special clothing;

(e) The cost of child care necessary to employment if not provided without cost or as departmental service. The actual expense shall be deducted but not to exceed standard in WAC 388-16-215.

**NEW SECTION**

**WAC 388-512-1245 Monthly maintenance standard—Own home.** (1) The following monthly standards of available income for maintenance shall apply when determining financial eligibility:

| FAMILY SIZE | STANDARD | FAMILY SIZE | STANDARD |
|-------------|----------|-------------|----------|
| 1           | \$195    | 7           | \$459    |
| 2           | \$237    | 8           | \$503    |
| 3           | \$282    | 9           | \$547    |
| 4           | \$327    | 10          | \$591    |
| 5           | \$371    | 11          | \$635    |
| 6           | \$415    | 12          | \$679    |
| 13          | \$723    | 16          | \$856    |
| 14          | \$768    | 17          | \$900    |
| 15          | \$812    | 18          | \$944    |

(2) Forty-four dollars shall be added for each additional member.

**NEW SECTION**

**WAC 388-512-1250 Monthly maintenance standard—Person in institution.** (1) The monthly standard for clothing and personal maintenance for a person in a skilled nursing facility or general hospital shall be twenty-five dollars.

(2) The monthly standards for clothing and personal maintenance for a person in an intermediate care facility shall be twenty-seven dollars and thirty cents.

**NEW SECTION**

**WAC 388-512-1255 Available income and nonexempt resources.** (1) The person's available income determined according to WAC 388-512-1240 and nonexempt resources determined according to WAC 388-512-1260 and

388-512-1265 shall be allocated for the purposes and in the order specified in this section.

(2) Maintenance needs of the person living in his own home, or of legal dependents living in the family home if the individual is in an institution:

(a) Apply maintenance standards in WAC 388-512-1245; unless

(b) The legal dependents are applying for or receive public assistance when the appropriate grant standards apply.

(3) Maintenance needs according to WAC 388-512-1250 for a person in an institution.

(4) Supplementary medical insurance premiums for an individual not in a nursing home who is eligible for medicare during the month of authorization and the month following if not withheld from the RSDI or RR benefit. See WAC 388-529-2960.

(5) Health and accident insurance premiums for policies continued in force from time of application.

(6) Costs not covered under this program for medical or remedial care as determined necessary by eligible providers according to WAC 388-87-005 (2)(a) and (h) initiated during a period of certification. See WAC 388-91-016 (1)(a).

(7) Participation in cost of care provided under this program except as provided in subsection (8) of this section; however, participation may not exceed:

(a) The excess regular income multiplied by six or the anticipated excess income that will be available within a six-month period, whichever is greater;

(b) The resources in excess of those listed in chapter 388-216 WAC. See WAC 388-512-1260;

(c) Additional cash resources that come into possession of the person during a period of certification.

(8) The twenty percent increase in Social Security benefits shall be considered exempt income when determining eligibility and participation for persons who in August 1972 received OAA, AFDC, AB or DA and also received RDSI benefits and who became ineligible for OAA, AFDC, AB or DA solely because of the twenty percent increase in Social Security benefits under Public Law 92-366.

**NEW SECTION**

**WAC 388-512-1260 Exempt resources.** When determining the eligibility of the grandfathered client, the rules for exempt resources in chapter 388-216 WAC shall apply. When separate property is a consideration, see WAC 388-216-2100.

**NEW SECTION**

**WAC 388-512-1265 Nonexempt resources.** (1) All resources not specifically exempted in WAC 388-512-1260 shall be considered available for medical and nonmedical needs following priorities set forth in WAC 388-512-1245 through 388-512-1255. Value shall be assigned resources according to WAC 388-216-2800.

(2) The possession of a nonexempt resource affects eligibility for medical care. Except for nonexempt real property, the value assigned to such resources shall be the "fair market value." The "fair market value" of the resource is considered available toward the cost of medical care. Such amount is considered at the time of each review for as long as the resource is possessed by the client.

(3) When assigning value to nonexempt real property, follow this sequence:

(a) First consideration shall be given to the sale of nonexempt real property based on the "quick sale value."

(b) When sale is not possible, rental or lease must be considered with the income derived from such rental or lease being considered available to meet the cost of medical care.

(c) If the property cannot be sold, rented, or leased and if the client has used reasonable diligence in seeking a purchaser, renter, or lessee, then no resource value for this property shall be considered to exist for the purpose of determining eligibility. The property shall remain on the market for as long as the client is certified for medical care.

(4) An application for medical assistance from a person who refuses to dispose of his property or refuses to attempt to dispose of his property shall be denied.

#### NEW SECTION

**WAC 388-512-1275 Continuing certification.** (1) A grandfathered client who continues to meet requirements of WAC 388-512-1215, 388-512-1245, 388-512-1260, 388-512-1265 and 388-512-1270 may be recertified for medical assistance.

(2) A grandfathered client who does not continue to meet requirements in subsection (1) of this section shall be terminated. See WAC 388-512-1280.

#### NEW SECTION

**WAC 388-512-1280 Application following termination.** The eligibility of a person applying for medical care after termination of his eligibility as a grandfathered client shall be determined according to WAC 388-511-1100.

### **Chapter 388-513 WAC CLIENT NOT IN OWN HOME—INSTITUTIONAL MEDICAL**

#### NEW SECTION

**WAC 388-513-1305 Maintenance standard—Alternate living.** (1) The department shall ensure the categorically needy monthly standard for an SSI, SSI-related, or GAU client living in an adult family home (AFH), adult residential treatment facility (ARTF), adult residential rehabilitation center (ARRC), congregate care facility (CCF), or division of developmental disabilities (DDD) group home is the department cost standard of the facility plus a specified CPI.

(2) The department shall determine the medically needy monthly standard for an SSI-related client living in an AFH, ARTF, ARRC, CCF, or DDD group home to be the private facility rate based on a thirty-one-day month plus a specified CPI.

(3) See WAC 388-15-555, 388-15-568, 388-250-1600, and 388-250-1650 for the definition of "department cost standard." The department shall ensure the monthly standard shall not exceed three hundred percent of the current SSI Federal Benefit Level.

(4) See WAC 388-511-1100 for computation of available income and resources for an SSI-related person.

(5) See chapter 388-219 WAC for computation of available income and resources for a GAU client.

#### NEW SECTION

**WAC 388-513-1310 Resource standard—Institutional.** The department shall ensure the total value of resources allowed and not otherwise excluded not exceed the dollar amount in:

(1) Subsection (2)(a) of this section for a single person; or

(2) Subsection (2)(b) of this section for a couple. The resource limitation for a:

(a) Single person shall be two thousand dollars; or

(b) Couple shall be three thousand dollars.

#### NEW SECTION

**WAC 388-513-1315 Eligibility determination—Institutional.** (1) The department shall find a person residing in or expected to reside in a Medicaid-approved medical facility for at least thirty consecutive days eligible for institutional care, if the person:

(a) Is Title XVI-related with gross income:

(i) Equal to or less than three hundred percent of SSI Federal Benefit Amount. The department shall determine a person's eligibility under the categorically needy program; and

(ii) Greater than three hundred percent of SSI federal benefit amount. The department shall determine a person's eligibility under the limited casualty program—medically needy program as determined under WAC 388-513-1395.

(b) Does not have nonexcluded resources, under WAC 388-513-1360 and 388-513-1365, greater than limitations under WAC 388-513-1310 and 388-513-1395(2).

(c) Is not subject to a period of ineligibility for transferring of resources under WAC 388-513-1365.

(2) The department shall determine institutional facility residents eligible for institutional care when the amount of the resources in excess of the amount in WAC 388-513-1310 plus countable income are less than the nursing facility private rate plus verifiable recurring medical expenses.

(3) The department shall allocate a client's income and resources as described under WAC 388-513-1380.

(4) When both spouses are institutionalized, the department shall determine the eligibility of each spouse individually.

(5) The department shall determine eligibility for a person residing or expected to reside in a Medicaid-approved medical facility less than thirty consecutive days as for a noninstitutionalized person.

(6) Effective January 1, 1991, for an institutionalized person twenty years of age or under, the department shall not consider the income and resources of the parents available unless the income and resources are actually contributed.

(7) The department shall not consider a person's transfer between medical institutions as a change in institutionalized status.

(8) For the effect of a social absence from an institutional living arrangement, see WAC 388-88-115.

NEW SECTION

**WAC 388-513-1320 Institutional status.** The department shall make medical assistance available to an otherwise eligible person who is in a Medicaid-certified medical facility.

NEW SECTION**WAC 388-513-1330 Institutional—Available income.**

(1) Income is defined under WAC 388-500-0020 for a SSI-related client and under WAC 388-22-030 for an AFDC-related client.

(2) The methodology and standards for determining and evaluating income are defined under WAC 388-513-1315 and 388-513-1375.

(3) The department shall consider the following income, less veteran's aid and attendance allowance, available to an institutionalized 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 the 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 institutionalized spouses receive in both names; and

(d) Income from a trust as provided by the trust.

(4) The department shall consider income, less veteran's aid and attendance allowance, as available to an institutionalized person when:

(a) Both spouses are institutionalized; or

(b) An institutionalized person has a community spouse and income in excess of three hundred percent of the SSI federal benefit rate (FBR). For the determination of eligibility only:

(i) Use community property law in determining ownership of income for purposes of Medicaid eligibility;

(ii) Presume all income received after marriage by husband or wife to be community income;

(iii) Divide the total of the community income, by two assigning one-half of the total to each person; and

(iv) Consider if the community income received in the name of the nonapplying spouse exceeds the community income received in the name of the applying spouse, the applicant's interest in that excess shall be unavailable to the applicant.

(5) The department shall consider income the community spouse receives in the community spouse's name as unavailable to the institutionalized spouse.

(6) The department shall consider an agreement between spouses transferring or assigning rights to future income from one spouse to the other as invalid in determining eligibility for medical assistance or the limited casualty program for the medically needy.

(7) The department shall consider income produced by transferred or assigned resources as the separate income.

(8) When an institutionalized spouse establishes the unavailability of income by a preponderance of evidence through a fair hearing, subsection (3) of this section shall not apply.

(9) See WAC 388-511-1130 for treatment of advance dated checks, electronically transferred funds, and garnished income.

(10) The department shall consider money voluntarily withheld from SSA Title II benefits by the Social Security Administration, for the recovery of SSI overpayments, as available income for the institutionalized person's contribution toward the cost of care.

NEW SECTION**WAC 388-513-1340 Institutional—Exempt income.**

The department shall consider a client's income exemptions as unavailable income when determining initial institutional eligibility or post-eligibility. The department shall exempt sequentially from income:

(1) Any public agency's refund of taxes paid on real property or on food;

(2) Supplemental security income (SSI) and state public assistance based on financial need;

(3) Any portion of a grant, scholarship, or fellowship used to pay tuition, fees, or other necessary educational expenses at any educational institution;

(4) Child support received by a parent from an absent parent, for a minor child who is not institutionalized;

(5) Tax exempt payments received by Alaska natives under the Alaska Native Claims Act;

(6) Tax rebates or special payments excluded by other statutes;

(7) Compensation provided to volunteers in ACTION programs established by P.L. 93-113, The Domestic Volunteer Service Act of 1973;

(8) Veteran's benefits designated for the veteran's:

(a) Dependent; or

(b) Unusual medical expense allowance;

(9) Income received by an ineligible or nonapplying spouse from a governmental agency for services provided to an eligible client, for example, chore services;

(10) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims under P.L. 101-201;

(11) Payments to certain survivors of the Holocaust under the Federal Republic of Germany's Law for Compensation of National Socialist Persecution or German Restitution Act. Interest earned on conserved payment is not exempt;

(12) Payments under the Radiation Exposure Compensation Act received by the injured person, the surviving spouse, children, grandchildren, or grandparents;

(13) Payments under sections 500 through 506 of the Austrian General Social Insurance Act. The department shall consider the earned interest from such payments as countable income;

(14) Certain cash payments a client receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;

(15) Restitution payment, and interest earned on such payment to a civilian of Japanese or Aleut ancestry under P.L. 100-383;

(16) The amount of expenses directly related to a client's impairment that allows the permanently and totally disabled client to continue to work;

- (17) The amount of blindness-related work expenses of a blind client;
- (18) Interest earned on excluded burial funds and any appreciation in the value of an exempt burial arrangement which are left to accumulate and become part of the separately identified burial funds set aside on or after November 1, 1982;
- (19) Earned income tax credit (EITC); and
- (20) Victim's compensation.

**NEW SECTION**

**WAC 388-513-1345 Institutional—Disregarded income.** The department shall consider disregarded income as unavailable income when determining initial eligibility but shall consider the income available during post-eligibility. See WAC 388-513-1380 for post-eligibility treatment of income. The department shall disregard sequentially from income:

- (1) Income that is not reasonably anticipated, or is received infrequently or irregularly, when such income does not exceed:
  - (a) Twenty dollars per month if unearned; or
  - (b) Ten dollars per month if earned.
- (2) The first twenty dollars per month of earned or unearned income. The department may not exclude income paid to a client on the basis of need and is totally or partially funded by the federal government or by a private agency.
- (3) The veteran's aid and attendance/house bound allowance.
- (4) For an SSI-related person, the first sixty-five dollars per month of earned income not exempted under WAC 388-513-1340, plus one-half of the remainder.
- (5) For an AFDC-related person, the first ninety dollars of earned income.
- (6) Money voluntarily withheld from SSA Title II benefits by the Social Security Administration for the recovery of an SSI overpayment; and
- (7) A fee charged by a guardian as reimbursement for provided services, when such guardianship services are a requirement for the client to receive payment of the income.

**NEW SECTION**

**WAC 388-513-1350 Institutional—Available resources.** (1) Resources are defined under WAC 388-500-0020 for an SSI-related client and under WAC 388-22-030 for an AFDC-related client.

(2) The methodology and standards for determining and evaluating resources are under WAC 388-513-1310, 388-513-1330, 388-513-1340, and 388-513-1360. Transfers of resources are evaluated under WAC 388-513-1365.

(3) The department shall determine ownership of resources following Washington state community property principles for a person:

- (a) Whose most recent period of institutionalization began on or before September 30, 1989; and
- (b) Who remains continuously institutionalized.
- (4) For purposes of Medicaid eligibility, the department shall consider resources are:
  - (a) Community resources when jointly held in the:
    - (i) Names of both the institutionalized and community spouse; or

- (ii) Name of the institutionalized spouse only;
- (b) The separate property of the community spouse when:

(i) Held in the separate name of the community spouse; or

(ii) Transferred between spouses as described under WAC 388-513-1370(6).

(5) The department shall:

(a) Divide by two, the total value of the community resources the spouses own; and

(b) Assign one-half of the total value of the community resources to each spouse.

(6) The department shall not consider a person continuously institutionalized if, for thirty consecutive days, the person:

(a) Is absent from an institution; or

(b) Does not receive home-based or community-based waived services.

(7) For the purpose of determining Medicaid eligibility of a person, whose most recent continuous period of institutionalization starts on or after October 1, 1989, the department shall:

(a) Exclude resources as described under WAC 388-511-1160;

(b) Consider available to the community spouse, resources in the name of either the community spouse or the institutionalized spouse, except resources exceeding the greater of:

(i) Seventy-two thousand six hundred sixty dollars effective January 1, 1994;

(ii) An amount established by a fair hearing under chapter 388-08 WAC when the community spouse's resource allowance is inadequate to provide a minimum monthly maintenance needs allowance; or

(iii) An amount ordered transferred to the community spouse by the court.

(c) Ensure resources available to the community spouse are in the name of the community spouse or transferred to the community spouse or to another person for the sole benefit of the community spouse:

(i) Before the first regularly scheduled eligibility review; or

(ii) As soon as practicable thereafter, taking into account such time as may be necessary to obtain a court order for the support of the community spouse.

(d) Consider resources greater than such resources in (b) of this subsection available to the institutional spouse.

(8) The department shall consider resources of the community spouse:

(a) Unavailable to the institutionalized spouse:

(i) The month after the institutionalized spouse is determined eligible for institutional benefits; and

(ii) While the institutionalized spouse remains in a continuous period of institutionalization;

(b) Available to the institutionalized spouse when the:

(i) Institutionalized spouse acquires resources which, when added to resources held by the institutionalized spouse, exceed the one-person resource, maximum, if the most recent period of institutionalization began on or after October 1, 1989; or

(ii) Institutionalized spouse has a break of thirty days or more in a period of institutionalization.

NEW SECTION

**WAC 388-513-1360 Resource exemptions.** (1) In determining eligibility, the department shall exempt resources specified under WAC 388-511-1160.

(2) The department shall apply WAC 388-513-1365 for transfers of resources.

NEW SECTION

**WAC 388-513-1365 Transfer of assets.** (1) The terms in this section shall have the following definitions:

(a) "**Assets**" means all income and resources of a client and the client's spouse, including such income or resources the person is entitled to but does not receive because of action by:

- (i) The client or the client's spouse;
- (ii) A person, court or administrative body, with legal authority to act in place of or on behalf of the client or the client's spouse; or
- (iii) A person, court or administrative body, acting at the direction or upon the request of the client or the client's spouse.

(b) "**Community spouse**" means the person married to an institutionalized client.

(c) "**Fair market value (FMV)**" means the price the asset may reasonably sell for on the open market at the time of transfer or assignment.

(d) "**Institutional services**" means a level of care provided in a nursing facility, equivalent nursing facility in a medical institution, or in a home-based or community-based program under WAC 388-515-1505 or 388-515-1510.

(e) "**Institutional spouse**" means a client who meets the requirements of subsection (1) of this section and is married to a spouse who is not:

- (i) In a medical institution;
- (ii) In a nursing facility; or
- (iii) Receiving home-based or community-based services under WAC 388-515-1505 or 388-515-1510.

(f) "**Institutionalized client**" means a person who is:

- (i) An inpatient in a nursing facility;
- (ii) An inpatient in a medical institution where the payment is made for a level of care provided in a nursing facility; or
- (iii) In need of the level of care provided in a nursing facility or medical institution, but receiving home-based or community-based services under WAC 388-515-1505 or 388-515-1510; and

(iv) Expected to be in the nursing facility, medical institution or receiving home-based or community-based services under WAC 388-515-1505 or 388-515-1510 for thirty consecutive days or more.

(g) "**Transfer**" means any act or omission to act, by a client or a nonapplying joint tenant, whereby title to or any interest in property is assigned, set over, or otherwise vested or allowed to vest in another person, including but not limited to:

- (i) Delivery of personal property;
- (ii) Bills of sale, deeds, mortgages, pledges; or
- (iii) Any other instrument conveying or relinquishing an interest in property.

(h) "**Uncompensated value**" means the FMV of an asset at the time of transfer minus the value of compensation the person receives in exchange for the resource.

(i) "**Undue hardship**" means the client's inability to meet shelter, food, clothing, and health needs.

(j) "**Value of compensation received**" means the consideration the purchaser pays or agrees to pay. Compensation includes:

(i) All money, real or personal property, food, shelter, or services the person receives under a legally enforceable agreement whereby the eligible client shall transfer the resource; and

(ii) The payment or assumption of a legal debt the client owes in exchange for the resource.

(2) The department shall not impose any penalty for the transfer of any exempt asset for less than FMV except as specified under subsection (7) of this section when the client transfers the client's home.

(3) The department shall determine whether the client or the client's spouse transferred an asset within the following look-back period:

(a) Thirty months when determining eligibility for services received:

(i) On or before September 30, 1993; or

(ii) On or after October 1, 1993, and the transfer of assets was on or before August 10, 1993;

(b) Thirty-six months when determining eligibility for services on or after October 1, 1993, and the transfer of assets was on or after August 11, 1993; or

(c) Sixty months when determining eligibility for services received on or after October 1, 1993, and all or part of the transferred assets are placed in a trust established on or after August 11, 1993, and all or part of the assets are deemed transferred as described under WAC 388-505-0595.

(4) The department shall consider the look-back period is the number of months described under subsection (3) of this section, before the first day of the month the client:

(a) Becomes an institutionalized person, if the client is eligible for medical assistance on that date; or

(b) Applies for institutional care when the client is not eligible for medical assistance as of the date the client initially became institutionalized.

(5) The department shall calculate a period of ineligibility for nursing facility services, equivalent nursing facility services in a medical institution, and services described under WAC 388-515-1505 and 388-515-1510, for the institutionalized client when the client or the client's spouse transfers an asset for less than FMV during or after the look-back periods as described under subsections (3) and (4) of this section.

(6) The department shall establish a period of ineligibility for a client when the client or the client's spouse has transferred an asset:

(a) On or before August 10, 1993. Such period of ineligibility shall:

(i) Begin the first day of the month in which the resource was transferred;

(ii) Be the lessor of:

(A) Thirty months; or

(B) The number of whole months found by dividing the total uncompensated value of the transferred assets by the

state-wide average monthly cost of nursing facility services to a private patient at the time of the application; and

(iii) Run concurrently when multiple transfers of assets have been made during the look-back period.

(b) On or after August 11, 1993. Such period of ineligibility shall:

(i) For a transfer of assets during the look-back period, except for a transfer made during a period of ineligibility established under this section:

(A) Begin on the first day of the month in the look-back period in which an asset was transferred; and

(B) Equal the number of whole months found by dividing the total, cumulative uncompensated value of all assets transferred during the look-back period by the state-wide average monthly cost of nursing facility services to a private patient at the time of application.

(ii) For a transfer of assets made while receiving medical assistance as an institutionalized client, or for transfers made during a period of ineligibility established under this section:

(A) Begin on the first day of the month in which an asset was transferred, or after the expiration of all other periods of ineligibility established under this section, whichever is later; and

(B) Equal the number of whole months found by dividing the total, uncompensated value of the transferred asset by the state-wide average monthly cost of nursing facility services to a private patient at the time of application.

(7) The department shall not find the institutionalized client ineligible for institutionalized services when the transferred asset was a home and the home was transferred to the client's:

(a) Spouse; or

(b) Child who is:

(i) Aged, blind or permanently and totally disabled; or

(ii) Twenty years of age or under.

(c) Sibling who has:

(i) Equity in the home; and

(ii) Lived in the home for at least one year immediately before the client became institutionalized.

(d) Child, other than described under (b) of this subsection, who:

(i) Lived in the home for two years or more immediately before the client became institutionalized; and

(ii) Provided care to the client to permit the client to remain at home.

(8) The department shall not find the institutionalized client ineligible for institutionalized services if the asset other than the home was transferred:

(a) To the client's spouse or to another person for the sole benefit of the client's spouse;

(b) From the client's spouse to another person for the sole benefit of the client's spouse;

(c) To the client's blind or permanently and totally disabled child, or to a trust established solely for the benefit of such child; or

(d) To a trust established solely for the benefit of a person sixty-four years of age or younger who is disabled according to SSI criteria.

(9) The department shall not find a person ineligible under this section when the client can satisfactorily show the department that:

(a) The client intended to transfer the asset at FMV or other valuable consideration; or

(b) The client transferred the asset exclusively for a purpose other than to qualify for medical assistance;

(c) All assets transferred by the client for less than FMV have been returned to the client; or

(d) The denial of eligibility would cause an undue hardship.

(10) A client or the spouse of such a client, the department determines ineligible under this section, may request a hearing to appeal the determination of ineligibility. The procedure for the hearing is under chapter 388-08 WAC.

(11) The department shall:

(a) Exempt cash received from the sale, transfer, or exchange of an asset to the extent that the cash is used for an exempt asset within the same month, except as specified under WAC 388-511-1160; and

(b) Consider any cash remaining as an available asset.

(12) When the transfer of an asset has resulted in a period of ineligibility for one spouse, the department shall not impose a period of ineligibility for the other spouse for the transfer of the same asset.

NEW SECTION

**WAC 388-513-1380 Institutional—Participation.** (1)

In reducing payment to the institution, the department shall consider the institutionalized client's:

(a) Income under WAC 388-513-1330 (3)(a), (b), (c), and (d); and

(b) Resources under WAC 388-513-1350, 388-513-1360, and 388-513-1365.

(2) In reducing payment to the institution, the department shall consider the eligible institutionalized client's excess resources available to meet the cost of care after the following allocations:

(a) Health insurance and Medicare premiums, deductions, and co-insurance not paid by a third party; and

(b) Noncovered medical bills which are the liability of the client and not paid by a third party.

(3) The department shall not use allocations used to reduce excess resources under subsection (2) of this section to reduce income under subsection (4) of this section.

(4) The department shall deduct the following amounts, in the following order, from the institutionalized client's total income, including amounts disregarded in determining eligibility:

(a) Specified personal needs allowance as follows:

(i) One hundred sixty dollars for a veteran living in a Medicaid-certified state veteran's home nursing facility;

(ii) Ninety dollars for a single veteran receiving an improved veteran's pension; or

(iii) Forty-one dollars and sixty-two cents for all other clients in medical institutions.

(b) Unearned income which:

(i) Is mandatorily withheld for income tax purposes before receipt by the client; and

(ii) Does not exceed the one-person medically needy income level less the client's personal needs allowance.

(c) Wages not to exceed the one-person medically needy income level less the client's personal needs allowance for a client who:

(i) Is SSI-related; and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction, the department shall:

(A) Not allow a deduction for employment expenses; and

(B) Apply the client's wages not deducted under this subsection to the client's cost of care.

(d) An amount an SSI or AFDC client in a medical facility receives as a cash assistance payment sufficient to bring the client's income up to the personal needs allowance.

(e) A monthly needs allowance for the community spouse not to exceed one thousand eight hundred seventeen dollars, unless specified in subsection (6) of this section. The department shall ensure the monthly needs allowance is:

(i) An amount added to the community spouse's income to provide a total community spouse's income of one thousand two hundred fifty-eight dollars; and

(ii) Excess shelter expenses as specified under subsection (5) of this section.

(f) An amount for the maintenance needs of each dependent family member residing with the community spouse:

(i) Equal to one-third of the amount one thousand two hundred thirty dollars exceeds the family member's income. Child support received from an absent parent is the child's income.

(ii) **"Family member"** means a:

(A) Dependent or minor child;

(B) Dependent parent; or

(C) Dependent sibling of the institutionalized or community spouse.

(g) When an institutional client does not have a community spouse, an amount for the maintenance needs of family members residing in the client's home equal to the medically needy income level for the number of legal dependents in the home less the income of the dependents.

(h) Amounts for incurred medical expenses not subject to third-party payment including, but not limited to:

(i) Health insurance premiums, coinsurance, or deductible charges; and

(ii) Necessary medical care recognized under state law, but not covered under Medicaid.

(i) Maintenance of the home of a single person or couple:

(i) Up to one hundred eighty dollars per month;

(ii) Limited to a six-month period; and

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) Social service staff shall document initial need for the income exemption and review the person's circumstances after ninety days.

(5) For the purposes of this section, the department shall ensure excess shelter expenses:

(a) Means the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard allowance for utilities, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(b) Do not exceed three hundred sixty-nine dollars, effective April 1, 1994.

(6) The department shall determine the amount the institutional spouse allocates to the community spouse may only be greater than the amount in subsection (4)(d)(i) of this section when:

(a) A court enters an order against the institutionalized client for the community spouse support; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(7) The client shall use the income remaining after allocations specified in subsection (4) of this section toward payment of the client's cost of care at the department rate.

(8) SSI-related clients:

(a) SSI-related clients shall continue to receive total payment under 1611 (b)(1) of the Social Security Act for the first three full calendar months of institutionalization in a public or Medicaid-approved medical institution or facility when the:

(i) Stay in the institution or facility is not expected to exceed three months; and

(ii) SSI-related clients plan to return to former living arrangements.

(b) The department shall not consider the SSI payment when computing the client's participation amount.

(9) The department shall not consider income from reparation payments made by the Federal Republic of Germany when computing the client's participation amount.

#### NEW SECTION

##### **WAC 388-513-1395 Institutional—Medically needy.**

(1) The department shall consider a person institutionalized when the person resides in or is expected to reside in a medical facility for thirty consecutive days or more.

(a) The department shall determine:

(i) An SSI/SSP-related person in a medical facility as medically needy when the person's gross income exceeds three hundred percent of the SSI benefit amount; and

(ii) An AFDC-related client in a medical facility as medically needy if countable income exceeds the one-person AFDC grant standard.

(b) The department shall determine a client ineligible for the medically needy program when the countable income is more than the private nursing facility rate plus verifiable recurring medical expenses.

(c) The department shall determine countable income of a medically needy client residing in a nursing facility by deducting the following amounts from gross income:

(i) Amounts that would be deducted in determining eligibility for AFDC or SSI/SSP; and

(ii) Previously incurred medical expenses not subject to third-party payment and which are the current liability of the client.

(d) The department shall determine a client eligible for nursing facility care when the client's countable income and the amount of resources in excess of the amount in WAC 388-513-1310 are less than the department's contracted rate plus verifiable recurring medical expenses. These clients shall:

(i) Participate in the cost of nursing facility care per WAC 388-513-1380 for post-eligibility allocation of income and post-eligibility allocation of resources; and

(ii) Be certified for three or six months at the client's option.

(e) The department shall determine a client eligible for nursing facility care when the client's countable income and the amount of resources in excess of the amount in WAC 388-513-1310 are:

(i) Less than the private nursing facility rate plus recurring medical expenses; but

(ii) More than the department's contracted rate.

(f) The client shall:

(i) Participate in the cost of nursing facility care. See WAC 388-513-1380 for post-eligibility allocation of income;

(ii) Spenddown all income remaining after allocating income to the department's contracted rate to be eligible for nonnursing facility medical care. The department shall only certify medical assistance for noninstitutional eligibility after spenddown has been met; and

(iii) Choose a certification period of three or six months for nursing facility care. The department shall determine spenddown of a person's nonnursing facility medical expenses be on a three-month or six-month basis.

(g) For the effect of a social absence from an institutional living arrangement, see WAC 388-88-115.

(h) The department shall not change a client's institutional status when the client is transferred between institutions.

(2) The department shall use other SSI financial criteria for consideration of resources as defined in WAC 388-513-1310 and 388-513-1360.

**NEW SECTION**

**WAC 388-513-1396 Fraternal, religious, or benevolent nursing facility.** (1) The department shall find an otherwise eligible client, residing in a nursing facility operated by a fraternal, religious, or benevolent organization:

(a) Eligible for medical care when the:

(i) Facility is licensed as a nursing facility; and

(ii) Contract between the client and the nursing facility excludes free or prepaid institutional and/or medical care for life; or

(iii) Nursing facility is unable to fulfill the terms of the contract and has:

(A) Voided the contract; and

(B) Refunded to the client any existing assets of the client;

(b) Ineligible for institutional and/or medical care when a contract between the client and the facility includes free or prepaid institutional and/or medical care for life.

(2) The department shall consider available to the client all assets of a fraternal, religious, or benevolent organization when the client:

(a) Signs a contract with the organization that includes free or prepaid institutional and/or medical care for the life of the client; and

(b) Surrenders income and/or resources to the organization in exchange for such care.

**Chapter 388-515 WAC  
ALTERNATE LIVING—INSTITUTIONAL  
MEDICAL**

**NEW SECTION**

**WAC 388-515-1505 Community options program entry system (COPEs).** (1) The department shall determine a person eligible for COPEs when a person is eighteen years of age or over and:

(a) Meets the categorically needy eligibility requirements for an SSI-related institutionalized person. For the purposes of COPEs, a person is considered institutionalized as of the date all eligibility criteria, except institutionalized status, is met;

(b) Requires the level of care provided in a nursing facility;

(c) Has a department-approved plan of care that meets the eligibility requirements for COPEs personal care as described under WAC 388-15-610 (1)(f); and

(d) Is able and chooses to reside at home with community support services, in a congregate care facility (CCF), or a licensed adult family home (AFH); and

(e) Is institutionalized, or the department determines is likely to be institutionalized within the next thirty days in the absence of waived services under WAC 388-15-615.

(2) The department shall not require participation in the cost of COPEs care by a person:

(a) Receiving SSI; or

(b) Remaining eligible for SSI under 1619(b) of the Social Security Act, but not receiving a cash grant.

(3) The department shall allocate available income of the SSI-related COPEs client as described under WAC 388-513-1380 (1), (2), (3), (4)(c), (d), (e), (f), and (g), and (6). The client shall retain an amount equal to the medically needy income level (MNIL) for one person for maintenance needs.

(4) The SSI-related client residing in an adult family home or CCF shall:

(a) Retain from a maintenance needs amount, a specified personal needs allowance as described under WAC 388-250-1600 and 388-250-1650; and

(b) Pay the remaining maintenance needs amount to the facility for the cost of board and room.

(5) The department shall include the remaining income after allocations as the participation amount for COPEs services as described under WAC 388-15-620.

**NEW SECTION**

**WAC 388-515-1510 Community alternatives program (CAP) and outward bound residential alternatives (OBRA).** (1) The department shall determine an eligible person for CAP is a person:

(a) Meeting the requirements and eligible for division of developmental disabilities (DDD) services and disabled according to SSI rules;

(b) Meeting the categorically needy eligibility requirements for an SSI-related institutionalized person. For the purposes of CAP and OBRA, a person is considered institutionalized as of the date all eligibility criteria, except institutionalized status is met;

(c) The department assesses as requiring the level of care provided in an intermediate care facility for the mentally retarded (IMR);

(d) For whom the department approves an individual plan of care describing the provided community support services; and

(e) Able and choosing to reside in the community with community support services according to the plan of care.

(2) The department shall determine an eligible person for the OBRA home-based and community-based services program is a person:

(a) Meeting the CAP eligibility standards in WAC 388-515-1510(1); and

(b) Residing in a Medicaid nursing facility at the time of application for OBRA services.

(3) The department shall not require participation in the cost of CAP or OBRA services by a person:

(a) Receiving SSI; or

(b) Remaining eligible for SSI under 1619(b) of the Social Security Act, but not receiving a cash grant.

(4) The department shall allocate available total income, including amounts disregarded in determining eligibility, of a SSI-related CAP or OBRA client as follows:

(a) For a client living in the client's residence, including a client receiving intensive tenant support services, the department shall use an amount equal to a maximum of three hundred percent of the SSI Federal Benefit Rate for one person for the client's maintenance needs;

(b) For a client residing in a state-contracted or state-operated group home, adult family home, or congregate care facility, the department shall use the following amounts for the client's maintenance needs:

(i) A specified personal needs allowance, as described under WAC 388-250-1600 and 388-250-1650;

(ii) An amount equal to the monthly room and board cost for the facility where the client resides;

(iii) The first twenty dollars per month of earned or unearned income; and

(iv) The first sixty-five dollars plus one-half of the remaining earned income not previously excluded.

(c) For a client described in (b) of this subsection, the maximum amount allowed for any client's individual maintenance needs shall not exceed three hundred percent of the SSI Federal Benefit Rate. The department shall not allow a client an individual maintenance needs deduction of less than the SSI payment standard;

(d) For a client with a spouse at home who is not receiving CAP or OBRA services, the department shall allocate an amount for the spouse's maintenance needs as computed under WAC 388-513-1380 (4)(d);

(e) For a client with a dependent relative living with the spouse not receiving CAP or OBRA services, the department shall designate an amount for the relative's maintenance needs as computed in WAC 388-513-1380 (4)(e);

(f) The department shall use amounts for incurred medical expenses not subject to third-party payment, including:

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical care recognized under state law but not covered under Medicaid.

(g) The department shall ensure income remaining after deductions in (a), (b), (c), (d), (e), and (f) of this subsection will be the participation amount for CAP or OBRA services.

#### NEW SECTION

**WAC 388-515-1530 Coordinated community aids services alternatives (CASA) program.** (1) The department shall determine an eligible person for CASA is a person:

(a) Meeting the categorically needy eligibility requirements for an SSI-related institutionalized person. For the purposes of CASA, the department shall consider a person institutionalized the date the person meets eligibility criteria, except institutionalized status;

(b) Having a diagnosis of:

(i) Acquired immune deficiency syndrome or disabling Class IV human immunodeficiency virus disease; or

(ii) P2 HIV/AIDS diagnosis, if fourteen years of age or under;

(c) Determined medically at risk of need for the level of hospital-provided care;

(d) Certified by the person's physician or nurse practitioner as in the terminal state of life;

(e) Agreeing to receive services in the person's own home, a licensed congregate care facility, or adult family home; and

(f) Having a plan of care approved by the department and the department of health.

(2) The department shall not require participation in the cost of CASA services by a person:

(a) Receiving SSI; or

(b) Remaining eligible for SSI under 1619(b) of the Social Security Act, but not receiving a cash grant.

(3) The department shall allocate available total income, including amounts disregarded in determining eligibility of a SSI-related CASA client residing at home, as follows:

(a) The client retains as maintenance needs an amount equal to the medically needy income level (MNIL) for one person; and

(b) As described under WAC 388-513-1380 (1), (2), (3), (4)(c), (d), (e), (f), and (g), (5), and (6).

(4) The department shall allocate available total income, including amounts disregarded in determining eligibility of a CASA client residing in an adult family home or congregate care facility, as follows:

(a) The client shall retain a specified personal needs allowance as described under WAC 388-250-1600 or 388-250-1650;

(b) As described under WAC 388-513-1380 (1), (2), (3), (4)(c), (d), (e), (f), and (g), (5), and (6); and

(c) Pay remaining income up to the MNIL to the facility for the cost of board and room.

(5) The SSI-related CASA client's income remaining after deductions in subsection (3) or (4) of this section shall be the participation amount for CASA services.

(6) When the department has determined that the client has financial participation under subsection (5) of this

section, the department shall require the client to meet the participation obligation to remain eligible.

**Chapter 388-517 WAC  
MEDICARE-RELATED MEDICAL ELIGIBILITY**

NEW SECTION

**WAC 388-517-1710 Medicare "buy-in" program.**

(1) Subject to limitations under chapter 388-87 WAC, the department shall pay for an otherwise eligible person:

(a) Supplementary medical insurance Part B, under Title XVIII of the Social Security Act;

(b) Coinsurance; and

(c) Deductibles.

(2) In addition to subsection (1) of this section, the department shall pay Part A, under Title XVIII of the Social Security Act, for a person eligible under WAC 388-517-1715 and 388-517-1720.

(3) The department shall only pay the Part B premium, under Title XVIII of the Social Security Act, for a person eligible under WAC 388-517-1730 and 388-517-1740.

(4) The department shall only pay Part A premium, under Title XVIII of the Social Security Act, for a person eligible under WAC 388-517-1750 and 388-517-1760.

NEW SECTION

**WAC 388-517-1715 Qualified Medicare beneficiary (QMB) eligible for Medicare cost sharing.** The department shall provide Medicare cost sharing under WAC 388-517-1710(2) for a person:

(1) Meeting the general nonfinancial requirements under WAC 388-504-0400; and

(2) Entitled to Medicare hospital insurance benefits, Part A, under Title XVIII of the Social Security Act.

NEW SECTION

**WAC 388-517-1720 Qualified Medicare beneficiaries—Income and resources.** (1) The department shall provide Medicare cost sharing for a qualified medical beneficiary (QMB) client having:

(a) A total countable income, as determined under chapter 388-511 WAC, except as specified in subsection (2) of this section, not exceeding one hundred percent of the current federal poverty level (FPL). One hundred percent of the current FPL is:

| Family Size | Monthly |
|-------------|---------|
| (i) One     | \$614   |
| (ii) Two    | \$820   |

(b) Resources, as determined under WAC 388-511-1110, not exceeding twice the maximum supplemental security income (SSI) resource limits.

(2) The department shall not consider a person's Social Security cost-of-living increase until April 1 of each year.

NEW SECTION

**WAC 388-517-1730 Special low-income Medicare beneficiaries (SLMB) eligible for Medicare cost sharing.** The department shall provide Medicare cost sharing under WAC 388-517-1710(3) for a person:

(1) Meeting the general nonfinancial requirements under WAC 388-504-0400;

(2) Entitled to Medicare hospital insurance benefits, Part A, under Title XVIII of the Social Security Act.

NEW SECTION

**WAC 388-517-1740 Special low-income Medicare beneficiaries (SLMB)—Income and resources.** (1) The department shall provide Medicare cost sharing for a SLMB client having:

(a) A total countable income, as determined under chapter 388-511 WAC, over one hundred percent of the current federal poverty level (FPL), but not exceeding one hundred ten percent of the FPL. One hundred ten percent of the current FPL is:

| Family Size | Monthly |
|-------------|---------|
| (i) One     | \$675   |
| (ii) Two    | \$902   |

(b) Resources, as determined under WAC 388-511-1110, not exceeding twice the maximum supplemental security income (SSI) resource limits.

(2) Effective January 1, 1995, the department shall find a person eligible under subsection (1)(a) of this section whose total countable income does not exceed one hundred twenty percent of the FPL.

NEW SECTION

**WAC 388-517-1750 Hospital premium insurance enrollment for the qualified disabled working individuals (QDWI).** The department shall pay premiums for Medicare Part A under WAC 388-517-1710(4) for a person:

(1) Who is not otherwise entitled to medical assistance; and

(2) Entitled to enroll for Medicare hospital insurance benefits, Part A, under section 1818A of the Social Security Act.

NEW SECTION

**WAC 388-517-1760 Qualified disabled working individuals (QDWI) income and resources.** The department shall pay premiums for Medicare Part A for a person having:

(1) A total countable family income, as determined under chapter 388-511 WAC, not exceeding two hundred percent of the current FPL. Two hundred percent of the current FPL is:

| Family Size | Monthly |
|-------------|---------|
| (a) One     | \$1,227 |
| (b) Two     | \$1,640 |

(2) Resources, as determined under WAC 388-511-1110, not exceeding twice the maximum supplemental security income (SSI) resource limits.

**Chapter 388-518 WAC  
LIMITED CASUALTY PROGRAM—MEDICALLY  
INDIGENT (LCP-MI)**

**NEW SECTION**

**WAC 388-518-1805 LCP-MI eligibility.** (1) The department shall determine a person's citizenship, Social Security number, and residency are not requirements for eligibility.

(2) A person shall not be eligible for LCP-MI when the person:

(a) Is eligible for medical care from another state; or  
(b) Enters Washington state specifically for the purpose of obtaining medical care.

(3) A person receiving LCP-MI shall meet the following eligibility criteria:

(a) The person is not receiving continuing cash assistance or eligible for any other medical program;

(b) The client who transferred resources within two years before the date of application but after July 1, 1981, shall spenddown the uncompensated value of the resource as described in WAC 388-518-1840. See WAC 388-513-1370 for determining the uncompensated value of the transferred resource; and

(c) For a pregnant woman, the department shall increase the number in the household by the number of unborn before comparing the pregnant woman's income to the:

(i) Income requirements of WAC 388-518-1850(1); and  
(ii) Resource requirements of WAC 388-518-1850(2).

**NEW SECTION**

**WAC 388-518-1810 LCP-MI emergency medical expense requirement (EMER).** (1) The client shall satisfy the EMER as described in this section.

(2) The department shall require documentation of emergency medical expenses of one thousand five hundred dollars per family over a twelve-month period.

(3) Only family members meeting the eligibility requirements in WAC 388-518-1805, 388-518-1810, 388-518-1820 and 388-518-1830 can accumulate expenses against the EMER.

(4) The department shall allow the accumulation of emergency medical expenses to begin up to seven working days before the application date. The department may waive the seven-day rule if a person fails to apply for medical reasons or other good cause.

(5) The department shall ensure only emergency medical services, including inpatient and outpatient hospital services, count toward the EMER.

(6) Other than expenses qualifying as hospital charity care under RCW 70.170.060, the emergency medical expense requirement and spenddown are the liability of the client.

(7) If the client does not satisfy the EMER during the three-month base period beginning with the month of application, the department shall apply the amount to any subsequent applications within twelve months of the initial application.

**NEW SECTION**

**WAC 388-518-1820 LCP-MI resource availability.** The department shall use AFDC resource guidelines in chapter 388-216 WAC to determine availability of resources, except for provisions under WAC 388-216-2600.

**NEW SECTION**

**WAC 388-518-1830 LCP-MI income availability.** The department shall use aid to families with dependent children (AFDC) income guidelines in chapter 388-218 WAC to determine treatment of income, except:

(1) The AFDC earned income exemption of thirty dollars plus one-third of the remainder does not apply to applicants for LCP-MI; and

(2) Deduct health insurance premiums expected to be paid during the base period.

**NEW SECTION**

**WAC 388-518-1840 LCP-MI spenddown.** (1) The department shall ensure all countable income and nonexempt resources above the MNIL and resource levels described in WAC 388-507-0705 and 388-507-0720 shall apply toward spenddown.

(2) On initial or subsequent applications, the department shall deduct previously incurred medical expenses from excess countable income as described in WAC 388-519-1930. These expenses cannot have been used toward a previous spenddown, deductible, or emergency medical expense requirement.

**NEW SECTION**

**WAC 388-518-1850 LCP-MI standard.** The department shall ensure a person eligible for LCP-MI meets the following income and resource standards:

(1) Nonexempt income shall:

(a) Not exceed the medically needy income level (MNIL) in WAC 388-507-0705; or

(b) Be spent down to that level according to WAC 388-519-1930.

(2) Nonexempt resources shall:

(a) Not exceed the resource standard for supplemental security income (SSI); or

(b) Be spent down to that level according to WAC 388-518-1840.

**Chapter 388-519 WAC  
SPENDDOWN**

**NEW SECTION**

**WAC 388-519-1905 Base period.** (1) Clients in their own homes shall have a choice of a three-month or a six-month base period which shall begin with the month of application. The department shall use a complete base period unless:

(a) A previous certification period overlaps; or

(b) The client is not resource eligible for the full base period; or

(c) The client is not categorically related for the full base period; or

(d) The client becomes eligible for categorically needy Medicaid.

(2) The department shall not certify a client for more than six months.

(3) The department shall certify a client who is required to spenddown from the day the client meets the spenddown requirement through the last day of the chosen base period when the client has not incurred hospital expenses equal to the spenddown liability.

(4) The department shall certify a client who is required to spenddown from the first day of the base period when the client has incurred hospital expenses equal to the spenddown liability.

(5) When the client requests retroactive medical coverage at the time of application, the retroactive period shall begin three months before the application month unless exceptions in subsection (1)(a), (b), (c), or (d) of this section exist. The department shall certify a client with spenddown in retroactive period effective:

(a) The day the spenddown requirement was met through the last day of the retroactive period when the client has not incurred hospital expenses equal to the spenddown liability; or

(b) The first day of the retroactive period when the client has incurred hospital expenses equal to the spenddown liability.

(6) The department shall require an application for any subsequent period of eligibility for the medically needy program.

#### NEW SECTION

**WAC 388-519-1910 Allowable income deductions and exemptions.** (1) The department shall compute countable income by deducting, from gross income, amounts that would be deducted in determining eligibility for:

(a) AFDC, for families and children. The department shall not apply the earned income exemption of thirty dollars plus one-third of the remainder for persons applying solely for medical assistance except as described under WAC 388-507-0740(1); or

(b) SSI/SSP, aged, blind or disabled clients.

(2) When more than one assistance unit exists, the department shall determine income for the:

(a) AFDC-related assistance unit according to subsections (1)(a) and (3) of this section; and

(b) SSI-related assistance unit according to subsections (1)(b) and (3) of this section.

(3) The department shall allow the following income exemptions:

(a) Health insurance premiums, except Medicare, the person expects to pay during the base period;

(b) An amount equal to the maintenance needs of an ineligible or nonapplying spouse of an SSI-related client not to exceed the one-person medically needy income level (MNIL);

(c) A child's allowance up to one-half of the Federal Benefit Rate (FBR) for each SSI-ineligible child of an SSI-related client;

(d) Child care payment amounts allowed as if the person was an AFDC client; and

(e) When the spouse of a client applying for medically needy receives a home-based and community-based waived service program, the department shall allow the medically needy client an income exemption equal to the one-person MNIL minus the income of the institutionalized spouse.

#### NEW SECTION

**WAC 388-519-1930 Computing spenddown; allowable spenddown expenses.** (1) When countable income is equal to or less than the appropriate MNIL, the department shall certify the client eligible.

(2) When countable income for any month of the base period is less than the appropriate medically needy income level (MNIL) but above the categorically needy income level (CNIL), the department shall deduct the difference between the countable income and the MNIL from the total excess countable income for the base period.

(3) When countable income is greater than the appropriate MNIL, the department shall require the client to spenddown the excess countable income for the base period.

(4) On initial or subsequent applications, the department shall deduct previously incurred medical expenses from the client's excess countable income subject to the following restrictions:

(a) The medical expense shall be a current liability:

(i) Of the client or other family member who is legally or blood-related and living in the same household; or

(ii) Subject to payment during or after the base period, by a public program as defined under subsection (2) of this section.

(b) The medical expense shall not have been used at any other time to reduce excess countable income on a medical application which resulted in eligibility;

(c) The department shall not consider the portion of the medical expense paid or covered by a third-party resource toward spenddown.

(i) The department shall disregard the possible payment by a third party as a resource and allow the entire expense for spenddown when a third party fails to send either payment or notice of the portion of a medical services bill covered within forty-five calendar days of the date of service or thirty calendar days from the last day of the base period, whichever is sooner.

(ii) When Medicare is the only insurance available, the department shall allow the Medicare deductible toward the spenddown when the client:

(A) Still owes the bill; and

(B) Is hospitalized for the first time in a sixty-day period.

(d) The department shall consider toward spenddown a medical expense incurred and paid during the base period:

(i) By the client; or

(ii) Subject to payment by a public program as defined under subsection (2) of this section.

(e) The department shall consider only medical services provided by practitioners recognized by state law.

(5) For the purposes of this section, a public program is one administered and funded, except for deductibles and coinsurance amounts, by a state, county, city, or territory. The department shall ensure funding for a public program is:

(a) From a source other than federally matched or funded; and

(b) Appropriated by a state, county, city, or territory; or

(c) Transferred from state, county, city, or territory to the administering agency.

(6) When the incurred medical bills equal or exceed the excess countable income at the time of application, the department shall certify the client's eligibility.

(7) When the incurred medical bills are less than the excess countable income, the department shall not approve the application and shall require the client to spenddown the remaining excess countable income. The department shall only certify the client eligible when excess countable income has been completely spent down. The department shall deduct medical expenses incurred during the spenddown period in the following order:

(a) Medicare and other health insurance premiums, deductibles coinsurance charges, enrollment fees, or copayments;

(b) Expenses for necessary medical and remedial care not covered by the medically needy program and provided by a practitioner recognized under state law;

(c) Expenses for necessary medical and remedial care covered by the medically needy program which a public program as defined under subsection (2) of this section has paid;

(d) Inpatient or outpatient hospital expenses for necessary medical and remedial care covered by the medically needy program, but remaining a client's liability; and

(e) Expenses for necessary medical or remedial care other than inpatient or outpatient hospital expenses covered by the medically needy program.

(8) The client shall provide the department with documentation of incurred medical expenses within thirty calendar days of the end of the base period. Once the client's medical eligibility is approved, the department shall not consider expenses the client omits or does not list. The client may use such expenses to reduce excess countable income on a subsequent application provided:

(a) The expenses incurred before the certification date meet the conditions in subsection (1) of this section; and

(b) Medical care or supplies received and paid for, on or after the certification date and before receiving medical coupons, meet the conditions in subsection (1)(b), (c), (d), and (e) of this section.

(9) The client shall be liable for any expenses incurred before the first day of eligibility.

#### NEW SECTION

**WAC 388-519-1950 Institutional spenddown.** Refer to WAC 388-513-1395.

### **Chapter 388-521 WAC MEDICAL EFFECTIVE DATES**

#### NEW SECTION

**WAC 388-521-2105 Effective eligibility date for Medicaid.** The department shall ensure the effective date of eligibility for:

(1) Categorically needy medical assistance shall be the first day of the month when the client is eligible at any time during that month.

(2) Categorically needy or medically needy medical care is not earlier than the third month before the month of application provided the:

(a) Medical services the client received were covered;

(b) Client would have been eligible had the client applied; and

(c) Client meets all categorical eligibility factors.

#### NEW SECTION

#### **WAC 388-521-2110 Effective date for SSI medical.**

The department shall determine the effective date of eligibility for medical assistance for an SSI beneficiary is the first day of the month the beneficiary is determined eligible for SSI.

#### NEW SECTION

#### **WAC 388-521-2120 Effective date for medical care services.**

(1) The department shall ensure eligibility for medical care services begins with the date of certification for:

(a) General assistance; or

(b) Alcohol and drug addiction services provided under sections 1 through 8 of the Alcoholism and Drug Addiction Treatment and Support Act of 1987 (chapter 406, Laws of 1987).

(2) The department shall not retroactively certify for medical care received before the initial date of eligibility under subsection (1) of this section.

#### NEW SECTION

#### **WAC 388-521-2130 Effective date for the medically needy program.**

(1) The department shall ensure the effective date for the limited casualty program—medically needy for a client in the client's own home is the date the client meets spenddown, if any.

(2) The department shall not deny eligibility based on failure to meet spenddown until at least thirty days after the end of the base period.

(3) See WAC 388-519-2105 for a client requesting retroactive medical coverage.

#### NEW SECTION

#### **WAC 388-521-2140 Effective date for the medically indigent program.**

(1) The department shall ensure the effective date of eligibility is the date the client meets spenddown, if any, and the emergency medical expense requirement.

(2) The department shall pay for medical care the client received in the seven working days before the application date when:

(a) The condition was an emergency medical condition; and

(b) The person was otherwise eligible.

(3) The department shall determine the certification date does not exceed three calendar months beginning with the month of application.

(4) A verified pregnant client may apply and be certified for separate three-month periods through the duration of the pregnancy. The three-month limitation in subsection (3) of this section may extend up to six weeks after delivery to cover the postpartum care, which includes routine care for the newborn. Beyond this period of time, the department shall determine eligibility for the mother or newborn separately.

(5) The department may waive the seven-day rule in subsection (2) of this section if a person fails to apply for medical reasons or other good cause.

**NEW SECTION**

**WAC 388-521-2150 Effective date for the qualified Medicare beneficiary (QMB) program.** The department shall ensure the effective date of eligibility for the QMB program shall be the first day of the month after the department determines the client is eligible for the QMB client.

**NEW SECTION**

**WAC 388-521-2155 Effective date for the qualified disabled working individual (QDWI) program.** The department shall ensure the effective date of eligibility for the QDWI program shall be the later of the:

- (1) First day of the month in which the client is enrolled in Part A; or
- (2) Retroactive period described under WAC 388-521-2105(2).

**NEW SECTION**

**WAC 388-521-2160 Effective date for the special low-income Medicare beneficiary (SLMB) program.** The department shall ensure the effective date of eligibility for the SLMB program shall be the later of the:

- (1) First day of the month in which the client is enrolled in Part B; or
- (2) Retroactive period described under WAC 388-521-2105(2).

**NEW SECTION**

**WAC 388-521-2170 Effective date—Reapplication.** Refer to WAC 388-504-0485(3).

**Chapter 388-522 WAC  
MEDICAL ELIGIBILITY CHANGES**

**NEW SECTION**

**WAC 388-522-2205 Redetermination of medical assistance.** (1) Before termination of a client's medical assistance, the department shall redetermine the client's eligibility for other medical assistance programs or the medically indigent program.

(a) When additional information is necessary to redetermine eligibility, the department shall give the client ten days notice and an opportunity to provide such information.

(b) The department shall give the client advance and adequate notice of the redetermination decision before termination of medical assistance as described under WAC 388-245-1700.

(c) Until the department redetermines a client's eligibility in conformity with the requirements of this section, the client shall remain eligible for categorically needy medical benefits.

(2) The department shall redetermine the client's eligibility for other financial and medical programs within thirty calendar days when SSA terminates the client's SSI/SSP financial benefits.

**NEW SECTION**

**WAC 388-522-2210 Effect of grant termination.** (1) The department shall continue eligibility for medical assistance until the client is determined ineligible for cash assistance.

(2) When eligibility for AFDC cash assistance is terminated:

(a) Due to increased income from or increased hours of employment, the department shall continue medical assistance for the extension periods as described under WAC 388-523-2305;

(b) Due to a child becoming eighteen years of age, the department shall redetermine eligibility for medical assistance under another program;

(c) For lack of cooperation with JOBS, work registration, or lack of school attendance, which are not eligibility factors for medical assistance, the department shall ensure eligibility for medical assistance will continue;

(d) Due solely to the loss of the thirty dollars plus one-third or the thirty-dollar income exemption, the department shall continue medical assistance for the appropriate extension periods as described under WAC 388-523-2305.

(e) Due to the termination of pregnancy, the department shall continue medical assistance to the end of the month containing the sixtieth day from the day the pregnancy ends.

**NEW SECTION**

**WAC 388-522-2230 Eligibility reviews.** The department shall redetermine eligibility for medical assistance the same as for the related cash assistance program for clients:

(1) Under eighteen years of age and not related to SSI, eligibility shall be redetermined every six months using AFDC financial criteria; or

(2) In medical institutions, eligibility shall be redetermined every twelve months.

**Chapter 388-523 WAC  
MEDICAL EXTENSIONS**

**NEW SECTION**

**WAC 388-523-2305 Medical extensions.** (1) Refer to:

(a) WAC 388-508-0830 for extensions for a pregnant woman; and

(b) WAC 388-508-0835 for the family planning extension.

(2) A family unit ineligible for AFDC cash assistance because of the collection or increased collection of child or spousal support shall be eligible for medical assistance for four months beginning with the month of ineligibility provided the family unit:

(a) Is eligible for and received AFDC cash assistance in three or more of the six months immediately preceding the month of ineligibility; and

(b) Continues to meet all AFDC eligibility criteria except income.

(3) The department shall find eligible for medical assistance, an AFDC family unit which becomes ineligible for cash assistance because of:

(a) Income from, or hours of, employment of the caretaker relative; or

(b) The loss of the thirty dollars plus one-third earned income deduction; or

(c) The loss of the thirty-dollar earned income deduction. Such AFDC family unit as described under (a), (b), or (c) of this subsection shall remain eligible for medical assistance for six calendar months when the family unit:

(i) Received AFDC in three or more of the six months immediately preceding the month of ineligibility; and

(ii) Includes a child.

(4) The AFDC family unit, under subsection (3) of this section, shall be:

(a) Eligible for six additional calendar months of medical assistance provided the family unit:

(i) Continues to include a child; and

(ii) Received medical assistance for the entire six-month extension under subsection (3) of this section; and

(iii) Reports any family earnings and child care costs related to the employment of the caretaker relative for the preceding three-month period. The client shall report by the twenty-first day of the fourth month of the initial extension, unless good cause is established.

(b) Terminated from the six additional calendar months of medical assistance when the:

(i) Family's average gross monthly earned income, less the cost of child care related to employment of the caretaker relative, exceeds one hundred eighty-five percent of the Federal Poverty Level when averaged over the immediately preceding three-month period; or

(ii) Caretaker relative has no earnings in one or more of the three previous months, unless lack of earnings is due to good cause.

(5) An AFDC family member shall not be eligible for the extensions in subsections (3) and (4) of this section when the department finds the person ineligible for AFDC in any of the last six months before the extension because of fraud.

#### NEW SECTION

##### **WAC 388-523-2320 Medicaid quarterly reporting.**

(1) The department shall determine the AFDC family unit under WAC 388-523-2305(4) eligible for six additional calendar months of medical assistance provided the family unit reports:

(a) Family earnings; and

(b) Child care costs related to the employment of the caretaker relative;

(c) For the immediately preceding three-month period by the twenty-first day of the fourth month of the initial extension.

(2) The department shall determine the AFDC family unit under WAC 388-523-2305(4) as terminated, unless good

cause is established, from the six additional calendar months of medical assistance when the family fails to report:

(a) Family earned income; and

(b) Child care costs related to the employment of the caretaker relative;

(c) For the immediately preceding three-month period by the twenty-first day of the first and fourth months of the additional extension period.

#### **Chapter 388-524 WAC MEDICAL TERMINATIONS**

##### NEW SECTION

**WAC 388-524-2405 SSI/state supplement termination.** When SSA terminates an SSI/state supplemental client because of failure to meet blindness and disability criteria under Title XVI, the department shall terminate medical assistance at the end of the second month following the month in which eligibility based on disability or blindness criteria ceases.

(1) If the client has filed a timely request for a hearing under SSA jurisdiction and SSA continues benefits, the department shall continue medical assistance concurrently.

(2) The department shall not authorize the CSO to resubmit a request for a redetermination of blindness or disability for consideration of the categorically needy or medically needy program.

(3) If the client presents new medical evidence to the CSO or the client's condition worsens, the department shall require a referral to SSA.

##### NEW SECTION

**WAC 388-524-2420 Medical care services termination.** Eligibility for medical care services shall cease when the department terminates:

(1) The general assistance grant; or

(2) Alcohol and drug addiction services provided under sections 1 through 8 of the Alcoholism and Drug Addiction Treatment and Support Act of 1987 (chapter 406, Laws of 1987).

#### **Chapter 388-525 WAC MEDICAL NOTICES**

##### NEW SECTION

##### **WAC 388-525-2505 Notification of medical approval.**

The department shall provide the client written notification when eligibility for medical care has been determined.

##### NEW SECTION

**WAC 388-525-2520 Notification of medical termination.** The department shall provide the client advance and adequate written notification when eligibility for medical care is terminated.

NEW SECTION

**WAC 388-525-2570 Notification of medical changes.** For any change of medical eligibility, the department shall use the same notification procedures as for cash assistance.

**Chapter 388-526 WAC  
MEDICAL FAIR HEARINGS**

NEW SECTION

**WAC 388-526-2610 Fair hearings.** (1) A client aggrieved by a department decision shall have a right to a fair hearing as provided under chapter 388-08 WAC.

(2) Medical assistance administration shall be responsible for a prehearing review when the fair hearing request questions a decision:

(a) Of a medical consultant; or

(b) Concerning an eligibility determination in the Medicaid category or state-funded medical program.

(3) Medical assistance administration shall review all fair hearing requests referred by the fair hearing coordinator to determine whether or not the:

(a) Appellant's request for service was filed according to the applicable rules and regulations;

(b) Decision has been made upon complete and accurate evaluation of the facts, existing standards, regulations, and policies.

(4) The client shall furnish all records and information necessary to determine the validity of the appellant's fair hearing request on request to the reviewing authority and forwarded not later than ten days from such request.

(5) The examiner or the appellant may obtain a medical assessment by a professionally qualified person not a party to the action being appealed, at the request of the examiner or the appellant.

(6) On receipt of the necessary material, evidence, or reports, the designated reviewing authority shall evaluate the appellant's request in accord with existing rules, regulations, and policies of the department. The reviewing authority may:

(a) Reverse the decision when such adverse decision has been made contrary to the rules, regulations and policies of medical assistance administration;

(b) Resolve a situation resulting in the fair hearing request by adjustment.

(7) In providing a system for fair hearings for medical care clients, the department shall follow the rules in chapter 388-08 WAC and, where appropriate, other portions of the rules which are applicable to the particular circumstances of the appellant.

**Chapter 388-527 WAC  
MEDICAL OVERPAYMENT/REPAYMENT**

NEW SECTION

**WAC 388-527-2710 Recovery from estates.** (1) The department shall recover the cost of public assistance benefits provided under chapter 74.09 RCW provided to a client, who was sixty-five years of age or older, upon the client's death, except:

(a) When there is a surviving spouse; or

(b) When there is a surviving child:  
(i) Twenty years of age and under; or  
(ii) Blind or disabled as defined under chapter 388-511 WAC; or

(c) For family heirlooms, collectibles, antiques, papers, jewelry, photos, or other personal effects that have been held in the possession of the deceased client to which a surviving child may otherwise be entitled not to exceed a total fair market value of two thousand dollars.

(2) The department shall assert and enforce a claim against the estate of the deceased client for the debt in subsection (1) of this section, in accordance with chapter 11.40 RCW.

(3) The department shall file a lien against any real property which was in the name of the client just before the client's death.

(a) The department shall file the lien with the county auditor of the county in which the property is located; and

(b) The department shall deem the lien effective as of the date of the client's death; and

(c) The department's recovery of property shall be upon the next sale or transfer of the property.

(4) When a surviving spouse or child, as defined under subsection (1)(b) of this section, is discovered or contacts the department before recovery, the department shall release the lien.

(5) The term "child" shall include both natural and adopted children.

(6) The value of the estate shall be the total estate value less any liabilities on any real property outstanding at the time of the client's death.

NEW SECTION

**WAC 388-527-2720 Restitution.** (1) If a medical care client was not eligible for medical care or takes possession of nonexempt resources which the client fails to disclose to the department, the amount of such medical care payment the department pays on the client's behalf shall be an overpayment and a debt due the department.

(2) The department shall not collect reimbursement from a grant for vendor payments incorrectly paid for medical care.

(3) If the department does not obtain repayment from a client, the office of financial recovery shall take action as described under chapter 388-270 WAC.

(4) The department may place a lien against the client's property, both personal and real, before the client's death only if a court judgment determines that benefits were incorrectly paid on behalf of the client.

**Chapter 388-528 WAC  
RECEIPT OF RESOURCES WITHOUT GIVING  
ADEQUATE CONSIDERATION**

NEW SECTION

**WAC 388-528-2810 Receipt of resources—Penalties.**

(1) The department shall find any person liable for a civil penalty and subject to referral for criminal prosecution for commission of a gross misdemeanor if the:

(a) Person knowingly and willingly receives nonexempt resources for less than fair market value;

(b) Nonexempt resources were transferred or assigned after December 1, 1981, and before July 1, 1989; and

(c) Transfer enables a client to qualify or continue to qualify for Title XVI related medical assistance or the limited casualty program for the medically needy.

(2) The department shall find no liability for resources transferred for less than fair market value after June 30, 1989.

(3) WAC 388-217-3100 and 388-217-3150 are incorporated by reference and apply to this section, with the exception to the reference therein to WAC 388-216-3050.

(4) The voluntary transfer or assignment of resources between spouses is permitted without affecting eligibility or continued eligibility of the spouse transferring or assigning the resources.

(5) The amount of the civil penalty shall be equal to the uncompensated value of the cash or resources transferred or assigned at less than fair market value.

(6) The civil penalty shall not exceed the cost of assistance rendered by the department to the client.

(7) Written notice of imposition of the civil penalty shall be provided by personal service or certified mail to the person or entity subject to the civil penalty.

(8) The person or entity alleged to be subject to the civil penalty under this section has the right to request a hearing to appeal the determination, and said hearing shall be in accordance with the administrative procedures in chapter 388-08 WAC except as modified by this section.

(a) There is a rebuttable presumption that a person who received cash or other nonexempt resources from a client for less than fair market value within two years preceding the date of application for medical care, did so willingly and knowingly for the purpose of enabling the client to qualify or continue to qualify for assistance.

(b) The person has the right to offer evidence to rebut the presumption that the transfer or assignment was made for purposes of enabling the client to qualify or continue to qualify for assistance and that the person knowingly and willfully received the resource for such purpose.

(c) The prevailing party in such an action shall be awarded reasonable attorney fees.

### Chapter 388-529 WAC SCOPE OF MEDICAL SERVICES

#### NEW SECTION

**WAC 388-529-2910 Scope of care—Categorically needy.** (1) The department shall provide the following Title XIX mandatory services to categorically needy clients:

(a) Early and periodic screening diagnosis and treatment (EPSDT) services to an eligible person twenty years of age or under;

(b) Family planning services;

(c) Federally qualified health center services;

(d) Home health agency services;

(e) Inpatient and outpatient hospital care;

(f) Medicare certified rural health clinic services;

(g) Other laboratory and x-ray services;

(h) Skilled nursing home care;

(i) Certified registered nurse practitioner services; and

(j) Physician's services in the office or away from the office as needed for necessary and essential medical care.

(2) The department shall provide the following Title XIX optional services to categorically needy clients:

(a) Anesthesia services;

(b) Blood;

(c) Chiropractic services;

(d) Drugs and pharmaceutical supplies;

(e) Eyeglasses and examinations;

(f) Hearing aids and examinations;

(g) Hospice services;

(h) Licensed midwife services;

(i) Maternity support services;

(j) Oxygen;

(k) Personal care services;

(l) Physical therapy services;

(m) Private duty nursing services;

(n) Surgical appliances;

(o) Prosthetic devices and certain aids to mobility; and

(p) Dental services.

(3) The department shall limit organ transplants to the cornea, heart, heart-lung, kidney, kidney-pancreas, liver, pancreas, single lung, and bone marrow.

(4) The department shall provide treatment, dialysis, equipment, and supplies for acute and chronic nonfunctioning kidneys when the client is in the home, hospital, or kidney center as described under WAC 388-86-050(5).

(5) The department shall provide detoxification and medical stabilization to a chemically using pregnant woman in a hospital.

(6) The department shall provide detoxification of acute alcohol or other drug detoxification only in a certified detoxification center or in a general hospital having a detoxification provider agreement with the department.

(7) The department shall provide outpatient chemical dependency treatment in programs certified under chapter 275-19 WAC.

(8) For medical services available under the:

(a) Limited casualty program-medically needy, see WAC 388-529-2920; and

(b) Limited casualty program-medically indigent, see WAC 388-529-2950.

(9) The department may require a second opinion and/or consultation before the approval of any elective surgical procedure.

(10) The department shall designate diagnoses that may require surgical intervention:

(a) Performed in other than a hospital in-patient setting; and

(b) Requiring prior approval by the department for a hospital admission.

(11) The department shall assure the availability of necessary transportation to and from medical services covered under a client's medical program.

#### NEW SECTION

**WAC 388-529-2920 Scope of care—Medically needy.** (1) The department shall provide the following medical services to the limited casualty-medically needy program clients:

- (a) Blood administration and processing;
  - (b) Case management services;
  - (c) Dental services;
  - (d) Dentures;
  - (e) Early and periodic screening, diagnosis and treatment (EPSDT) services;
  - (f) Enteral/parenteral nutrition;
  - (g) Eyeglasses;
  - (h) Family planning clinic services;
  - (i) Home health services;
  - (j) Hospice services;
  - (k) Inpatient hospital services;
  - (l) Intermediate care facility services for the mentally retarded;
  - (m) Laboratory and x-ray services;
  - (n) Nursing facility services;
  - (o) Outpatient hospital;
  - (p) Oxygen and respiratory therapy;
  - (q) Physical medicine and rehabilitation services;
  - (r) Physician, ARNP, and clinic services;
  - (s) Podiatric services;
  - (t) Prescribed drugs;
  - (u) Prosthetic devices;
  - (v) Rural health services;
  - (w) School medical services for special education students; and
  - (x) Medically necessary transportation.
- (2) The department shall apply conditions and limitations in chapter 388-86 WAC to the limited casualty-medically needy program.
- (3) A request for an exception to policy shall require a review by the medical assistance administration.

**NEW SECTION**

**WAC 388-529-2930 Scope of care—GAU/ADATSA—Medical care services.** A medical care services client shall be eligible to receive the same scope of care as a categorically needy client except:

- (1) The department shall not provide care outside the state of Washington other than in designated bordering cities as specified in WAC 388-501-0150; and
- (2) The department shall only provide mental health services in community mental health centers and to the extent that the client meets the client definitions and priorities established in the Community Mental Health Act; and
- (3) The department shall not provide a medical care services client dental services.

**NEW SECTION**

**WAC 388-529-2940 Scope of care—Children’s health.** The department shall provide a child eligible for the children’s health program categorically needy medical services. Refer to WAC 388-529-2910 for scope of care.

**NEW SECTION**

**WAC 388-529-2950 Scope of care—Medically indigent.** (1) The department shall provide coverage under the limited casualty program-medically indigent to an eligible person for treatment of emergency medical conditions only. Services available are limited to:

- (a) Rural health clinic services;
  - (b) Physical medicine and rehabilitation services;
  - (c) Physician and clinic services;
  - (d) Prescribed drugs;
  - (e) Dentures;
  - (f) Prosthetic devices;
  - (g) Eyeglasses;
  - (h) Nursing facilities, and intermediate care facilities for the mentally retarded;
  - (i) Home health services;
  - (j) Laboratory and x-ray services;
  - (k) Podiatric services; and
  - (l) Medically necessary transportation.
- (2) The department shall not pay until the client has medical expenses equal to the total of the emergency medical expense requirement of one thousand five hundred dollars and the spenddown, if any.
- (3) The emergency medical expense requirement in WAC 388-518-1850 does not apply for treatment under the Involuntary Treatment Act (ITA). When any other medical need is identified for clients undergoing treatment under the ITA, the department shall apply the emergency medical expense requirement to the services other than ITA.
- (4) When a client indicates that an urgent undefined medical illness exists, the department shall:
- (a) Regard the condition as an emergency medical condition;
  - (b) Allow one office visit for diagnosis, provided all financial eligibility criteria are met; and
  - (c) Allow treatment only when the condition meets the criteria for an emergency medical condition.
- (5) For other conditions and limitations under which the department may provide these services, refer to appropriate service in chapter 388-86 WAC.
- (6) The department shall not provide a client out-of-state care except in the designated bordering cities.

**NEW SECTION**

**WAC 388-529-2960 Scope of care—Qualified Medicare beneficiary (QMB), special low-income Medicare beneficiary and qualified disabled working individual (QDWI).** Refer to WAC 388-517-1700 for scope of care concerning QMB, SLMB, and QDWI clients.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 388-20-010 Rules—Applicability.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

- WAC 388-24-040 Aid to families with dependent children—Summary of eligibility conditions.
- WAC 388-24-042 Aid to families with dependent children—Eligibility of strikers.
- WAC 388-24-044 Mandatory monthly reporting.

WAC 388-24-050 Aid to families with dependent children—Assistance unit.

WAC 388-24-052 Provision of Social Security numbers.

WAC 388-24-055 Aid to families with dependent children-regular—Deprivation of parental support or care.

WAC 388-24-060 Aid to families with dependent children-regular—Deprivation due to death.

WAC 388-24-065 Aid to families with dependent children—Deprivation due to incapacity.

WAC 388-24-070 Aid to families with dependent children-regular—Deprivation due to continued absence from home.

WAC 388-24-074 Aid to families with dependent children-employable—Deprivation due to unemployment of a parent.

WAC 388-24-090 Eligibility conditions applicable to AFDC—Employment or training.

WAC 388-24-108 Eligibility conditions applicable to AFDC—Assignment of rights to support.

WAC 388-24-109 Eligibility conditions applicable to AFDC—Support enforcement cooperation.

WAC 388-24-111 Good cause not to cooperate with support enforcement.

WAC 388-24-125 Eligibility conditions applicable to AFDC—Living with a relative of specified degree.

WAC 388-24-200 Reporting child neglect or abuse—Coordination of department services.

WAC 388-24-207 Aid to families with dependent children-foster care—Summary of eligibility conditions.

WAC 388-24-210 Aid to families with dependent children-foster care—Assistance unit.

WAC 388-24-215 Aid to families with dependent children-foster care—Requirements.

WAC 388-24-220 Aid to families with dependent children-foster care—Standards and requirements.

WAC 388-24-225 Aid to families with dependent children-foster care—Income and nonexempt resources.

WAC 388-24-235 Aid to families with dependent children-foster care—Medical care.

WAC 388-24-243 Aid to families with dependent children-foster care—Nonprofit agency placement.

WAC 388-24-550 Assistance to minor child.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 388-26-025 Age determination—Specific considerations.

WAC 388-26-040 Age determination—Affidavit.

WAC 388-26-050 Residence.

WAC 388-26-055 Residence—Establishing.

WAC 388-26-060 Residence—Maintaining.

WAC 388-26-065 Residence—Applicant living in another state.

WAC 388-26-070 Residence—Applicant receiving assistance from another state.

WAC 388-26-080 Residence—Of children.

WAC 388-26-105 Residence—Authorizing return of Washington resident.

WAC 388-26-120 Citizenship and alienage.

WAC 388-26-145 Citizenship and alienage—Program preferences.

WAC 388-26-149 Property transfer.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 388-28-005 Financial need—Rules and procedures.

WAC 388-28-300 Property rights and entitlements.

WAC 388-28-350 Confidentiality—Stepparent responsibility.

WAC 388-28-355 Nonrelated adult in household.

WAC 388-28-360 Community, separate and jointly owned property—Community property.

WAC 388-28-365 Community, separate and jointly owned property—Separate property.

WAC 388-28-370 Community, separate and jointly owned property—Further considerations for determining property of husband and wife.

WAC 388-28-380 Community, separate and jointly owned property—Property jointly owned (not community).

WAC 388-28-385 Community, separate and jointly owned property—Property ownership—Verification.

WAC 388-28-390 Community, separate and jointly owned property—Entitlements.

WAC 388-28-392 Community, separate, and jointly owned property—Time-loss compensation—Lien.

WAC 388-28-400 Effect of resources on financial need—Summary of basic policies.

WAC 388-28-410 Effect of resources on financial need—Exempt and nonexempt resources.

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| <p>WAC 388-28-415<br/>WAC 388-28-420<br/>WAC 388-28-425<br/>WAC 388-28-435<br/>WAC 388-28-438<br/>WAC 388-28-439<br/>WAC 388-28-440<br/>WAC 388-28-450<br/>WAC 388-28-474<br/>WAC 388-28-475<br/>WAC 388-28-480<br/>WAC 388-28-481<br/>WAC 388-28-482<br/>WAC 388-28-483<br/>WAC 388-28-484<br/>WAC 388-28-485<br/>WAC 388-28-500<br/>WAC 388-28-515<br/>WAC 388-28-520<br/>WAC 388-28-530<br/>WAC 388-28-532<br/>WAC 388-28-535<br/>WAC 388-28-555</p> | <p>Effect of resources on financial need—Exempt resources.<br/>Effect of resources on financial need—Real property—Home.<br/>Effect of resources on financial need—Real property other than home—All programs.<br/>Effect of resources on financial need—Personal property exemptions—Ceiling values.<br/>Effect of resources on financial need—Personal property exemptions.<br/>Effect of resources on need—Property used in self-employment.<br/>Accumulation and depletion of allowable cash resource reserves.<br/>Nonexempt resources—Effect on financial need.<br/>Replacement of exempt property.<br/>Use of income and income potentials.<br/>Use of income and income potentials—Types of income—Effect on need.<br/>Nonexempt resources and income known at time of application.<br/>Effect of newly acquired income and property on continuing need.<br/>Prospective eligibility, prospective budgeting, and retrospective budgeting.<br/>Treatment of newly acquired nonexempt income and resources.<br/>Use of income and income potentials—Parental income and support.<br/>Allocating income from an assistance unit.<br/>Net cash income—Determination—Employment or training expenses—Deductions from gross income.<br/>Income from self-employment.<br/>Net cash income—Board, room rental, board and room.<br/>Income—Foster homes for children and adult family homes.<br/>Net cash income—Determination—Deductions from gross income—Income of child.<br/>Net cash income—Guardianship costs—Retired, disabled and survivors insur-</p> | <p>WAC 388-28-560<br/>WAC 388-28-570<br/>WAC 388-28-575<br/>WAC 388-28-578<br/>WAC 388-28-580<br/>WAC 388-28-590<br/>WAC 388-28-600<br/>WAC 388-28-650</p> | <p>ance benefits—Veterans benefits.<br/>Allocating income to an assistance unit.<br/>Net cash income—Exempt earned income.<br/>Disregard of income and resources.<br/>Assistance from other agencies and organizations.<br/>Other income.<br/>Alien sponsorship—Deeming of income and resources—Overpayments.<br/>Determination of net income in-kind.<br/>Guardianships and trusts—Indians.</p> |
| <b><u>REPEALER</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                  |
| The following chapter of the Washington Administrative Code is repealed:                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p>WAC 388-33-015<br/>WAC 388-33-020<br/>WAC 388-33-025<br/>WAC 388-33-045<br/>WAC 388-33-050<br/>WAC 388-33-051<br/>WAC 388-33-055<br/>WAC 388-33-080<br/>WAC 388-33-085<br/>WAC 388-33-090<br/>WAC 388-33-095<br/>WAC 388-33-115<br/>WAC 388-33-120<br/>WAC 388-33-125<br/>WAC 388-33-135<br/>WAC 388-33-140</p>                                                                                                                                      | <p>Payment of grant—Persons included.<br/>Payment of grant—Monthly basis.<br/>Payment of grant—Amount.<br/>Payment of grant—Deduction of overpayment.<br/>Payment of grant—Self-imposed maximum amount.<br/>Payment of grant—Rounding down.<br/>Payment of grant—Minimum amount.<br/>Grant authorization, reauthorization, and computation—Authorizing documents.<br/>Grant authorization, reauthorization, and computation—Local office function.<br/>Grant authorization, reauthorization and computation—State office function.<br/>Grant authorization, reauthorization and computation—State office reauthorization and recomputation of grant.<br/>Effective date of eligibility—Applicant, reapplicant and reinstated recipient.<br/>Effective date of eligibility—Exceptions.<br/>Notification of grant approval.<br/>Effective date of change in eligibility.<br/>Effective date of increase or decrease in grant.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                  |

|                |                                                                                                                                            |                |                                                                                                                                                                                 |
|----------------|--------------------------------------------------------------------------------------------------------------------------------------------|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| WAC 388-33-165 | Effective date of grant—Fair hearing or court decision involved.                                                                           | WAC 388-33-444 | Protective or vendor payment due to mismanagement of AFDC grant—Notice to AFDC recipient, protective payee or vendor.                                                           |
| WAC 388-33-170 | Effective date of grant—Law or rule change involved.                                                                                       |                |                                                                                                                                                                                 |
| WAC 388-33-190 | Effective date of grant—Monthly deduction of overpayment.                                                                                  | WAC 388-33-446 | Protective or vendor payment due to mismanagement of AFDC grant—Discharge of protective payee—                                                                                  |
| WAC 388-33-195 | Underpayments.                                                                                                                             |                | Reinstatement of relative payee.                                                                                                                                                |
| WAC 388-33-230 | Address change to another local office area.                                                                                               |                |                                                                                                                                                                                 |
| WAC 388-33-235 | Address change to another local office area—Reside permanently.                                                                            | WAC 388-33-447 | Protective or vendor payment due to mismanagement of AFDC grant—Fair hearing.                                                                                                   |
| WAC 388-33-240 | Address change to another local office area—Visit.                                                                                         | WAC 388-33-448 | Protective or vendor payment due to mismanagement of AFDC grant—Periodic review of plan.                                                                                        |
| WAC 388-33-335 | Reduction of grant amount.                                                                                                                 |                |                                                                                                                                                                                 |
| WAC 388-33-355 | Suspension of grant.                                                                                                                       |                |                                                                                                                                                                                 |
| WAC 388-33-365 | Termination of grant.                                                                                                                      | WAC 388-33-449 | Protective or vendor payment due to mismanagement of AFDC grant—Information confidential.                                                                                       |
| WAC 388-33-375 | Termination of suspended grant—Authorization of assistance resulting from change of decision on eligibility and grant.                     |                |                                                                                                                                                                                 |
|                |                                                                                                                                            | WAC 388-33-450 | Protective payment—                                                                                                                                                             |
| WAC 388-33-376 | Advance and adequate notice—Suspension—Termination—Reduction of benefits.                                                                  |                | Employment or work incentive program refused without good cause.                                                                                                                |
| WAC 388-33-377 | Grant continuation pending fair hearing.                                                                                                   | WAC 388-33-453 | Protective payment—Failure or refusal to cooperate with support enforcement.                                                                                                    |
| WAC 388-33-382 | Notification of suspension or termination or reduction of grant—Effect on eligibility and grant.                                           | WAC 388-33-455 | Protective payment—Special needs of SSI beneficiary, general assistance recipient or recipient of the Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) program. |
| WAC 388-33-385 | Notification of suspension or termination or reduction of grant—Dispensation of advance notice.                                            |                |                                                                                                                                                                                 |
| WAC 388-33-387 | Notification of exception to policy request and decision.                                                                                  | WAC 388-33-457 | Protective payment—Modification or termination of plan.                                                                                                                         |
| WAC 388-33-389 | Grievance procedure—Applicants and recipients of public assistance, medical assistance, and social services administered by Title 388 WAC. | WAC 388-33-458 | Protective payment—Periodic review.                                                                                                                                             |
|                |                                                                                                                                            | WAC 388-33-459 | Protective payment—Fair hearing.                                                                                                                                                |
| WAC 388-33-400 | Payee of grant.                                                                                                                            | WAC 388-33-460 | Payment to vendor of goods and services.                                                                                                                                        |
| WAC 388-33-420 | Payment of grant to other person in behalf of recipient.                                                                                   | WAC 388-33-525 | Warrant endorsement.                                                                                                                                                            |
| WAC 388-33-425 | Payment of grant to guardian—Continuing general assistance.                                                                                | WAC 388-33-535 | Delivery of warrant.                                                                                                                                                            |
| WAC 388-33-430 | Payment of grant to guardian—Aid to families with dependent children—Special and limited nature.                                           | WAC 388-33-545 | Delivery of warrant—Address unknown.                                                                                                                                            |
|                |                                                                                                                                            | WAC 388-33-550 | Delivery in care of local office.                                                                                                                                               |
| WAC 388-33-440 | Protective or vendor payment due to mismanagement of AFDC grant.                                                                           | WAC 388-33-576 | Loss, theft, or destruction of warrant payable to recipient.                                                                                                                    |
|                |                                                                                                                                            | WAC 388-33-579 | Loss, theft or destruction of warrant payable to vendor.                                                                                                                        |
|                |                                                                                                                                            | WAC 388-33-585 | Cancellation of warrant.                                                                                                                                                        |
| WAC 388-33-442 | Protective or vendor payment due to mismanagement of AFDC grant—Plan approval—Duration.                                                    | WAC 388-33-595 | One-time grant—                                                                                                                                                                 |
|                |                                                                                                                                            | WAC 388-33-605 | Authorization—Disbursement.                                                                                                                                                     |
|                |                                                                                                                                            |                | One-time grant—Notification to recipient.                                                                                                                                       |

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

- WAC 388-38-010 Definitions.
- WAC 388-38-030 Application—Department responsibility.
- WAC 388-38-040 Application—Recording and documenting.
- WAC 388-38-045 Applicant responsibility for providing information.
- WAC 388-38-050 Alteration or addition to forms.
- WAC 388-38-08501 Trial visit.
- WAC 388-38-110 Time limit for disposal.
- WAC 388-38-120 Disposal actions.
- WAC 388-38-150 Application approved—Notice.
- WAC 388-38-172 Application denied or withdrawn—Notice.
- WAC 388-38-200 Verifying eligibility and re-eligibility.
- WAC 388-38-220 Verification of citizenship.
- WAC 388-38-225 Verification of lawful admission for permanent residence in United States.
- WAC 388-38-230 Verification of permanent residence in United States under color of law.
- WAC 388-38-250 Responsibility for eligibility maintenance.
- WAC 388-38-255 Responsibility for eligibility maintenance—Recipient.
- WAC 388-38-260 Responsibility for eligibility maintenance—Local office.
- WAC 388-38-265 Recipient's whereabouts unknown or failure to provide eligibility data.
- WAC 388-38-270 Redirection of warrant.
- WAC 388-38-280 Periodic review and redetermination of eligibility.
- WAC 388-38-285 Content of review.
- WAC 388-38-290 Action on review.
- WAC 388-38-295 Changing and terminating grant.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

- WAC 388-80-002 Applicability.
- WAC 388-80-005 Definitions.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

- WAC 388-81-005 Medical care program.
- WAC 388-81-010 Civil rights.
- WAC 388-81-015 Institution of control.
- WAC 388-81-017 Requirements for advance directives.
- WAC 388-81-020 Vendor reports—Collection and analysis of statistical data.

- WAC 388-81-025
- WAC 388-81-030
- WAC 388-81-035
- WAC 388-81-038
- WAC 388-81-040
- WAC 388-81-042
- WAC 388-81-043
- WAC 388-81-044
- WAC 388-81-047
- WAC 388-81-050
- WAC 388-81-052
- WAC 388-81-055
- WAC 388-81-060
- WAC 388-81-065
- WAC 388-81-070
- WAC 388-81-100
- WAC 388-81-175
- WAC 388-81-200

- Eligibility—General.
- Case exception.
- Confidential records.
- Medical services request.
- Fair hearing.
- Fair hearing—Provider.
- Administrative appeal—Rate—Contractor/provider.
- Interest penalties—Providers.
- Recovery from estates.
- Restitution.
- Receipt of resources without giving adequate consideration.
- Fraud.
- Medicare cost sharing.
- Medical care client co-payment.
- Determination of maternity care distressed areas.
- Patient requiring regulation (PRR).
- Audit dispute resolution.
- Appeal of adverse department action—Contractor/provider.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

- WAC 388-82-006
- WAC 388-82-008
- WAC 388-82-010
- WAC 388-82-115
- WAC 388-82-126
- WAC 388-82-130
- WAC 388-82-135
- WAC 388-82-140
- WAC 388-82-150
- WAC 388-82-160

- Medical assistance.
- Family independence program (FIP).
- Persons eligible for medical assistance.
- Categorically needy medical assistance eligibility.
- Medical care services (GAU).
- Medical care provided in bordering cities.
- Out-of-state medical care.
- Qualified Medicare beneficiaries eligible for Medicare cost sharing.
- Special low-income Medicare beneficiaries (SLMB) eligible for Medicare cost sharing.
- Hospital premium insurance enrollment for the working disabled.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

- WAC 388-83-005
- WAC 388-83-006
- WAC 388-83-010
- WAC 388-83-012
- WAC 388-83-013

- Medical assistance eligibility.
- Medical care services.
- Alternative sources for medical care.
- Assignment of rights.
- Cooperation in securing medical support.

|                  |                                                                                                 |
|------------------|-------------------------------------------------------------------------------------------------|
| WAC 388-83-014   | Good cause not to cooperate in securing medical care support.                                   |
| WAC 388-83-015   | Citizenship and alien status.                                                                   |
| WAC 388-83-017   | Social Security number.                                                                         |
| WAC 388-83-020   | Age.                                                                                            |
| WAC 388-83-025   | Residence.                                                                                      |
| WAC 388-83-026   | Availability of resources—General.                                                              |
| WAC 388-83-029   | Medical extensions.                                                                             |
| WAC 388-83-031   | Continuation of eligibility for pregnant women.                                                 |
| WAC 388-83-03101 | Postpregnancy family planning extension.                                                        |
| WAC 388-83-032   | Pregnant women.                                                                                 |
| WAC 388-83-033   | Children—Eligible to nineteen years of age.                                                     |
| WAC 388-83-036   | Monthly maintenance standard—Client not in own home.                                            |
| WAC 388-83-041   | Income—Eligibility.                                                                             |
| WAC 388-83-046   | Relative financial responsibility for AFDC-related programs.                                    |
| WAC 388-83-130   | Eligibility—Special situations.                                                                 |
| WAC 388-83-200   | Community options program entry system (COPES).                                                 |
| WAC 388-83-210   | Community alternatives program (CAP) and outward bound residential alternatives (OBRA) program. |
| WAC 388-83-220   | Coordinated community AIDS service alternatives (CASA) program.                                 |

REPEALER

The following chapter of the Washington Administrative Code is repealed:

|                |                                                          |
|----------------|----------------------------------------------------------|
| WAC 388-84-105 | Medical application.                                     |
| WAC 388-84-110 | Application—Disposition.                                 |
| WAC 388-84-115 | Effective date of eligibility.                           |
| WAC 388-84-120 | Effective date of eligibility for medical care services. |

REPEALER

The following chapter of the Washington Administrative Code is repealed:

|                |                                           |
|----------------|-------------------------------------------|
| WAC 388-85-105 | Certification of eligibility.             |
| WAC 388-85-110 | SSI/state supplement termination.         |
| WAC 388-85-115 | Denied Title II and Title XVI applicants. |

REPEALER

The following chapter of the Washington Administrative Code is repealed:

|                |                                                            |
|----------------|------------------------------------------------------------|
| WAC 388-92-005 | Definitions.                                               |
| WAC 388-92-015 | Eligibility determination—SSI.                             |
| WAC 388-92-025 | Relative financial responsibility for SSI-related clients. |
| WAC 388-92-027 | SSI-related income deeming.                                |

|                |                                |
|----------------|--------------------------------|
| WAC 388-92-030 | Monthly standard.              |
| WAC 388-92-034 | Availability of income.        |
| WAC 388-92-036 | SSI-related income exemptions. |
| WAC 388-92-040 | Availability of resources.     |
| WAC 388-92-041 | Trusts.                        |
| WAC 388-92-045 | Exempt resources.              |
| WAC 388-92-050 | Limitation of resources.       |

REPEALER

The following chapter of the Washington Administrative Code is repealed:

|                |                                                                                                                         |
|----------------|-------------------------------------------------------------------------------------------------------------------------|
| WAC 388-93-005 | Definitions.                                                                                                            |
| WAC 388-93-010 | Description of program.                                                                                                 |
| WAC 388-93-015 | Eligibility—General.                                                                                                    |
| WAC 388-93-020 | Eligibility—Blindness defined.                                                                                          |
| WAC 388-93-025 | Eligibility—Permanently and totally disabled defined.                                                                   |
| WAC 388-93-030 | Refusal of disabled recipient to accept available and recommended medical treatment—Effect on eligibility.              |
| WAC 388-93-035 | Refusal of disabled recipient to accept available and recommended medical treatment—Review for disability or blindness. |
| WAC 388-93-040 | Computation of available income.                                                                                        |
| WAC 388-93-045 | Monthly maintenance standard—Individual living in own home.                                                             |
| WAC 388-93-050 | Monthly maintenance standard—Individual in institution.                                                                 |
| WAC 388-93-055 | Allocation of available income and nonexempt resources.                                                                 |
| WAC 388-93-060 | Exempt resources.                                                                                                       |
| WAC 388-93-065 | Nonexempt resources.                                                                                                    |
| WAC 388-93-075 | Continuing certification.                                                                                               |
| WAC 388-93-080 | Application following termination of eligibility.                                                                       |

REPEALER

The following chapter of the Washington Administrative Code is repealed:

|                |                                                              |
|----------------|--------------------------------------------------------------|
| WAC 388-95-300 | Recipients in medical institutions eligible under Title XIX. |
| WAC 388-95-310 | Fraternal, religious, or benevolent nursing facility.        |
| WAC 388-95-320 | Eligibility determination—Institutional.                     |
| WAC 388-95-335 | Availability of income.                                      |
| WAC 388-95-337 | Availability of resources.                                   |
| WAC 388-95-340 | Computation of available income and resources.               |
| WAC 388-95-360 | Allocation of income and resources—Institutionalized client. |
| WAC 388-95-380 | Excluded resources.                                          |
| WAC 388-95-390 | Limitation of resources.                                     |

WAC 388-95-395 Transfer of assets.  
 WAC 388-95-400 Medically needy—Eligibility determination—Institutional.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 388-99-005 Limited casualty program—Medically needy.  
 WAC 388-99-010 Persons eligible for medically needy assistance.  
 WAC 388-99-011 Continuation of eligibility for pregnant women.  
 WAC 388-99-015 Eligibility—General.  
 WAC 388-99-020 Eligibility determination—Medically needy in own home.  
 WAC 388-99-030 Allocation of excess income—Spendedown.  
 WAC 388-99-035 Resource standards.  
 WAC 388-99-036 Monthly maintenance standard—Client not in own home.  
 WAC 388-99-040 Availability of resources.  
 WAC 388-99-050 Limited casualty program—Medically needy—Application process.  
 WAC 388-99-055 Base period.  
 WAC 388-99-060 Scope of care for medically needy.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 388-100-001 Effective dates.  
 WAC 388-100-005 Limited casualty program—Medically indigent.  
 WAC 388-100-010 Limited casualty program—Medically indigent—Eligibility determination.  
 WAC 388-100-015 Allocation of excess income and nonexempted resource.  
 WAC 388-100-020 Limited casualty program—Medically indigent—Application process.  
 WAC 388-100-025 Certification.  
 WAC 388-100-030 Emergency medical expense requirement.  
 WAC 388-100-035 Scope of care for medically indigent.

**WSR 94-07-116**  
**PROPOSED RULES**  
**LOTTERY COMMISSION**  
 [Filed March 21, 1994, 4:34 p.m.]

Original Notice.

Title of Rule: New sections WAC 315-11A-122 Instant Game Number 122 ("High Card"), 315-11A-123 Instant Game Number 123 ("Holiday Cash"), 315-11A-124 Instant

Game Number 124 ("Queen of Hearts"), 315-11A-125 Instant Game Number 125 ("Windfall"), and 315-11A-126 Instant Game Number 126 ("Megamoney II"); and amending WAC 315-04-180 Obligations of lottery retailers, 315-04-210 Procedure if license is terminated, suspended or revoked, and 315-11A-117 Instant Game Number 117 ("Cash Crop").

Purpose: To establish the game play rules and criteria for determining winners of Instant Game Nos. 122 (High Card), 123 (Holiday Cash), 124 (Queen of Hearts), 125 (Windfall), and 126 (Megamoney II); and to amend WAC 315-04-180, 315-04-210, and 315-11A-117.

Statutory Authority for Adoption: RCW 67.70.040.

Statute Being Implemented: RCW 67.70.040.

Summary: See Purpose above.

Reasons Supporting Proposal: See Explanation of Rule below.

Name of Agency Personnel Responsible for Drafting: Jeff Burkhardt, Rules Coordinator, Olympia, 586-6583; Implementation and Enforcement: Evelyn P. Yenson, Director, Olympia, 753-3330.

Name of Proponent: Washington State Lottery Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 315-11A-122, 315-11A-123, 315-11A-124, 315-11A-125 and 315-11A-126, for each 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 or its retailers from paying out prize money on invalid tickets.

Proposal Changes the Following Existing Rules: The proposal amends WAC 315-04-180 to state that the lottery's instant ticket accounting system became fully operational on March 2, 1994. It also amends WAC 315-11A-117 to correct one of the verification codes, and WAC 315-04-210 to make a punctuation correction, and insert a clarifying clause pertaining to retailers' return of unsold lottery tickets.

No small business economic impact statement required by chapter 19.85 RCW.

The lottery has considered whether these rules are subject to the Regulatory Fairness Act, chapter 19.85 RCW, and has determined that they are not for the following reasons: The rules have no economic impact on business' cost of equipment, supplies, labor or administrative costs. The rules are designed to establish rules and procedures for the playing of instant lottery games; and the rules will have a negligible impact, if any, 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, 5963 Corson Avenue South, Suite 106, Seattle, WA 98108, on May 6, 1994, at 10:00 a.m.

Submit Written Comments to: Jeff Burkhardt, Lottery, P.O. Box 43025, Olympia, WA 98504-3025, by May 5, 1994.

Date of Intended Adoption: May 6, 1994.

March 18, 1994  
 Evelyn P. Yenson  
 Director

PROPOSED

NEW SECTION

**WAC 315-11A-122 Instant Game Number 122 ("High Card"). (1) Definitions for Instant Game Number 122.**

(a) Play symbols: The following are the "play symbols": "9"; "10"; "J"; "Q"; "K"; and "A." One of these play symbols appears in each of the three play spots in the "your card" column and in each of the three play spots in the "dealer's card" column in the playfield on the front of the ticket.

(b) Play symbol captions: The small printed characters appearing below each play symbol which verify and correspond 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. The number 1, 2 or 3 precedes each play symbol caption to indicate the location of the play symbol in Game (row) 1, Game 2 or Game 3. For Instant Game Number 122, the captions which correspond with and verify the play symbols are:

| <u>PLAY SYMBOL</u> | <u>CAPTION</u> |
|--------------------|----------------|
| 9                  | NIN            |
| 10                 | TEN            |
| J                  | JAC            |
| Q                  | QUE            |
| K                  | KNG            |
| A                  | ACE            |

(c) Prize symbols: The following are the "prize symbols": "\$1.00"; "\$2.00"; "\$6.00"; "\$9.00"; "\$40.00"; and "\$4,000." One of these prize symbols appears for each game in the prize column on the front of the ticket.

(d) Prize symbol 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 each prize symbol. The number 1, 2 or 3 precedes each prize symbol caption to indicate the location of the prize symbol in Game 1, Game 2 or Game 3. For Instant Game Number 122, the prize symbol captions which correspond with and verify the prize symbols are:

| <u>PRIZE SYMBOL</u> | <u>CAPTION</u> |
|---------------------|----------------|
| \$ 1.00             | ONE DOL        |
| \$ 2.00             | TWO DOL        |
| \$ 6.00             | SIX DOL        |
| \$ 9.00             | NIN DOL        |
| \$ 40.00            | \$FORTY\$      |
| \$ 4,000            | FORTHOU        |

(e) Validation number: The unique nineteen-digit number on the front of the ticket. The number is covered with latex.

(f) Pack-ticket number: The twelve-digit number of the form 12200001-1-000 printed on the back of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number

122 constitute the "pack number" which starts at 12200001; the last three digits constitute the "ticket number" which starts at 000 and continues through 199 within each pack of tickets.

(g) 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 \$600.00 and less. For Instant Game Number 122, the retailer verification codes are three-letter codes, with each letter appearing in a varying three of six locations beneath the removable covering and among the play symbols on the front of the ticket. The retailer verification codes are:

| <u>VERIFICATION CODE</u> | <u>PRIZE</u>                             |
|--------------------------|------------------------------------------|
| ONE                      | \$ 1.00                                  |
| TWO                      | \$ 2.00 (\$1 AND \$1)                    |
| SIX                      | \$ 6.00 (\$2, \$2 AND \$2; \$6)          |
| TLV                      | \$ 12.00 (\$6 AND \$6; \$9, \$2 AND \$1) |
| EGN                      | \$ 18.00 (\$6, \$6 AND \$6; \$9 AND \$9) |
| FRY                      | \$ 40.00                                 |
| ETY                      | \$ 80.00 (\$40 AND \$40)                 |

(h) Pack: A set of two hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

**(2) Criteria for Instant Game Number 122.**

(a) The price of each instant game ticket shall be \$1.00.

(b) Determination of prize winning tickets: An instant prize winner is determined in the following manner: The bearer of a ticket having a play symbol in the "your card" column that is superior to the play symbol in the "dealer's card" column in the same game shall win the prize shown in the prize column for that game. The bearer of a ticket having winning play symbols in more than one game shall win the sum of the prizes in each winning game. Play symbols in different games may not be combined to win a prize.

(c) For purposes of this game, the "A" shall be the play symbol with the highest superiority followed by "K," "Q," "J," "10," and "9" in that order.

(d) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(e) 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 122 set forth in subsection (3) of this section, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(f) Notwithstanding any other provisions of these rules, the director may:

(i) Vary the length of Instant Game Number 122; and/or

(ii) Vary the number of tickets sold in Instant Game Number 122 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

**(3) Ticket validation requirements for Instant Game Number 122.**

(a) In addition to meeting all other requirements in these rules and regulations, a valid instant game ticket for Instant Game Number 122 shall comply with all of the following validation requirements.

(i) Exactly one play symbol must appear in each of the three play spots in the "your card" column and in each of the three play spots in the "dealer's card" column under the latex covering on the front of the ticket.

(ii) Each of the six play symbols must have a caption below and each must agree with its caption.

(iii) Exactly one prize symbol for each of the three games must appear under the latex covering in the prize column on the front of the ticket.

(iv) Each of the three prize symbols must have a caption below it and each must agree with its caption.

(v) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the specifications on file with the director. The numbers, letters, and symbols shall be printed as follows:

|                            |                   |
|----------------------------|-------------------|
| Play Symbols               | Play Symbol Font  |
| Prize Symbols              | Prize Symbol Font |
| Captions                   | Caption Font      |
| Pack-Ticket Number         | Validation Font   |
| Validation Number          | Validation Font   |
| Retailer Verification Code | Validation Font   |

(vi) Each of the play symbols and its caption, prize symbol and its caption, the validation number, pack-ticket number, and the retailer verification code must be printed in black ink.

(vii) Each of the play symbols must be exactly one of those described in subsection (1)(a) of this section and each of the play symbol captions must be exactly one of those described in subsection (1)(b) of this section, each of the prize symbols must be exactly one of those described in subsection (1)(c) of this section and each of the prize symbol captions must be exactly one of those described in subsection (1)(d) of this section.

(b) Any ticket not passing all the validation requirements in WAC 315-10-070 and (a) of this subsection is invalid and ineligible for any prize.

**NEW SECTION**

**WAC 315-11A-123 Instant Game Number 123 ("Holiday Cash"). (1) Definitions for Instant Game Number 123.**

(a) Play symbols: The following are the "play symbols": "1," "2," "3," "4," "5," "6," and "9." One of these play symbols appears in each of the five play spots under the latex covering on the front of the ticket. The latex covered area shall be known as the playfield. One of the five play spots shall be labeled "winning number."

(b) Play symbol 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 abbreviated form of the play symbol. One and only one of these captions appears under each play symbol. The three-digit ticket number shall appear before each play symbol caption. For Instant Game Number 123, the captions which correspond with and verify the play symbols are:

| <u>PLAY SYMBOL</u> | <u>CAPTION</u> |
|--------------------|----------------|
| 1                  | ONE            |
| 2                  | TWO            |
| 3                  | THR            |
| 4                  | FOR            |
| 5                  | FIV            |
| 6                  | SIX            |
| 9                  | NIN            |

(c) Prize symbols: The following are the "prize symbols": "\$1.00," "\$2.00," "\$3.00," "\$4.00," "\$10.00," "\$24.00," "\$40.00," and "\$500.00." One of these prize symbols appears below each of the play symbol captions, except that no prize symbol appears below the caption of the play symbol labeled "winning number."

(d) Prize symbol captions: The small printed characters which appear below the prize symbol and verify and correspond with that prize symbol. The prize symbol caption is a spelling out, in full or abbreviated form, of the prize symbol. For Instant Game Number 123, the prize symbol captions which correspond with and verify the prize symbols are:

| <u>PRIZE SYMBOL</u> | <u>CAPTION</u> |
|---------------------|----------------|
| \$ 1.00             | ONE DOL        |
| \$ 2.00             | TWO DOL        |
| \$ 3.00             | THR DOL        |
| \$ 4.00             | FOR DOL        |
| \$ 10.00            | TEN DOL        |
| \$ 24.00            | TTF DOL        |
| \$ 40.00            | \$FORTY\$      |
| \$ 500.00           | FIVHUND        |

(e) Validation number: The unique nineteen-digit number on the front of the ticket. The number is covered by latex.

(f) Pack-ticket number: The twelve-digit number of the form 12300001-1-000 printed on the back of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number 123 constitute the "pack number" which starts at 12300001; the last three digits constitute the "ticket number" which starts at 000 and continues through 199 within each pack of tickets.

(g) Retailer verification codes: Codes consisting of small letters found under the removable covering on the front of the ticket which the lottery retailer uses to verify instant winners of \$600.00 or less. For Instant Game Number 123, the retailer verification code is a three-letter code, with each letter appearing in a varying three of six locations beneath the removable covering and among the play symbols on the front of the ticket. The retailer verification codes are:

| <u>VERIFICATION CODE</u> | <u>PRIZE</u>                                             |
|--------------------------|----------------------------------------------------------|
| ONE                      | \$ 1.00                                                  |
| THR                      | \$ 3.00 (\$2 AND \$1; \$3)                               |
| EGT                      | \$ 8.00 (\$2, \$2, \$2 AND \$2; \$4 AND \$4)             |
| SXT                      | \$ 16.00 (\$4, \$4, \$4 AND \$4; \$10, \$4, \$1 AND \$1) |

|     |          |                                    |
|-----|----------|------------------------------------|
| TTF | \$ 24.00 | (\$10, \$10, \$2 AND \$2;<br>\$24) |
| FRY | \$ 40.00 |                                    |
| FVH | \$500.00 |                                    |

(h) Pack: A set of two hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

**(2) Criteria for Instant Game Number 123.**

(a) The price of each instant game ticket shall be \$1.00.

(b) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

(i) When any of the four play symbols matches exactly the play symbol labeled "winning number," the matching play symbol shall be a winning play symbol, and the bearer of the ticket shall win the prize below the winning play symbol.

(ii) The bearer of a ticket which has more than one winning play symbol shall win the total of the prizes below each winning play symbol.

(c) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(d) 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 123 set forth in subsection (3) of this section, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(e) Notwithstanding any other provisions of these rules, the director may:

(i) Vary the length of Instant Game Number 123; and/or

(ii) Vary the number of tickets sold in Instant Game Number 123 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

**(3) Ticket validation requirements for Instant Game Number 123.**

(a) In addition to meeting all other requirements in these rules and regulations, to be a valid instant game ticket for Instant Game Number 123 all of the following validation requirements apply:

(i) Exactly one play symbol must appear in each of the five play spots in the playfield on the front of the ticket.

(ii) Each play symbol must have a play symbol caption below it and each must agree with its caption.

(iii) Each of the play symbol captions, except for the "winning number" play symbol caption, shall have a prize symbol below it. Each of the prize symbols shall also have a prize symbol caption below it.

(iv) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the artwork on file with the director. The numbers, letters, and symbols shall be printed as follows:

|                            |                   |
|----------------------------|-------------------|
| Play Symbols               | Play Symbol Font  |
| Prize Symbols              | Prize Symbol Font |
| Captions                   | Caption Font      |
| Pack-Ticket Number         | Validation Font   |
| Validation Number          | Validation Font   |
| Retailer Verification Code | Validation Font   |

(v) Each of the play symbols and its caption, the validation number, pack-ticket number, and retailer verification code must be printed in black ink.

(vi) Each of the play symbols must be exactly one of those described in subsection (1)(a) of this section and each of the play symbol captions must be exactly one of those described in subsection (1)(b) of this section.

(vii) Each of the prize symbols must be exactly one of those described in subsection (1)(c) of this section and each of the prize symbol captions must be exactly one of those described in subsection (1)(d) of this section.

(b) Any ticket not passing all the validation requirements in WAC 315-10-070 and in (a) of this subsection is invalid and ineligible for any prize.

NEW SECTION

**WAC 315-11A-124 Instant Game Number 124 ("Queen of Hearts"). (1) Definitions for Instant Game Number 124.**

(a) Play symbols: The following are the "play symbols": "8," "9," "10," "J," "♥" "K," and "A." One of these play symbols appears in each of the five play spots under the latex covering on the front of the ticket. The latex covered area shall be known as the playfield. Two of the five play spots shall be labeled "winning card."

(b) Play symbol 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 abbreviated form of the play symbol. One and only one of these captions appears under each play symbol. The three-digit ticket number shall appear before each play symbol caption. For Instant Game Number 124, the captions which correspond with and verify the play symbols are:

| <u>PLAY SYMBOL</u> | <u>CAPTION</u> |
|--------------------|----------------|
| 8                  | EGT            |
| 9                  | NIN            |
| 10                 | TEN            |
| J                  | JAC            |
| ♥                  | Q♥             |
| K                  | KNG            |
| A                  | ACE            |

(c) Prize symbols: The following are the "prize symbols": "\$1.00," "\$2.00," "\$3.00," "\$7.00," "\$11.00," "\$25.00," "\$50.00," and "\$5,000." One of these prize symbols appears below each of the play symbol captions, except that no prize symbol appears below the caption of the play symbols labeled "winning card."

(d) Prize symbol captions: The small printed characters which appear below the prize symbol and verify and correspond with that prize symbol. The prize symbol caption is a spelling out, in full or abbreviated form, of the prize symbol. For Instant Game Number 124, the prize symbol captions which correspond with and verify the prize symbols are:

| <u>PRIZE SYMBOL</u> | <u>CAPTION</u> |
|---------------------|----------------|
| \$ 1.00             | ONE DOL        |
| \$ 2.00             | TWO DOL        |
| \$ 3.00             | THR DOL        |
| \$ 7.00             | SVN DOL        |

|          |           |
|----------|-----------|
| \$ 11.00 | ELV DOL   |
| \$ 25.00 | TWF DOL   |
| \$ 50.00 | \$FIFTY\$ |
| \$ 5,000 | FIVTHOU   |

(e) Validation number: The unique nineteen-digit number on the front of the ticket. The number is covered by latex.

(f) Pack-ticket number: The twelve-digit number of the form 12400001-1-000 printed on the back of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number 124 constitute the "pack number" which starts at 12400001; the last three digits constitute the "ticket number" which starts at 000 and continues through 199 within each pack of tickets.

(g) Retailer verification codes: Codes consisting of small letters found under the removable covering on the front of the ticket which the lottery retailer uses to verify instant winners of \$600.00 or less. For Instant Game Number 124, the retailer verification code is a three-letter code, with each letter appearing in a varying three of six locations beneath the removable covering and among the play symbols on the front of the ticket. The retailer verification codes are:

| <u>VERIFICATION CODE</u> | <u>PRIZE</u>                        |
|--------------------------|-------------------------------------|
| ONE                      | \$ 1.00                             |
| TWO                      | \$ 2.00 (\$1 AND \$1; \$2)          |
| SVN                      | \$ 7.00 (\$3, \$3 AND \$1; \$7)     |
| ELV                      | \$ 11.00 (\$7, \$3 AND \$1; \$11)   |
| TWF                      | \$ 25.00 (\$11, \$11 AND \$3; \$25) |
| FTY                      | \$ 50.00                            |
| OHN                      | \$100.00 (\$50 AND \$50)            |

(h) Pack: A set of two hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrink wrapping.

**(2) Criteria for Instant Game Number 124.**

(a) The price of each instant game ticket shall be \$1.00.

(b) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

(i) When any of the three play symbols matches exactly one of the play symbols labeled "winning card," the matching play symbol shall be a winning play symbol, and the bearer of the ticket shall win the prize below the winning play symbol.

(ii) The bearer of a ticket which has a "♥" play symbol shall be entitled to the prize shown below the "♥."

(iii) The bearer of a ticket which has more than one winning play symbol shall win the total of the prizes below each winning play symbol.

(c) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(d) 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 124 set forth in subsection (3) of this section, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(e) Notwithstanding any other provisions of these rules, the director may:

(i) Vary the length of Instant Game Number 124; and/or

(ii) Vary the number of tickets sold in Instant Game Number 124 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

**(3) Ticket validation requirements for Instant Game Number 124.**

(a) In addition to meeting all other requirements in these rules and regulations, to be a valid instant game ticket for Instant Game Number 124 all of the following validation requirements apply:

(i) Exactly one play symbol must appear in each of the five play spots in the playfield on the front of the ticket.

(ii) Each play symbol must have a play symbol caption below it and each must agree with its caption.

(iii) Each of the play symbol captions, except for the "winning card" play symbol captions, shall have a prize symbol below it. Each of the prize symbols shall also have a prize symbol caption below it.

(iv) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the artwork on file with the director. The numbers, letters, and symbols shall be printed as follows:

|                            |                   |
|----------------------------|-------------------|
| Play Symbols               | Play Symbol Font  |
| Prize Symbols              | Prize Symbol Font |
| Captions                   | Caption Font      |
| Pack-Ticket Number         | Validation Font   |
| Validation Number          | Validation Font   |
| Retailer Verification Code | Validation Font   |

(v) Each of the play symbols and its caption, the validation number, pack-ticket number, and retailer verification code must be printed in black ink.

(vi) Each of the play symbols must be exactly one of those described in subsection (1)(a) of this section and each of the play symbol captions must be exactly one of those described in subsection (1)(b) of this section.

(vii) Each of the prize symbols must be exactly one of those described in subsection (1)(c) of this section and each of the prize symbol captions must be exactly one of those described in subsection (1)(d) of this section.

(b) Any ticket not passing all the validation requirements in WAC 315-10-070 and in (a) of this subsection is invalid and ineligible for any prize.

**NEW SECTION**

**WAC 315-11A-125 Instant Game Number 125 ("Windfall"). (1) Definitions for Instant Game Number 125.**

(a) Play symbols: The following are the "play symbols": "1," "2," "3," "4," "5," "6," and "9." One of these play symbols appears in each of the six play spots under the latex covering on the front of the ticket. The latex covered area shall be known as the playfield. Two of the six play spots shall be labeled "winning number."

(b) Play symbol 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 abbreviated form of the play symbol. One and

only one of these captions appears under each play symbol. The three-digit ticket number shall appear before each play symbol caption. For Instant Game Number 125, the captions which correspond with and verify the play symbols are:

| PLAY SYMBOL | CAPTION |
|-------------|---------|
| 1           | ONE     |
| 2           | TWO     |
| 3           | THR     |
| 4           | FOR     |
| 5           | FIV     |
| 6           | SIX     |
| 9           | NIN     |

(c) Prize symbols: The following are the "prize symbols": "\$1.00," "\$2.00," "\$3.00," "\$6.00," "\$9.00," "\$18.00," "\$24.00," "\$50.00," and "\$10,000." One of these prize symbols appears below each of the play symbol captions, except that no prize symbol appears below the caption of the play symbols labeled "winning number."

(d) Prize symbol captions: The small printed characters which appear below the prize symbol and verify and correspond with that prize symbol. The prize symbol caption is a spelling out, in full or abbreviated form, of the prize symbol. For Instant Game Number 125, the prize symbol captions which correspond with and verify the prize symbols are:

| PRIZE SYMBOL | CAPTION   |
|--------------|-----------|
| \$ 1.00      | ONE DOL   |
| \$ 2.00      | TWO DOL   |
| \$ 3.00      | THR DOL   |
| \$ 6.00      | SIX DOL   |
| \$ 9.00      | NIN DOL   |
| \$ 18.00     | EGN DOL   |
| \$ 24.00     | TTF DOL   |
| \$ 50.00     | \$FIFTY\$ |
| \$ 10,000    | TENTHOU   |

(e) Validation number: The unique nineteen-digit number on the front of the ticket. The number is covered by latex.

(f) Pack-ticket number: The twelve-digit number of the form 12500001-1-000 printed on the back of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number 125 constitute the "pack number" which starts at 12500001; the last three digits constitute the "ticket number" which starts at 000 and continues through 199 within each pack of tickets.

(g) Retailer verification codes: Codes consisting of small letters found under the removable covering on the front of the ticket which the lottery retailer uses to verify instant winners of \$600.00 or less. For Instant Game Number 125, the retailer verification code is a three-letter code, with each letter appearing in a varying three of six locations beneath the removable covering and among the play symbols on the front of the ticket. The retailer verification codes are:

| VERIFICATION CODE | PRIZE                                             |
|-------------------|---------------------------------------------------|
| ONE               | \$ 1.00                                           |
| THR               | \$ 3.00 (\$1, \$1 AND \$1; \$2 AND \$1)           |
| NIN               | \$ 9.00 (\$3, \$3, \$2 AND \$1; \$6 AND \$3; \$9) |
| EGN               | \$ 18.00 (\$6, \$6, \$3 AND \$3; \$18)            |
| TTF               | \$ 24.00 (\$6, \$6, \$6 AND \$6; \$24)            |
| FTY               | \$ 50.00                                          |
| OHN               | \$100.00 (\$50 AND \$50)                          |

(h) Pack: A set of two hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

**(2) Criteria for Instant Game Number 125.**

(a) The price of each instant game ticket shall be \$1.00.

(b) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

(i) When any of the four play symbols matches exactly one of the two play symbols labeled "winning number," the matching play symbol shall be a winning play symbol, and the bearer of the ticket shall win the prize below the winning play symbol.

(ii) The bearer of a ticket which has more than one winning play symbol shall win the total of the prizes below each winning play symbol.

(c) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(d) 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 125 set forth in subsection (3) of this section, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(e) Notwithstanding any other provisions of these rules, the director may:

(i) Vary the length of Instant Game Number 125; and/or

(ii) Vary the number of tickets sold in Instant Game Number 125 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

**(3) Ticket validation requirements for Instant Game Number 125.**

(a) In addition to meeting all other requirements in these rules and regulations, to be a valid instant game ticket for Instant Game Number 125 all of the following validation requirements apply:

(i) Exactly one play symbol must appear in each of the six play spots in the playfield on the front of the ticket.

(ii) Each play symbol must have a play symbol caption below it and each must agree with its caption.

(iii) Each of the play symbol captions, except for the "winning number" play symbol captions, shall have a prize symbol below it. Each of the prize symbols shall also have a prize symbol caption below it.

(iv) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the artwork on file with the director. The numbers, letters, and symbols shall be printed as follows:

|                            |                   |
|----------------------------|-------------------|
| Play Symbols               | Play Symbol Font  |
| Prize Symbols              | Prize Symbol Font |
| Captions                   | Caption Font      |
| Pack-Ticket Number         | Validation Font   |
| Validation Number          | Validation Font   |
| Retailer Verification Code | Validation Font   |

| <u>PRIZE SYMBOL</u> | <u>CAPTION</u> |
|---------------------|----------------|
| \$ 1.00             | ONE DOL        |
| \$ 2.00             | TWO DOL        |
| \$ 3.00             | THR DOL        |
| \$ 5.00             | FIV DOL        |
| \$ 10.00            | TEN DOL        |
| \$ 20.00            | TWY DOL        |
| \$ 50.00            | \$FIFTY\$      |
| \$ 100.00           | ONEHUND        |
| \$ 10,000           | TENTHOU        |

(v) Each of the play symbols and its caption, the validation number, pack-ticket number, and retailer verification code must be printed in black ink.

(vi) Each of the play symbols must be exactly one of those described in subsection (1)(a) of this section and each of the play symbol captions must be exactly one of those described in subsection (1)(b) of this section.

(vii) Each of the prize symbols must be exactly one of those described in subsection (1)(c) of this section and each of the prize symbol captions must be exactly one of those described in subsection (1)(d) of this section.

(b) Any ticket not passing all the validation requirements in WAC 315-10-070 and in (a) of this subsection is invalid and ineligible for any prize.

**NEW SECTION**

**WAC 315-11A-126 Instant Game Number 126 ("Megamoney II"). (1) Definitions for Instant Game Number 126.**

(a) Play symbols: The following are the "play symbols": "1," "2," "3," "4," "5," "6," and "9." One of these play symbols appears in each of the six play spots under the latex covering on the front of the ticket. The latex covered area shall be known as the playfield. One of the six play spots shall be labeled "winning number."

(b) Play symbol captions: The small printed characters appearing below each play symbol which verify and correspond 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. The three-digit ticket number shall appear before each play symbol caption. For Instant Game Number 126, the captions which correspond with and verify the play symbols are:

| <u>PLAY SYMBOL</u> | <u>CAPTION</u> |
|--------------------|----------------|
| 1                  | ONE            |
| 2                  | TWO            |
| 3                  | THR            |
| 4                  | FOR            |
| 5                  | FIV            |
| 6                  | SIX            |
| 9                  | NIN            |

(c) Prize symbols: The following are the "prize symbols": "\$1.00," "\$2.00," "\$3.00," "\$5.00," "\$10.00," "\$20.00," "\$50.00," "\$100.00," and "\$10,000." One of these play symbols appear below each of the play symbol captions, except that no prize symbol appears below the caption of the play symbol labeled "winning number."

(d) Prize symbol captions: The small printed characters which appear below the prize symbol and correspond with and verify that prize symbol. The prize symbol caption is a spelling out in full or abbreviated form of the prize symbol. For Instant Game Number 126, the prize symbol captions which correspond with and verify the prize symbols are:

(e) Validation number: The unique nineteen-digit number on the front of the ticket. The number is covered by latex.

(f) Pack-ticket number: The twelve-digit number of the form 12600001-1-000 printed on the back of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number 126 constitute the "pack number" which starts at 12600001; the last three digits constitute the "ticket number" which starts at 000 and continues through 199 within each pack of tickets.

(g) 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 \$600.00 or less. For Instant Game Number 126, 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:

| <u>VERIFICATION CODE</u> | <u>PRIZE</u>                                              |
|--------------------------|-----------------------------------------------------------|
| TWO                      | \$ 2.00 (\$2; \$1 AND \$1)                                |
| THR                      | \$ 3.00 (\$3; \$1, \$1 AND \$1)                           |
| SIX                      | \$ 6.00 (\$2, \$2 AND \$2; \$2, \$2, \$1 AND \$1)         |
| TEN                      | \$ 10.00 (\$2, \$2, \$2, \$2 AND \$2; \$5 AND \$5)        |
| TWY                      | \$ 20.00 (\$10, \$5 AND \$5; \$10, \$5, \$2, \$2 AND \$1) |
| FTY                      | \$ 50.00 (\$20, \$20 AND \$10; \$50)                      |
| FVH                      | \$500.00 (\$100, \$100, \$100, \$100 AND \$100)           |

(h) Pack: A set of two hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

**(2) Criteria for Instant Game Number 126.**

(a) The price of each instant game ticket shall be \$2.00.

(b) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

(i) When any of the five play symbols matches exactly the play symbol labeled "winning number," the matching play symbol shall be a winning play symbol, and the bearer of the ticket shall win the prize below the winning play symbol.

(ii) The bearer of a ticket which has more than one winning play symbol shall win the total of the prizes below each winning play symbol.

(c) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(d) 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 126 set forth in subsection (3) of this section, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(e) Notwithstanding any other provisions of these rules, the director may:

(i) Vary the length of Instant Game Number 126; and/or

(ii) Vary the number of tickets sold in Instant Game Number 126 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

**(3) Ticket validation requirements for Instant Game Number 126.**

(a) A valid instant game ticket for Instant Game Number 126 shall meet all of the following validation requirements as well as all other requirements in these rules and regulations.

(i) Exactly one play symbol must appear in each of the six play spots under the removable latex covering on the front of the ticket.

(ii) Each of the six play symbols must have a caption below it, and each must agree with its caption. Each of the play symbol captions, except for the "winning number" play symbol caption, shall have a prize symbol below it. Each of the prize symbols shall also have a prize symbol caption below it.

(iii) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the artwork on file with the director. The numbers, letters, and symbols shall be printed as follows:

|                          |                  |
|--------------------------|------------------|
| Play Symbols             | Play Symbol Font |
| Captions                 | Caption Font     |
| Pack-Ticket Number       | Validation Font  |
| Retail Verification Code | Validation Font  |

(iv) Each of the play symbols and its caption, the validation number, pack-ticket number, and retailer verification code must be printed in black ink.

(v) Each of the play symbols must be exactly one of those described in subsection (1)(a) of this section and each of the play symbol captions must be exactly one of those described in subsection (1)(b) of this section.

(vi) Each of the prize symbols must be exactly one of those described in subsection (1)(c) of this section and each of the prize symbol captions must be exactly one of those described in subsection (1)(d) of this section.

(b) Any ticket not passing all the validation requirements in WAC 315-10-070 and subsection (1) of this section is invalid and ineligible for any prize.

**AMENDATORY SECTION** (Amending WSR 94-03-020, filed 1/7/94, effective, see (1) of this section)

**WAC 315-04-180 Obligations of lottery retailers.**

(1)(a) The method of accounting for a retailer's payment to the director for instant ticket packs received prior to the lottery's instant ticket accounting system (ITAS) being fully operational shall be governed by Title 315 WAC and other

applicable law as it was in effect prior to ~~((February 9))~~ March 2, 1994.

(b) The method of accounting for a retailer's payment to the director for instant ticket packs received on or after the day ITAS becomes fully operational shall be governed by Title 315 WAC and other applicable law as it was in effect on the day of ITAS' becoming fully operational ~~((which shall not be prior to February 9, 1994)).~~

(c) It is the intent of the Washington state lottery commission that those repeals and amendments filed with the state of Washington office of the code reviser to take effect no earlier than February 9, 1994, shall take effect when ITAS is fully operational. ~~((In the event that ITAS is not fully operational on February 9, 1994, Title 315 WAC shall remain in effect as it was prior to February 9, 1994, and shall so remain until ITAS does become fully operational. When ITAS becomes fully operational, the director shall make an announcement to all concerned parties, thereby establishing the effective date of said repeals and amendments.))~~

(d) The instant ticket accounting system referred to above became fully operational on March 2, 1994.

(2)(a) Upon acceptance of a pack of instant tickets from the director, the retailer shall be responsible for the condition and security of the pack. The retailer shall hold the pack in its own safekeeping until it is ready to begin sale of the pack. Immediately prior to beginning sale, the retailer shall place the pack in "activated" status in the lottery's instant ticket accounting system (ITAS). Placement in activated status designates that the tickets in the pack may be sold, and prizes in the pack may be paid.

(b) In the event that instant tickets accepted by the retailer are lost, stolen or in any way unaccounted for prior to their being placed in activated status on ITAS, the retailer shall, upon discovery of their disappearance, immediately notify the director of each pack or portion of a pack so unaccounted for, lost or stolen. The retailer may be required to provide the director a police report or other evidence of the pack's disappearance. The retailer shall be charged twenty-five dollars for each pack or portion of a pack unaccounted for, lost or stolen.

(c) A retailer may return an unopened pack, at no charge, to the director at any time prior to the pack having been placed in activated status. Within thirty days of the official end of an instant game, a retailer shall return to the director all packs never activated in that game. Retailers shall be charged twenty-five dollars for each pack or portion thereof which was not returned to the director and not activated in accordance with this section.

(d) Upon placement of a pack in activated status, the retailer shall be liable to the director for payment for the pack, in the amount calculated under WAC 315-06-035. Payment for a pack shall be due to the director no later than twenty calendar days after the pack has been placed in activated status. The director shall not reimburse the retailer for any ticket losses which occur after activation of the pack from which the tickets came, except as allowed by WAC 315-04-210(2) or 315-06-190.

(e) Each lottery retailer and lottery license applicant shall sign and comply with a lottery instant retailer agreement. Failure to sign or to comply shall result in revocation or denial of a retailer's lottery license.

(3) Each lottery retailer shall abide by the law, these rules and all other directives or instructions issued by the director.

(4) Each lottery retailer grants to the director an irrevocable license to enter upon the premises of the lottery retailer in which tickets may be sold or any other location under the control of the lottery retailer where the director may have good cause to believe lottery materials and/or tickets are stored or kept in order to inspect said lottery materials and/or tickets and the licensed premises.

(5) All property given, except tickets, to a lottery retailer remains the property of the director, and, upon demand, the lottery retailer agrees to deliver forthwith the same to the director.

(6) All books and records pertaining to the lottery retailer's lottery activities shall be made available for inspection and copying, during the normal business hours of the lottery retailer and between 8:00 a.m. and 5:00 p.m., Monday through Friday, upon demand by the director.

(7) All books and records pertaining to the lottery retailer's lottery activities shall be subject to seizure by the director without prior notice.

(8) No lottery retailer shall advertise or otherwise display advertising in any part of the lottery retailer's premises as a licensed location which may be considered derogatory or adverse to the operations or dignity of the lottery and the lottery retailer shall remove any advertising forthwith if requested by the director.

**AMENDATORY SECTION** (Amending WSR 94-03-020, filed 1/7/94)

**WAC 315-04-210 Procedure if license is terminated, suspended or revoked.** (1) Upon termination, revocation or suspension of a lottery retailer's license for any reasons whatsoever, the lottery retailer must, by a date designated by the director, render a final lottery accounting and surrender all lottery property((-)), as well as unsold lottery tickets which have been placed in activated status, to the director.

(2) The director shall reimburse each retailer whose license is terminated, suspended or revoked for payments made for unsold tickets which had been placed in activated status prior to termination, suspension or revocation which the retailer returns to the director.

**AMENDATORY SECTION** (Amending WSR 94-03-019, filed 1/7/94, effective 2/7/94)

**WAC 315-11A-117 Instant Game Number 117 ("Cash Crop").** (1) **Definitions for Instant Game Number 117.**

(a) **Play symbols:** The following are the "play symbols": ", ", ", ", ", " and "." One of these play symbols appears in each of the five play spots under the latex covering on the front of the ticket. The latex covered area shall be known as the playfield. Two of the five play spots shall be labeled "winning crop."

(b) **Play symbol 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 abbreviated form of the play symbol. One and only one of these captions appears under each play symbol.

The three-digit ticket number shall appear before each play symbol caption. For Instant Game Number 117, the captions which correspond with and verify the play symbols are:

| <u>PLAY SYMBOL</u>                                                                  | <u>CAPTION</u> |
|-------------------------------------------------------------------------------------|----------------|
|  | LEMN           |
|  | CORN           |
|  | MELN           |
|  | APPL           |
|  | CHRS           |
|  | GRPS           |
|  | STBR           |

(c) **Prize symbols:** The following are the "prize symbols": "\$1.00," "\$4.00," "\$8.00," "\$12.00," "\$20.00," "\$40.00," "\$80.00," and "\$8,000." One of these prize symbols appears below each of the play symbol captions, except that no prize symbol appears below the caption of the play symbol labeled "winning crop."

(d) **Prize symbol captions:** The small printed characters which appear below the prize symbol and verify and correspond with that prize symbol. The prize symbol caption is a spelling out, in full or abbreviated form, of the prize symbol. For Instant Game Number 117, the prize symbol captions which correspond with and verify the prize symbols are:

| <u>PRIZE SYMBOL</u> | <u>CAPTION</u> |
|---------------------|----------------|
| \$ 1.00             | ONE DOL        |
| \$ 4.00             | FOR DOL        |
| \$ 8.00             | EGT DOL        |
| \$ 12.00            | TLV DOL        |
| \$ 20.00            | TWY DOL        |
| \$ 40.00            | \$FORTY\$      |
| \$ 80.00            | \$EIGHTY       |
| \$ 8,000            | EGTTHOU        |

(e) **Validation number:** The unique nine-digit number on the front of the ticket. The number is covered by latex.

(f) **Pack-ticket number:** The eleven-digit number of the form 11700001-000 printed on the front of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number 117 constitute the "pack number" which starts at 11700001; the last three digits constitute the "ticket number" which starts at 000 and continues through 199 within each pack of tickets.

(g) **Retailer verification codes:** Codes consisting of small letters found under the removable covering on the front of the ticket which the lottery retailer uses to verify instant winners of less than \$600.00. For Instant Game Number 117, the retailer verification code is a three-letter code, with each letter appearing in a varying three of six locations beneath the removable covering and among the play symbols on the front of the ticket. The retailer verification codes are:

| <u>VERIFICATION CODE</u> | <u>PRIZE</u>                                                 |
|--------------------------|--------------------------------------------------------------|
| ONE                      | \$ 1.00                                                      |
| FOR                      | \$ 4.00 (((\$1, \$1, \$1, AND \$1; \$4)) (\$2 AND \$2; \$4)) |
| EGT                      | \$ 8.00 (\$4 AND \$4; \$8)                                   |
| TLV                      | \$ 12.00 (\$8 AND \$4; \$12)                                 |

|     |          |                                             |
|-----|----------|---------------------------------------------|
| TWY | \$ 20.00 | (\$12 AND \$8; \$12, \$4,<br>AND \$4; \$20) |
| FRY | \$ 40.00 |                                             |
| ETY | \$ 80.00 |                                             |

(h) Pack: A set of two hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

(2) **Criteria for Instant Game Number 117.**

(a) The price of each instant game ticket shall be \$1.00.

(b) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

(i) When any of the three play symbols matches exactly one of the play symbols labeled "winning crop," the matching play symbol shall be a winning play symbol, and the bearer of the ticket shall win the prize below the winning play symbol.

(ii) The bearer of a ticket which has more than one winning play symbol shall win the total of the prizes below each winning play symbol.

(c) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(d) 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 117 set forth in subsection (3) of this section, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(e) Notwithstanding any other provisions of these rules, the director may:

(i) Vary the length of Instant Game Number 117; and/or

(ii) Vary the number of tickets sold in Instant Game Number 117 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

(3) **Ticket validation requirements for Instant Game Number 117.**

(a) In addition to meeting all other requirements in these rules and regulations, to be a valid instant game ticket for Instant Game Number 117 all of the following validation requirements apply:

(i) Exactly one play symbol must appear in each of the five play spots in the playfield on the front of the ticket.

(ii) Each play symbol must have a play symbol caption below it and each must agree with its caption.

(iii) Each of the play symbol captions, except for the "winning number" play symbol caption, shall have a prize symbol below it. Each of the prize symbols shall also have a prize symbol caption below it.

(iv) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the artwork on file with the director. The numbers, letters, and symbols shall be printed as follows:

|                            |                   |
|----------------------------|-------------------|
| Play Symbols               | Play Symbol Font  |
| Prize Symbols              | Prize Symbol Font |
| Captions                   | Caption Font      |
| Pack-Ticket Number         | Validation Font   |
| Validation Number          | Validation Font   |
| Retailer Verification Code | Validation Font   |

(v) Each of the play symbols and its caption, the validation number, pack-ticket number, and retailer verification code must be printed in black ink.

(vi) Each of the play symbols must be exactly one of those described in subsection (1)(a) of this section and each of the play symbol captions must be exactly one of those described in subsection (1)(b) of this section.

(vii) Each of the prize symbols must be exactly one of those described in subsection (1)(c) of this section and each of the prize symbol captions must be exactly one of those described in subsection (1)(d) of this section.

(b) Any ticket not passing all the validation requirements in WAC 315-10-070 and in (a) of this subsection is invalid and ineligible for any prize.

**WSR 94-07-117**

**PROPOSED RULES**

**WESTERN WASHINGTON UNIVERSITY**

[Filed March 22, 1994, 2:35 p.m.]

**Original Notice.**

Title of Rule: Amending chapter 516-26 WAC, Student records.

Purpose: Clarify information the university can release regarding student records and update policy.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Statute Being Implemented: RCW 28B.35.120(1).

Summary: The language of the proposed changes makes it more user friendly and clarifies what information the university can release regarding student records.

Reasons Supporting Proposal: To make it more easily understood.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Connie Copeland, Western Washington University, OM 395, Bellingham, 98225, (206) 650-3849.

Name of Proponent: Western Washington University, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Clarifies the process to follow in obtaining educational records.

Proposal Changes the Following Existing Rules: Clarifies and simplifies the process.

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

Hearing Location: Viking Union 460, Western Washington University, 516 High Street, Bellingham, WA, on May 5, 1994, at 3:00 p.m.

Submit Written Comments to: Connie Copeland, by May 28, 1994.

Date of Intended Adoption: June 3, 1994.

March 16, 1994  
Wendy K. Bohlke  
Assistant Attorney General  
Senior Counsel

AMENDATORY SECTION (Amending WSR 90-10-042, filed 4/27/90, effective 5/1/90)

WAC 516-26-010 ((Purpose)) Preamble. The purpose of this ~~((chapter is to implement 20 U.S.C. Sec. 1232g, the Family Educational Rights and Privacy Act of 1974, by establishing rules and procedures to insure that information contained in student records is accurate and is handled in a responsible manner by the university and its employees))~~ student records policy is to establish rules and procedures that appropriately implement the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. § 1232g. Western Washington University is committed to safeguarding appropriate access to student education records as well as maintaining individual student privacy. The university records officer works to ensure that information contained in student records is treated responsibly with due regard to its personal nature, and for the students', university's and community's needs.

(1) Generally, students have the right to review and copy their education records. Students also have the right to challenge the content of, release of, or denial of access to their education records.

(2) The university will normally not permit unauthorized access to or release of student education records to the public; some exceptions exist.

(3) The university may release directory information concerning a student unless the student requests in writing that it not be released.

Please read below for a complete description of the policy.

AMENDATORY SECTION (Amending WSR 90-10-042, filed 4/27/90, effective 5/1/90)

WAC 516-26-020 Definitions. For purposes of this chapter the following terms shall have the indicated meanings:

(1) "Student" shall mean any person, regardless of age, who is or has been officially registered at and attending Western Washington University and with respect to whom the university maintains education records or personally identifiable information.

(2)(a)(i) "Education records" shall refer to those records, files, documents and other materials maintained by Western Washington University or by a person acting for Western Washington University which contain information directly related to a student.

(ii) Records relating to an individual in attendance at the university who is employed as a result of his or her status as a student are considered education records. Records made and maintained by the university in the normal course of business which relate exclusively to a person's capacity as an employee and are not available for any other purpose are not considered education records.

(b) The term "education records" does not include the following:

(i) Records of instructional, supervisory or administrative personnel and educational personnel ancillary ~~((there to which are))~~ to those persons, which are kept in the sole possession of the maker ~~((thereof))~~ of the record and which are not accessible or revealed to any other person except a substitute;

~~(ii) ((If the personnel of the university's department of safety and security do not have access to education records under WAC 516-26-080, the records and documents of the department which are kept apart from records described in WAC 516-26-020 (2)(a), are maintained solely for law enforcement purposes, and are not made available to persons other than law enforcement officials of the same jurisdiction;~~

~~(iii) Records made and maintained by the university in the normal course of business which relate exclusively to a person's capacity as an employee and are not available for any other purpose except that records relating to an individual in attendance at the university who is employed as a result of his or her status as a student are education records and not excepted; or~~

~~(iv)) Records of the university's public safety office maintained solely for law enforcement purposes, disclosed only to law enforcement officials of the same jurisdiction, and maintained separately from education records in (a) of this subsection; but only if said law enforcement personnel do not have access to education records under WAC 516-26-080; or~~

(ii) Records concerning a student which are created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity, and which are created, maintained or used only in connection with the provision of treatment to the student and are not available to anyone other than persons providing such treatment, except that such records may be personally reviewed by a physician or other appropriate professional of the student's choice.

(3) "Personally identifiable information" shall refer to data or information which includes either (a) the name of a student, the student's parent, or other family member, (b) the address of the student, (c) the address of the student's family, (d) a personal identifier, such as the student's social security number or student number, (e) a list of personal characteristics which would make it possible to identify the student with reasonable certainty, or (f) other information which would make it possible to identify the student with reasonable certainty.

(4) "Vice-president for student affairs" shall refer to the vice-president for student affairs or his designee.

(5) "University records officer" shall refer to that individual (or his or her designee) responsible for the policies safeguarding the access, release, or copying of education records and for informing students and parents of their rights.

(6) "Records center manager" shall refer to that individual (or his or her designee) responsible for the facilitation of the development of records retention schedules.

(7) "Records coordinator" shall refer to that individual (or his or her designee) designated by the department or unit head to be responsible for the custody of the education record(s) in that office, department or unit.

(8) "Unit head" shall refer to that individual (or his or her designee) responsible for the supervision or management of an institutional department or unit.

AMENDATORY SECTION (Amending Order 79-05, Resolution No. 79-05, filed 5/14/79)

**WAC 516-26-030 Access to education records.** (1) Except as provided in WAC 516-26-035, each student at Western Washington University shall have access to his or her education records. The right of access shall include the right to inspect, review, and obtain copies of education records.

(2) ~~The ((vice president for student affairs shall prepare a list of the types of student education records which are maintained by Western Washington University)) records coordinator is responsible for maintaining an up-to-date records retention schedule which lists the types of student education records maintained by that office, department or unit. The said records retention schedule is also filed with the records center manager and the state archives in Olympia.~~

(3) A student wishing access to his or her education records shall submit a written request for access to the ~~((vice president for student affairs. A request for access shall be acted upon by the vice president for student affairs))~~ appropriate records coordinator. The records coordinator shall respond to a request for access within a reasonable period of time, not to exceed ((twenty)) five days.

(4) ~~The ((vice president for student affairs)) records coordinator shall provide students of the university with an opportunity for reasonable access to education records, ((provided that the vice president for student affairs)) and shall be responsible for taking appropriate measures to safeguard and insure the security and privacy of the institution's records while being inspected by students.~~

(5) ~~The ((vice president for student affairs)) records coordinator will inform in writing a student who has requested access to his or her education records of the nature of any records which are being withheld from the student on the basis of the exceptions set forth in WAC 516-26-035. A student may ((challenge a decision by the vice president for student affairs)) file with the university records officer a request to review the decision by the records coordinator and/or by the unit head as per WAC 516-26-055 to withhold certain of the student's records. A student may also request a review of the university records officer's decision to withhold certain of the student's records by filing an appeal with the student ((rights and responsibilities committee)) academic grievance board, refer to WAC 516-26-060.~~

~~((6) This section shall not prohibit the university registrar from providing a student with a copy of the student's academic transcript without prior clearance from the vice president for student affairs.))~~

AMENDATORY SECTION (Amending Order 79-05, Resolution No. 79-05, filed 5/14/79)

**WAC 516-26-035 Access to education records—Limitations on access.** (1) Western Washington University shall not make available to a student the following types of materials:

(a) The financial records of the student's parents or any information contained therein, if the parents have requested in writing that such information remain confidential.

(b) Letters or statements of recommendation, evaluation or comment which were provided to the university in

confidence, either expressed or implied, prior to January 1, 1975, provided that such letters or statements shall not be used for purposes other than those for which they were originally intended.

(c) If a student has signed a waiver of the student's right of access in accordance with subsection (2) of this section, confidential records relating to the following:

- (i) Admission to any educational agency or institution;
- (ii) An application for employment; or
- (iii) The receipt of an honor or honorary recognition.

(2) A student, or a person applying for admission to the university, may waive his or her right of access to the type of confidential records referred to in subsection (1)(c) of this section, provided that such a waiver shall apply only if the student is, upon request, notified of the names of all persons making confidential recommendations, and such recommendations are used solely for the specific purpose for which the waiver has been granted. ~~((Such a waiver may not be required))~~ The university is not allowed to require such a waiver as a condition for admission to, receipt of financial aid from, or receipt of other services or benefits from the university.

(3) If any material or document in the education record of a student includes information concerning more than one student, the student shall only have the right either to inspect and review that portion of the material or document which relates to the student or to be informed of the specific information contained in that portion of the material or document.

AMENDATORY SECTION (Amending Order 79-05, Resolution No. 79-05, filed 5/14/79)**WAC 516-26-040 Right to copy education records.**

(1) ~~The ((vice president for student affairs)) records coordinator shall, at the request of a student, provide the student with copies of the student's education records. The fees for providing such copies shall not exceed the actual cost to the university of providing the copies.~~

(2) Official copies of transcripts from other educational institutions, such as high school or other college transcripts, will not be provided to students by the university.

AMENDATORY SECTION (Amending Order 76-4, filed 8/20/76)

**WAC 516-26-045 Request for explanation or interpretation of record.** ~~The ((vice president for student affairs)) records coordinator shall respond to reasonable requests for explanations or interpretations of the contents of student education records.~~

AMENDATORY SECTION (Amending Order 79-05, Resolution No. 79-05, filed 5/14/79)

**WAC 516-26-050 Challenges—To content of education records—To release of education records—Or to denial of access to education records.** (1) Any student who believes that inaccurate, misleading, or otherwise inappropriate data is contained within his or her education records shall be permitted to have included within the record a written explanation by the student concerning the content of the records.

(2) A student shall have the right, in accordance with the procedures set forth in WAC 516-26-055 and 516-26-060, to:

(a) Challenge the content of education records in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the students;

(b) Have the opportunity to ~~((correct or delete))~~ request the correction or deletion of inaccurate, misleading, or otherwise inappropriate data contained within education records;

(c) Challenge the release of education records to specific persons as contrary to the provisions of this chapter; and

(d) Challenge a decision by the university to deny the student access to particular types of records.

(3) A student shall not be permitted under this chapter to challenge the validity of grades given in academic courses, except on the grounds that, as a result of clerical error, the student's records fail to accurately reflect the grades actually assigned by an instructor.

AMENDATORY SECTION (Amending Order 76-4, filed 8/20/76)

**WAC 516-26-055 Challenges—Informal proceedings.** A student wishing to exercise the rights set forth in WAC 516-26-050(2) shall first discuss with the ~~((vice president for student affairs the nature of the corrective action sought by the student))~~ records coordinator the nature of the corrective action sought by the student. Failing resolution, the student shall next discuss with the department or unit head the corrective action sought by the student. Failing resolution, the student shall next discuss with the university records officer the corrective action sought by the student, as outlined in WAC 516-20-030(5).

AMENDATORY SECTION (Amending Order 79-05, Resolution No. 79-05, filed 5/14/79)

**WAC 516-26-060 Challenges—Hearing before student ~~((rights and responsibilities committee))~~ academic grievance board.** (1) If informal proceedings fail to resolve the complaint of a student, the student may file ~~((with the vice president for student affairs))~~ a written request for ~~((a hearing before the student rights and responsibilities committee of the university.~~

~~(2) Within a reasonable time after submission of a request for hearing, the student rights and responsibilities committee shall conduct a hearing concerning the student's request for corrective action.~~

~~(a) The student and the university shall be given a full opportunity to present relevant evidence at the hearing before the student rights and responsibilities committee.)~~ an appeal to the student academic grievance board of the university.

(2) The student academic grievance board shall process the appeal according to procedures outlined in the student academic grievance policy.

(3) If a student demonstrates that the student's education records are inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the student ~~((rights and responsibilities committee))~~ academic grievance board shall have authority to order the correction or deletion

of inaccurate, misleading or otherwise inappropriate data contained in the records.

(4) If a student demonstrates that the release of the student's education records would be improper under this chapter, the student ~~((rights and responsibilities committee))~~ academic grievance board shall have authority to order that the records not be released.

(5) If a student demonstrates that the student is entitled to access to particular documents under this chapter, the student ~~((rights and responsibilities committee))~~ academic grievance board shall have authority to order that the student be permitted access to the records.

(6) The decision of the student ~~((rights and responsibilities committee))~~ academic grievance board shall be rendered in writing within a reasonable period of time after the conclusion of the hearing.

AMENDATORY SECTION (Amending Order 79-05, Resolution No. 79-05, filed 5/14/79)

**WAC 516-26-070 Release of personally identifiable information or education records.** ~~((Except as provided in WAC 516-26-080, 516-26-085, or 516-26-090, the university shall not permit access to or the release of a student's education records or personally identifiable information contained therein to any person without the written consent of the student.))~~ The university shall not permit access to or release of a student's education records or personally identifiable information contained therein to any person without the written consent of the student, except as provided in WAC 516-26-080, 516-26-085, or 516-26-090.

AMENDATORY SECTION (Amending Order 79-05, Resolution No. 79-05, filed 5/14/79)

**WAC 516-26-080 Release of personally identifiable information or education records—Exceptions to consent requirement.** (1) The university may permit the access to or release of a student's education records or personally identifiable information contained therein without the written consent of the student to the following parties:

(a) University officials, including faculty members, when the information is required for a legitimate educational purpose within the scope of the recipient's official responsibilities with the university and will be used only in connection with the performance of those responsibilities;

(b) Federal or state officials requiring access to education records in connection with the audit or evaluation of federally or state supported educational programs or in connection with the enforcement of federal or state legal requirements relating to such programs. In such cases the information required shall be protected by the federal or state officials in a manner which shall not permit the personal identification of students or their parents to other than those officials, and such personally identifiable data shall be destroyed when no longer needed for the purposes for which it was provided;

(c) Agencies or organizations requesting information in connection with a student's application for, or receipt of, financial aid;

(d) Organizations conducting studies for or on behalf of the university for purposes of developing, validating or administering predictive tests, administering student aid

programs, or improving instruction, if such studies are conducted in a manner which will not permit the personal identification of students by persons other than representatives of such organizations, and the information will be destroyed when no longer needed for the purposes for which it was provided;

(e) Accrediting organizations in order to carry out their accrediting functions; or

(f) Any person or entity authorized by judicial order or lawfully issued subpoena to receive such records or information, upon condition that the student is notified of all such orders or subpoenas in advance of compliance therewith by the university. Any university employee or official receiving a subpoena or judicial order for education records or personally identifiable information contained therein shall immediately notify the assistant attorney general representing the university;

(g) An alleged victim of any crime of violence (as defined in section 16 of Title 18, United States Code) may have disclosed the results of any disciplinary proceeding conducted by the university against the alleged perpetrator of such crime with respect to such crime, without the consent of the alleged perpetrator.

(2) Education records of a student or personally identifiable information contained therein which are released to third parties, with or without the consent of the student involved, shall be accompanied by a written statement indicating that the information cannot subsequently be released in a personally identifiable form to any other party without the written consent of the student involved.

(3) The university shall maintain a record, kept with the education records of each student, indicating all parties, other than those parties specified in WAC 516-26-080 (1)(a), which have requested or obtained access to the student's education records, and indicating the legitimate interest that each such party has in obtaining the records or information contained therein. This record of access shall be available only to the student, to the employees of the university responsible for maintaining the records, and to the parties identified under WAC 516-26-080 (1)(a) and (c).

AMENDATORY SECTION (Amending Order 79-05, Resolution No. 79-05, filed 5/14/79)

**WAC 516-26-085 Release of information in emergencies.** (1) The vice-president for student affairs or his designee may, without the consent of a student, release the student's education records or personally identifiable information contained therein to appropriate parties in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

(2) The university police, during instances of emergency pertaining to individual students, may have access to those student's education records or personally identifiable information.

(3) The following factors should be taken into consideration in determining whether records may be released under this section:

(a) The seriousness of the threat to the health or safety of the student or other persons;

(b) The need for personally identifiable information concerning the student to meet the emergency;

(c) Whether the parties to whom the records or information are released are in a position to deal with the emergency; and

(d) The extent to which time is of the essence in dealing with the emergency.

~~((3))~~ (4) If the university, pursuant to subsection (1) of this section, releases personally identifiable information concerning a student without the student's consent, the university shall notify the student as soon as possible of the identity of the parties and to whom the records or information have been released and of the reasons for the release.

AMENDATORY SECTION (Amending WSR 90-10-042, filed 4/27/90, effective 5/1/90)

**WAC 516-26-090 Release of directory information.**

(1) The university may release "directory information" concerning a student to the public unless the student requests in writing of the ~~((vice president for student affairs))~~ university registrar that the student's directory information not be released except as provided in WAC 516-26-070, 516-26-075, 516-26-080 or 516-26-085.

(2) The term "directory information" shall include information relating to the student's name, local ~~((and home address,))~~ telephone ~~((listing))~~ number, dates of attendance, degrees and awards received, participation in officially recognized sports and activities, weight and height if a member of an athletic team, and the most recent previous educational institution attended.

AMENDATORY SECTION (Amending Order 79-05, Resolution No. 79-05, filed 5/14/79)

**WAC 516-26-095 Destruction of ~~((student))~~ education records.** Except as otherwise provided by law, the university shall not be ~~((precluded))~~ prevented under this chapter from destroying all or any portion of a student's education records in accordance with established record retention schedules, provided that no education record to which a student has requested access shall be removed or destroyed by the university prior to providing the student with the requested access.

AMENDATORY SECTION (Amending WSR 90-10-042, filed 4/27/90, effective 5/1/90)

**WAC 516-26-100 Notification of rights under this chapter.** The university shall annually notify students currently in attendance of their rights under this chapter and the Family Educational Rights and Privacy Act.

The notice shall include a statement ~~((that the student has a right to each of the following))~~ of the following student rights:

(1) Inspect and review ~~((the student's))~~ his or her education records;

(2) Request ~~((the))~~ an amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;

(3) ~~((Consent to))~~ Allow or deny disclosures of personally identifiable information contained in the student's

education records, except to the extent that these regulations and the regulations promulgated pursuant to the Family Educational Rights and Privacy Act allow;

(4) File a complaint with the United States Department of Education under 34 C.F.R. 99.64 concerning alleged failures by the university to comply with the requirements of the act;

(5) Access information concerning the cost to be charged for reproducing copies of the student's records; and

(6) (~~Obtain~~) Access a copy of the regulations in this chapter (chapter 516-26 WAC).

The notice shall indicate the places where copies of these regulations are located.

**WSR 94-07-119**

**PROPOSED RULES**

**DEPARTMENT OF ECOLOGY**

[Order 94-10—Filed March 22, 1994, 3:48 p.m.]

Original Notice.

Title of Rule: WAC 173-19-4203 City of Olympia shoreline master program.

Purpose: Adoption of revised shoreline master program into state master program, chapter 173-19 WAC.

Statutory Authority for Adoption: RCW 90.58.200.

Statute Being Implemented: Chapter 90.58 RCW, Shoreline Management Act of 1971.

Summary: The amendment revises the shoreline master program for the city of Olympia. An amendment to the Percival Creek special area management plan, specifically the location of utility crossings.

Reasons Supporting Proposal: Shoreline master programs and revisions thereto are developed by local governments and submitted to the department for approval. The programs do not become effective until adopted by the department in accordance with the Shoreline Management Act and the Administrative Procedure Act.

Name of Agency Personnel Responsible for Drafting: Linda Whitcher, P.O. Box 47690, Olympia, WA 98504, (206) 407-6523; Implementation and Enforcement: Jay A. Shepard, P.O. Box 47600, Olympia, 98504-7600, (206) 407-7280.

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: This rule amendment will liberalize the procedure for locating utilities within the Percival Creek corridor. Rather than having specific locations delineated in the shoreline master program, they may be placed in areas specifically identified in utility comprehensive plans or drainage basin plans adopted by the city. This will allow greater flexibility as public utility plans are updated on a regular basis.

Proposal Changes the Following Existing Rules: This amends chapter 173-19 WAC, Shoreline Management Act of 1971, state master program.

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

Chapter 19.85 RCW, Regulatory Fairness Act, requires mitigating action and filing of a small business economic impact statement when rule adoption will have an economic impact on more than 20% of all business or more than 10% of any one industry. This amendment proposed by Olympia does not meet the criteria which require preparation of a small business impact statement.

Hearing Location: City Council Chambers, City Hall, 900 Plum Street, Olympia, WA, on April 27, 1994, at 7:00 p.m.

Submit Written Comments to: Master Program Coordinator, Washington State Department of Ecology, Shorelands and Coastal Zone Management Program, P.O. Box 47690, Olympia, WA 98504-7690, by May 4, 1994.

Date of Intended Adoption: June 7, 1994.

March 22, 1994

Mary Riveland

Director

AMENDATORY SECTION (Amending WSR 93-12-107, filed 6/2/93, effective 7/3/93)

**WAC 173-19-4203 Olympia, city of.** City of Olympia master program approved May 21, 1976. Revision approved March 29, 1984. Revision approved April 30, 1984. Revision approved August 30, 1984. Revision approved September 29, 1987. Revision approved May 15, 1990. Revision approved June 1, 1993. Revision approved June 7, 1994.

**WSR 94-07-120**

**PROPOSED RULES**

**DEPARTMENT OF ECOLOGY**

[Order 94-09—Filed March 22, 1994, 3:50 p.m.]

Original Notice.

Title of Rule: WAC 173-19-3303 City of Raymond shoreline master program.

Purpose: Adoption of revised shoreline master program into state master program, chapter 173-19 WAC.

Statutory Authority for Adoption: RCW 90.58.200.

Statute Being Implemented: Chapter 90.58 RCW, Shoreline Management Act of 1971.

Summary: The amendment revises the shoreline master program for Raymond. This is a major rewrite of the master program which has not been amended since the original adoption in 1976.

Reasons Supporting Proposal: Shoreline master programs and revisions are developed by local governments and submitted to the department for approval. The programs do not become effective until adopted by the department in accordance with the Shoreline Management Act and the Administrative Procedure Act.

Name of Agency Personnel Responsible for Drafting: Linda Whitcher, Washington Department of Ecology, Box 47690, Olympia, 98504-7690, (206) 407-6523; Implementation and Enforcement: Jay A. Shepard, Washington Department of Ecology, Box 47690, Olympia, 98504-7690, (206) 407-7280.

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: This is a complete rewrite of the city's master program. It reduces the area regulated by the master program from the floodplain to the floodway plus two hundred feet. This removes much of the town from shoreline jurisdiction. The program also establishes development guidelines for the urban waterfront.

Proposal Changes the Following Existing Rules: This amends chapter 173-19 WAC, Shoreline Management Act of 1971, state master program.

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

Chapter 19.85 RCW, Regulatory Fairness Act, requires mitigating action and filing of a small business economic impact statement when rule adoption will have an economic impact on more than 20% of all industries or more than 10% of any one industry. This amendment proposed by the city of Raymond does not meet the criteria which require preparation of a small business impact statement.

Hearing Location: Raymond City Hall, 230 Second Street, Raymond, WA, on May 2, 1994, at 6:30 p.m.

Submit Written Comments to: Master Program Coordinator, Washington State Department of Ecology, Shorelands and Coastal Zone Management Program, P.O. Box 47692, Olympia, WA 98504-7692, by May 9, 1994.

Date of Intended Adoption: June 7, 1994.

March 22, 1994

Mary Riveland

Director

AMENDATORY SECTION (Amending Order DE 79-34, filed 1/30/80)

**WAC 173-19-3303 Raymond, city of.** City of Raymond master program approved April 9, 1976. Revision approved June 7, 1994.

**WSR 94-07-121  
PROPOSED RULES  
DEPARTMENT OF HEALTH**

[Filed March 22, 1994, 3:58 p.m.]

Original Notice.

Title of Rule: Fees for construction and operating permits of pools.

Purpose: To enable the Department of Health to recover costs needed by repealing existing fees for construction permits and enacting new fees for construction and operating permits to provide surveillance of pool facilities in areas where local health jurisdictions are unable to provide service.

Statutory Authority for Adoption: RCW 70.90.150.

Statute Being Implemented: RCW 70.90.150.

Summary: Department fee WAC repealed and new WAC added to cover costs for providing construction and operating permits.

Reasons Supporting Proposal: New regulations enacted require more detailed review for safety; allows recovery of costs for review for spa pools which were previously not

reviewed; and allows for inspection of approximately 240 pools where local health departments are unable to carry out this program.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Gary Fraser, Building 2 Airdustrial Center, 586-8131.

Name of Proponent: Washington State Department of Health, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Rule is needed to cover costs for the Department of Health to provide service for construction permits which has increased in scope and types of facilities reviewed. Operating permit fees will cover costs of surveillance of approximately 240 pools not currently being permitted local health jurisdictions.

Proposal Changes the Following Existing Rules: Modifies construction permit fees to include costs for reviewing spa pools; maximum lid on fees (7% related to Initiative 601 will limit recovery of costs for additional review involved with regulations, as well as increased costs occurring since fees were last raised in 1987); and new operating permits for facilities currently not having surveillance.

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

This will affect less than 20% of the entire regulated industry and less than 10% of any individual segment of industry.

Hearing Location: Building 3 Airdustrial Park, Tumwater, Washington 98504, on April 26, 1994, at 1:30 to 2:30.

Submit Written Comments to: Ann Foster, Department of Health Rules Coordinator, P.O. Box 47890, Olympia, WA 98504-7890, by April 25, 1994.

Date of Intended Adoption: April 26, 1994.

March 22, 1994

Bruce Miyahara

Secretary

REPEALER

The following section is hereby repealed:

WAC 246-260-990

NEW SECTION

**WAC 246-260-9901 Fees** (1) CONSTRUCTION PERMIT FEES. The department establishes the fees listed in Table 990.1 for construction permits for carrying out its duties under WAC 246-260-030.

**TABLE 990.1  
CONSTRUCTION PERMIT FEES**

| TYPE OF FACILITY                                                                                                                                                                                                                                                                                                                                                                                                   | CONSTRUCTION PERMIT PLAN REVIEW FEES |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|
| I. Swimming Pools                                                                                                                                                                                                                                                                                                                                                                                                  |                                      |
| (a) 125,000 gallons or more in volume                                                                                                                                                                                                                                                                                                                                                                              | \$535.00                             |
| (b) Greater than 75,000 gallons and less than 125,000 gallons                                                                                                                                                                                                                                                                                                                                                      | \$320.00                             |
| (c) Greater than 40,000 gallons and less than 75,000 gallons                                                                                                                                                                                                                                                                                                                                                       | \$210.00                             |
| (d) Less than 40,000 gallons                                                                                                                                                                                                                                                                                                                                                                                       | \$160.00                             |
| II. Spa Pools                                                                                                                                                                                                                                                                                                                                                                                                      | \$160.00                             |
| III. Wading Pools                                                                                                                                                                                                                                                                                                                                                                                                  | \$105.00                             |
| IV. Spray Pools                                                                                                                                                                                                                                                                                                                                                                                                    | \$ 80.00                             |
| V. Alterations, renovations, or modifications to existing swimming, spa, wading or spray pools, not to exceed two-thirds of new construction permit fees, or \$65/hour (which ever is less).                                                                                                                                                                                                                       |                                      |
| VI. The fees for multiple pools at the same location will be based upon the highest fee for one facility and two thirds of the fee for each additional facility. For example: The fee for a 100,000 gallon swimming pool, a 60,000 gallon swimming pool, and a spa pool will be: $\$320 + \$139 + 107 = \$566$ . The fees for a small 30,000 gallon swimming pool and a spa pool will be $\$160 + \$107 = \$267$ . |                                      |

(2) OPERATING PERMIT FEES The department establishes the fees listed in Table 990.2 for operating permits for carry out its duties under 246-260-040.

TABLE 990.2

**FEE SCHEDULE  
OPERATING PERMITS  
Type + Number of Facilities**

|                              | Single Swim Pool | Single Spa Pool | Single Wading Pool | Spray Pool or Pools | Each Additional Swim, Spa, or Wading Pool |
|------------------------------|------------------|-----------------|--------------------|---------------------|-------------------------------------------|
| Operating Permit 0-6 month   | \$275.00         | \$240.00        | \$200.00           | \$100.00            | \$100.00                                  |
| Operating Permit 6-12 months | \$450.00         | \$400.00        | \$350.00           | \$150.00            | \$125.00                                  |

**Other Terms and Conditions:**

- (1) The department may charge an additional fee of \$85 plus associated laboratory costs for any inspections beyond those provided under the annual operating permit when necessary due to violations of such items as (a) noncompliance with water quality standards, and (b) failure to comply with operational requirements for health and safety.
- (2) The department may charge an alternate annual fee for an operating permit based on direct and indirect costs associated with issuance of the permit when arrangements are made with local health jurisdictions to administer all or portions of the duties associated with the operating permit. Except, that the fee for this operating permit cannot exceed the cost established by the previous portions of this regulation, but the fee may be less.
- (3) During the first year of development of the operating permit and for new pool facilities built hereafter, or pools temporarily closed (significant period of several months) and reopened, there are provisions for prorating the costs for the operating permits.
- (4) A reduction in fees, up to but not exceeding thirty percent, may be granted by the department when a facility operator can demonstrate a satisfactory level of training in pool safety, water quality, maintenance and operations. The department will develop criteria for such fee reductions within six months of the adoption of this regulation.
- (5) For limited use facilities requiring operating permits which are serving less than fifteen living units, the operating permit shall be fifty percent of the fee. However, reinspection fees when necessary, will be charged as noted in condition (1).
- (6) Fees for multiple facilities at the same physical location shall have a maximum FEE CAP as follows: **Seasonal (0-6 months) WRF's: \$750 NOTE:** The third and subsequent pool/spa at the same location will be charged \$50 for each such additional pool/spa.

**Year around (>6 months) WRF's \$1000 NOTE:** The third and subsequent pool/spa at the same physical location will be charged \$65 for each such additional pool/spa.

**Examples of Fees Charged:**

- (1) If more than one pool at a facility and one is a year-round pool and another is a seasonal pool -- year-round pool is base cost, seasonal pool is charged at additional fee charge. For example: year-round spa = \$400 plus seasonal swimming pool is \$100 = \$500 total operating permits.
- (2) If a single swimming pool and a single spa pool is used at the facility, the fee schedule will include fees as noted. For a 0-6 month permit, the primary fee for the single swimming would be \$275 and the spa pool would be viewed as the second pool at the facility and would have a fee of \$100, total operating permit fees would be \$375.
- (3) If there are 12 pools/spas at a single year-around pool facility, the FEE CAP would apply and the maximum fee of \$1000 would be charged. (\$450 base fee; \$125 for first additional pool/spa, \$65 for the remaining ten year-around pools/spas (10 x \$65 = \$650) Total fee before fee cap = \$550 + \$125 + \$650 = \$1275. After FEE CAP the total fee=\$1000. If approved training were credited to this facility for the maximum 30% discount, the 30% would be applied to the FEE CAP fee of \$1000; \$1000 - 30% = \$700.

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.

PROPOSED

**WSR 94-07-123**  
**PREPROPOSAL COMMENTS**  
**DEPARTMENT OF REVENUE**  
 [Filed March 23, 1994, 8:00 a.m.]

Subject of Possible Rule Making: New section WAC 458-16-215 Nonprofit organizations that solicit, collect, and distribute gifts, donations, or grants.

Persons may comment on this subject in writing or by attending the public meeting. Written comments should be addressed to: Kim M. Qually, Counsel, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, FAX #(206) 664-0972. Public meeting scheduled in: Evergreen Plaza Building, 2nd Floor Conference Room, 711 Capitol Way South, Olympia, WA, on April 29, 1994, at 9:30 a.m. (written comments should be submitted by this date to assure full consideration, but will be accepted to date of adoption.)

Other Information or Comments by Agency at this Time, if any: The adoption of this new rule is necessary to implement and administer a new statute enacted in 1993: RCW 84.36.550. A copy of this new rule draft is available upon request. Contact Pat Baxter, (206) 753-1382.

March 22, 1993 [1994]  
 William N. Rice  
 Assistant Director  
 Property Tax

**WSR 94-07-124**  
**PROPOSED RULES**  
**LIQUOR CONTROL BOARD**  
 [Filed March 23, 1994, 8:14 a.m.]

Original Notice.

Title of Rule: WAC 314-24-230 Class W8—Private wine shipper's license.

Purpose: To amend language to remove the \$25 license fee for the W8 wine shipper's license.

Statutory Authority for Adoption: RCW 66.08.030.

Summary: In order to comply with the legislation passed in the 1994 session WAC 314-24-230 needs to be amended to remove the \$25 license fee for the W8 shipper's license.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Gary W. Gilbert, 1025 East Union, Olympia, WA, 586-3052.

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: WAC 314-24-030 requires that all class W8 wine shipper's licensees pay a license fee of \$25. In order to comply with the legislation passed in the 1994 session the WAC needs to be amended to remove the \$25 license fee.

Proposal Changes the Following Existing Rules: Will remove the current \$25 license fee for W8 wine shipper's licensees.

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

Hearing Location: Liquor Control Board, Fifth Floor Board Room, Capital Plaza Building, 1025 East Union, Olympia, WA, on April 27, 1994, at 9:30.

Submit Written Comments to: M. Carter Mitchell, Information Officer, Washington State Liquor Control Board, P.O. Box 43080, Olympia, WA 98504-3080, FAX (206) 664-9689, by April 26, 1994.

Date of Intended Adoption: April 27, 1994.

March 18, 1994  
 Joseph L. McGavick  
 Chairman

**AMENDATORY SECTION** (Amending WSR 91-21-132, filed 10/23/91, effective 11/23/91)

**WAC 314-24-230 Class W8—Private wine shipper's license.** There shall be a license, designated as a class W8 license, to authorize the licensee to ship up to two cases of wine of its own manufacture annually to any resident of the state of Washington who is over the age of twenty-one years without payment of Washington's state liquor taxes and markup. ~~((The fee for such license shall be \$25 annually.))~~

(1) Wine received as authorized by this rule shall be free of markup and state taxes as otherwise required by RCW 66.12.120 if the state from which the wine is received allows its residents to receive wine from the state of Washington without imposition of state tax, markup, or charges.

(2) All holders of a winery certificate of approval designated as a W7 license as authorized by RCW 66.24.206 and WAC 314-22-010, shall be deemed to hold class W8 license privileges without further application ~~((or payment of fee))~~, provided, the holder meets all legal requirements for private wine shipments.

(3) A wine manufacturer located outside the state of Washington which is licensed by its resident state to manufacture wine therein may apply for a class W8 license from the board, if the manufacturer's resident state allows Washington wineries licensed under RCW 66.24.170 an equal reciprocal shipping privilege.

**WSR 94-07-125**  
**PROPOSED RULES**  
**LIQUOR CONTROL BOARD**  
 [Filed March 23, 1994, 8:17 a.m.]

Original Notice.

Title of Rule: WAC 314-16-010 Booths.

Purpose: To repeal WAC 314-16-010 in its entirety.

Statutory Authority for Adoption: RCW 66.08.030.

Summary: WAC 314-16-010 requires that all booths be open on one end so as to provide a clear view. It appears that the rule is unnecessary and should be repealed.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Gary W. Gilbert, 1025 East Union, Olympia, WA, 586-3052.

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: WAC 314-16-010 requires that all booths be open

on one end so as to provide a clear view. This rule has been in effect in one way or another since 1935. Currently, we permit drinking and dining in private rooms or cubicles in restaurants. The licensee has the opportunity to assess age and sobriety when patrons are seated or served. Each time an employee interacts with a customer they have the opportunity for assessment. Thus it appears that this rule is unnecessary and should be repealed.

Proposal does not change existing rules.

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

Hearing Location: Liquor Control Board, Fifth Floor Board Room, Capital Plaza Building, 1025 East Union, Olympia, WA, on April 27, 1994, at 9:30.

Submit Written Comments to: M. Carter Mitchell, Information Officer, Washington State Liquor Control Board, P.O. Box 43080, Olympia, WA 98504-3080, FAX (206) 664-9689, by April 26, 1994.

Date of Intended Adoption: April 27, 1994.

March 18, 1994

Joseph L. McGavick  
Chairman

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-16-010 Booths.

**WSR 94-07-126**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed March 23, 1994, 8:23 a.m.]

Original Notice.

Title of Rule: Proposed amendments to chapters 296-20, 296-23 and 296-23A WAC and the repeal of chapter 296-21 WAC.

Purpose: Amends WAC 296-20-010 to allow for the adoption of CPT and HCPCS codes on January 1 of each year. Repeals chapter 296-21 WAC. Language or reference changes are made to WAC 296-20-110, 296-23-135, 296-23-155, and 296-23A-400. WAC 296-23-150, 296-23-220, 296-23-225, 296-23-230, and 296-23-235 are repealed. WAC 296-21-230 will now be WAC 296-20-01505.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030.

Statute Being Implemented: RCW 51.04.020, 51.04.030.

Summary: To give adequate notice to providers on adopting new codes each year January 1. Repeals chapter 296-21 WAC and general updating of references and language.

Reasons Supporting Proposal: Relieves administrative burden on providers by having the knowledge that we will adopt these codes on a timely basis.

Name of Agency Personnel Responsible for Drafting: Bill Stoner, 956-6807; Implementation and Enforcement: Mark Brown, 956-4200.

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: Yearly adoption of CPT and HCPCS codes and allows a grace period in which both the old and new codes will be accepted for payment. Repeals chapter 296-21 WAC. Changes coding language for WAC 296-20-110 to adopt HCPCS (health care financing administration's common procedure coding system) codes. Reference and language changes are made to WAC 296-23-135, 296-23-155, and 296-23A-400. WAC 296-21-230 is repealed and is now a new section WAC 296-20-01505.

Proposal Changes the Following Existing Rules: Makes language and reference changes. Repeals chapter 296-21 WAC. Amends WAC 296-20-010 to adopt new language. Creates a new section WAC 296-20-01505.

Small Business Economic Impact Statement: The department has evaluated the economic impact of the proposed rule changes in accordance with the Regulatory Fairness Act and concluded that the average cost per employee would be \$3.82. Once again, the department believes this rule will enhance the health services industry understanding of the medical services reimbursement process. The medical aid rules and fee schedule will include pertinent reimbursement rate information that will enable the health services industry to more accurately bill the department.

Summary of Rule Changes: The health services analysis section of the Department of Labor and Industries is proposing rule changes to the medical aid rules and fee schedule. In order to clarify the medical services reimbursement process, reduce the administrative burden on the health services industry, and to enhance the accuracy of the industry's billing practices, the department is proposing a medical aid fee schedule that will be updated on an annual basis and that will contain pertinent information regarding the medical services reimbursement process.

The proposed changes will occur in the following sections of the Washington Administrative Code: Amending chapter 296-20 WAC, Medical aid rules; chapter 296-23 WAC, Specialty providers; and chapter 296-23A WAC, Hospitals. Repealing chapter 296-21 WAC, General reimbursement policies, bundled codes and services, global surgery policy, psychiatric, biofeedback, physical medicine, HCPCS codes and modifiers, department unique codes, noncovered provider types.

Regulatory Fairness Act: 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 10 percent of any one industry as determined by the standard industrial classification (SIC) codes, shall be reviewed to determine if there exists a proportionately higher economic burden of compliance on small business. Small businesses are defined as businesses having fifty or fewer employees.

### Summary of Economic Analysis

General: The department is of the opinion that the costs associated with these proposed rule changes may impact

more than 10 percent of one or more of the following industries (at the three-digit SIC code level):

- 801 Offices and Clinics of Doctors of Medicine
- 802 Offices of dentists
- 803 Offices of Clinics of doctors of Osteopathy
- 804 Offices and clinics of Other Health Practitioners
- 805 Nursing and Personal Care Facilities
- 806 Hospitals
- 807 Mental and Dental Laboratories
- 808 Home Health Care Services
- 809 Miscellaneous Health and Allied Services, Not Elsewhere Classified

Further analysis indicated that the above SIC codes were comprised of businesses with an average size of 19 employees. Data source: Washington State Employment Security Department (LMEA 1st Quarter 1993 Employer Size Report).

Health services providers may be required to purchase medical code manuals that are published and updated annually in order to accurately bill the department. In most cases, businesses that currently do not purchase the physician's current procedural terminology (CPT) manual and the health care financing administration's common procedure coding system (HCPCS) manual would be advised to do so. The average cost of these two medical coding manuals was determined by averaging price quotes from three distributors:

|                                              | <u>CPT</u>     | <u>HCPCS</u>   | <u>Total</u>   |
|----------------------------------------------|----------------|----------------|----------------|
| American Medical Association:                | \$39.95        | \$29.95        | \$69.90        |
| Medicode:                                    | \$39.95        | \$29.95        | \$69.90        |
| Practice Management Information Corporation: | \$42.95        | \$34.95        | \$77.90        |
| <b>Average Cost/Business</b>                 | <b>\$40.95</b> | <b>\$31.62</b> | <b>\$72.57</b> |

**Estimated Cost of Compliance:** Due to the accessibility of employment data from the Employment Security Department, the department decided to evaluate the cost of compliance on a "per employee" basis. With an average employee base of 19 and an average cost of \$72.57, the average annual cost per employee relative to this rule proposal will be \$3.82.

**Potential Benefits of the Proposed Rule:** The proposed medical aid rules and fee schedule will include additional information that will enable health services providers to better understand the reimbursement process and to more accurately bill the department. A more accurate billing process will decrease the number of bills denied payment by the department. Providers of health services will not have to resubmit corrected bills and therefore be reimbursed in a more timely manner. This proposed rule change will enable the department's medical payment system to be consistently and accurately updated on an annual basis. This will allow the department to be more consistent with the practices of other public agencies that reimburse for health care services.

**Disproportionate Economic Impact and Mitigation Efforts:** The department realizes that the cost of compliance is an annual cost that may have a disproportionate economic impact on businesses with fewer employees (e.g., an employer with 6 employees would pay \$12.10/employee; and an

employer with 36 employees would pay \$2.02/employee). However, due to the relatively minimal economic impact and the benefits of the proposed rule changes, the department has decided not to propose further mitigation efforts to lessen any potential economic burden.

**Conclusion:** The department has evaluated the economic impact of the proposed rule changes in accordance with the Regulatory Fairness Act and concluded that the average cost per employee would be \$3.82. Once again, the department believes this rule will enhance the health services industry's understanding of the medical services reimbursement process. The medical aid rules and fee schedule will include pertinent reimbursement rate information that will enable the health services industry to more accurately bill the department.

Persons wishing to obtain a complete copy of the small business economic impact statement should contact Bill Stoner, (206) 956-6807 or Stephanie Brewer, (206) 956-6801, Health Services Analysis, Department of Labor and Industries.

**Hearing Location:** Department of Labor and Industries, 7273 Linderson Way, Tumwater, WA 98501, on April 26, 1994, at 1:30 p.m.

**Submit Written Comments to:** Bill Stoner, P.O. Box 44322, Olympia, WA 98504-4322, by May 2, 1994.

**Date of Intended Adoption:** May 31, 1994.

March 23, 1994  
Mark O. Brown  
Director

**AMENDATORY SECTION** (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

**WAC 296-20-010 General information.** (1) The following rules are promulgated pursuant to RCW 51.04.020 and 51.04.030. The department or self-insurer may purchase necessary physician and other provider services according to the fee schedules. The fee schedules shall be established in consultation with interested persons and updated at times determined by the department in consultation with those interested persons. Prior to the establishment or amendment of the fee schedules, the department will give at least thirty calendar days notice by mail to interested persons who have made timely request for advance notice of the establishment or amendment of the fee schedules. To request advance notice of the establishment or amendment of the fee schedules, interested persons must contact the department at the following address:

Department of Labor and Industries  
Health Services Analysis  
Interested Person's Mailing List for the Fee Schedules  
P.O. Box 44322  
Olympia, WA 98504-4322

The department or self-insurer will require the current version of the federal Health Care Financing Administration's Common Procedure Coding System (HCPCS) Level I (or CPT) and II codes on January 1, of each new year. CPT refers to the American Medical Association's Physicians' Current Procedural Terminology codes.

The department and self-insurer will allow a "grace period" in which codes deleted each year may be submitted for payment. This grace period will start on January 1 of each year and the length of time will be determined by department policy.

The adoption of these codes on an annual basis is designed to reduce the administrative burden on providers and lead to more accurate reporting of services. However, the inclusion of a service, product or supply within these new codes does not necessarily imply coverage, reimbursement or endorsement, by the department or self-insurer. The department will make coverage and reimbursement decisions for these new codes on an individual basis.

If there are any services, procedures or narrative text contained in the new HCPCS Level I and II codes that conflict with the medical aid rules or fee schedules, the department's rules and policies take precedence.

Copies of the HCPCS Level I and II codes are available for public inspection. These documents are available in each of the department's service locations.

Copies of the HCPCS Level II codes may be purchased from:

The Superintendent of Documents  
United States Government Printing Office  
Washington, DC 20402  
(202) 783-3238

Copies of the Level I (or CPT) codes may be purchased from:

The American Medical Association  
Chicago, Illinois 60601  
(800) 621-8335

In addition to the sources listed above, both the Level I and II codes may be purchased from a variety of private sources.

(2) The fee schedules are 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 schedules, 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 schedules' maximum allowable.

(3) 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 of the medical aid rules.

(4) The methodology for determining the maximum allowable fee for a procedure is listed in WAC 296-20-132 and 296-20-135.

(5) No fee is payable for missed appointments unless the appointment is for an examination arranged by the department or self-insurer.

(6) 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 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 chapter 51.04 RCW.

(7) 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. A health care practitioner's bill for services, appointment book, accounting records, or other similar methodology do not qualify as appropriate documentation for services rendered. Refer to chapter 296-20 WAC and department policy for reporting requirements.

(8) 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 proper and necessary medical care required for the diagnosis and curative or rehabilitative treatment of the accepted condition.

(9) When a worker is being treated concurrently for an unrelated condition the fee allowable for the service(s) rendered must be shared proportionally between the payors.

(10) Correspondence: Correspondence pertaining to state fund and department of energy claims should be sent to: Department of Labor and Industries, Claims Administration, P.O. Box 44291, Olympia, Washington 98504-4291.

Accident reports should be sent to: Department of Labor and Industries, P.O. Box 44299, Olympia, Washington 98504-4299.

Send provider bills by type (UB-92) to: Department of Labor and Industries, P.O. Box 44266, Olympia, Washington 98504-4266.

Adjustments, Home Nursing and Miscellaneous to: Department of Labor and Industries, P.O. Box 44267, Olympia, Washington 99504-44267

Pharmacy to: Department of Labor and Industries, P.O. Box 44268, Olympia, Washington 99504-4268.

HFCA to: Department of Labor and Industries, P.O. Box 44269, Olympia, Washington 98504-4269.

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, P.O. Box 44520, Olympia, Washington 98504-4520.

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 the service representative as the case may be.

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.

(11) The department's various local service locations should be utilized by providers to obtain information, supplies, or assistance in dealing with matters pertaining to industrial injuries.

**NEW SECTION**

**WAC 296-20-01505 Provider types and services not covered.** The department will not pay for services performed by the following practitioners:

- Acupuncturists
- Herbalists
- Christian Science practitioners or theological healers
- Homeopathists
- Noncertified physician assistants
- Operating room technicians
- Certified surgical technicians
- Certified surgical assistants

Any other licensed or unlicensed practitioners not otherwise specifically provided for by the department.

**AMENDATORY SECTION** (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

**WAC 296-20-110 Dental.** Only dentists, oral surgeons or dental specialists licensed in the state in which they practice are eligible to treat workers entitled to benefits under the industrial insurance law.

If only a dental injury is involved, the doctor's portion of the report of accident must be completed by the dentist to whom the worker first reports. See WAC 296-20-025 for further information.

If the accident report has been submitted by another doctor, the dentist's report should be made by letter. In addition to the information required under WAC 296-20-025, the dentist should outline the extent of the dental injury and the treatment program necessary to repair damage due to the injury. Dental x-rays should be retained by the attending dentist for a period of not less than ten years. The department or self-insurer does not require submission of the actual films except upon specific request.

The department or self-insurer is responsible only for repair or replacement of teeth injured or dentures broken as a result of an industrial accident. Any dental work needed due to underlying conditions unrelated to the industrial injury is the responsibility of the worker. It is the responsibility of the dentist to advise the worker accordingly.

In cases presenting complication, controversy, or diagnostic or therapeutic problems, consultation by another dentist may be requested to support authorization for restorative repairs.

Bills covering the cost of dentures should be submitted for the denture only and should not include the cost for subsequent relining. If relining becomes necessary, authorization for relining must be obtained in advance from the department or self-insurer.

Bills must be submitted to the department or self-insurer within one year from the date the service is rendered. Bills must itemize the service rendered, including ~~((standard American Dental Association procedure))~~ the current HCPCS Level II codes, the materials used and the injured tooth number(s). See WAC 296-20-125 and department policy for further billing rules.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

- |                |                                                                  |
|----------------|------------------------------------------------------------------|
| WAC 296-21-015 | Office visits.                                                   |
| WAC 296-21-025 | Hospital visits.                                                 |
| WAC 296-21-026 | Extended care facility, convalescent hospital, and nursing home. |
| WAC 296-21-027 | Emergency room service.                                          |
| WAC 296-21-030 | Consultations.                                                   |
| WAC 296-21-085 | Specific therapeutic procedures—Miscellaneous.                   |
| WAC 296-21-240 | General instructions.                                            |
| WAC 296-21-250 | Bundled services and supplies.                                   |
| WAC 296-21-260 | Global surgery policy.                                           |
| WAC 296-21-270 | Psychiatric services.                                            |
| WAC 296-21-280 | Biofeedback rules.                                               |
| WAC 296-21-290 | Physical medicine.                                               |
| WAC 296-21-300 | HCPCS codes.                                                     |
| WAC 296-21-310 | HCPCS billing modifiers.                                         |
| WAC 296-21-320 | Provider types and services not covered.                         |

**AMENDATORY SECTION** (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

**WAC 296-23-135 General information—Radiology.**

(1) Rules and billing procedures pertaining to all practitioners rendering services to workers are presented in the general instruction section beginning with WAC 296-20-010.

(2) Billing codes, reimbursement levels, and supporting policies are listed in the fee schedules.

(3) Refer to WAC 296-20-132 and 296-20-135 for information regarding use of the conversion factors.

(4) Refer to ~~((chapter 296-21-WAC))~~ the fee schedules for information on use of coding modifiers.

(5) The values listed in the fee schedules only apply when these services are performed by or under the responsible supervision of a doctor.

**AMENDATORY SECTION** (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

**WAC 296-23-155 Pathology general information and instructions.** (1) Rules and billing procedures pertaining to all practitioners rendering service to workers are presented in general information section beginning with WAC 296-20-010.

(2) Refer to WAC 296-20-132 and 296-20-135 for information regarding use of the conversion factors.

(3) Refer to ~~((chapter 296-21-WAC))~~ the fee schedules for information on use of coding modifiers.

(4) Billing codes, reimbursement levels, and supporting policies are listed in the fee schedules.

(5) The reimbursement levels listed in the fee schedules apply only when the services are performed by or under the responsible supervision of a physician. Unless otherwise specified, the listed values include the collection and handling of the specimens by the laboratory performing the procedure. SERVICES IN PATHOLOGY AND LABORATORY are

provided by the pathologist or by technologists under responsible supervision of a physician.

(6) Laboratory procedures performed by other than the billing physician shall be billed at the value charged that physician by the reference (outside) laboratory under the individual procedure number or the panel procedure number listed under "PANEL OR PROFILE TESTS" (see modifier -90).

(7) The department or self-insurer may deny payment for lab procedures which are determined to be excessive or unnecessary for management of the injury or conditions.

(8) Separate or multiple procedures: It is appropriate to designate multiple procedures that are rendered on the same date by separate entries.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 296-23-150 Low osmolar contrast media.
- WAC 296-23-220 Physical therapy rules.
- WAC 296-23-225 Work hardening.
- WAC 296-23-230 Occupational therapy rules.
- WAC 296-23-235 Work hardening.

**AMENDATORY SECTION** (Amending WSR 94-02-045, filed 12/30/93, effective 3/1/94)

**WAC 296-23A-400 Hospital outpatient physical therapy rules.** Hospitals should refer to chapter 296-20 WAC for general information and rules, and to department billing instructions pertaining to the care of workers and the billing of services.

The procedure codes and maximum allowable fees for physical therapy services are listed in the fee schedules. Also refer to WAC 296-20-132 and 296-20-135 regarding use of the conversion factor.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist or a physical therapist assistant serving under the direction of a licensed physical therapist.

The department or self-insurer will review the quality and medical necessity of physical therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically necessary and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or a flat dollar rate (~~of \$63.65,~~) whichever is less. The flat dollar rate is listed in the fee schedules. These limits will not apply to physical therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diapulse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-075 and 296-23A-100 for further information.

Biofeedback treatment may be rendered on physician's orders only. The extent of biofeedback treatment is limited to those procedures allowed within the scope of practice of a licensed physical therapist. See chapter ~~((296-24))~~ 296-20 WAC, the fee schedules, and department policy for rules pertaining to the authorized conditions and the reporting requirements. The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

**WSR 94-07-127  
PROPOSED RULES  
DEPARTMENT OF  
LABOR AND INDUSTRIES**  
[Filed March 23, 1994, 8:24 a.m.]

**Original Notice.**

**Title of Rule:** Manual of rules, classifications, rates and rating system for Washington workers' compensation insurance, chapter 296-17 WAC.

**Purpose:** Proposes to eliminate the minimum WAC premium requirement of \$10.00 when hours reported times assigned rate equals less than \$10.00 owed.

**Statutory Authority for Adoption:** RCW 51.04.020(1).  
**Statute Being Implemented:** RCW 51.16.035.

**Summary:** Agency proposes to eliminate WAC 296-17-350(1) which states every employer shall be liable for a premium not less than ten dollars for any calendar quarter regardless of number of worker hours reported.

**Reasons Supporting Proposal:** Although we do have RCW 51.16.060, which addresses our quarterly report requirements, this particular statute does not include language that "allows the department to assess \$10 (or any other amount) when an employer reports that \$2.00 is owed as premiums." WAC 296-17-350(1) addresses minimum premium, but does not appear to carry any statutory support. The anticipated effects include equitable application of premium requirements for small businesses owing actual premium of \$9.99 or less, and provides the opportunity for improvement of the image and integrity of the agency with its customers.

**Name of Agency Personnel Responsible for Drafting:** Mary Pat Frederick, Mailstop 4140, 956-4739 and Beth Johnson, Mailstop 4141, 956-4741; **Implementation and Enforcement:** Mary Pat Frederick, Mailstop 4140, 956-4739.

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

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

**Explanation of Rule, its Purpose, and Anticipated Effects:** This is an elimination of WAC 296-17-350(1). The anticipated effects include equitable application of premium requirements for small businesses owing actual premium of

\$9.99 or less, and provides the opportunity for improvement of the image and integrity of the agency with its customers.

**Proposal Changes the Following Existing Rules:** This WAC change eliminates the \$10 minimum quarterly premium payment requirement for firms who owe actual premiums totaling less than \$10.

#### SMALL BUSINESS ECONOMIC IMPACT STATEMENT

**Summary of Rule Changes:** In regard to workers' compensation insurance premiums, the proposed regulatory change would eliminate the current ten dollar minimum payment required by WAC 296-17-350(1). This rule has been in effect since 1973.

The proposed deletions/modifications to the Washington Administrative Code include: WAC 296-17-350(1), deletion of subsection (1) to preclude businesses from having to pay the ten dollar minimum premium in any quarter for which the actual premium was less than ten dollars.

**Regulatory Fairness Act:** 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 10 percent of any one industry as determined by the standard industrial classification (SIC) codes, shall be reviewed to determine if there exists a proportionately higher economic burden of compliance on small business. Small businesses are defined as having fifty or less employees.

#### SUMMARY OF ECONOMIC ANALYSIS

**General:** The department has determined that the proposed rule may potentially impact less than ten percent of the small businesses in Washington state who have employees. The number of employers, quarterly, who are required to pay the ten dollar minimum premium is approximately 2,500. These 2,500 employers are not confined nor concentrated in one particular SIC but are distributed among all SICs.

**Impacted SIC:** There is no one SIC that is more affected than any other SIC for the purposes of this analysis. The proposed rule would impact SICs in a positive manner.

**Estimated Cost of Compliance:** There is no cost for compliance of this WAC modification. To the contrary it will result in less monitoring on the part of departmental employees, less unnecessary collection activity, and simplified computer system programs.

**Proposed Benefits of the Proposed Rule:** This rule modification would have a positive impact on employers, who during any quarter, have premiums due and owing to the state fund of less than ten dollars. The employer would still be required to submit all reports, within the time frames specified by RCW, but the employer would not be "penalized" for owing less than ten dollars in a quarter. In the past, any employer whose premium was less than ten dollars (except for a two dollar tolerance policy) have been billed for the difference between premiums owing and ten dollars. Additionally, the employer was assessed another ten dollar premium for late payment which the employer did not truly know existed.

**Conclusion:** The department has evaluated the economic impact of the proposed rule in accordance with the Regulatory Fairness Act and concluded that the deletion of WAC 296-17-350(1) would have a positive economic impact

on small business. Therefore, further economic analysis is not required for this proposed rule amendment.

**Hearing Location:** Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98504, on April 26, 1994, at 8:30 a.m.

**Submit Written Comments to:** Mary Pat Frederick, P.O. Box 44140, Olympia, WA 98504-4140, by April 25, 1994.

**Date of Intended Adoption:** May 27, 1994.

March 23, 1994

Mark O. Brown

Director

**AMENDATORY SECTION** (Amending WSR 93-12-093, filed 5/31/93, effective 7/1/93)

**WAC 296-17-350** (~~Minimum premiums~~) **Assumed worker hours.** (~~A minimum premium is the lowest amount of premium to be paid by an employer and is also the basis for determining premium computation for workers for whom an~~) Assumed number of worker hours must be, and hereby, is established:

(1) (~~Minimum premium. Except as otherwise provided in this chapter, every employer shall be liable for a premium not less than ten dollars for any calendar quarter regardless of number of worker hours reported.~~)

(2) **Excluded employments.** Any employer having any person in their employ excluded from industrial insurance whose application for coverage under the elective adoption provisions of RCW 51.12.110 or authority of RCW 51.12.095 or 51.32.030 has been accepted by the director shall report and pay premium on the actual hours worked for each such person who is paid on an hourly, salaried-part time, percentage of profit or piece basis; or one hundred sixty hours per month for any such person paid on a salary basis employed full time. In the event records disclosing actual hours worked are not maintained by the employer for any person paid on an hourly, salaried-part time, percentage of profits or piece basis the worker hours of such person shall be determined by dividing the gross wages of such person by the state minimum wage for the purpose of premium calculation. However, when applying the state minimum wage the maximum number of hours assessed for a month will be one hundred sixty.

((3)) (2) **Building or property management.** Resident managers, caretakers, or similar employments that are employed for irregular periods and whose compensation is for a stipulated sum in money or a substitute for money shall be reported for the purpose of premium calculation by dividing total compensation by the average hourly wage for classification 4910 as contained in WAC 296-17-89501 "average hourly wages" to determine reportable assumed hours. Provided that the reportable exposure calculated under this subsection shall not exceed 520 hours per quarter for each worker.

((4)) (3)(a) **Commission personnel—Inside employments.** Commission personnel—inside employments are persons whose compensation is based upon a percentage of the amount charged for the commodity or service rendered and who are employed exclusively within an office having no duties away from the office. Commission personnel—inside employments are to be reported for premium purposes at a minimum of assumed worker hours of not less than

eight worker hours a day for part-time employment, or not less than 40 worker hours per week for full-time employment unless the employer maintains and presents to the department's representative at the time of audit payroll records that show in detail the name of each such commissioned worker, the actual number of hours worked for each such worker and the date or dates the services were rendered. If actual time records are maintained then such actual hours shall be reported to the department and premiums paid on such actual hours.

**(b) Commission personnel—Outside employments.** Commission personnel—outside employments are persons whose compensation is based upon a percentage of the amount charged for the commodity or service rendered and who are employed to perform duties primarily away from the employers premises although some office work may be performed. Commission personnel—outside employments are to be reported for premium purposes at a minimum of assumed worker hours of not less than eight worker hours a day for part-time employment, or not less than 40 worker hours per week for full-time employment: *Provided*, That the assumed eight worker hours daily for part-time employment will apply only if the employer's books and records are maintained so as to show separately such person's actual record of employment.

~~((5))~~ **(4) Salaried personnel.** Salaried personnel for the purposes of this chapter means persons whose compensation is not governed by the number of hours devoted to employment for their employer. Employers having salaried personnel in their employ shall for the purpose of premium calculation report assumed worker hours based upon one hundred sixty worker hours for each month in which the employee is on salary: *Provided*, That if the employer maintains complete and accurate records, supported by original time cards or timebook entries, the employer may report and pay premium on the actual hours worked by salaried personnel: *Provided further*, That the department may, at its discretion, authorize some other method in assuming workers hours for premium calculating purposes in the case of contract personnel employed by schools and/or school districts.

~~((6))~~ **(5) Piece workers.** For employees whose compensation is based upon the accomplishment of a number of individual tasks whether computed on the number of pounds, items, pieces, or otherwise who are not subject to any federal or state law or rule which requires the reporting of actual hours worked, the employer shall for the purpose of premium calculation assume each two dollars of earnings of each employee as representing one worker hour: *Provided*, That if the average rate of compensation for the applicable classification is at least \$3.00 but less than \$3.50 per worker hour the assumed amount shall be \$3.00 of earnings as representing one worker hour, and on a progressive basis, if the average compensation is at least \$3.50 but less than \$4.00 the assumed amount shall be \$3.50 of earnings as representing one worker hour, and so forth. The records of the department as compiled for the preceding fiscal year ending June 30, shall be the basis for determining the average rate of compensation for each classification: *Provided further*, That an employer who maintains records but is not required to do so shall report the actual hours worked for the purpose of premium calculation. In the event

an employer who is otherwise required by federal or state laws or rules to maintain records of actual hours worked by each employee fails to do so, the worker hours of such employees will be determined by dividing the gross wages of each employee by the state minimum hourly wage to determine the hours reported for the purpose of premium calculation. Notwithstanding any other provisions of this section, workers employed in a work activity center pursuant to WAC 296-17-779 shall be reported on the basis of the piece worker rule.

~~((7))~~ **(6) Noncontact sports teams.** All employers having personnel in their employ as defined under WAC 296-17-745 shall for the purpose of premium calculations, report assumed worker hours based upon 40 worker hours for each week in which any duties are performed.

~~((8))~~ **(7) Jockeys and race drivers.** All employers having personnel in their employ as defined under WAC 296-17-739 shall, for the purpose of premium calculations, report assumed worker hours based upon ten hours for each mount in each horse race; professional drivers shall report worker hours based upon ten hours for each heat or race of any racing event: *Provided*, That any day such personnel do not ride or drive in a race, the premium calculation shall be made by assuming ten worker hours for any day in which duties are performed.

~~((9))~~ **(8) Pilots and flight crew members.** Pilots and flight crew members having flight duties during a work shift including preflight time shall have premium calculated by utilizing daily readings logged per federal requirements of the aircraft tachometer time: *Provided*, That if the total tachometer time for any day includes a fraction of an hour, the reportable time will be increased to the next full hour: *Provided further*, That pilots and flight crew members who assume nonflying duties during a work shift will have premium calculated in accordance with the appropriate rules and classifications applicable to nonflight duties.

**WSR 94-07-128**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed March 23, 1994, 8:25 a.m.]

Original Notice.

Title of Rule: Manual of rules, classifications, rates and rating system for Washington workers' compensation insurance, chapter 296-17-WAC.

Purpose: Revise classification plan applicable to workers' compensation insurance underwritten by the Washington state fund, Department of Labor and Industries. Statutory Authority for Adoption: RCW 51.04.020(1). Statute Being Implemented: RCW 51.16.035.

Summary: Agency proposes to amend thirteen risk classifications and discontinue one risk classification definition.

Reasons Supporting Proposal: RCW 51.16.035 requires the department to maintain actuarial solvency of the industrial insurance funds and maintain a classification plan. Adjustments to the classification and/or rating plan reflect changes in Washington industries and/or changes in loss experience by various industries. Revisions to general

reporting rules are intended to provide greater clarity to the rules.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Theresa Whitmarsh and Ken Woehl, 7273 Linderson, Tumwater, WA, 956-4776.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: Revisions to the classification plan are intended to provide greater ratepayer equity. Since classifications are keyed to the nature of an employer's business and rates are based on losses sustained by business within a given classification, the more precise the plan, the greater equity to each business. Revisions to general reporting rules are intended to clarify how the classification plan is to be administered and/or how a classification or premium calculation is to be determined. Revisions to base rates are intended to recognize recent loss (claims) experience and reported exposure (hours) over which losses are spread.

Proposal Changes the Following Existing Rules: These following thirteen proposed WAC rule modifications as provided in this section are minor housekeeping changes to better clarify the scope of the risk classification and should have no adverse affect to employer businesses currently assigned any of these risk classifications. They are as follows: WAC 296-17-50602 Classification 0108 Tank installation, amend definition to add the word "removal" to underground tank installation and repair; WAC 296-17-519 Classification 0504 Painting tanks, amend definition to include the cleaning of sewage treatment tanks; WAC 296-17-52104 Classification 0512 Insulation, N.O.C., amend definition to add asbestos abatement-all operations; WAC 296-17-524 Classification 0603 Machinery and equipment installation, amend definition to add commercial equipment installation, service and repair; WAC 296-17-528 Classification 0701 Dam construction, amend definition to clarify this classification only applies to new dam construction, and all other activities are to be separately rated; WAC 296-17-53504 Classification 1007 Surveyors, N.O.C., amend definition to remove the words "and surveyors" as part of the entry for—Foresters, forest rangers and timber cruisers. Also amend to specify that classifications 1007, 5001 and 5004 are not to be assigned to the same risk unless the business has three bona fide operations, and each with separate and distinct payrolls and employees; WAC 296-17-536 Classification 1101 Delivery services, amend definition to remove cesspool cleaning and to include septic tank pumping, excluding cleaning; WAC 296-17-558 Classification 2005 Pipe supply dealers, amend definition to repeal rule; WAC 296-17-56101 Classification 2009 Building material dealers, amend definition to add electrical supply dealers, add in-shop pump repairs when performed by pump or plumbing dealers, add the transfer of product or material inventory between related stores is to be included within this classification, and remove all references indicating whether such risks are retail or wholesale; WAC 296-17-650 Classification 4901 Engineering, N.O.C., amend definition to add "land surveying services" as part of the entry for—Consulting engineering and architectural, N.O.C.; WAC 296-17-686 Classification 6109 Medical, N.O.C., amend defini-

tion to add radiology and MRI referral clinics; WAC 296-17-704 Classification 6309 Retail variety stores, amend definition to remove all references indicating whether such risks are retail or wholesale; WAC 296-17-706 Classification 6402 Grocery stores, amend definition to include in-store activities such as bakeries, delis, espresso bars, video rentals, film developing and floral, but to exclude in-store pharmacies; and WAC 296-17-779 Classification 7309 Work activity centers, amend definition to add this classification is only applicable to businesses who have employees listed on their community rehabilitation program (CRP) subminimum wage certificate as issued by the United States Department of Labor.

#### SMALL BUSINESS ECONOMIC IMPACT STATEMENT

Introduction: In order to provide greater equity among payers of workers' compensation industrial insurance premiums, the Department of Labor and Industries is proposing revisions to multiple rate-classification definitions. These changes would clarify the reporting process concerning employee exposures that are used to compute premiums for workers' compensation insurance. Rate classifications and experience rating plans are established for varying risk groups and industries in order to promote equity among employer premiums. Specific classifications are able to participate in rate-related programs and accident prevention programs, along with active claims management practices. These types of programs and practices promote more effective reporting of employee exposures and ultimately provide employers with opportunities to reduce their workers' compensation insurance costs.

Summary of Rule Changes: Repealing WAC 296-17-558 definition of classification 2005-pipe supply dealers; and amending WAC 296-17-56101 2009-building material dealers, 296-17-704 6309-retail variety stores, 296-17-706 6402-grocery stores, 296-17-50602 0108-tank installation, 296-17-519 0504-painting tanks, 296-17-52104 0512-insulation, N.O.C., 296-17-524 0603-machinery and equipment installation, 296-17-528 0701-dam construction, 296-17-53504 1007-surveyors, N.O.C., 296-17-536 1101-delivery services, 296-17-650 4901-consulting engineering, 296-17-686 6109-medical, N.O.C., and 296-17-779 7309-work activity centers.

Regulatory Fairness Act: 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 10 percent of any one industry as determined by the standard industrial classification (SIC) codes, shall be reviewed to determine if there exists a proportionately higher economic burden of compliance on small business. Small businesses are defined as businesses having fifty or fewer employees.

#### SUMMARY OF ECONOMIC ANALYSIS

General: The department has determined that the proposed rule may potentially impact more than 10% of the small businesses within the affected industries, or 20% of all industries, as determined by the three-digit standard industrial classification (SIC) codes. Thus, in accordance with the Regulatory Fairness Act, the department must further analyze the potential costs of compliance relative to the proposed rule.

Estimated Cost of Compliance: There would be no costs associated with the adoption of this rule.

Benefits of the Proposed Rule: Revised rate classifications would be able to participate in programs designed to reduce premium costs and promote a more equitable workers' compensation premium calculation process.

Conclusion: The department has evaluated the economic impact of the proposed rule in accordance with the Regulatory Fairness Act and concluded that there would be no economic impact to business. Thus, neither a more substantive small business economic impact statement nor a proposal for the mitigation of an adverse economic impact is necessary.

Hearing Location: Labor and Industries, 7273 Linderson Way S.W., Auditorium, Tumwater, on April 29, 1994, at 1 p.m.

Submit Written Comments to: Theresa Whitmarsh, Assistant Director, Insurance Services, 7273 Linderson Way S.W., Tumwater, WA 98504-4148, by May 2, 1994.

Date of Intended Adoption: May 30, 1994.

March 23, 1994

Mark O. Brown

Director

**AMENDATORY SECTION** (Amending WSR 93-12-093, filed 5/31/93, effective 7/1/93)

**WAC 296-17-50602 Classification 0108.**

Ditches and canals, N.O.C.

Sewer construction

Septic tank installation, including drainfield construction

Tanks, N.O.C. - underground type: Installation (~~and~~), repair, or removal.

**AMENDATORY SECTION** (Amending WSR 90-13-018, filed 6/8/90, effective 7/9/90)

**WAC 296-17-519 Classification 0504.**

Cleaning, washing, and/or sandblasting buildings, N.O.C. - including shop operations

Painting bridges, including incidental preparation work

Painting, coating or cleaning oil or gas storage tanks (~~and~~), beer vats, and sewage treatment tanks

Painting, decorating or paperhanging, N.O.C., including incidental preparation, including shop

Painting towers, smokestacks and steel or iron structures

Plastering, stuccoing, and lathing buildings - interior work

Sandblasting, N.O.C., including shop operations

Wallboard taping and texturing, excluding wallboard installation rated under risk classification 0515 (WAC 296-17-52107)

Water proofing, N.O.C., excluding roofing or subaqueous work.

**AMENDATORY SECTION** (Amending Order 87-12, filed 5/29/87, effective 7/1/87)

**WAC 296-17-52104 Classification 0512.**

Asbestos abatement - all operations

Insulation or soundproofing materials installation, N.O.C.

This classification includes installation of weather strip and caulking, roof or soffit ventilators, energy-efficient

doors and related carpentry work done in connection with the weatherization or retrofitting of buildings and residences. Report installation of windows separately in risk classification 0511 (WAC 296-17-52103) "glass installation—buildings" and energy auditors with no installation or delivery duties separately in risk classification 6303 (WAC 296-17-698) "outside sales—estimators."

**AMENDATORY SECTION** (Amending WSR 93-12-093, filed 5/31/93, effective 7/1/93)

**WAC 296-17-524 Classification 0603.**

Commercial equipment installation, service and repair

Dynamos: Installation, service and repair including electrical generators and turbines

Engines and gas machines: Service and repair including installation, replacement of drive belts, erection of shafting

Machinery: Installation, service and repair - including installation and repair of escalator and conveyor systems, printing presses, and commercial laundry equipment N.O.C. and millwright work, N.O.C.

Playground equipment - metal: Installation and repair

This classification includes the dismantling of all the above types of machinery and will also include plant maintenance by contractor which will be rated as millwright work.

**AMENDATORY SECTION** (Amending Order 85-33, filed 11/27/85, effective 1/1/86)

**WAC 296-17-528 Classification 0701.**

Dam construction, all operations in damsite area

This classification applies to new dam construction only - all other activities to be separately rated.

**AMENDATORY SECTION** (Amending WSR 93-12-093, filed 5/31/93, effective 7/1/93)

**WAC 296-17-53504 Classification 1007.**

Foresters, forest rangers(~~(r)~~) and timber cruisers (~~(and~~ surveyors)

Geophysical exploration, N.O.C., no core drilling

Inspection and grading bureaus, N.O.C.

Log scaling and grading bureaus

Lumber inspection services

Prospectors

Rainmaking - not by aircraft

Surveyor services, N.O.C.

Testing and inspecting of pipe lines - radiographers

Weather stations

Weigh scale attendants, N.O.C.

X-raying by contractor at industrial plants or construction sites

Classification 1007, classification (~~(5004)~~) 5001, and classification (~~(5005)~~) 5004 shall not be assigned to the same risk unless the operations described by these classifications are conducted as separate and distinct businesses and each business has separate and distinct employees.

AMENDATORY SECTION (Amending Order 89-22, filed 12/1/89, effective 1/1/90)

**WAC 296-17-536 Classification 1101.**

Armored car service  
 Automobile delivery drive away, automobile repossessing  
 Computer tape/accounting records delivery service  
 Delivery by retail, wholesale, combined wholesale and retail stores and distributors, N.O.C.  
 Delivery companies, deliver parcels and packages, no bulk merchandise  
 Distribution of sample merchandise by vehicle  
 Driver delivery sales, N.O.C.  
 Drivers of sound trucks  
 News agents or distributors of magazines, periodicals and telephone books, no retail dealer  
 Route food services, excludes food preparation to be reported under risk classification 3905 (WAC 296-17-618)  
 Septic tank (~~and cesspool cleaning~~) pumping, excludes installation (~~(or)~~), repair or cleaning  
 Street sweeping, parking lot sweeping, portable chemical toilets servicing  
 Street vending vehicles.

AMENDATORY SECTION (Amending WSR 93-12-093, filed 5/31/93, effective 7/1/93)

**WAC 296-17-56101 Classification 2009.**

Building material dealers, warehouse centers, home improvement centers, and lumber yards(~~(- Wholesale or retail)~~)  
Electrical supply dealers  
 (~~(Pump, plumbing, irrigation pipe, and pipe supply dealers: Wholesale or retail)~~)  
 Farm supply stores(~~(- Wholesale or retail)~~)  
 Hardware stores with lumber or building material supplies(~~(- Wholesale or retail)~~)  
Pump, plumbing, irrigation pipe, and pipe supply dealers:  
Includes pump repair if done in shop  
 For the purposes of this rule the term "building materials" includes but is not limited to such items as wallboard, roofing, insulation, sheet metal, bricks, blocks, windows, etc.

This classification includes all store and yard operations with inventory of building material, lumber and lumber products. Such stores may also carry a variety of hardware items, hand and power tools, paints, floor coverings, garden supplies, housewares, and similar types of products. Transfer of product or material inventory between related stores is included within this classification

This classification excludes delivery drivers which are to be separately rated under risk classification 1101 "Delivery-stores: Retail/wholesale." This classification further excludes all other activities conducted away from the shop or plant operation.

AMENDATORY SECTION (Amending Order 85-33, filed 11/27/85, effective 1/1/86)

**WAC 296-17-650 Classification 4901.**

Consulting engineering (~~and~~), architectural (~~firms~~), and land surveying services, N.O.C.

Geologists, N.O.C.

Lease buyers performing work similar to oil geologists  
 Oil or gas geologists or scouts.

AMENDATORY SECTION (Amending WSR 93-12-093, filed 5/31/93, effective 7/1/93)

**WAC 296-17-686 Classification 6109.**

Childbirth classes  
 Chiropractors, N.O.C.  
 Dental clinics, N.O.C.  
 Dentists, N.O.C.  
 Massage therapy services - This subclassification excludes massage practitioners employed by a health club, gymnasium, saunas or bath house which are to be reported separately in classification 6204  
 Medical clinics, N.O.C.  
 Midwife services  
 Naturopaths, N.O.C.  
 Optometrists, N.O.C.  
 Physical therapists, N.O.C.  
 Physicians and surgeons, N.O.C.  
 Psychologists and psychiatrists, N.O.C.  
Radiology and MRI referral clinics  
 This classification includes clerical office and sales personnel.

AMENDATORY SECTION (Amending WSR 93-12-093, filed 5/31/93, effective 7/1/93)

**WAC 296-17-704 Classification 6309.**

Automobile, truck, motorcycle accessory or replacement parts stores(~~(- wholesale/retail)~~) - excluding repairs  
 Bicycle stores - (~~wholesale/retail~~) including repairs  
 Custom picture or u-frame stores - (~~wholesale/retail~~) including repairs  
 Gun stores - (~~wholesale/retail~~) including repairs  
 Hardware variety stores, N.O.C.: (~~Wholesale/retail~~)  
Excluding any operation that sells lumber or building materials which will be separately reported in risk classification 2009 and small engine repair which is to be separately reported in classification 3402  
 Locksmiths, including repairs but excluding installation of dead bolt locks or similar activities which will be separately reported in risk classification 0607  
 Stained art glass stores - (~~wholesale/retail~~) excluding manufacturing  
 Wood stove and accessory stores - (~~wholesale/retail~~) excluding installations or repairs  
 This classification includes clerical office and sales personnel.

AMENDATORY SECTION (Amending Order 85-33, filed 11/27/85, effective 1/1/86)

**WAC 296-17-706 Classification 6402.**

Grocery stores with fresh meat counters, combined - retail  
 This classification includes clerical office and sales personnel  
 (~~(Lunch counters and restaurant operations to be separately rated)~~) This classification also includes but is not limited to such activities as in-store bakeries, delis,

espresso bars, video rentals, film developing, and floral, but excludes in-store pharmacies, lunch counters, and restaurant operations to be separately rated.

PROPOSED

**AMENDATORY SECTION** (Amending Order 85-33, filed 11/27/85, effective 1/1/86)

**WAC 296-17-779 Classification 7309.**

Work activity centers

~~((For the purpose of this rule "work activity center" will refer to such centers licensed through the department of social and health services and as defined in Title 29, Part 525.2(e) of the Code of Federal Regulations as published by United States Department of Labor, providing job training and learning skills to mentally and/or developmentally disabled workers and who are enrolled as clients of the center. Usage of this classification will be limited to mentally and/or developmentally disabled workers employed within a work activity center and excludes all other employments of mentally and/or developmentally disabled workers not employed in a work activity center which will be separately rated in risk classification 6709 (WAC 296-17-740).)) This classification is only applicable to businesses who have employees listed on their Community Rehabilitation Program (CRP) subminimum wage certificate as issued by the United States Department of Labor. This classification ((further)) excludes professional, clerical, and other blue-collar employments which will be separately rated in risk classification 6709 (WAC 296-17-740) even though the only operation of the employer may be a work activity center.~~

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 296-17-558 Classification 2005.

**WSR 94-07-129  
PROPOSED RULES  
DEPARTMENT OF  
LABOR AND INDUSTRIES**  
[Filed March 23, 1994, 8:26 a.m.]

Original Notice.

Title of Rule: Manual of rules, classifications, rates and rating system for Washington workers' compensation insurance, chapter 296-17 WAC.

Purpose: Agency proposes to amend a risk classification definition and repeal an existing risk classification definition applicable to workers' compensation insurance underwritten by the Washington state fund, Department of Labor and Industries.

Statutory Authority for Adoption: RCW 51.04.020.

Statute Being Implemented: RCW 51.16.035.

Summary: Agency proposes to reclassify "tree topping and pruning services" from risk classification definition 0106 to risk classification 0101. Also included is the repeal of risk classification 0106.

Reasons Supporting Proposal: As a part of labor and industries annual review of risk classification rating data, it has been determined that risk classification 0106 "tree topping and pruning services, N.O.C." has reached a point that it no longer has an acceptable level of reported exposure (worker hours). This lack of reporting has resulted in the risk classification no longer being able to maintain the credibility required for rate making purposes and therefore should be discontinued as a separate distinct classification of risk. A secondary reason supporting the reclassification of "tree topping and pruning services, N.O.C." from risk classification 0106 (WAC 296-17-506) to risk classification 0101 (WAC 296-17-501) is based on the business practices of parties letting contracts for such work. In this regard it is common practice for parties letting contracts to combine tree topping or pruning activities with other ground related work such as roadside brush mowing. This contracting practice can often lead to an unintentional misclassification of work hours. Misclassifications of this nature can often be the difference of being awarded the contract and losing the bid since the difference in premium rates is upwards of \$5.50 per hour. This change in underwriting practice will provide a more stabilized premium rate for the industry and reduce the potential to misclassify this type of work.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Theresa J. Whitmarsh, Assistant Director, Insurance Services; William White, Senior Actuary; Francis A. Romero, Classification Development; and Douglas J. Mathers, Chief Auditor, 7273 Linderson Way S.W., Tumwater, WA 98404-4100 [98504-4100], (206) 956-4776.

Name of Proponent: Labor and Industries, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed changes reclassify "tree topping and pruning services, N.O.C." from risk classification 0106 (WAC 296-17-506) to risk classification 0101 (WAC 296-17-501). The primary purpose of this change is to provide the affected industry with a more stabilized premium rate and to group them with a larger pool of employers for future rate making purposes. Risk classification 0106 (WAC 296-17-506) has experienced a steady decline in reportable exposure (worker hours). This reduction of exposure has adversely affected the reliability and stability of the classification's rate to the extent that it can no longer stand alone as a viable classification. The immediate effect of this proposed change to this industry is an overall rate reduction of approximately \$5.50 per hour. The anticipated long term effect of this reclassification is a more responsive and less volatile rate for the industry.

Proposal Changes the Following Existing Rules: Labor and Industries proposed to reclassify "tree topping and pruning services N.O.C" from risk classification 0106 (WAC 296-17-506) to risk classification 0101 (WAC 296-17-501). Risk classification 0106 (WAC 296-17-506) is proposed to be repealed. All other rules contained in chapter 296-17 WAC remain unchanged.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT

Summary of Rule Changes: In regards to workers' compensation insurance premiums the proposed regulatory change would reclassify "tree topping and pruning services, N.O.C.", from risk classification 0106 to risk classification 0101. The change in classification treatment of this industry would result in a premium reduction for most affected employers.

The proposed additions and/or modifications to the Washington Administrative Code include: WAC 296-17-501, addition of "tree topping and pruning services, N.O.C." to the existing definition of risk classification 0101; and WAC 296-17-506, this risk classification definition is being repealed.

Regulatory Fairness Act: 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 10 percent of any one industry as determined by the standard industrial classification (SIC) codes, be reviewed to determine if there exists a proportionately higher economic burden of compliance on small business. Small businesses are defined as businesses having fifty or fewer employees.

SUMMARY OF ECONOMIC ANALYSIS

General: The department is of the opinion that the proposed rule would impact more than 10 percent of the small businesses within the affected industry group as determined by the three-digit SIC code. Thus, in accordance with the Regulatory Fairness Act, the department must further analyze the potential costs of compliance relative to this proposed rule change. Impacted SIC: 078 Landscape and Horticultural Services and 0783 Ornamental Shrub and Tree Services. This industrial classification includes establishments primarily engaged in performing a variety of ornamental shrub and tree services. The proposed rule changes would impact those businesses involved in tree topping and pruning services as currently described in WAC 296-17-506.

Estimated Cost of Compliance: There would be no added costs associated with the adoption of the proposed changes as no changes in reporting or record keeping is required. Most employers currently subject to risk classification 0106 would experience a substantial reduction in insurance costs associated with tree topping and pruning services as a result of these proposed changes.

Benefits of the Proposed Rule: Employers subject to the revised risk classification are able to participate in broader programs designed to encourage workplace safety and to reduce premium costs.

Conclusion: The department has evaluated the economic impact of the proposed rule in accordance with the Regulatory Fairness Act and concluded that there is no adverse economic impact to business. Thus, neither a more substantive small business economic impact statement, nor a proposal for the mitigation of an adverse economic impact is necessary.

Hearing Location: Labor and Industries, 7273 Linderson Way S.W., Auditorium, Tumwater, on April 29, 1994, at 10:30 a.m.

Submit Written Comments to: Theresa Whitmarsh, Assistant Director, Insurance Services, P.O. Box 44100, Olympia, WA, 98504-4100, by April 27, 1994.

Date of Intended Adoption: May 27, 1994.

March 23, 1994

Mark O. Brown  
Director

AMENDATORY SECTION (Amending WSR 93-12-093, filed 5/31/93, effective 7/1/93)

**WAC 296-17-501 Classification 0101.**

- Airports, landing strips, runways and taxi ways: Construction and repair
- Alley and parking lot: Construction
- Diking, N.O.C. - including oil spill clean-up involving diking and/or ditching work
- Excavation work, N.O.C.
- Forest trail construction, fire fighting and slash burning, N.O.C.
- Grading work, N.O.C. - including land leveling and grading of farm lands by contractor
- Highway, street and road, N.O.C.: Construction and repair - includes operations such as grading, grubbing, clearing, surfacing, striping, guard rail highway divider installation, highway lighting and highway sign installation
- Humus or peat digging - including humus or peat dealers
- Land clearing, N.O.C. - including slope grooming
- Parking lot striping
- Pit, crusher and bunker operations in connection with road, street and highway construction
- Railroad line: Construction, maintenance and repair, N.O.C., - including the dismantling of tracks and the sale of salvaged track metal and ties
- Retaining wall: Construction or repair when done in connection with road, street and highway construction, N.O.C.
- Sand, gravel, or shale: Digging, N.O.C.
- Tree topping and pruning services, N.O.C. - use of this subclassification is limited to employers engaged in providing a variety of tree care services such as tree topping and tree pruning. Work performed subject to this subclassification will generally take place in residential areas, or settings adjacent to roadways, parking lots, business parks, shopping malls. A primary purpose of this work is to remove tree or branch hazards from power lines or building structures. This subclassification includes all the incidental ground operations such as picking up branches and limbs, operating mobile chip machines used in connection with a tree topping or limbing operation, spraying or fumigating, and debris removal. This subclassification excludes tree pruning done in connection with an orchard operation which is to be reported separately in classification 4803; tree pruning done in connection with a nursery operation which is to be reported separately in classification 4805; tree topping or tree pruning done in connection with a public or private forest, range land operation which is to be reported separately in classification 5004; or tree pruning done in connection with a Christmas tree farm operation which is to be reported separately in classification 7307.

Tunnels and approaches - including lining, cofferdam work, shaft sinking, and well digging with caisson  
 This classification excludes bridge construction which is to be reported separately in classification 0201 although such a structure may be constructed as a part of a highway, street or road construction project; logging road construction which is to be reported separately in classification 6902; log railroad construction which is to be reported separately in classification 6902; and tunnels and approaches - including lining, cofferdam work, shaft sinking and well digging with caisson done in connection with dam construction which is to be reported separately in classification 0701.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-17-506      Classification 0106.

**WSR 94-07-134**  
**PROPOSED RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Filed March 23, 1994, 10:52 a.m.]

Original Notice.

**Title of Rule:** Amends WAC 480-12-455 relating to administrative penalty assessments for incorrect estimates issued by household goods carriers; and adopts WAC 480-12-137 relating to definitions, registrations processes, fees and compliance audits of those private carriers conducting terminal operations in Washington state. The proposed amendatory section is shown below as Appendix A, Docket No. TV-940231.

**Purpose:** See Explanation of Rule below.

**Statutory Authority for Adoption:** RCW 80.01.040.

**Statute Being Implemented:** Chapter 392, Laws of 1993, RCW 81.80.132, chapter 359, Laws of 1993, RCW 81.80.145.

**Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement:** Steve McLellan, Secretary, 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:** No comments or recommendations are submitted because the proposal is pursuant to legislative authorization 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:** This proposal would modify existing WAC 480-12-445 to implement chapter 392, Laws of 1993. This chapter establishes a monetary penalty assessment of not to exceed \$1,000 per violation when actual charges for household goods moves exceed the percentages allowed by the commis-

sion. This proposal would promulgate new WAC 480-12-137 to establish definitions of private carriers, terminal operations, and exempt vehicles; to establish a registration process by filing a master business application with the Washington State Department of Licensing; establishing a one-time application payment of \$35 per registration, and a fee of \$10 per nonexempt vehicle; and defining those sections of Title 480 WAC of the rules relating to motor carrier operations which will be subject to terminal audits of those carriers with terminal operations in the state of Washington.

**Proposal Changes the Following Existing Rules:** See Explanation of Rule above.

**Small Business Economic Impact Statement:** Pursuant to chapter 19.85 RCW, a small business economic impact statement is required if more than ten percent of any one industry within a three-digit standard industry classification code is affected. Private motor carriers fall within industry group number 421 — Trucking and Courier Services, Except Air.

From Department of Licensing license registration data, there are 176,660 commercial vehicles with a gross weight rating of 10,001 lbs. or greater that are licensed in the state of Washington. Of the 176,660 registered commercial vehicles, 71,660 are 26,001 lbs. or over. It is estimated that 40% or 28,644 of these trucks are used by companies that transport their own products (private motor carriers). These carriers represent 16% of the total industry group within the standard classification code.

We could not find data breaking out or quantifying the number of private motor carriers with terminals in this state operating vehicles over 26,001 lbs.; nor were we able to find any financial data of private motor carriers to compare the fiscal impact these proposed rules would have on them.

The Utilities and Transportation Commission conducts intrastate common/contract motor carrier terminal safety audits at a company's place of business. The motor carrier's books are inspected for compliance with the hours of service requirements, driver qualification standards, and vehicle inspections.

The 1993 legislature extended the commission's jurisdiction to conduct terminal safety audits of private motor carriers operating vehicles over 26,001 lbs. with terminals in the state of Washington. The same inspection process now used for common carriers would apply to private motor carriers within the state.

This legislation was supported by the Washington Trucking Association to close a loophole existing in the state's jurisdiction over commercial vehicle safety in this state. Until the passage of this legislation, private motor carriers were not subject to terminal safety inspections by any state agency.

The Department of Licensing already has a system set up for state required licenses and registration through the master business license service. These rules add private motor carriers to the Department of Licensing registration process. Private motor carriers would pay a one time only registration fee of \$35 and a \$10 annual per vehicle fee. By having fees collected through the master business license service, the commission is promoting a one-stop shopping policy for commercial truck owners payment of truck fees. This will reduce the private motor carrier's administrative

costs by having to deal with one agency to comply with the proposed rules.

The fees collected by Department of Licensing will cover the costs associated with conducting terminal safety audits and inspection of equipment at the motor carrier's terminal. The payment of the one time only registration fee, and the annual \$10 per vehicle fee should not place an economic burden on the individual motor carriers involved.

Hearing Location: Commission Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, on April 27, 1994, at 9:00 a.m.

Submit Written Comments to: Steve McLellan, Secretary, P.O. Box 47250, Olympia, WA 98504-7250, by April 18, 1994.

Date of Intended Adoption: April 27, 1994.

March 23, 1994  
Steve McLellan  
Secretary

**NEW SECTION**

**WAC 480-12-137 Private carriers.** Private carriers conducting terminal operations in Washington state, and having nonexempt vehicles rated at twenty-six thousand one pounds or greater gross vehicle weight or gross combination weight, or vehicles of any rated weight that are used to transport hazardous materials in a quantity requiring the vehicle to be placarded, shall register as private carriers with the commission.

(1) Definitions for purposes of this section:

(a) A private carrier is a person who transports by its own motor vehicle, with or without compensation for the transportation, property that the person owns or is buying or selling, or property of which the person is lessee or bailee, when the transportation is incidental to and in furtherance of some other primary business conducted by that person in good faith. The term "private carrier" includes the agents, officers, representatives and employees of a private carrier who are responsible for hiring, training, supervising, assigning, or dispatching drivers, or who are responsible for ordering or directing the maintenance of motor vehicles used by a private carrier.

(b) A terminal operation is a location in the state of Washington where a private carrier maintains driver or vehicle records, or where it dispatches or maintains vehicles, or where it regularly parks, stores or houses vehicles that are available for transportation service.

(c) An exempt vehicle is a motor vehicle:

(i) That is owned and normally operated by a farmer to transport his or her own agricultural products, farm machinery and/or farm supplies to or from the owner's farm, within one hundred fifty air miles of the farm, and not transporting hazardous materials of a type or quantity that requires the vehicle to be placarded; or

(ii) That is owned and used by the United States government, Washington state, or a county, city or municipality; or

(iii) Has a rated gross vehicle weight or gross combination weight of twenty-six thousand pounds or less and is not used for transporting hazardous materials of a type or quantity that requires the vehicle to be placarded.

(2) Registration and payment of fees.

(a) Private carriers who are required to register with the commission shall do so by filing a master business application with the Washington state department of licensing. The private carrier registration fee shall be a one-time payment of thirty-five dollars per registration. When registering, the carrier shall also pay an annual fee of ten dollars per nonexempt vehicle.

(b) Private carriers who have registered under this section shall maintain their registration by renewing their master business license, including payment of the annual fee of ten dollars per nonexempt vehicle.

(c) Failure to register as required herein and to pay the required per-vehicle fee is a violation of law and commission rule.

(3) The commission will audit terminal operations of registered private carriers for compliance with requirements of law and rule regarding driver and equipment safety. Private carriers must comply with provisions of WAC 480-12-165, 480-12-180, 480-12-181, 480-12-185, 480-12-190, 480-12-195, and 480-12-196 and with such other laws and regulations as pertain to safe motor carrier operations.

**AMENDATORY SECTION** (Amending Order R-5, filed 6/6/69, effective 10/9/69)

**WAC 480-12-455 Underestimates.** When a carrier gives an estimate of charges for services in the carrying of household goods, such carrier shall endeavor to accurately reflect the actual tariff charges. Such carrier shall be subject to monetary penalties under the provisions of RCW ((81-04-405)) 81.80.132 when the actual total charges for long distance moves exceed the estimated charges by 15 percent and when, on local moves, the actual charges for the time required to complete the move exceed the estimated time charges by 25 percent or when actual charges for accessorial and other services not related to time charges exceed estimates for such services by 15 percent.

**WSR 94-07-135  
PROPOSED RULES**

**UTILITIES AND TRANSPORTATION  
COMMISSION**

[Filed March 23, 1994, 10:54 a.m.]

Original Notice.

Title of Rule: Amends WAC 480-12-045, 480-12-050, 480-12-180, 480-12-190, and 480-12-990, relating to applications for motor carrier authority, transfers of motor carrier authority, safety of drivers and motor carrier equipment, driver's hours of service and the classification of carriers. The proposed amendatory section is shown below as Appendix A, Docket No. TV-940122.

Purpose: This proposal would modify existing WAC 480-12-045 by defining additional types of applications which would not automatically be subject to docketing and protest. This proposal would modify existing WAC 480-12-050 by defining additional types of permit transfer applications which would not automatically be subject to docketing and protest, and also by adding provisions wherein persons applying for transfer of Washington intrastate motor carrier

March 22, 1994  
Steve McLellan  
Secretary

authority as part of an interstate commerce commission transaction would be required to concurrently file an application with the Washington Utilities and Transportation Commission and to file copies of all applications, correspondence and orders with the commission. The proposal also calls for docketing of this type of application for informational purposes only. This proposal would modify existing WAC 480-12-180 by adopting, by reference, all of Title 49 Code of Federal Regulations part 391 (driver's qualifications) for those carriers operating in interstate operations — retaining the exemption from 49 CFR Parts 391.81 through 391.123 for those carriers who operate exclusively in intrastate commerce; and by adding private and registered exempt carriers to the motor freight operators who would be subject to the provisions of Title 49 Codes adopted by reference in this rule. It would also modify the section by adopting, by reference, in its entirety part 393 of Title 49 Code of Federal Regulations. This would require all motor carriers to comply with federal regulations related to periodic vehicle inspection and certification of carrier inspectors. This proposal would modify existing WAC 480-12-190 by adding private and registered exempt carriers to those subject to the provisions of Title 49 CFR, Part 395 (hours of service) and by correcting a typographical error in the gross vehicle weight cited in subsection (4). This proposal would modify existing WAC 480-12-990, by adding to the classification of carriers two additional categories: Commercial zone service carriers (as defined in WAC 480-12-081) and terminal area carriers (as defined in WAC 480-12-082).

Statutory Authority for Adoption: RCW 80.01.040.

Statute Being Implemented: RCW 81.80.145, chapter 359, Laws of 1993.

Summary: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Steve McLellan, Secretary, 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: No comments or recommendations are submitted because the proposal is pursuant to legislative authorization 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: See Purpose above.

Proposal Changes the Following Existing Rules: See Purpose above.

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 98504, on April 27, 1994, at 9:00 a.m.

Submit Written Comments to: Steve McLellan, Secretary, P.O. Box 47250, Olympia, WA 98504-7250, by April 18, 1994.

Date of Intended Adoption: April 27, 1994.

AMENDATORY SECTION (Amending Order R-325, Docket No. TV-900022, filed 8/10/90, effective 9/10/90)

**WAC 480-12-045 Application for authority, docketing—Protests—Hearings.** For the purposes of this rule, applications for authority shall include applications for original or extended common or contract carrier authority, applications to transfer existing common or contract carrier authority or to acquire control of common or contract carrier authority. Applications for temporary authority are governed by WAC 480-12-033.

(1) All applications for authority (~~(((except applications for combination of services by log contract carriers, filed under the provisions of RCW 81.80.060)))~~) will be published in the commission's weekly application docket, which is mailed on the first business day of each week: Provided, That the following applications shall not be published in the docket and are not subject to protest:

(a) Applications to transfer or acquire existing common or contract carrier authority, to the extent excluded from docketing and protest in WAC 480-12-050(2).

(b) Applications for combination of services contract carrier authority to transport logs, filed under RCW 81.80.060. The commission finds such service to be consistent with the public interest.

(c) Applications for primary haul agricultural authority, filed under RCW 81.80.175. The commission finds such service to be consistent with the public interest.

(d) Applications under WAC 480-12-085 to transport the carrier's own property.

(e) Applications for transportation of recovered materials, pursuant to WAC 480-12-510.

(f) Applications for reinstatement of canceled permits under WAC 480-12-065, if filed within thirty days after cancellation.

(2) The weekly application docket will publish the name and address of the applicant and the name and address of the applicant's attorney or representative, if any, and a description of the authority sought. The docket shall be mailed to the applicant, and, upon written request to any other person having a valid interest in application proceedings.

(3)(a) Any person having a valid interest adverse to the application may file a protest with the commission. Note: Any eligible person who fails to file a timely protest, in substantial compliance with this section, will be precluded from participating at the hearing or at any further stage of the proceeding.

(b) Protests to applications for temporary authority are governed by WAC 480-12-033.

(c) Protests may be filed on a form provided by the commission, or in a similar format, specifying the grounds for the protest and defining the protestant's interest in the proceeding.

(i) The protest shall identify that portion of the requested authority to which the protestant objects, or that portion of the authority alleged to be inactive in a transfer or acquisition of control proceeding pursuant to RCW 81.80.270.

(ii) When a protestant has a limited interest in an application, which could be eliminated by a restrictive amendment, the protest shall describe the amendment. If the applicant and the commission accept the proposed amendment, then the protest will be dismissed pursuant to subsection (4)(d) of this section. The commission will reject amendments it finds unacceptable.

(iii) Protests shall state the approximate number of witnesses to be presented by the protestant and an estimate of the hearing time required for the presentation.

(iv) Protests must be signed either by the protesting party or by the protestant's attorney or representative. Protests shall contain the name and address of each person on whose behalf the protest is filed, and include that person's permit number ~~((and))~~, a copy of the permit, and identification of the specific portion or portions of their permit that is the basis for the protest.

(d) Within thirty days following publication of the application in the weekly docket, the protestant must file one original and two copies of the protest with the commission. The protestant must also serve one copy each upon the applicant and the applicant's attorney or representative named in the docket. The protest and each copy must include a certificate of service executed according to WAC 480-09-120.

(e) A protest also may be filed in the name of a transportation industry organization, association, or conference on behalf of its members; such group protest shall specify the group's mailing address. A group protest shall contain a list of all currently active group members and be signed by an authorized representative of the organization, association, or conference. Service upon the protesting group shall be made by serving its contact person and the group's attorney, and need not be made upon any member who does not file a protest in that individual member's own name.

(4)(a) Notice of the time, date, and place of hearing will be served upon all parties pursuant to WAC 480-09-700 (1)(a).

(b) A request by any party for a change in the time, date, or place of an assigned hearing must be made pursuant to WAC 480-09-440, generally at least five days before the assigned hearing date. Notice of a change in the time, date, or place of hearing will be served upon all parties of record by the commission or the office of administrative hearings, in accordance with WAC 480-09-700 (1)(b).

(c) An application shall be dismissed without further notice if the applicant fails to appear at the hearing or if the applicant appears and fails to present supporting evidence. The order of dismissal may provide that the application may not be refiled for a period of ninety days thereafter. Application fees are not refundable.

(d) By filing a protest, the protestant agrees to appear at the hearing if an oral hearing is held. If an applicant adopts a restrictive amendment that satisfies the interests of a protestant, and the protestant files a withdrawal at least five days prior to the hearing, that protestant need not appear at the hearing. If the commission rejects the proposed amendment, a new notice will issue.

(e) A penalty may be assessed, pursuant to WAC 480-09-700, against any party who fails to appear at the hearing. Failure to appear may also result in dismissal or default,

which would include the loss of the right to participate further in the proceeding.

(5) The commission may require a hearing in any proceeding, pursuant to RCW 34.05.413 and WAC 480-09-400.

(a) If the protest period expires without any protest being filed, or if all protests are withdrawn or dismissed, the commission may allow the application to proceed without hearing.

(b) If the application is processed without hearing, the applicant shall, upon request, submit verified statements of its witnesses, containing the facts to which the witnesses would testify at a hearing if one were held. If no verified statements are submitted, the application shall be dismissed.

(c) An application may be denied, or it may be granted in part or in full, based upon the sufficiency of the statements presented. The applicant may request a review of full or partial denial through a brief adjudicative proceeding, pursuant to WAC 480-09-500.

AMENDATORY SECTION (Amending Order R-260, Cause No. TV-1963, filed 5/29/86)

**WAC 480-12-050 Transfer of permit rights.** (1) For purposes of this section applications for transfer of permit rights shall include requests for authority to transfer outstanding common or contract carrier permits or portions thereof, and requests for authority to acquire control of common or contract carriers holding permits through ownership of their stock or through purchase, lease or contract to manage the business, or otherwise, as provided in RCW 81.80.270.

(2) Applications for transfer of permit rights shall be subject to the docketing, hearing, and protest provisions of WAC 480-12-045: *Provided*, That applications need not be published in the commission's weekly application docket subject to protest, and the commission may grant the requested authority without hearing in the following cases:

(a) Transfers authorized by the proviso of RCW 81.80.270 and transfers authorized by RCW 81.80.272.

(b) A transfer by an individual to a corporation established to incorporate the transferor's business, ~~((where))~~ when the transferor is the majority stockholder, or by an individual to a partnership, when the transferor is the majority partner, or a transfer by a corporation to the majority shareholder or by a partnership to the majority partner, unless the acquisition of majority interest has not otherwise been approved upon application.

(c) A transfer by a partnership to a corporation established to incorporate the partnership business, ~~((where))~~ when the partners are the majority stockholders.

(d) A transfer by a corporation to another corporation where both corporations are wholly owned by the same stockholders.

(3) The transferor (seller) or someone familiar with the details of ~~((his))~~ the business will be required to be present if a hearing is held on the application. The transferee (buyer) is also required to be present at the hearing. In case either of these parties is a corporation, a duly authorized representative familiar with the details of the corporation's business will suffice, as will one of the partners having familiarity with the business of the partnership. Transferee

will be required to establish (~~his, or~~) its(~~s~~) fitness, willingness, and ability to conduct operations under the authority sought to be transferred.

(4)(a) If a hearing is held on the application, the permit holder will be required to produce proof that (~~said permit holder~~) it was ready, able and willing, and so held (~~himself~~) itself out to the public to handle the traffic in question within the territory involved.

(b) Bills of lading or other records, as evidence of freight movements, if available, shall be produced by the permit holder and must be segregated by commodity groups and territory. A summary sheet shall be offered in evidence which lists, by commodity groups and territory, each bill of lading or other shipping document by number, date, commodity, weight, point of origin, point of destination, consignee and consignee. The summary sheet shall show whether it contains all shipments or only representative shipments. If representative shipments are shown, the basis for selection shall be explained, and be representative of the traffic handled, throughout the one year test period hereinafter described.

(c) A period of one year immediately prior to the date on which the application was filed shall be examined for evidence of operations. Where effective control of the operations of the permit holder has passed to the transferee prior to the date on which the application was filed, a period of one year immediately prior to the date that effective control passed to the transferee shall be examined for evidence of operations. Upon a finding that unusual circumstances existed the commission may use a different period, prior to the date the application was filed.

(d) The parties to a transfer may offer, and if offered, the commission shall give consideration to the nature of operating authority, the amount of traffic that is available in the territory in question, the type of equipment the carrier has had in his or its possession and suitability of the equipment for the traffic in question, the extent of active solicitation of such traffic, and the type of solicitation, whether the operation in question is one of regular or irregular route, whether scheduled or nonscheduled, whether the traffic demands employees having special skills and whether the permit holder had such skilled employees, and all other facts and circumstances tending to show whether or not the permit holder was at all times ready, able and willing and so held (~~himself~~) itself out to the public, to handle such traffic in question within the territory involved.

(e) In the event a cessation of operations occurred during the test year when service would normally be expected, the proposed transfer or acquisition of control will be denied unless the permit holder shows that such cessation was caused by circumstances over which (~~he~~) it had no control.

(5) In the case of applications to transfer outstanding permit rights or acquire control of a carrier holding a permit, if any rights in the subject permit are not authorized to be transferred or acquired, the application shall be denied in its entirety unless applicants consent to the elimination from the permit of such rights in writing within 30 days of a final determination of the application. If the application is for transfer of a part only, of a right or rights in a permit, it will be denied if it is found that the partition would create duplicative rights, would divide rights at a point other than

along clearly defined geographical or political lines, or permit minute or multiple division of operating rights, or would permit the separation of a commodity or commodities from a class of substantially related commodities or from a commodity classification set forth in Appendix "A" herein, entitled "Classification of brokers, forwarders and motor carriers of property."\* The commission will not accept restrictive amendments to applications for the transfer of a permit or a portion thereof nor will it impose restrictive conditions on such a transfer where it is found that the restrictive amendment or conditions requested by the parties would divide rights at a point other than along clearly defined geographical or political lines, or would permit the separation of a commodity or commodities from a class of substantially related commodities or from a commodity classification set forth in Appendix "A" herein entitled "Classification of brokers, forwarders and motor carriers of property."\* The commission will not approve the transfer of a permit or a portion thereof (~~where~~) when the transferee does not intend to engage in bona fide motor carrier operations under the operating rights or if the transferor acquired the operating rights for the purpose of reselling said permit rights or otherwise trafficking therein for profit. No transfer will be authorized of rights to a transferee (~~where~~) when an affiliate of the transferee already has substantially duplicating territorial and commodity rights. Transfers except those involving acquisition of control, will not be authorized until all claims for loss and damage against a transferor are settled or until all C.O.D. collections made by the transferor are remitted. If authorized, transfer will include identification stamps, tariffs, and regulatory fees.

(6) This subsection governs the transfer of Washington intrastate authority by the Interstate Commerce Commission under its authority to preempt intrastate regulatory authority while effecting transfers of interstate authority.

(a) Any person who applies to the Interstate Commerce Commission for preemptive transfer of Washington intrastate motor carrier authority as part of an interstate transaction shall file an application with the Washington Utilities and Transportation Commission for implementation of the intrastate transfer, within five business days after submitting the ICC application. The Washington application shall be on the form for transfers supplied by the commission and shall be accompanied by the required fee.

(b) In addition to information required of all applicants for transfer, an applicant for ICC-exempted transfer shall submit a copy of the application that it submitted to the ICC. The applicant shall also file with the commission a copy of every document, order, or other correspondence to or from the ICC that is relevant to the proposed intrastate transfer, within five days after sending or receiving the document.

(c) The application for preemptive transfer shall be docketed for informational purposes but is not subject to intrastate protest. The commission may express its view of the proposal directly to the Interstate Commerce Commission.

(d) As soon as administratively feasible following receipt of proof of ICC action approving the transaction and preempting transfer of intrastate motor carrier authority, the commission will enter an order in the intrastate proceeding to transfer such intrastate authority as required by the Interstate Commerce Commission under its preemptive

authority and to adjust any retained authority as necessary to reflect the transfer. The commission may require an applicant to submit a copy of the ICC action that is certified by an authorized official of the Interstate Commerce Commission to be a true and correct copy of that commission's action.

(e) A party to a preemptive transfer proceeding who is aggrieved by a commission action in a preempted transfer may request review of the decision in an adjudication or in a brief adjudication under WAC 480-09-500.

\*In the case of the commodity classification "general freight" where such authority was issued prior to May 1, 1944, the commission construes such authority to include all other commodity classifications and will permit the separation of a commodity classification from such general freight authority provided such separation meets the other requirements of subsection (5).

**AMENDATORY SECTION** (Amending Order R-355, Docket No. TV-900483, filed 12/18/91, effective 1/18/92)

**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; part 393; part 396; part 397; as well as and including all appendices and amendments thereto are adopted and prescribed by the commission to be observed by all common, contract, private, registered, and registered exempt carriers operating under chapter 81.80 RCW. Exceptions: Carriers operating exclusively in intrastate commerce are not subject to provisions of 49 C.F.R., parts 392.2, 396.17, 396.19, 396.21, 396.23, 396.25, and with respect to 49 C.F.R., part 396.11, no driver vehicle inspection report need be filed if no defects are found.

(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."

(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.

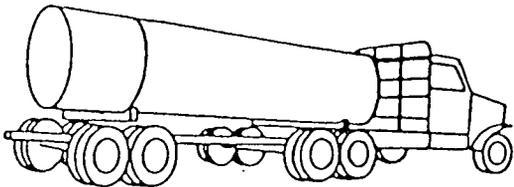
(q) Binder extensions. Pipe extension handles (swedes) for tightening or securing binders shall be limited to not longer than thirty-six inches. Care shall be taken that a sufficient amount of the pipe extends over the binder handle.

(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.

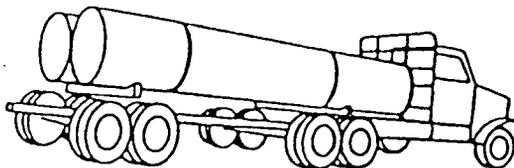
**PLACEMENT AND NUMBER OF WRAPPERS**

One log load



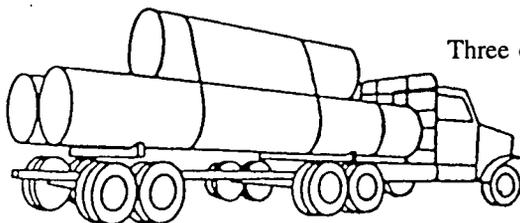
One wrapper required which shall be secured to the rear bunk. Log shall be blocked or secured in a manner to prevent it from rolling or shifting. A second wrapper secured to the front bunk is optional.

Two log load



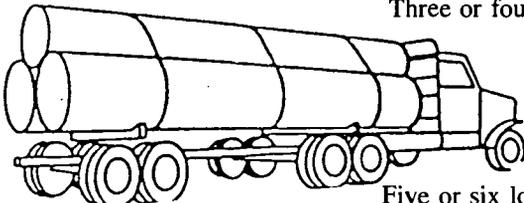
A minimum of two wrappers required. Logs shall be blocked to prevent them from rolling or shifting.

Three or four log load forty-four feet or less



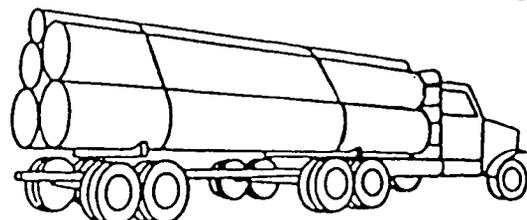
A minimum of two wrappers required.

Three or four log loads more than forty-four feet

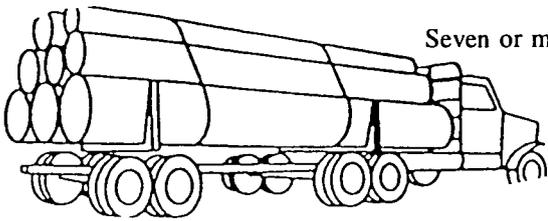


A minimum of three wrappers required.

Five or six log load all logs seventeen feet or less

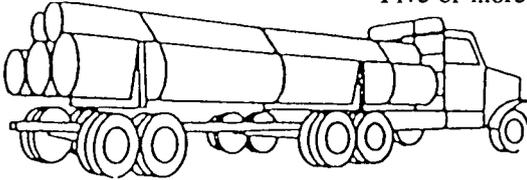


A minimum of two wrappers required.



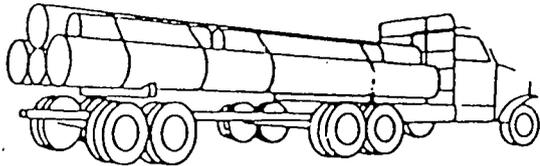
Seven or more log load all logs seventeen feet or less

A minimum of two wrappers required.



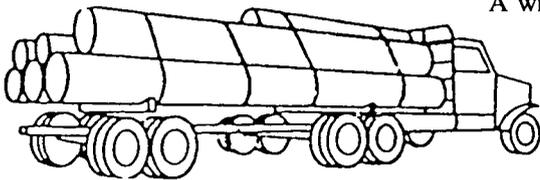
Five or more log load if any logs are more than seventeen feet

A minimum of three wrappers required.



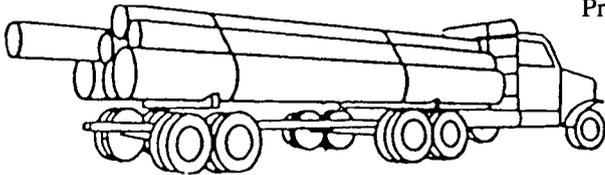
Outside logs or top logs

All outside or top logs shall be secured by a binder near but not within 12 inches of each end.



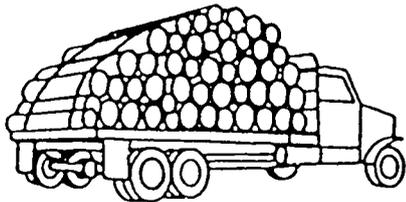
A wrapper shall be near each bunk

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 and part ((391.1 through 391.71,)) 391, as well as and including all appendices and amendments thereto, are adopted and prescribed by the commission to be observed by all common, contract, private, registered, and registered exempt carriers operating under chapter 81.80 RCW except ((for)) carriers operating exclusively in intrastate commerce:

- (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 private carrier, or to a single vehicle owner driver common or contract carrier 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.

(f) The provisions of 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), and 391.81 through 391.123 shall not apply.

(g) Carriers operating vehicles with a manufacturer's gross vehicle weight rating (GVWR) of less than ten thousand pounds shall not be subject to the provisions of part 391 unless the vehicle 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.

(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*. Copies of this document are available from the commission upon request.

(8) Whenever the designation "director, office 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.

**AMENDATORY SECTION** (Amending Order R-355, Docket No. TV-900483, filed 12/18/91, effective 1/18/92)

**WAC 480-12-190 Hours of service—On duty—Adoption of federal safety regulations.** The rules and regulations adopted by the United States Department of Transportation in Title 49, Code of Federal Regulations, part 395 are adopted and prescribed by the commission to be observed by all common, contract, ~~((and))~~ private, registered and registered exempt carriers operating under chapter 81.80 RCW, except:

(1) A driver who is driving a motor vehicle in the hauling of logs from the point of production or in dump truck operations, exclusively in intrastate commerce, shall not drive nor be permitted to drive more than twelve hours following eight consecutive hours off duty. Such driver shall not be on duty nor be permitted to be on duty more than ninety hours in any period of seven consecutive days.

(2) A driver who is driving a motor vehicle in the hauling of agricultural products from the point of production on farms, exclusively in intrastate commerce, shall not drive nor be permitted to drive more than twelve hours following eight consecutive hours off duty. Such driver shall not be on duty nor be permitted to be on duty more than ninety hours in any period of seven consecutive days.

(3) The rules and regulations governing driver's daily logs prescribed in Title 49, Code of Federal Regulations, section 395.8 and adopted in this section, do not apply to a driver who drives exclusively in intrastate commerce and wholly within a radius of one hundred miles of the terminal or garage at which he or she reports for work, if the motor carrier who employs the driver maintains and retains for a period of one year accurate and true records showing the total number of hours of driving time and the time that the driver is on duty each day and the time at which the driver reports for, and is released from, duty each day. A tacograph showing the required driver hourly information may be substituted for the required records.

(4) Carriers operating exclusively in intrastate commerce operating vehicles with a manufacturer's gross vehicle weight rating (GVWR) of less than ten thousand one pounds shall not be subject to the provisions of part 395 unless the vehicle 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.

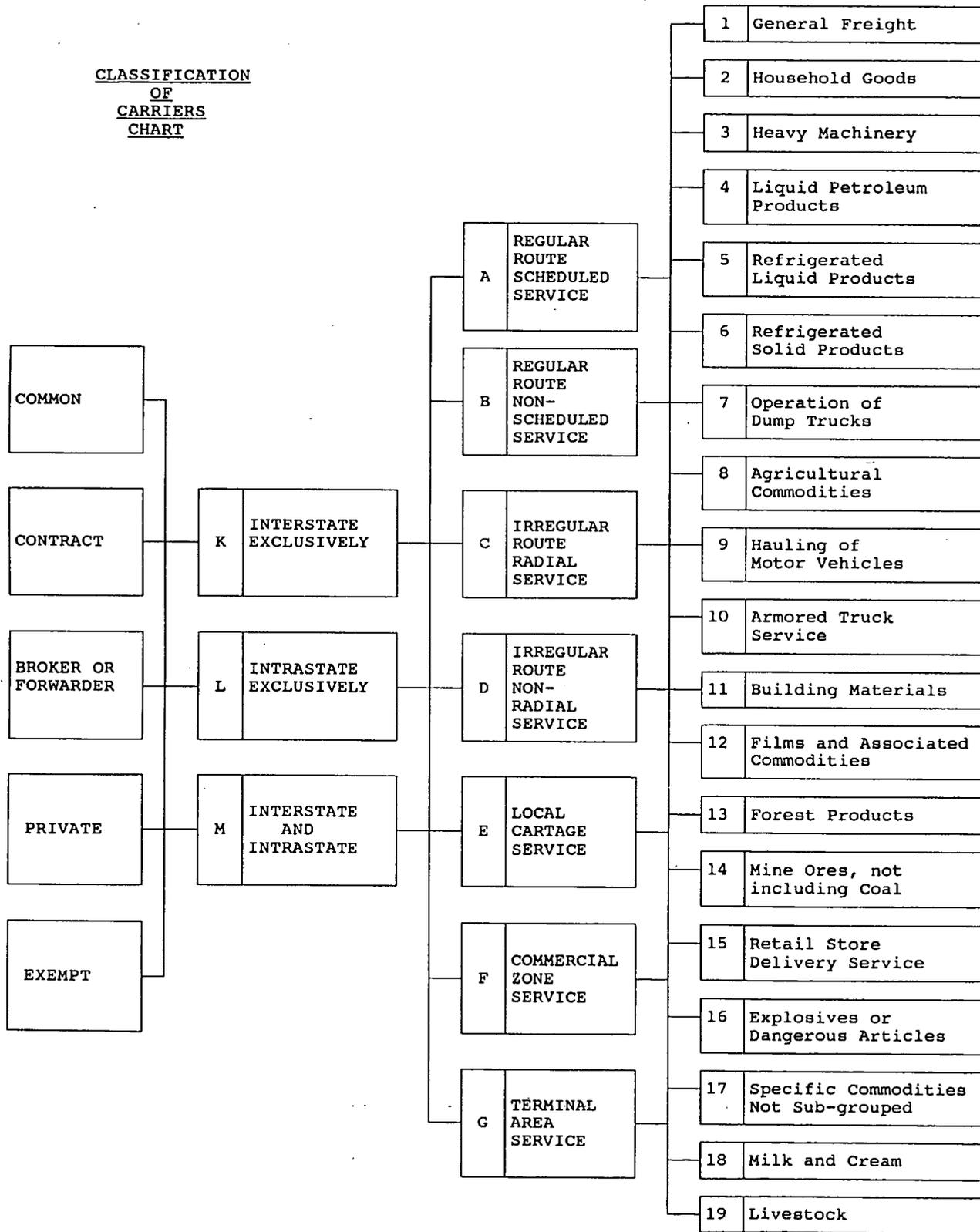
AMENDATORY SECTION (Amending Order R-124, Cause No. TV-985, filed 6/20/79)

**WAC 480-12-990 Appendix A—Classification of brokers, forwarders and motor carriers of property.**

APPENDIX A Classification of brokers, forwarders and motor carriers of property

CLASSIFICATION CHART

CLASSIFICATION  
OF  
CARRIERS  
CHART



The preceding page is a chart which outlines three steps taken in a breakdown of each motor carrier operation. These three steps are the analytical factors which are used to determine the carrier's classification. They include (1) type of carrier, (2) type of carrier's service, and (3) type of commodities transported. Each class is a composite of these three factors. The chart includes a symbol system through which class may be identified by code letter and number.

The first division of the chart identifies the type of operation, as fixed by chapter 81.80 RCW. There are five such types of property operators.

- Common carrier of property
- Contract carrier of property
- Forwarder or broker of property transportation
- Private carrier of property
- Exempt carrier

The second division on the chart identifies the type of service in which the carrier is engaged as determined by:

- (a) Regular route, scheduled service
- (b) Regular route, nonscheduled service
- (c) Irregular route, radial service
- (d) Irregular route, nonradial service
- (e) Local cartage service
- (f) Commercial zone service
- (g) Terminal area service

The third division on the chart describes the type of commodities transported by the carrier. There are nineteen such commodity groups which are of sufficient importance at this time to warrant individual identification. Additional groups may be added as the need therefor is shown.

- (1) Carriers of general freight
- (2) Carriers of household goods
- (3) Carriers of heavy machinery
- (4) Carriers of liquid petroleum products
- (5) Carriers of refrigerated liquid products
- (6) Carriers of refrigerated solid products
- (7) Carriers engaged in dump trucking
- (8) Carriers of agricultural commodities
- (9) Carriers of motor vehicles
- (10) Carriers engaged in armored truck service
- (11) Carriers of building materials
- (12) Carriers of films and associated commodities
- (13) Carriers of forest products
- (14) Carriers of mine ores not including coal
- (15) Carriers engaged in retail store delivery service
- (16) Carriers of explosives or dangerous articles
- (17) Carriers of specific commodities, not subgrouped
- (18) Carriers of milk and cream
- (19) Carriers of livestock

The symbol system of code identification is derived from the foregoing three groups. Illustration: A common carrier may be engaged in transporting household goods over irregular routes in radial services. Such a carrier would be classed as a **common carrier** Class C-2.

Appropriate definitions or explanations of each class or group appear on the following pages in the order shown above.

Types of carriers

DEFINITIONS

RCW Section 81.80.010 (of the "Motor Carrier Act") defines carriers by motor vehicle and brokers and forwarders as follows:

MOTOR CARRIER

The term "motor carrier" means and includes "common carrier," "contract carrier," "private carrier" and "exempt carrier," as herein defined.

COMMON CARRIER

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

CONTRACT CARRIER

The term "contract carrier" shall include all motor vehicle operators not included under the terms "common carrier" and "private carrier" as herein defined, and further shall include any persons who under special and individual contracts or agreements transport property by motor vehicle for compensation.

PRIVATE CARRIER

A "private carrier" is a person who, in ~~((his))~~ its own vehicle, transports only property owned or being bought or sold by ~~((him))~~ it in good faith and only when such transportation is purely an incidental adjunct to some established private business owned or operated by ~~((him))~~ it in good faith.

BROKER AND FORWARDER

The terms "common carrier" and "contract carrier" shall include persons engaged in the business of providing, contracting for, or undertaking to provide transportation of property for compensation over the public highways of the state of Washington as brokers or forwarders.

EXEMPT CARRIER

The term "exempt carrier" means any person operating a vehicle exempted from certain provisions of the act under section RCW 81.80.040 thereof.

Interpretation of permits

Commodity descriptions and the right to serve certain routes or territories described in a carrier's permit where ambiguity exists shall be interpreted according to general custom and trade usage of the common carrier motor freight industry, and the usual Commission administrative practice.

~~((Where))~~ When the terms Olympic Peninsula, Eastern Washington, ~~((and))~~ Western Washington, and Southwest Washington are used in common or contract carrier permits, ~~((these))~~ the terms shall define ~~((the))~~ territory ~~((embraced therein))~~ as follows:

**Olympic Peninsula:** The Olympic Peninsula area comprises all points in Clallam County, Jefferson County,

Mason County (points north of an east-west line through Shelton only), Kitsap County, Vashon Island and the northern portion of Pierce County, north and west of Tacoma and Steilacoom.

**Eastern Washington and Western Washington:** The dividing line between Eastern Washington and Western Washington is the summit of the Cascade Range, which is also the county boundary, starting at the Canadian border and running south as far as Mt. Adams; from Mt. Adams running south to the Columbia River the dividing line shall be between the eastern boundary of Skamania County and the western boundaries of Yakima and Klickitat Counties.

**Southwest Washington:** Southwest Washington shall comprise all of Skamania, Clark, Cowlitz, Wahkiakum, Pacific, Lewis and Thurston Counties, and that portion of Pierce, Mason and Grays Harbor Counties lying south of a westerly extension of the King-Pierce County lines, extended directly west from Dash Point.

Types of property carrier service

EXPLANATION

(A) REGULAR ROUTE, SCHEDULED SERVICE

A regular route scheduled service carrier is any person who or which undertakes to transport property or any class or classes of property by motor vehicle for compensation between fixed termini and over a regular route or routes upon established or fixed schedules.

(B) REGULAR ROUTE, NONSCHEDULED SERVICE

A regular route nonscheduled service carrier is any person who or which undertakes to transport property or any class or classes of property by motor vehicle for compensation between fixed termini and over a regular route or routes at intermittent intervals and not upon an established or fixed schedule.

(C) IRREGULAR ROUTE, RADIAL SERVICE

An irregular route radial service carrier is any person who or which undertakes to transport property or any class or classes of property by motor vehicle for compensation over irregular routes from a fixed base point or points to points or places located within such radial area as shall have been fixed and authorized by the Commission, or from any point located within such radial area to such carrier's fixed base point or points.

(D) IRREGULAR ROUTE, NONRADIAL SERVICE

An irregular route nonradial service carrier is any person who or which undertakes to transport property or any class or classes of property by motor vehicle for compensation over irregular routes between points or communities located within such general territory as shall have been defined geographically and authorized in a permit, and any other points or communities located within the same general territory without respect to a hub community or a fixed base point of operation.

(E) LOCAL CARTAGE SERVICE

A local cartage carrier is any person who or which undertakes to transport property or any class or classes of

property by motor vehicle for compensation when such transportation is performed wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities.

(F) COMMERCIAL ZONE SERVICE

A commercial zone carrier is any carrier of general freight who has acquired authority to operate within a commercial zone, pursuant to RCW 81.80.400 or 81.80.410 and WAC 480-12-081.

(G) TERMINAL AREA SERVICE

A terminal area carrier is any carrier of general freight who has acquired authority to pick up and deliver intercity shipments within a terminal area, pursuant to RCW 81.80.400 or 81.80.410 and WAC 480-12-082.

Types or groups of commodities

EXPLANATION

(1) CARRIERS OF GENERAL FREIGHT

(a) This group comprises both common and contract carriers transporting general freight except such commodities as require special equipment or service.

(b) Common or contract carriers authorized to transport general freight prior to May 1, 1944 may transport any commodity without restriction as to type of equipment required or special service rendered.

(2) CARRIERS OF HOUSEHOLD GOODS AS A COMMODITY

Household goods carriers include carriers, both common and contract, engaged in the transportation of property commonly used in a household when a part of such household equipment or supply; furniture, fixtures, equipment, and the property usual in an office, museum, institution, hospital, or other similar establishment when a part of the stock, equipment, or supply of such office, museum, institution, hospital, or other similar establishment; furniture, fixtures, and equipment of a store; works of art, furniture, musical instruments, display exhibits, and articles requiring the specialized handling and special equipment usually employed in moving household goods.

Note: This type of carrier renders a specialized service requiring skilled workmen. Such special service includes removing furniture from the higher stories of large office buildings when freight elevator service is not available, the proper placing of furniture in the home or office upon delivery at destination, the laying of rugs, hanging of pictures, and other services in connection with the removal of furniture or fixtures from one location to another. A household goods carrier is usually a Class C-2 operator, but such a carrier may be a Class D-2 operator. When the operation is that of a D-2 operator it embraces the transportation of household goods to, from and between unlimited points of origin and unlimited points of destination within the territory served by such carrier, over irregular routes, in either direction, outbound, or back haul, or in cross movements.

Note: For further definition of Household Goods see Administrative Ruling No. 7 dated December 10, 1959.

(3) CARRIERS OF HEAVY MACHINERY

This commodity group designates the transportation of heavy machinery or other articles which, because of their

weight or size, require the use of special vehicle equipment for transportation, special equipment for loading or unloading, or specialized carrier-supplied auxiliary or accessorial services as described below.

The words "special equipment" as used in this definition mean equipment not ordinarily used in the loading, unloading or transportation of items defined in the other types or groups of commodities classified or customarily utilized by carriers of specific commodities.

This commodity description includes articles weighing in excess of 2,000 pounds each, such as prestressed concrete beams, heavy steel or iron ingots and bars, ships' propellers and anchors, structural steel, oil field rigs and oil field equipment. Items weighing less than 2,000 pounds may fall within this classification when their size or other nature requires the specialized services of these carriers or specialized equipment.

This commodity description does not, however, include aggregations of items not defined above, which have been bundled, palletized, or placed in bins, barrels or other containers, or otherwise aggregated, merely because of convenience, economy or industry preference; the classification does include articles which are aggregated when the aggregation is required by the inherent nature of the article and the aggregation actually constitutes the minimum shipping quantity or package for the article. Articles fall within this exception (1) when their inherent nature requires aggregation — e.g., when they are susceptible to damage if not so bundled — (2) when industry practice is to bundle in such quantities, and (3) when the aggregated bundle is of a size, weight, or nature to require the specialized equipment or ancillary service that carriers of this classification customarily provide and which are not customarily provided by carriers of other commodities.

Note: These commodities are grouped together because of the equipment required for their transportation, loading or unloading or the nature of the services performed by the carriers. Certain auxiliary or accessorial services may be necessary in the transportation of these commodities, such as the dismantling and resetting of machinery, often requiring use of rigging, skidding, or similar devices. A carrier of this classification may find that all of ~~(his)~~ its facilities are employed for a considerable period of time in a locality which is only part of the territory in which ~~(he)~~ it is authorized to serve. This type of carrier is usually a Class D-3 operator. The territorial scope of this service is usually similar to that of the household goods carrier. The movement involves and embraces transportation to, from, and between unlimited points of origin and destination within the territory served by such carrier over irregular routes.

#### (4) CARRIERS OF LIQUID PETROLEUM PRODUCTS

Carriers of liquid petroleum products include those carriers who transport such petroleum products as gasoline and other liquid motor fuel, road oil, crude oil, fuel oil, kerosene, and like products in tank vehicles. Such vehicles include solo trucks, semi-trailers, and full-trailers. Carriers of butane, propane and other derivatives of petroleum are included in this group when such products are transported in tank vehicles. The group also includes carriers of edible oils, coal tar products, and chemicals, if transported in tank vehicles but does not include the transportation of milk, fruit juices, or other perishable liquid products which require temperature control.

Note: Carriers who fall within this group may be either common or contract carriers. In either case the service involves special tank transport equipment.

#### (5) CARRIERS OF REFRIGERATED LIQUID PRODUCTS

This group comprises carriers, both common and contract, which specialize in the transportation of refrigerated or temperature controlled perishable liquid products, such as fruit juices and various beverages in tank vehicles, including solo trucks, semi-trailers, or full-trailers. Those liquid products such as milk which are classified in other commodity groups are not included in this class.

Note: The production area of fruit juices and beverages and the transportation of these products by tank truck is largely restricted to the territories where they are manufactured. While the shipments originate in a restricted area the transportation is usually over long distances and requires operation both day and night. The matter of public health is particularly involved in this type of carriage in view of the nature of the commodity.

#### (6) CARRIERS OF REFRIGERATED SOLID PRODUCTS

This group includes that class of carriers, both common and contract, which engages in the transportation of commodities of a perishable nature, including fresh fish, meats and meat products, fruits and vegetables, dairy products, etc., requiring the use of special refrigeration or temperature control. It does not include refrigerated or temperature controlled liquid products, otherwise classified herein.

Note: Specially designed and constructed refrigerator equipment is usually necessary for this operation. Dry ice is often used. Extra care in handling shipments must be exercised on account of the danger of spoiling. This operation is the same as that of the ordinary general commodity carrier except as to refrigeration requirements.

#### (7) CARRIERS ENGAGED IN DUMP TRUCKING

This group includes both common and contract carriers engaged in the operation of dump trucks and similar vehicles used in the transportation of sand, gravel, dirt, debris, and other similar commodities except garbage, cement in bulk, and coal.

Note: The operations of this group are usually carried on during the daytime and are local in character. The activities of carriers in this group are somewhat seasonal, especially in connection with building or construction projects. The value of the commodity hauled is usually low.

#### (8) CARRIERS OF AGRICULTURAL COMMODITIES

This group includes carriers engaged exclusively in the transportation of unmanufactured or unprocessed agricultural commodities including the return of empty containers. It does not include carriers of milk and cream or livestock, which is dealt with in a separate classification, regardless of the type of vehicle used, and does not include carriers engaged in the transportation of fruit juices or other processed agricultural commodities.

Note: While both common and contract carriers are included in this group, it is composed principally of irregular route radial service common carriers. Most commercial agricultural commodities are also handled as general commodities, especially when hauled in small lots as fruit, vegetables, produce, poultry, grains in sacks, etc. In some instances, special vehicle equipment is required for the movement of small grains in bulk, grass feeds, hay, etc.

**(9) CARRIERS OF MOTOR VEHICLES**

This group consists of motor carriers engaged in the transportation of new and used motor vehicles, including automobiles, trucks, trailers, chassis, bodies, and automotive display vehicles, wholly or partially assembled. In this group are included:

(a) Carriers engaged in the transportation of motor vehicles by truck away method, involving the use of special equipment such as trucks, tractors, trailers, semi-trailers, 4-wheel trailers, and various combinations of the above in or upon which such motor vehicles are loaded.

(b) Carriers engaged in the transportation of motor vehicles by driveaway method, involving the utilization of the motive power, in whole or in part, of the vehicles being transported, either in single driveaway or in combinations of two or more vehicles by use of towbar mechanism, saddle or bolster mount mechanism, or any combinations of the above.

Note: The transportation of new automobiles, trucks, and trailers is usually a Class C-9 movement. The transportation of used automobiles, trucks, and trailers and new or used chassis, bodies and automotive display vehicles is usually a Class D-9 movement. In either case, the operation may be that of a common or contract carrier. When classified as a Class D-9 movement, the scope of the operation is territorial in character and includes the transportation of motor vehicles to, from, and between unlimited points of origin and unlimited points of destination within the territory served by such carrier, over irregular routes, in either direction, outbound, or back haul, or in cross movements.

**(10) \*CARRIERS ENGAGED IN ARMORED TRUCK SERVICE**

This group includes motor carriers, either common or contract, which by reason of the commodity transported, i.e., gold, silver, currency, valuable securities, jewels and other property of very high value, use specially constructed armored trucks and provide policy protection to safeguard the commodity while it is being transported and delivered. It also includes carriers which operate ordinary equipment in the carriage of high value commodities when guards are necessary to accompany the shipment.

Note: This is a highly specialized type of service and is usually confined to larger cities and industrial areas. It is used by financial institutions for the transfer of funds including bullion, currency, valuable securities and jewels from dock to vault, pay rolls to industries, bank to bank, etc. It is frequently performed under a specific contract, although there are some carriers engaged in the service that hold themselves out as common carriers. Where the service is entirely local, the operation may be regarded as local cartage within a municipality. Where routes or territory beyond a municipal area are served, the operation becomes that of an irregular route, radial carrier.

**(11) CARRIERS OF BUILDING MATERIALS**

This group includes carriers engaged in transporting any commodity which at the time of transportation is, without further processing or manufacture, in a form and condition to be used in the construction, modification or repair of a structure; which is at the time of the transportation intended with reasonable certainty to be so used; and which does not require the use of specialized equipment other than ordinary van or flatbed equipment. The classification does not include bulk sand, gravel, crushed stone or other building materials ordinarily transported in dump trucks.

Some articles can be transported under this classification without specific inquiry by the carrier as to their intended future use, provided the carrier does not at the time of movement have knowledge of an intended use other than as a building material. Such articles include (1) lumber, cut stone, slate, tile, brick, cement in sacks, plaster in sacks, or other similar materials usually transported on flatbed equipment; (2) any commodity designed especially for use in the construction, modification or repair of a structure and having virtually no other use; and (3) any commodity whose predominant use is as a building material.

Commodities having general utility in many lines of work may be transported under this classification providing the carrier affirmatively establishes before shipment that the commodity, at the time of movement is specifically intended, at the immediate or ultimate destination, to be used as a building material.

Note: Usually no special equipment is required, except in the case of the lumber hauler, who uses vehicles equipped with a special unloading device or that of the concrete hauler, who mixes en route. Most building materials can be and are hauled in small lots as general commodities. The movement of these commodities is usually in connection with a construction project, in truck loads, and for comparatively short distances. The transportation of lumber between manufacturing plants and from mill to retail yard is an important service rendered by carriers in this classification.

**(12) CARRIERS OF FILMS AND ASSOCIATED COMMODITIES**

This group, composed of both common and contract carriers, includes those carriers which are engaged in the transportation of motion-picture and sound-reproducing films, recording, reproducing, and amplifying devices, supplies and accessories for the operation of motion picture theaters or places of exhibition, including the transportation of tickets, advertising matter, displays, and exhibits, such as are found in lobbies of motion picture theaters, and furnishing and supplies necessary in the maintenance and operation of such theaters. This type of operation requires unusual delivery schedules and special personal service.

Note: This group is not authorized to engage in the transportation of general freight unless specifically so authorized in permit.

**(13) CARRIERS OF FOREST PRODUCTS**

This group includes both common and contract carriers engaged principally in the transportation of forest products, i.e., logs, poles, piling, fence posts, shingle bolts, pulp-wood, and fuel from the forest to processing plants or to market.

Note: In those areas where the timber is large, special truck equipment is required for the transportation of logs. Such equipment includes bunks, reaches, 2- and 4-wheel trailers, special braking arrangements, and other incidental special equipment. Similar equipment is also frequently used in the transportation of poles and piling. Ordinary vehicles are used to transport the other items referred to herein. This group does not include carriers who are engaged in the transportation of rough or finished lumber or processed products derived from raw forest products nor does it include such operations as are grouped under "carriers of building materials."

Note: For definition of short logs see Administrative Ruling No. 6 dated December 30, 1957.

**(14) CARRIERS OF MINE ORES NOT INCLUDING COAL**

This group comprises both common and contract carriers, engaged principally in the transportation of mining products in the rough, such as iron, copper, or other ores from the mine to the smelter or from the mine to bunkers located on the routes of connecting carriers. It also includes the transportation of products of smelters to refineries or foundries. It does not include coal or coal products or refined or manufactured products of ores which are classified herein under other groupings.

**(15) CARRIERS ENGAGED IN RETAIL STORE DELIVERY SERVICE**

This group includes carriers who render a specialized delivery service for retail store establishments. This service is usually confined to municipal areas, and where that is the case, may be regarded as a city cartage operation. In some instances, however, the service extends beyond municipal areas and in that case the operation may be classified in accordance with the service rendered.

**(16) CARRIERS OF EXPLOSIVES OR DANGEROUS ARTICLES**

Carriers of certain explosives or dangerous articles, except liquid petroleum products as described in commodity Group 4, and films as described in commodity Group 12, are those carriers which engage in transporting dangerous, less dangerous, or relatively safe explosives, including nonexplosive materials such as fuses, cartridge cases, dummy cartridges, etc., inflammable oxidizing materials, corrosive liquids, compressed gases, poisonous articles, and other acceptable dangerous articles other than inflammable liquids in tank vehicles.

Note: The transportation of the commodities classed in this group involves unusual hazards and requires special precautions in the matter of safety. The carriage is usually rendered under special agreement but is also rendered by common carriers when the volume of the movement is not sufficient to warrant a contract operation.

**(17) CARRIERS OF SPECIFIC COMMODITIES, NOT SUBGROUPED**

Throughout the State there are individual truck operators who engage in the transportation of some specific commodity or commodities which do not fall within any of the commodity subgroups included in this classification.

Note: Usually such transportation is carried on in conjunction with a local industry or local situation and is not of sufficient importance to warrant subgrouping. In order to provide, however, for the general classification of such operations, miscellaneous commodity Group 17 has been included in this classification. The specific commodity or commodities transported by carriers who may be classified in this group are shown in the carrier's permit. Commodity Group 17 carriers will be the subject of further study and if need therefor is shown, additional commodity groups will be established from time to time from this miscellaneous group to meet the administrative requirements of the Commission.

**(18) CARRIERS OF MILK AND CREAM**

This group composed of both common and contract carriers includes those carriers who are engaged in the transportation of milk and cream, primarily from point of production to creameries and primary markets. It includes carriers of milk and cream regardless of the type of vehicle used.

**(19) CARRIERS OF LIVESTOCK**

The term livestock is defined to include, and carriers of livestock may transport, all cattle, swine, sheep, goats, horses, burros, asses, and mules, except such as are chiefly valuable for breeding, racing, show purposes or other special uses.

**Exceptions to and changes in classification**

These classifications and groupings are prescribed for general purposes. The operation of individual carriers may fall within more than one grouping, in which event they become subject to the rules and regulations of each group into which they fall.

Any group of carriers, or any carrier member of a group, may, upon proper notice, petition the commission to alter, amend, or otherwise modify any part of this classification or any grouping prescribed herein. Unless exceptions are specifically granted, the general rules and regulations of the commission shall govern.

**Emergencies**

In case of emergencies or unforeseen conditions over which the motor carrier affected has no control, which require immediate and extraordinary treatment, the commission may, without notice, modify, amend, suspend or vacate any or all classifications or groupings herein prescribed and substitute in lieu thereof such classification groupings or regulations as may be necessary during the period of such emergency.

**WSR 94-07-136****PROPOSED RULES****UTILITIES AND TRANSPORTATION  
COMMISSION**

[Filed March 23, 1994, 10:55 a.m.]

**Original Notice.**

Title of Rule: Amends WAC 480-70-250, relating to insurance requirements for solid waste collection companies. The proposed amendatory section is shown below as Appendix A, Docket No. TG-940127.

Purpose: See Explanation of Rule below.

Statutory Authority for Adoption: RCW 80.01.040.

Summary: See Explanation of Rule below.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Steve McLellan, Secretary, 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: No comments or recommendations are submitted because the proposal is pursuant to legislative authorization 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: This proposal would modify existing WAC 480-70-250 by increasing the amount of insurance required to not less than \$100,000 for personal injury by one person and not

less than \$750,000 for all persons receiving personal injury in one act or negligence, and by allowing the insurance requirement to be met by filing a combined bodily injury and property damage liability or surety bond of not less than \$750,000.

Proposal Changes the Following Existing Rules: See Explanation of Rule above.

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

The transportation of solid waste is classified within industry group 421 - Trucking and Courier Services, Except Air. Within that industry classification, there are 105 solid waste companies that have certificates granted by the WUTC. Solid waste transporters represent 2 percent of the total industry groupings within the industry classification. Therefore, the economic impact on the groups falling within the industry classification is minimal and a detailed economic assessment is not required. The proposed rule raises the minimum insurance requirement from \$100,000 to \$750,000 to cover property damage and public liability arising from accidents involving the transportation of solid waste. The proposed insurance level is comparable to the federally mandated limits for general transportation companies. The Washington Refuse and Recycling Association (WRRRA) represents a majority of the solid waste transporters operating in this state. The staff of the commission contacted an insurance company that does business with many of the member companies of the WRRRA. To their knowledge, not one of their customers involved in solid waste transportation carried less than 1 million in insurance coverage. A telephone survey was also conducted with a sample of the smaller solid waste certificate holders. All carried at least a minimum of \$750,000 in coverage. In conclusion, the proposed rule will have minimal impact on solid waste carriers certificated by the WUTC.

Hearing Location: Commission Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, on April 27, 1994, at 9:00 a.m.

Submit Written Comments to: Steve McLellan, Secretary, P.O. Box 47250, Olympia, WA 98504-7250, by April 18, 1994.

Date of Intended Adoption: April 27, 1994.

March 22, 1994  
Steve McLellan  
Secretary

AMENDATORY SECTION (Amending Order R-5, filed 6/6/69, effective 10/9/69)

**WAC 480-70-250 Insurance.** Within ten days after the date an applicant is notified (~~his~~) that its application has been granted, and before a certificate shall be issued, 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, or a surety bond written by a company of a company licensed to write surety bonds in the state of Washington, on each motor-propelled vehicle used or to be used in transporting garbage or refuse under the certificate granted, in the amount of not less than (~~twenty-five thousand~~) one hundred thousand dollars for recovery for

personal injury by one person, and not less than (~~one~~) seven hundred fifty thousand dollars for recovery for all persons receiving personal injury by reason of one act of negligence, and not less than ten thousand dollars for damage to property of any person other than the insured, or combined bodily injury and property damage liability insurance or surety bond of not less than seven hundred fifty thousand dollars.

Failure to file and keep such insurance or surety bond in full force and effect shall be cause for cancellation of a certificate.

**WSR 94-07-137  
PROPOSED RULES  
UTILITIES AND TRANSPORTATION  
COMMISSION**

[Filed March 23, 1994, 10:56 a.m.]

Original Notice.

Title of Rule: Amends WAC 480-30-032, 480-30-050, 480-30-095 and 480-30-100, relating to applications for auto transportation certificates, notice requirements for fare increases, auto transportation equipment safety and operation of motor vehicles. The proposed amendatory section is shown below as Appendix A, Docket No. TC-940123.

Purpose: This proposal would modify existing WAC 480-30-032 by adding language which states that persons who fail to file protests will be precluded from participating in hearings regarding applications for auto transportation certificate authority. This proposal would modify existing WAC 480-30-050 to update the address of the commission, deleting the incorrect address and requiring carriers to list the commission's current address on posted notices relating to increases in auto transportation passenger fares. This proposal would modify existing WAC 480-30-095 by adopting, by reference, in its entirety Part 393 of Title 49 Code of Federal Regulations. This would require all auto transportation companies to comply with federal regulations related to periodic inspections and certification of carrier inspectors. This proposal would modify existing WAC 480-30-100, by adopting, by reference, Part 391 of Title 49 Code of Federal Regulations for carriers who operate in interstate commerce, while maintaining a limited exemption (from provisions of 49 CFR, Parts 391.81 through 391.123 — related to drug testing) for those carriers operating exclusively in intrastate commerce. The proposal would further modify the section by removing outdated language related to drivers' responsibilities.

Statutory Authority for Adoption: RCW 80.01.040.

Summary: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Steve McLellan, Secretary, 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: No comments or recommendations are submitted because the proposal is pursuant to legislative authorization 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: See Purpose above.

Proposal Changes the Following Existing Rules: [No information supplied by agency.]

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 98504, on April 27, 1994, at 9:00 a.m.

Submit Written Comments to: Steve McLellan, Secretary, P.O. Box 47250, Olympia, WA 98504-7250, by April 18, 1994.

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March 22, 1994  
Steve McLellan  
Secretary

**AMENDATORY SECTION** (Amending Order R-351, Docket No. A-910835, filed 10/30/91, effective 11/30/91)

**WAC 480-30-032 Notice of application; protests; contemporaneous applications.** (1) Notice shall be made of the filing of applications for authority to provide auto transportation service in identified territory by sending notice of the application, with a description of its terms, to all persons presently authorized to provide auto transportation service under this chapter in the territory of the application, all present applicants for such service, and any other person who has requested, in writing, to receive such notices. Interested persons shall have twenty days from the date of mailing of the notice in which to file a protest with the commission stating opposition to the application. Protests should set forth specifically the grounds on which they are made and contain a concise statement of the interest of the protestant in the proceeding. Any person who is eligible to file a protest to an application but fails to do so is precluded from participating in any hearing upon the application or in any further stage of the proceeding.

(2) If any person wishes to seek authority which overlaps, in whole or in part, that sought in any pending application, it must apply for that authority within thirty days after the mailing of the notice of filing of the initial application in order for the applications to be considered jointly by the commission. During the thirty-day period, pending applications will be on file and available for inspection in the commission headquarters office in Olympia.

(3) The commission may consolidate overlapping pending applications, pursuant to WAC 480-09-610, for joint consideration.

(4) Overlapping applications which are not filed within thirty days after mailing of the notice of filing of the initial application will not be jointly considered with the initial application and will not be decided until after the conclusion of proceedings resolving the pending application and any other application which qualifies for joint consideration.

(5) The commission may consider and decide, on any schedule, portions of an overlapping application when:

(a) The portions to be heard do not overlap a prior pending application; and

(b) The overlapping portions may appropriately be severed from the portions to be heard.

**AMENDATORY SECTION** (Amending Order R-329, Docket No. T-900076, filed 10/31/90, effective 12/1/90)

**WAC 480-30-050 Tariff, naming rates and fares.** (1) Every auto transportation company shall file with the commission two copies of its tariff, and any amendments thereto, showing all fares, rates and charges for the transportation of persons, and for auto transportation companies baggage and express between all points on its line; or in the case of a joint tariff, shall show all fares, rates and charges applicable between points on its line and all affected points on the line of the concurring carrier or carriers. Tariffs, or supplements thereto, must be issued and filed in accordance with the commission's Tariff Circular No. 6 or reissues thereof.

(2) In the event that a new tariff or amendment will effect an increase in fares, rates or charges, or will in any respect restrict the service offered under said tariff, a notice must be given to the public at least thirty days before the effective date thereof, unless the commission has granted authority for a lesser period, by posting a copy or copies of said notice in conspicuous places at each station, also at each passenger facility and on each vehicle continuously assigned to the route or routes affected. The notice must plainly indicate that the notice has been posted "in compliance with regulations of the Utilities and Transportation Commission, (~~1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-8002~~) (stating the commission's mailing address)."

(3) Where through ticketing arrangements are in effect between two or more auto transportation companies for the transportation of persons over routes authorized by certificates of public convenience and necessity duly granted by the commission, interline settlements must be made between such carriers within thirty days after the close of the month in which such settlements are due. If any carrier fails to make full settlement with its connecting lines within thirty days such connecting carriers shall immediately report each failure to do so to the commission in writing, giving the names of the defaulting carriers together with the amounts outstanding.

(4) Auto transportation companies shall be governed by the provisions of chapter 81.68 RCW, and by such other portions of Title 81 RCW as may be applicable to auto transportation companies.

(5) No auto transportation company shall pay any commission to any individual, firm, association or corporation, their lessees, trustees or receivers, for the sale of any ticket or fare, or for transportation by express unless upon a contract or agreement, the form of which has previously been approved by the commission.

**AMENDATORY SECTION** (Amending Order R-357, Docket No. TC-900481, filed 12/31/91, effective 1/31/92)

**WAC 480-30-095 Equipment—Safety.** In addition to other laws and regulations of this state, all motor vehicles operating under chapter 81.68 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, part 393, part 396, and part 397, are adopted and prescribed by the commission to be observed by all auto transportation companies operating under chapter 81.68 RCW. Exceptions: All auto transportation companies operating exclusively in intrastate commerce shall be exempt from the provisions of sections 392.2((7)) and 393.76((, 396.17 through 396.23, and 397.21)). Further, with respect to section 396.11 no driver vehicle inspection report need be filed if no defects are found.

(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."

**AMENDATORY SECTION** (Amending Order R-357, Docket No. TC-900481, filed 12/31/91, effective 1/31/92)

**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((7)) and part ((391.1 through part) 391((74)), excluding ((paragraphs (a) and (b) of)) section 391.2, are adopted and prescribed by the commission to be observed by all auto transportation companies operating under chapter 81.68 RCW except ((relating to those)) carriers operating exclusively in intrastate commerce:

(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.

(d) The provisions of sections 391.81 through 391.123 shall not apply.

(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)) while 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, are adopted and prescribed by the commission to be observed by all auto transportation 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 or herself 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((7)) and safety ((and peace of mind of his or her)) of passengers ((to the extent that he or she should be)) and 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 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 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 than one hundred fifty percent of its rated carrying capacity. No passenger shall be permitted to stand unless the vehicle is equipped with devices designed and permanently installed to provide stability and safety for standing passengers. Even if the vehicle is so equipped, no passenger shall be permitted to stand for a distance in excess of thirty-five miles.

(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) 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.

(11) Accidents occurring in this state arising from or in connection with the operations of any auto transportation 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.

(12) Auto transportation companies transporting passengers shall be responsible for the comfort of its patrons.

(13) 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*. Copies of this document are available from the commission upon request.

(14) 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 (5) of this section, such designations for the purpose of this rule shall mean the "Washington utilities and transportation commission."

990, correcting a typographical error on the illustration which depicts typical railroad track clearance requirements. This proposal would modify existing WAC 480-62-085 by deleting the schedule upon which railroad companies must submit annual reports and regulatory fees, allowing the commission to set the schedule and fees by order. This proposal would modify existing WAC 480-62-090 by adopting by reference the 1992 version of Title 49, Code of Federal Regulations relating to the transportation of hazardous materials by railroad companies.

Proposal Changes the Following Existing Rules: See Explanation of Rule above.

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 98504, on April 27, 1994, at 9:00 a.m.

Submit Written Comments to: Steve McLellan, Secretary, P.O. Box 47250, Olympia, WA 98504-7250, by April 18, 1994.

Date of Intended Adoption: April 27, 1994.

March 22, 1994  
Steve McLellan  
Secretary

**WSR 94-07-138  
PROPOSED RULES  
UTILITIES AND TRANSPORTATION  
COMMISSION**

[Filed March 23, 1994, 10:57 a.m.]

Original Notice.

Title of Rule: Amends WAC 480-60-990, 480-62-085, and 480-62-090 relating to typical track clearances, annual reports filed by railroad companies and transportation of hazardous materials by railroad companies. The proposed amendatory section is shown below as Appendix A, Docket No. TR-940126.

Purpose: See Explanation of Rule below.

Statutory Authority for Adoption: RCW 80.01.040.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Steve McLellan, Secretary, 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: No comments or recommendations are submitted because the proposal is pursuant to legislative authorization in RCW 80.01.040.

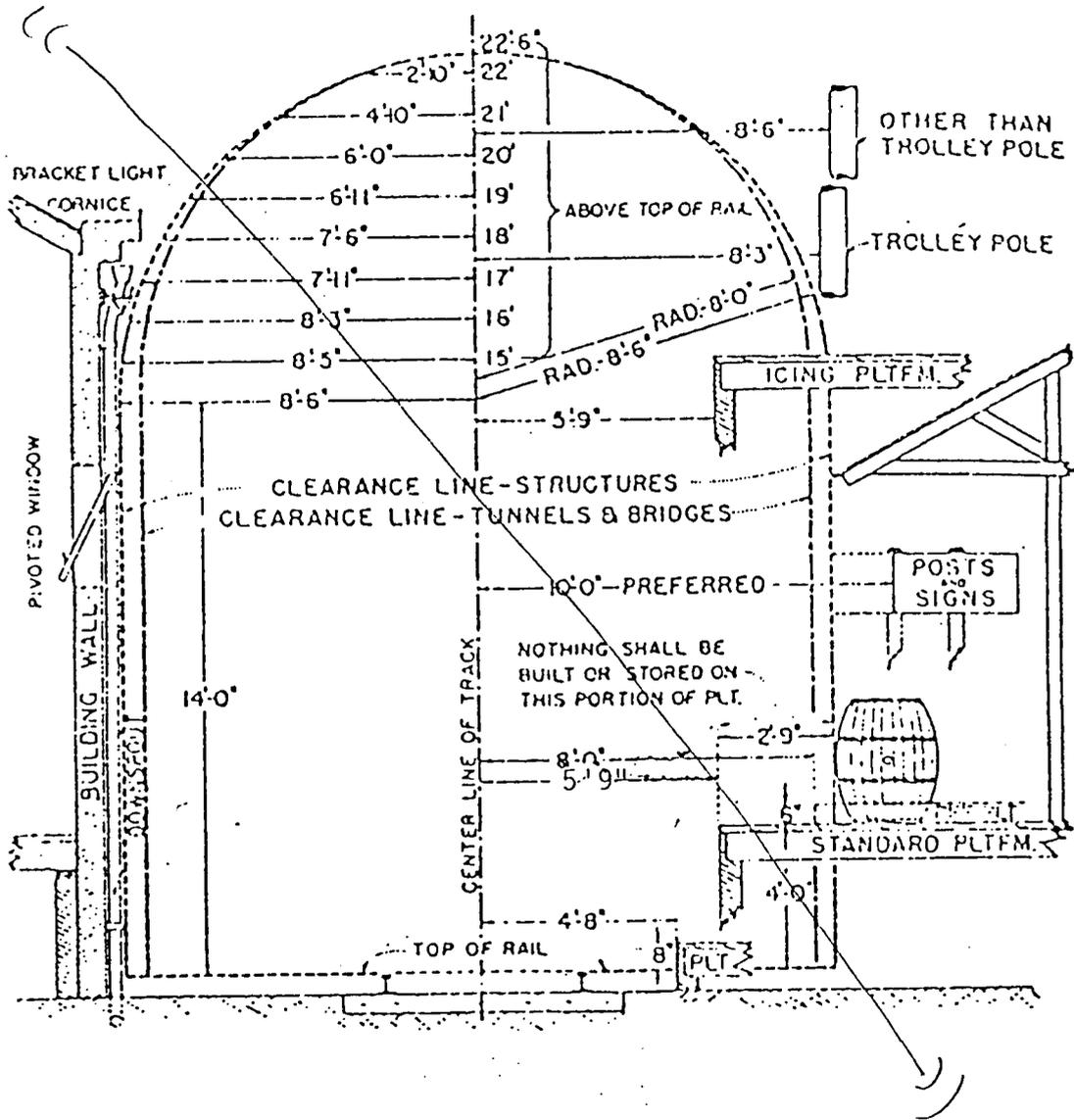
Rule is not necessitated by federal law, federal or state court decision.

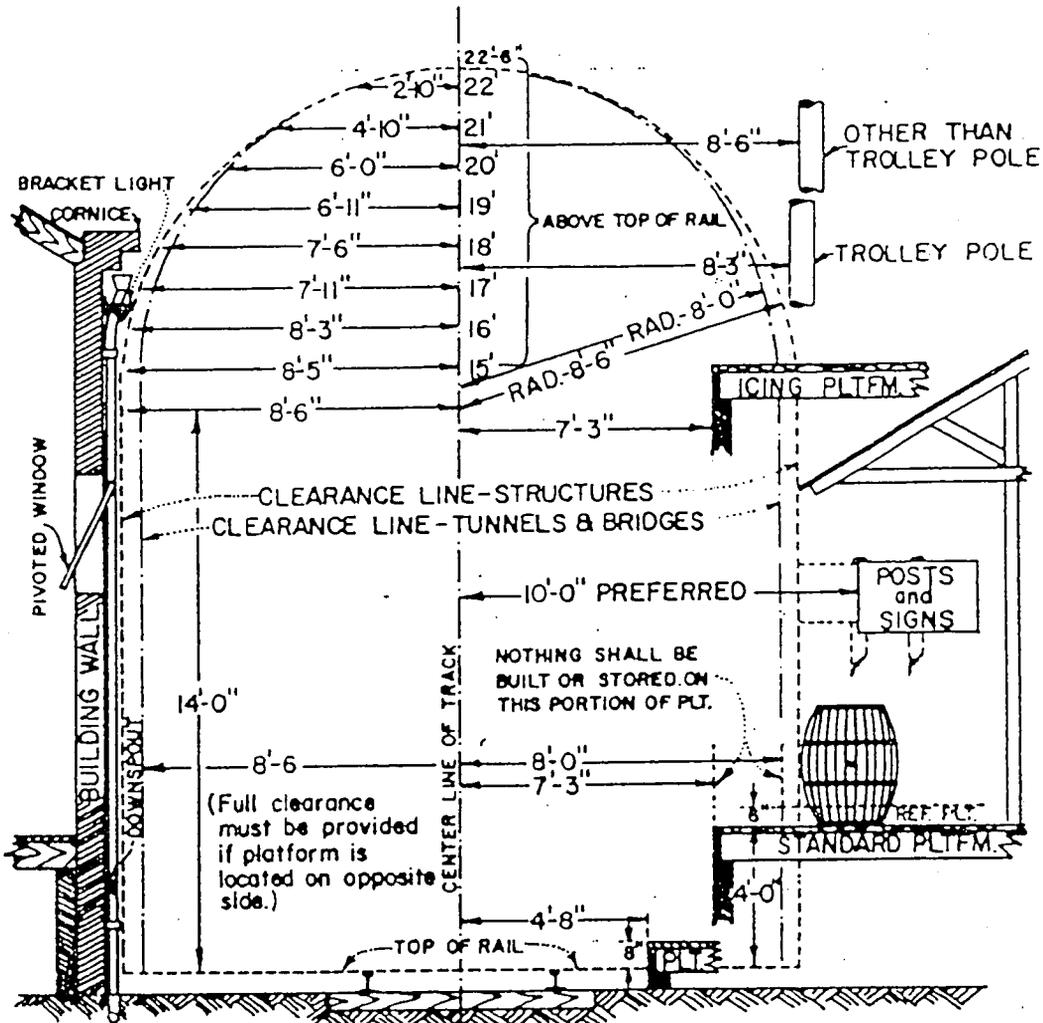
Explanation of Rule, its Purpose, and Anticipated Effects: This proposal would modify existing WAC 480-60-

AMENDATORY SECTION (Amending Order R-5, filed 6/6/69, effective 10/9/69)

WAC 480-60-990 Illustration—Typical clearance of structures from railroad tracks.

TYPICAL CLEARANCE OF STRUCTURES FROM RAILROAD TRACKS





NOTES

OVERHEAD WIRE CLEARANCES SHALL CONFORM TO THE ELECTRICAL & COMMUNICATION WORKERS SAFETY RULES OF THE STATE OF WASHINGTON  
 SIDE CLEARANCES ON ALL STRUCTURES ADJACENT TO CURVED TRACK SHALL BE INCREASED TO GIVE THE EQUIVALENT OF TANGENT TRACK CLEARANCES.

AMENDATORY SECTION (Amending Order R-313, Docket No. U-89-3099-R, filed 12/15/89, effective 1/15/90)

**WAC 480-62-085 Annual reports.** (1) The annual report form R1 promulgated by the Interstate Commerce Commission is hereby adopted for Class I railroad companies. The commission shall publish the annual report forms for the Class II and Class III railroad companies. At the close of each calendar year every railroad company must secure from the commission two copies of the annual report form applicable to its business. The annual report is to be completed for the calendar year's operations. One copy of the completed annual report will be submitted to the commission no later than May 1 of the succeeding year. The second completed copy is to be retained by the company.  
 (2) The regulatory fee for the Class I railroad companies will be due (~~by October 1 and April 1. The October 1 fee~~

~~will be based on one half of the estimated annual fee. Class II and Class III railroad companies' regulatory fee is due by April 1 of the succeeding year)) and payable upon a schedule established by commission order.~~

AMENDATORY SECTION (Amending Order R-182, Cause No. TR-1579, filed 2/10/82)

**WAC 480-62-090 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 171 through 174, and parts 178 and 179, as well as and including all appendices and amendments thereto, in effect on January 1, ((1982)) 1992, are adopted and prescribed by the commission to define hazardous materials for purposes of carriage by rail, and to state the precautions that must be observed in storage packaging, loading, and unloading such materials,

and in maintaining, placarding, marking, and certifying railroad cars 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 railroad companies operating in this state. A copy of the federal rules referenced in this chapter is available for inspection at the commission branch of the Washington state library, located in conjunction with the commission's headquarters office. A copy may be obtained from the secretary of the commission, upon payment of any required fee, or from the United States government printing office, which operates a retail sales facility in Seattle, Washington.

(2) In addition to any accident reporting requirement now or hereafter prescribed by the commission, every railroad company 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.

**WSR 94-07-139  
PROPOSED RULES  
UTILITIES AND TRANSPORTATION  
COMMISSION**

[Filed March 23, 1994, 10:58 a.m.]

Original Notice.

Title of Rule: Amends WAC 480-04-030, describing the central and field organization of the commission, and listing the current addresses and telephone numbers of the commission's field offices. The proposed amendatory section is shown below as Appendix A, Docket No. TV-940121.

Purpose: The proposal would amend WAC 480-04-030 to update language, addresses, and telephone numbers describing the commission's current field operations.

Statutory Authority for Adoption: RCW 80.01.040.

Summary: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Steve McLellan, Secretary, 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: No comments or recommendations are submitted because the proposal is pursuant to legislative authorization 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: See Purpose above.

Proposal Changes the Following Existing Rules: See Purpose above.

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 98504, on April 27, 1994, at 9:00 a.m.

Submit Written Comments to: Steve McLellan, Secretary, P.O. Box 47250, Olympia, WA 98504-7250, by April 18, 1994.

Date of Intended Adoption: April 27, 1994.

March 22, 1994

Steve McLellan

Secretary

**AMENDATORY SECTION** (Amending Order R-368, Docket No. A-910530, filed 3/5/92, effective 4/5/92)

**WAC 480-04-030 Description of central and field organization of Washington utilities and transportation commission.** (1) The Washington utilities and transportation commission consists of three members who are appointed by the governor pursuant to RCW 80.01.010. The governor designates one member as the chairman.

(2) The administrative office of the commission, also known as the headquarters, is located at 1300 S. Evergreen Park Drive S.W., Olympia, Washington. Its mailing address is Washington Utilities & Transportation Commission, 1300 S Evergreen Park Dr SW, PO Box 47250, Olympia WA 98504-7250. Its telephone number is (206) 753-6423.

(3) The commission is organized into the following principal parts: Administrative services division; transportation division; utilities division; policy planning and research section; public affairs section; and regulatory affairs section. The heads of the listed parts are responsible directly to the commissioners. They are housed in the commission's headquarters office.

(4) The commission has ~~((six district))~~ two regional offices, each of which is in the charge of a ~~((district))~~ regional manager. Each of the offices is open during customary commission hours. As of the effective date of this rule, the addresses of the commission's ~~((district))~~ regional offices were as follows:

| Office                                                       | Address                                                                         |
|--------------------------------------------------------------|---------------------------------------------------------------------------------|
| (a) <del>((Seattle District No. 1))</del> <u>Kent Region</u> | West Meeker Square<br>1313 West Meeker Ave.<br>Kent, WA 98032<br>(206) 859-1727 |
| (b) <del>((Vancouver District No. 2))</del>                  | 1006 N.E. 146th<br>Suite A<br>Vancouver, WA 98686<br>(206) 696-6660             |
| (c) <del>Yakima District No. 3</del>                         | 2808 Main Street<br>Union Gap, WA 98903<br>(509) 575-2789                       |
| (d) <del>Spokane ((District No. 4))</del> <u>Region</u>      | East 6204 Dean<br>Spokane, WA 99206<br>(509) 533-2475                           |
| (e) <del>Olympia District No. 5</del>                        | 7912 Martin Way<br>Suite D<br>Olympia, WA 98506<br>(206) 459-6580               |

~~(f) Pasco District 1600 C West Clark  
No. 6 Pasco, WA 99301  
(509) 545-2421)~~

Because ~~((district))~~ regional office addresses may change from time to time, current addresses and telephone numbers should be obtained from the local telephone directory or from the commission's administrative office.

(5) Each ~~((district))~~ regional office maintains one or more field offices. The addresses and office hours of the various field offices are available at the ~~((district))~~ regional offices and the commission's administrative office.

**WSR 94-07-140**  
**PREPROPOSAL COMMENTS**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Filed March 23, 1994, 11:00 a.m.]

Subject of Possible Rule Making: Administrative process, especially use of alternate dispute resolution techniques (ADR) and case management techniques.

Persons may Comment on this Subject in the Following Ways: Written comments will be accepted. Comments should be submitted to Steve McLellan, Secretary, re: Docket No. A-940351, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250. Written comments should reach the commission not later than April 22, 1994. Oral comments may be made on May 13, 1994, beginning at 9:00 a.m. in the commission's hearing room, Room 250, at the above address.

Other Information or Comments by Agency at this Time, if any: In re the investigation on the commission's motion into regulatory process.

The Washington Utilities and Transportation Commission establishes this inquiry to discover and to evaluate techniques for dispute resolution and for case management that may be appropriate for use in commission proceedings.

During a recent annual review of commission procedural rules, several commenters suggested that the commission engage in a farther-reaching examination: Whether current knowledge about "alternative dispute resolution" techniques,<sup>1</sup> or ADR, could contribute to less contentious and more efficient proceedings while maintaining appropriate protections of participants' rights and interests and appropriate avenues for commission policy determination. In addition, commenters asked whether efficiencies could be gained from enhanced case management techniques.

The commission notes that considerable theoretical and practical research has been conducted into the benefits of ADR and its application to disputes in general and to utility proceedings in particular. It notes concern at the state and federal levels regarding need for alternatives to contested processes and favoring increased use of consensual decisions. The commission believes that exploring current knowledge of ADR and case management may identify opportunities to amend commission rules and practices in ways that can reduce the time and effort required to make decisions — and at the same time reduce possible conten-

tiousness and unpleasantness in the dispute resolution process.

Therefore, the commission establishes this notice of inquiry under RCW 34.05.310(1). It invites comments on the subject matter and questions in Appendix A to this notice, but specifically states that the attachment is not intended to be exclusive and that observations, suggestions, and ideas on related subjects within the scope of this topic are welcomed.

Comments should be made in writing, bearing Docket No. A-940351, to reach the commission not later than April 22, 1994. Commission staff will summarize the comments, organizing them into general topic areas. The commission will send a copy of the summary to every commenter.

The commission also invites interested persons to comment on the suggestions orally and to discuss them on May 13, 1994, beginning at 9:00 a.m., in the commission's hearing room, Room 250, at 1300 South Evergreen Park Drive S.W., Olympia, WA 98504. The commission encourages timely written comments as the most helpful way to allow study and thoughtful discussion. The commission requests that persons submitting comments, except for individual members of the public, please file 20 copies of any submission and also provide it in electronic form, in ASCII or WordPerfect (version 5.1 or earlier). While not mandatory, doing so will help the commission review and distribute the comments.

The commission encourages broad participation in all phases of this inquiry. It will establish a schedule for further meeting or meetings, if they appear to be worthwhile, either at the meeting scheduled herein or by later letter from the secretary. Notice of any additional meeting will be sent to commenters, to participants in the discussion meeting scheduled above, and to persons who ask to receive notice. Commission staff is available to answer questions about the process: Call Bob Wallis, Review Judge, at (206) 753-6404.

The commission expects that some elements of the NOI, especially case management, may be the subjects of early consensus or of a commission decision that it should address them separately. Those elements may be severable from the more general topic. If that is the case, and the general topic requires longer study, the commission may begin rulemaking or other policy formulation on the individual subjects before closure is reached on all aspects of the more general topic.

DATED at Olympia, Washington and effective this 22nd day of March 1994.

March 22, 1994  
Steve McLellan  
Secretary

APPENDIX A

**INQUIRY INTO REGULATORY PROCESS**  
**Background Statement and Statement of Specific**  
**Questions**

The commission offers this discussion both as a framework and as a stimulus for comments and further discussions. It concludes with a series of questions that interested persons are invited to address, but notes that any comments relevant to the topic are welcome.

I. MAKING ADMINISTRATIVE DECISIONS.

The commission's charge to administer regulatory law often requires it to decide what approach or action is most consistent with the law and with the policies underlying the law. In some settings the commission can look at issues in broad policy terms. In others, it must make specific decisions about narrow questions. In both settings, specific options are frequently presented fervently for consideration by persons who oftentimes have a financial stake in the outcome. In both settings, the law has provided that the ultimate dispute resolution<sup>2</sup> will be the exercise of the state's power by the commission, a body created to be impartial and to act in the public interest, and that the commission's decision may be enforced by the power of the state.

The commission operates in making its decisions under some very specific requirements created by the legislature to allow public observation and participation and to assure that persons of any interest have the opportunity to present their views and their perceived facts under a common and well-understood set of procedural requirements. The three principal sets of requirements govern the conduct of adjudications, the conduct of rule-making proceedings, and the making of most other decisions.

A. PUBLIC MEETINGS ACT. The least restrictive of these three requirements, in terms of process, is the Public Meetings Act, chapter 42.30 RCW. That law requires commissioners to take much of their official action only during a meeting that is open to the public. The law does provide for exceptions from its terms; among those are matters arising under the Administrative Procedure Act, chapter 34.05 RCW. That act governs process for rulemaking and adjudications.

B. RULEMAKING. Decisions that are intended to apply to all similarly affected persons and to require of them certain kinds of action, or to require governmental action any time specified circumstances arise, are called rules.<sup>3</sup> Rules must be presented to the public via the State Register, and the public must have the opportunity to present written and oral comment prior to adoption of permanent rules.

C. ADJUDICATIONS. In many situations, affected individuals who have a disagreement with another individual or with the agency have a right under rule, statute, or constitution to a hearing before the agency to resolve the dispute. The dispute resolution process is an adjudicative proceeding<sup>4</sup> or "adjudication." Some very specific steps or procedures are provided for adjudications to assure that all affected persons have a reasonably equivalent opportunity to make their cases to the commission and that the commission's decision is based on the record in the proceeding.

With the protections of procedure in adjudications also come certain consequences. In particular, assuring directly-affected persons the right to participate requires the making of notice and time to accomplish it. The right to present information often involves the right to acquire relevant information from other participants, requiring time and in some instances process. The agency's obligation to make its decision on the record leads to the parties' right to present evidence and argument — and requires time in hearing, when oral and written information is offered; other parties have the right to explore that information by means of cross examination, and all parties have the right in oral or written

argument to make their views about their own and others' presentations known to the commission.

Defining disagreements as disputes in the procedural context of the litigation model is sometimes seen to discourage agreement-oriented behavior. Parties may posture before the decider, each arguing that its position is best and that opponents' positions are flawed. Contentiousness may not be spawned by that process, but there sometimes seems to be little institutional moderation of contentiousness that arises. As a consequence, participants may argue more ardently, may insist more intensively, may personalize their own or others' arguments, and may bring more issues to the decider. The process may become slower, more difficult, and more unpleasant, requiring more intervention by the decider and demanding more resources from all participants and from the decider.

II. ALTERNATIVE DISPUTE RESOLUTION (ADR).

Considerable research has been conducted into "alternative dispute resolution" techniques, or ADR, and its application to disputes in general and to utility proceedings in particular. At both state and federal levels, ADR has been suggested among other processes for resolution of administrative disputes.<sup>5</sup> The commission believes, consistently with the comments it has received, that exploring current knowledge of ADR and of case management techniques may highlight opportunities to amend commission processes in ways that preserve needed due process protections but also reduce both the time and the effort required to make decisions — and at the same time reduce possible contentiousness and unpleasantness in the dispute resolution process.

The commission also understands that there may be drawbacks to ADR and that existing process is not without purpose and value. Formalized APA adjudicative procedures impose burdens, but they also assure protections for all parties, including those who have fewer resources. The same level of procedural protections may not be provided for users of ADR. Because resolving a complex matter such as a rate case under any process requires a great deal of effort to understand the issues and the evidence, it is also possible that a totally alternative process would require as much time and effort as the present adversary process.<sup>6</sup>

A. ADR APPLICATIONS. There appears to be a continuum of consensual involvement by parties in the resolution of disagreements to which they are a party. The following chart illustrates some options in the continuum, from least structured to most structured. The chart shows that principles of ADR may be used in discussions leading to specific principles of general application, as in rulemaking and in discussions leading to more general principles, as well as in resolving individual disputes.

**Dispute Resolution:**

Continua of dispute resolution processes from least structure to most:<sup>7</sup>

| <u>Policy determination outside of adjudications</u> | <u>Adjudication and Dispute Resolution</u> |
|------------------------------------------------------|--------------------------------------------|
| NOI/Collaborative - open ended                       | ) Negotiation                              |
| Collaborative - focused                              |                                            |
| NOI/Collaborative - mediated                         | ) <b>Mediation</b> <sup>8</sup>            |
| NOI/collaborative - Guided                           |                                            |

|                              |                          |
|------------------------------|--------------------------|
|                              | Early Neutral Evaluation |
|                              | Mini-Trial               |
| Negotiated Rulemaking        | ) Med-Arb                |
| (Mediation/Arbitration)      |                          |
| Specific rulemaking proposal | )                        |
|                              | Arbitration              |
|                              | Litigation               |

Public interest and statutory or constitutional elements including time frames and the exercise of knowledgeable commission discretion<sup>9</sup> may limit the utility of "pure" mediation, minitrials, "med-arb" and arbitration involving exclusive decision by third parties and lack of review for substance by the commission. Variations of these techniques, however, or other techniques, might be effectively used within the commission's overall system of dispute resolution.<sup>10</sup>

B. COLLABORATIVES. The commission has directed disagreeing parties to engage in collaboration to resolve disputes and make policy suggestions. Although these collaborations are usually outside the adjudicative process, they often arise from it. The commission is interested in this NOI in exploring collaboratives and discussing ways in which the process of entering, supporting, running, and reporting collaboratives and of implementing their results, may be structured to optimize participants' opportunities to achieve consensus and the commission's use of the result in achieving sound public policy.

III. CASE MANAGEMENT TECHNIQUES.

Some ADR techniques, such as settlement conferences, are also case management techniques. Because they are ADR-related, general principles developed to institutionalize ADR may apply.

Other, more-limited, issues relating to case management exist as well, however, including the possibility of limitations on data requests. Suggestions or comments are welcomed in any related area.

IV. QUESTIONS TO STIMULATE COMMENT AND DISCUSSION.

The following questions are intended to stimulate comment and discussion. Interested persons are invited to address any or all of the questions, to propose or to answer other questions, or to broach any topics that are within the proposed subject.

1. Encouraging settlement and negotiation. Commission rules and the Administrative Procedure Act favor negotiation and settlements. Should the commission more specifically encourage or sanction particular negotiations? What kinds or subjects? Should the commission assert the authority to order parties to negotiate?<sup>11</sup> Should rules be promulgated to identify specific situations that may be particularly amenable to negotiation? Should rules define how to initiate, how to conduct, how to present, or how the commission will consider the results of, negotiation? If rules are inappropriate, are other means appropriate to institutionalize process?

2. Mediation groundrules. Should the commission establish certain minimum assumptions or groundrules for mediation? If so, what should those be? Should they address: When it may occur? Who may (or must) be involved? Who shall bear what costs? Need for commission awareness or approval? Mechanisms for communicat-

ing with the commission or a surrogate during the mediation process, including informal or formal channels of communication or certification of an issue to the commission for resolution — or other? Mechanisms to bring consensus (or report of nonconsensus conclusion) to the commission for appropriate action? Should the commission have trained staff, having no stake in the outcome, available to act as mediators if desired by participants? Should it arrange a pool of qualified external mediators?

3. Mediated rate cases. Should the commission establish a specific process for mediating all issues in a rate case? Would that process allow better, more efficient, less resource-intensive resolution of issues than alternatives? Would parties use the process if it were established? Could (or should) the commission force parties into such a process? Could general principles of mediation and other, nonglobal, mediation rules be applied in this context for a mediated result? How can the commission identify issues that may not be appropriate for mediation,<sup>12</sup> and how can that information be imparted to parties?

4. Collaboratives. Collaboratives may be conducted as negotiations, as mediation, or perhaps in other formats. Is there any aspect of a collaboration that may be better addressed individually rather than under questions 2 or 3, above? How specific should the commission be in instituting, approving, or directing collaborations? Should rules define collaboratives or provide who may commence a collaboration or how to ask that one be commenced?

5. Settlement and other conferences. The APA and commission rules now provide for prehearing conferences as a vehicle for achieving settlements and the limitation of issues. How may such conferences become more effective in accomplishing those results? Are rule changes needed? Should settlement conferences be mandatory in every proceeding — available in shorter, more narrowly-focused cases by telephone? Should settlement conferences be conducted by the judge assigned to hear the case or by some other person? How can the commission be satisfied that settlement conferences are conducted when it is possible to resolve or reduce issues and that they are not used to delay proceedings in which they are not needed or are fruitless? Are any rule changes needed regarding settlement or other prehearing conferences?

6. Other ADR Techniques. Do early neutral evaluation, mini-trial, "med-arb", or arbitration (or variations of those techniques) offer any opportunities for commission practice? If so, how could they be structured for optimal effect in the commission's legal and procedural context?

7. Encouraging dialogue and agreement. During the course of a hearing, are there opportunities to narrow or resolve issues that are not now used? How might existing rules be applied to optimize such agreements, or what rules could be promulgated? Should presiding officers or the commission be more proactive in encouraging nonlitigated voluntary agreements? If so, how might that be accomplished without jeopardizing neutrality and the appearance of fairness?

8. Rate case discovery. The need for data requests in certain commission cases, particularly utility rate cases, results largely from large disparities in knowledge among the parties at the outset of the proceeding. Assuming that parties are entitled to information to prepare for the proceed-

ing, is the current volume of data requests excessive? Is sufficient information presented in the case filing, to avoid need for data requests, or should the filing rules in chapter 480-09 WAC be expanded to gain earlier disclosure and reduced discovery? Is inappropriate or excessive information being requested in data requests? Are requests imperfectly organized? Are responses sufficiently complete that additional data requests are not required as follow-ups? Is the current discovery issue review process (now encouraging telephone hearings) sufficient to resolve disagreements? Could a more accessible, more informal process have promise? Could the commission establish or encourage periodic meetings or prehearing conferences at which knowledgeable staff of all parties discuss questions, clearly identify needed information, identify follow-up questions, and resolve ambiguities?

9. Hearing management. Current law and rules afford considerable discretion to the presiding officer to reject duplicating witnesses and redundant questions and testimony. Is the present application of those principles satisfactory? Should the presiding officer rely on counsel for motions or take a more active role in managing the hearing? Would doing so threaten the actual or perceived impartiality of the presiding officer? Are existing principles consistently applied? Should parties of like interests be required to present common witnesses, cross examine jointly, and be barred from cross examination of witnesses of parties of like interests? What authority supports suggestions favoring those results? Should the commission be more strict in applying evidentiary rules or should it receive most offered evidence "for what it is worth"? Is more strict enforcement of Washington evidentiary rules lawful, or could it violate parties' rights?

10. Telephone conferences/hearings. Does the commission optimally use telephone conferences to resolve issues, or are in-person hearings needed for all of the situations in which they are used? When can telephone conference, or perhaps hearings, be used to best advantage? Should in-person appearances ever be required for arguing nonevidentiary questions?

11. Formality. Is the current level of formality in commission hearings — resembling that in courts of record — appropriate for commission proceedings, or would more or less formality expedite processes without adversely affecting other essential elements of the adjudicative process?

12. Alternative formal processes. Are there any other ways in which the commission can alter its practices or change or promulgate rules that will afford high quality adjudications — that is, knowledgeable, fair, and appearing fair, as well as lawful — but in ways that can reduce the resources needed to accomplish the result? Are current practices, including segmented hearings with preparation of written testimony, appropriate for all rate cases or could some cases — those involving the smallest companies, on whom such procedures can be quite burdensome — be conducted in other ways? How? Could the use of formal investigations and fact finding (FIFF) be expanded in telephone company proceedings under RCW 80.36.145 to benefit both companies and the commission? What elements should be included?

13. Alternative adjudicative processes. Can any groups of cases appropriately and lawfully be resolved without an oral hearing? Would that expedite and simplify decisions? Brief adjudications are available under commission rules in many proceedings, but are seldom used. Is the brief adjudicative proceeding a viable alternative to a full hearing in particular types of cases? Why is the brief adjudication so seldom used?

14. APA or other statutory amendments. The APA, while it encourages informal dispute resolution, establishes a highly structured, formal, litigation model. Should changes be proposed to the APA or other statutes to facilitate less formal and alternative dispute resolution techniques? Are other changes needed? If so, what changes would be appropriate?

- 1 The comment has been made that, because most disputes, statistically speaking, do not result in litigation, it is litigation that is the alternative to other forms of dispute resolution. The term is a handy and picturesque label, however, to identify both alternatives and supplements to conventional, contentious litigation.
- 2 Agency decisions are of course subject to judicial review.
- 3 See, RCW 34.05.010(15) for the statutory definition.
- 4 See, RCW 34.05.010(1), "adjudicative proceeding."
- 5 The Administrative Conference of the United States recommendations for federal agencies appears at 1 CFR 305.86-3. It suggests that agencies explore settlement techniques including mediation, minitrials, and arbitration. A framework for negotiated rulemaking is provided for at 5 U.S.C. sec. 561.
- 6 Elements needed for an alternative dispute resolution system to work may include the following:  
**Procedures** must be in place, well defined, and known;  
**Incentives** to use the procedures must be present;  
**Skills** necessary for using the system must be present;  
**Resources** to implement the system must be available.  
R. Elaine Hallmark, "Designing a Dispute Resolution System", in Second Annual Northwest Dispute Resolution Conference, Seattle, 1992.
- 7 After Manual on Alternative Dispute Resolution, Alternative Dispute Resolution Section, Washington State Bar Association, Seattle (1993). The chart is not intended to define various processes, but only to illustrate that there are a variety of possible means to reach a determination, each involving various degrees of consensus as opposed to imposed decision and varying degrees of informality as opposed to mandated formal process.
- 8 Public interest and statutory elements including time frames and the exercise of knowledgeable commission oversight may limit the utility of "pure" mediation, minitrials, med-arb and arbitration involving exclusive participation by third parties and lack of review for substance by the decider. Variants of all but third-party arbitration may be viable.

- 9 The commission may be restricted from delegating its decision making power. See, State v. Dougall, 89 Wn.2d 118 (1977); State v. Reader's Digest Association, 81 Wn.2d 259 (1972).
- 10 The following elements may be needed for ADR techniques to achieve their goals: Ability to loop back to a more appropriate basis for resolution must be possible and encouraged by the system; moving to a less costly mechanism for resolution within a system must be possible and encouraged; and the ability to start anywhere in the system and shift as needed to more appropriate mechanisms for resolving the dispute. See, Hallmark, note 5, above.
- 11 Of course, it cannot order parties to agree.
- 12 E.g., matters of policy significance of first impression.

## WSR 94-07-142

## PROPOSED RULES

## PUBLIC DISCLOSURE COMMISSION

[Filed March 23, 1994, 11:06 a.m.]

## Original Notice.

Title of Rule: New sections WAC 390-16-311 Automatically affiliated entities maintaining separate contribution limits and 390-17-405 Volunteer services.

Purpose: WAC 390-16-311, clarifies under what circumstances a local unit of an organization that is automatically affiliated under WAC 390-16-309(1) with its national or state body for candidate contribution limit purposes would have its own contribution limit, separate and apart from other local units of the same organization; and WAC 390-17-405, to identify those services that may be contributed to a state office candidate's campaign by volunteers without incurring a contribution subject to limits in RCW 42.17.640 or 42.17.105(8).

Statutory Authority for Adoption: RCW 42.17.390.

Statute Being Implemented: Chapter 42.17 RCW.

Summary: WAC 390-16-311, pursuant to WAC 390-16-309(1), a national or state body shares a contribution limit with each of its local units with respect to a state office candidate unless the national or state body does not participate in a state office candidate's election campaign. If there is no participation, each local unit has its own contribution limit. The new rule identifies activities which demonstrate participation in a candidate's election campaign and states that if any of these actions are undertaken by the national or state body, the result would be that each local unit loses its own limit and shares one limit with the national or state body. The proposed rule only applies to automatically affiliated organizations and does not add more factors that would make two entities affiliated for contribution purposes; and WAC 390-17-405, RCW 42.17.630 (5)(b)(viii) allows individuals to render personal services of the sort commonly performed by volunteers without having those services qualify as a contribution to a state office candidate's campaign. This proposed rule identifies what kinds of services may be volunteered to a campaign. It also permits legal and accounting services, while not subject to limit, would be reportable by the recipient candidate's campaign.

Reasons Supporting Proposal: WAC 390-16-311, necessary to give guidance to organizational contributors to state office races given the contribution limits contained in chapter 42.17 RCW following passage of Initiative 134; and WAC 390-17-405, necessary to clarify RCW 42.17.630 (5)(b)(viii) and (ix).

Name of Agency Personnel Responsible: For WAC 390-16-311 Drafting: Roselyn Marcus, AG, Olympia, 586-1913, Implementation: Melissa Warheit, Public Disclosure Commission, Olympia, 753-1111, and Enforcement: Susan Harris, Public Disclosure Commission, Olympia, 753-1111; and for WAC 390-17-405 Drafting and Implementation: Melissa Warheit, Public Disclosure Commission, Olympia, 753-1111, and Enforcement: Susan Harris, Public Disclosure Commission, Olympia, 753-1111.

Name of Proponent: Public Disclosure Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 390-16-311, without this rule for guidance, organizations that contribute to state office races would not know what actions its state body could engage in without jeopardizing the separate contribution limits otherwise enjoyed by each of its local units. The rule, if adopted, will relieve confusion and set uniform standards for organizational contributors; and WAC 390-17-405, clarifies what activities are "commonly performed by volunteers" and not subject to contribution limits and also clarifies the circumstances under which legal and accounting services may be volunteered to a state office candidate.

Proposal Changes the Following Existing Rules: WAC 390-16-311, this proposed rule does not change existing rules, but it does supplement WAC 390-16-309.

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

Hearing Location: 2nd Floor Conference Room, Evergreen Plaza Building, 711 Capitol Way, Olympia, WA 98501, on April 26, 1994, at 9 a.m.

Submit Written Comments to: Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, by April 10, 1994.

Date of Intended Adoption: April 26, 1994.

March 23, 1994  
Melissa Warheit  
Executive Director

NEW SECTION

**WAC 390-16-311 Automatically affiliated entities maintaining separate contribution limits.** (1) If two or more entities are affiliated pursuant to WAC 390-16-309(1), the parent corporation, national or international labor union or state body of such national or international labor union, trade association or state body of such trade association, national or state collective bargaining organization or national or state membership organization (hereinafter called the parent or umbrella organization) automatically shares a single contribution limit with each of its subsidiary corporations, corporate branches or departments or with each of its local units. However, absent satisfying one of the affiliation factors set forth in WAC 390-16-309(3), a subsidiary

corporation or local unit shall maintain its own contribution limit if the parent or umbrella organization does not participate in an election campaign with respect to a candidate defined in RCW 42.17.630(3). If the parent or umbrella organization engages in any of the following activities, a subsidiary corporation or local unit shares the contribution limit with the parent or umbrella organization with respect to a candidate:

- a) Making either a monetary or in-kind contribution to a candidate;
- b) Making an independent expenditure in support of or opposition to a candidate;
- c) Endorsing a candidate prior to a contribution being made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent;
- d) Making a recommendation regarding whether a candidate should be supported or opposed prior to a contribution being made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent;

or  
e) Directly or indirectly collaborating or consulting with a subsidiary corporation or local unit on matters relating to the support of or opposition to a candidate, including but not limited to, the amount of a contribution, when a contribution should be given, and what assistance, services or independent expenditures, if any, will be made or should be made in support of or opposition to a candidate.

(2) If the parent or umbrella organization participates in an election campaign, a subsidiary corporation or local unit, which shares a contribution limit with the parent or umbrella organization pursuant to WAC 390-16-309(1), may nevertheless contribute to any candidate regarding whom the parent or umbrella organization has not engaged in any of the activities set forth in subsection (1) of this section up to the contribution limits set forth in RCW 42.17.640.

**NEW SECTION**

**WAC 390-17-405 Volunteer services.** (1) In accordance with RCW 42.17.630 (5)(b)(viii), an individual may perform services or labor for a campaign, without incurring a contribution subject to the limits under RCW 42.17.640 or RCW 42.17.105(8), so long as the individual is not compensated by any person for the services or labor rendered, the services or labor are performed outside the hours for which the employer has scheduled the employee to work and the services are of the sort commonly performed by the volunteer campaign workers, including:

- (a) office staffing;
- (b) doorbelling or leaflet drops;
- (c) mail handling (folding, stuffing, sorting and postal preparation);
- (d) political or fund raising event staffing;
- (e) telephone bank activity (conducting voter identification, surveys or polling, and get-out-the-vote campaigns);
- (f) construction and placement of yard signs, hand-held signs or in-door signs;
- (g) chauffeuring for candidate or candidate staff;
- (h) scheduling of campaign appointments and events;
- (i) transporting voters to polling places on election day;
- (j) the services of any individual, except an attorney or accountant, provided that the services donated are solely for

the purpose of ensuring compliance with state election or public disclosure laws;

(k) campaign consulting and management services, polling and survey design, public relations and advertising, or fundraising performed by any individual, so long as the individual is not a professional in that field who ordinarily charges a fee or receives compensation for providing those services, and

(l) all similar activities as determined by the commission.

(2) An attorney or accountant may donate his or her professional services in accordance with RCW 42.17.630 (5)(b)(ix), if the attorney or accountant is:

- (a) employed and his or her employer is paying for the services rendered;
- (b) self-employed; or
- (c) performing services for which no compensation is paid by any person.

**WSR 94-07-143**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**  
 [Filed March 23, 1994, 11:45 a.m.]

Original Notice.

Title of Rule: Actuarial recomputation of judicial plan member's retirement allowance following reemployment.

Purpose: To clarify the department's method of actuarially recomputing the retirement allowance of judicial plan members who retire, reenter employment causing their retirement allowance to be suspended, and then retire again.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 2.10.155.

Summary: Clarifies department's method of actuarially recomputing judicial plan member's retirement allowance upon retirement following reemployment.

Reasons Supporting Proposal: Provide guidance to judicial plan members regarding the department's actuarial recomputation of their retirement allowance upon retirement following reemployment.

Name of Agency Personnel Responsible for Drafting: Paul Neal and Marc Medeiros, Olympia, Washington, (206) 586-3368; Implementation and Enforcement: Jerry Long, Olympia, Washington, (206) 753-3108.

Name of Proponent: Department of Retirement Systems, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Clarifies the department's method to actuarially recompute judicial plan members' retirement allowances upon retirement following reemployment. Clarifies and provides guidance to members as to what the actuarially recomputed retirement allowance shall constitute.

Proposal does not change existing rules.

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

Hearing Location: Department of Retirement Systems, 2nd Floor Boardroom, 1025 East Union Avenue, Olympia, WA 98504-8380, on April 26, 1994, at 4:00 - 5:00 p.m.

Submit Written Comments to: Paul Neal, Department of Retirement Systems, by April 26, 1994.

Date of Intended Adoption: May 3, 1994.

February 25, 1994

Paul Neal

Rules Coordinator

## NEW SECTION

**WAC 415-100-190 Actuarial recomputation of retirement allowance upon retirement following reemployment.** (1) The purpose of this rule is to establish a method to actuarially recompute the retirement allowance of a plan member who retires, reenters employment causing his or her retirement allowance to be suspended, and then retires again.

(2) If a member initially retired at or after age sixty and reentered membership, upon the member's next retirement, the department shall recompute the member's retirement allowance pursuant to RCW 2.10.110. In recomputing the member's retirement allowance, the department shall include any additional service credit earned and any applicable increase in the member's average final compensation resulting from the member's reentry into membership. Under no circumstances shall a retiree receive a retirement allowance creditable to a month during which that individual earned service credit.

(3) If a retiree's retirement allowance is suspended under RCW 2.10.155 due to reemployment in an eligible position but the retiree does not reenter membership, upon the retiree's separation from such employment, the retiree shall receive an actuarially recomputed retirement allowance equal to the sum of:

(a) The amount of the monthly suspended retirement allowance; plus

(b) An actuarially computed increase based upon the retirement allowance payments the member did not receive due to reemployment including cost-of-living adjustments. The retiree may elect to receive the actuarially computed increase in either:

(i) An amount amortized over the expected term of the recomputed retirement allowance; or

(ii) A lump sum payment equal to the suspended retirement allowance plus interest.

**WSR 94-07-144**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**  
[Filed March 23, 1994, 11:46 a.m.]

Original Notice.

Title of Rule: Treatment of cash payments made in lieu of unused leave - calculation of retirement allowance pursuant to *Bowles v. Retirement Systems* - interim retirement allowance, final computation of retirement allowance.

Purpose: To clarify the department's administrative practice in relation to the treatment of cash payments made in lieu of unused leave - calculation of retirement allowance pursuant to *Bowles v. Retirement Systems* - interim retirement allowance, final computation of retirement allowance.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 41.40.010 (8)(a), 41.50.150, and 41.50.130.

Summary: Clarifies the department's practice in treating cash payments made in lieu of unused leave, calculating of retirement allowance pursuant to *Bowles v. Retirement Systems*, and computing interim and final retirement allowances.

Reasons Supporting Proposal: To provide guidance to members concerning the department's practice in relation to the matters listed in Title of Rule and Purpose above.

Name of Agency Personnel Responsible for Drafting: Paul Neal and Marc Medeiros, Olympia, Washington, (206) 586-3368; Implementation and Enforcement: Jerry Long, Olympia, Washington, (206) 753-3108.

Name of Proponent: Department of Retirement Systems, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: To clarify treatment of cash payments made in lieu of unused leave - calculation of retirement allowance pursuant to *Bowles v. Retirement Systems* - interim retirement allowance, final computation of retirement allowance. Provides guidance to members concerning the department's practice in relation to these matters.

Proposal does not change existing rules.

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

Hearing Location: Department of Retirement Systems, 2nd Floor Boardroom, 1025 East Union Avenue, Olympia, WA 98504-8380, on April 26, 1994, at 4:00 - 5:00 p.m.

Submit Written Comments to: Paul Neal, Department of Retirement Systems, by April 26, 1994.

Date of Intended Adoption: May 3, 1994.

February 25, 1994

Paul Neal

Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 93-11-077, filed 5/18/93, effective 6/18/93)

**WAC 415-108-010 Definitions.** (1) All definitions in RCW 41.40.010 apply to terms used in this chapter, unless a different meaning is plainly required by the context.

(2) As used in this chapter, unless a different meaning is plainly required by the context:

"Annual leave" means leave provided by an employer for the purpose of vacation and does not include leave for illness, personal business if in addition to and different than vacation leave, or other paid time off from work: *Provided, however, That if an employer authorizes only one type of leave to provide paid leave for vacation and illness as well as any other excused absence from work, such leave will be considered annual leave for purposes of RCW 41.50.150.*

"Level of union organization" means a union or a lodge or division of a union;

"Union" means a labor guild, labor association, and/or labor organization;

"Union employer" means a union or a union lodge or other division of the union which has verified that it meets the definition of a Plan I employer in RCW 41.40.010.

AMENDATORY SECTION (Amending Order DRS 87-08, filed 8/19/87)

**WAC 415-108-510 Treatment of cash payments made in lieu of unused leave—First-in-first-out accounting method for determining when leave earned—Forms of leave deemed excess compensation—Conversions.** (1) Cash compensation in lieu of unused annual or sick leave may be considered compensation earnable for Plan I members subject to the provisions of RCW 41.40.010 (8)(a) and WAC 415-108-450. Employers may not limit the inclusion of cash compensation paid in lieu of unused annual or sick leave as compensation earnable in conflict with RCW 41.40.010 (8)(a). Provisions of collective bargaining agreements, employment and administrative policies or other rules applied by an employer that conflict with RCW 41.40.010 (8)(a) and rules adopted thereunder are without legal effect.

(2) When an employer provides cash compensation in lieu of unused annual or sick leave, the department applies a first-in-first-out accounting method to determine when the compensated leave was earned, (~~unless~~) and when or whether the leave was used or cashed out, with the following exceptions:

(a) As otherwise provided in WAC 415-108-530 and *Bowles v. Department of Retirement Systems*, 121 Wn.2d 52 (1993); and

(b) The employer has in place a regulation, charter provision, ordinance, collective bargaining agreement, or other comparable written policy statement which clearly delineates when the cashed out leave was accrued, or a different method of accounting for the accrual and use of leave, and, if applicable, compensation for unused leave and the same such method is consistently applied in each instance and for all purposes.

Any employer's policy which is not consistent for all purposes which is contained in a regularly negotiated labor agreement in effect on the effective date of this section will be honored until the expiration date of the agreement not including any extensions at which time it will be brought into compliance with this section. Any employer's policy which is not consistent for all purposes which is established by the employer shall be brought into compliance within sixty days of the effective date of this section. In the event an employer fails to come into full compliance with this section by the dates established herein, the department will treat cashed out leave on the same basis as the employer has established for using leave.

(3) A cash out of leave which is not annual leave as defined under WAC 415-108-010, shall be treated by the department as "any other form of leave" under RCW 41.50.150(2). The department shall bill the employer for any such leave cash out as excess compensation under RCW 41.50.150.

(4) For purposes of determining average final compensation and excess compensation, hours of leave earned by a member shall be considered for all purposes in the form in which it was earned. The department shall disregard any conversion of leave by an employer from one form to another and bill the employer for the amount converted as excess compensation pursuant to RCW 41.50.150.

## NEW SECTION

**WAC 415-108-530 Calculation of retirement allowance pursuant to *Bowles v. Retirement Systems*—Eligibility—Procedure.** Pursuant to *Bowles v. Retirement Systems*, 121 Wn.2d 52 (1993), the department is required to calculate certain Plan I members' retirement allowances without regard to percentage or ceiling limitations on leave cash outs. *Bowles v. Retirement Systems* does not change the terms contained in collective bargaining agreements negotiated by employers and employees or leave policies promulgated by employers, nor does it apply to state and school district employees who cash out sick leave pursuant to RCW 28A.400.210 or 41.04.340, or annual leave pursuant to RCW 43.01.040 through 43.01.044.

(1) Certain Plan I members' retirement allowances shall be calculated pursuant to this section if they meet the following criteria:

(a) Retire on or after March 11, 1993, from Plan I, or be a surviving spouse or beneficiary of a member who retired or died after March 11, 1993; and

(b) Have average final compensation that is:

(i) Based on employment with a nonstate agency or political subdivision employer; and

(ii) Subject to employer percentage or ceiling limitations on leave cash outs.

(c) If a person meets the eligibility requirements for calculation under (a) and (b) of this subsection, the department shall determine whether the person is entitled to the calculation provided under subsection (2) of this section.

(2) For persons who are eligible under subsection (1) of this section, the department shall calculate the retirement allowance as follows:

(a) Calculate average final compensation twice:

(i) First, by including the amount of leave actually cashed out that is accruable within the member's two year average final compensation period, not taking into consideration any employer percentage or ceiling cash out limitations; and

(ii) Second, by including accrued leave as specified in (a)(i) of this subsection but taking into consideration any employer percentages and ceiling cash out limitations.

(b) Calculate the difference between the retirement allowance under (a)(i) and (ii) of this subsection. The department shall calculate the present value of this difference using its actuarial tables and retain eight percent of the present value of this amount to restore pension fund moneys expended in paying *Bowles* plaintiff class attorney fees. Each member's *Bowles* attorney fee payment shall be made in a one-time deduction from the member's first retirement allowance payment after the final computation of the member's benefit; and

(c) Pursuant to RCW 41.50.150, assess the member's employer for any additional excess compensation added to the member's retirement allowance.

## NEW SECTION

**WAC 415-108-540 Interim retirement allowance—Employer final compensation report—Final computation of retirement allowance—Adjustment of retirement allowance for errors.** (1) At the time of a member's application for retirement, the department does not have all

information necessary to make a final computation of the member's retirement allowance. Based upon estimates of the retiree's compensation and earned service credit through the date of retirement, the department shall compute an interim retirement allowance made payable to the member in the interim between the member's date of retirement and the department's final computation of the member's retirement allowance. The interim retirement allowance is an initial, estimated computation of the retiree's retirement allowance subject to adjustment by the department based upon subsequent review of information provided by the member's employer.

(2) In computing the interim retirement allowance, the department shall, subject to later correction, consider only the amount of the member's salary actually reported by the employer up to the date of the interim computation, but shall impute the member's earned service credit for the same period.

(3) Every employer of a member who applies for retirement shall provide the department with a final compensation report for that member. The report shall be completed on a form provided or approved by the department.

(4) Following the department's computation of the interim benefit and receipt of the employer final compensation report, leave cash out information for Plan I retirees, earnings history, and copies of the employment contract and employer compensation policies, the department shall complete a final computation of the member's retirement allowance. The department's final computation may either increase or decrease the amount of the interim retirement allowance computed pursuant to subsection (1) of this section.

(5) Pursuant to RCW 41.50.130, following the department's final computation of the member's retirement allowance as provided in subsection (4) of this section, the department may subsequently adjust a member's retirement allowance to correct any error in retirement system records. For purposes of this subsection, errors in retirement system records include, but are not limited to, the following:

(a) Applying an incorrect retirement allowance formula in computing the retirement allowance;

(b) Including service that is not creditable to the member;

(c) Including payments that do not constitute earnable compensation to a member in the member's retirement allowance computation, or excluding earnable compensation not reported by an employer;

(d) Benefit overpayments and underpayments;

(e) Including an individual in the membership of the retirement system who is not entitled to such membership.

**AMENDATORY SECTION** (Amending WSR 93-20-021, filed 9/24/93, effective 10/25/93)

**WAC 415-112-015 Definitions.** (1) All definitions in RCW 41.32.010 apply to terms used in this chapter, unless a different meaning is plainly required by the context.

(2) As used in this chapter, unless a different meaning is plainly required by the context:

"Annual leave" means leave provided by an employer for the purpose of vacation and does not include leave for illness, personal business if in addition to and different than

vacation leave, or other paid time off from work: *Provided, however, That if an employer authorizes only one type of leave to provide paid leave for vacation and illness, as well as any other excused absence from work, such leave will be considered annual leave for purposes of RCW 41.50.150.*

"Contract period" for Plan I members as used in RCW 41.32.345 means the period from July 1 to June 30 of the following year.

"Day" for purposes of administering RCW 41.32.570 means seven compensated hours. "Seventy-five days" means five hundred twenty-five cumulative compensated hours;

"Duly executed" means that all required forms or documents have been completed, signed and notarized, and filed with the department;

"Insurable interest" means a reasonable expectation of monetary benefit from the continued life of the member; or a relation of the parties to each other by blood or marriage;

"Pension benefit" means that portion of a retiree's monthly retirement allowance that is funded by the state of Washington and the retiree's former employer or employers;

"Public educational institution" means a school district, the state school for the deaf, the state school for the blind, educational service districts, institutions of higher education, or community colleges;

"School year" for Plan I members means the fiscal year running from July 1 to June 30;

"Single life annuity" means an annuity based solely on the expected remaining life of the member, without regard to any benefits for the member's designated beneficiary or spouse;

"Spousal consent" means written evidence that the married member's spouse consents to the retirement option selected by the member. The spouse's notarized signature on the retirement application, when such application is duly executed and filed with the department, shall constitute "spousal consent";

"Survivor" means a person who has an insurable interest in the member's life. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement.

**AMENDATORY SECTION** (Amending Order DRS 87-07, filed 8/19/87)

**WAC 415-112-415 Treatment of cash payments made in lieu of unused leave—First-in-first-out accounting method for determining when leave earned—Forms of leave deemed excess compensation—Conversions.** (1) Cash compensation in lieu of unused annual or sick leave may be considered earnable compensation for Plan I members subject to the provisions of RCW 41.32.010 (10)(a) and WAC 415-112-410. Employers may not limit the inclusion of cash compensation paid in lieu of unused annual or sick leave as compensation earnable in conflict with RCW 41.32.010 (10)(a). Provisions of collective bargaining agreements, employment and administrative policies or other rules applied by an employer that conflict with RCW 41.32.010 (10)(a) and rules adopted thereunder are without legal effect.

(2) When an employer provides cash compensation in lieu of unused annual or sick leave, the department applies a first-in-first-out accounting method to determine when the

compensated leave was earned and when or whether the leave was used or cashed out, unless the employer has in place a regulation, charter provision, ordinance, collective bargaining agreement, or other comparable written policy statement which clearly delineates when the cashed out leave was accrued, or a different method of accounting for the accrual and use of leave, and, if applicable, compensation for unused leave and the same such method is consistently applied in each instance and for all purposes.

Any employer's policy which is not consistent for all purposes which is contained in a regularly negotiated labor agreement in effect on the effective date of this section will be honored until the expiration date of the agreement not including any extensions at which time it will be brought into compliance with this section. Any employer's policy which is not consistent for all purposes which is established by the employer shall be brought into compliance within sixty days of the effective date of this section. In the event an employer fails to come into full compliance with this section by the dates established herein, the department will treat cashed out leave on the same basis as the employer has established for using leave.

(3) A cash out of leave which is not annual leave as defined under WAC 415-112-015, shall be treated by the department as "any other form of leave" under RCW 41.50.150(2). The department shall bill the employer for any such leave cash out as excess compensation under RCW 41.50.150.

(4) For purposes of determining average final compensation and excess compensation, hours of leave earned by a member shall be considered for all purposes in the form in which it was earned. The department shall disregard any conversion of leave by an employer of one form to another and bill the employer for the amount converted as excess compensation pursuant to RCW 41.50.150.

#### NEW SECTION

**WAC 415-112-840 Interim retirement allowance—Employer final compensation report—Final computation of retirement allowance—Adjustment of retirement allowance for errors.** (1) At the time of a member's application for retirement, the department does not have all information necessary to make a final computation of the member's retirement allowance. Based upon estimates of the retiree's compensation and earned service credit through the date of retirement, the department shall compute an interim retirement allowance made payable to the member in the interim between the member's date of retirement and the department's final computation of the member's retirement allowance. The interim retirement allowance is an initial, estimated computation of the retiree's retirement allowance subject to adjustment by the department based upon subsequent review of information provided by the member's employer.

(2) In computing the interim retirement allowance, the department shall, subject to later correction, consider both the amount of salary projected by the member for periods of employment through the date of the member's retirement and the amount of salary as previously reported by the employer.

(3) Every employer of a member who applies for retirement shall provide the department with a final compen-

sation report for that member. The report shall be completed on a form provided or approved by the department.

(4) Following the department's computation of the interim benefit and receipt of the employer final compensation report, the department shall complete a final computation of the member's retirement allowance. In computing the final computation of the member's retirement allowance, the department may also require the employer to provide the department with leave cash out information for Plan I retirees, earnings history, and copies of the employment contract or contracts and employer compensation policies. The department's final computation may either increase or decrease the amount of the interim retirement allowance computed pursuant to subsection (1) of this section.

(5) Pursuant to RCW 41.50.130, following the department's final computation of the member's retirement allowance as provided in subsection (4) of this section, the department may subsequently adjust a member's retirement allowance to correct any error in retirement system records. For purposes of this subsection, errors in retirement system records include, but are not limited to, the following:

- (a) Applying an incorrect retirement allowance formula in computing the retirement allowance;
- (b) Including service that is not creditable to the member;
- (c) Including payments that do not constitute earnable compensation to a member in the member's retirement allowance computation, or excluding earnable compensation not reported by an employer;
- (d) Benefit overpayments and underpayments;
- (e) Including an individual in the membership of the retirement system who is not entitled to such membership.

**WSR 94-07-008**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**

[Filed March 3, 1994, 11:05 a.m.]

Date of Adoption: March 2, 1994.

Purpose: To clarify language and to provide information to nonprofit organizations, associations, and corporations seeking a property tax exemption. To implement changes that resulted from 1993 legislative session.

Citation of Existing Rules Affected by this Order: Amending WAC 458-16-100 Property tax exemptions, generally, rules of construction, 458-16-110 Applications—Who must file, (~~filing requirement, application forms, what covered, filing fee, financial statement, evidence of timely filing~~) initial applications, renewal applications, annual certifications, 458-16-111 Filing fees, penalties and refunds, 458-16-130 (~~Real property sold or acquired by property owner deemed to be exempt.~~) Change in taxable status of nongovernmental real property, 458-16-150 Cessation of use—Taxes collectible for prior years, 458-16-180 Cemeteries, 458-16-190 Churches, parsonages and convents, 458-16-200 (~~Grounds~~) Land upon which a church or parsonage shall be built, 458-16-210 Nonprofit (~~nonsectarian~~) organizations or associations organized and conducted for nonsectarian purposes, 458-16-220 Church camps, 458-16-230 Character building organizations, 458-16-240 Veterans organizations, 458-16-260 Nonprofit day care centers, libraries, orphanages, (~~homes for the aged,~~) homes for sick or infirm, hospitals, outpatient dialysis facilities, 458-16-270 Schools and colleges, 458-16-280 Art, scientific, and historical collections (~~Fire companies Humane societies~~), 458-16-282 Musical, dance, artistic, dramatic and literary associations, 458-16-290 Nature conservancy lands, 458-16-300 Public meeting (~~facilities~~) hall—Public meeting place—Community meeting hall, and 458-16-310 Community celebration facilities; and new sections WAC 458-16-165 Conditions under which nonprofit organizations, associations, or corporations may obtain a property tax exemption, 458-16-245 Student loan agencies, 458-16-284 Fire companies, 458-16-286 Humane societies, 458-16-320 Emergency or transitional housing, and 458-16-330 Sheltered workshops for the handicapped.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, and chapter 84.36 RCW.

Pursuant to notice filed as WSR 94-01-169 on December 21, 1993.

Changes Other than Editing from Proposed to Adopted Version: WAC 458-16-210, subsection (3)(f) was deleted after further examination of 1993 legislation, HB 1324; WAC 458-16-260, the definitions of "home for the sick or infirm" in subsection (2)(c), "hospital" in subsection (2)(d), and "hospital unit" in subsection (2)(e) were changed to conform with the hospital licensing statute, RCW 70.41.020, and decisions of the Board of Tax Appeals.

Effective Date of Rule: Thirty-one days after filing.

March 3, 1994  
 William N. Rice  
 Assistant Director  
 Property Tax

AMENDATORY SECTION (Amending Order PT 83-5, filed 9/14/83)

**WAC 458-16-100 Property tax exemptions, generally, rules of construction.** (~~All property having situs in Washington is subject to assessment and taxation, except property expressly exempted from taxation by law (RCW 84.36.005). In interpreting statutes which exempt property from taxation, the following principles shall govern:~~

(1) ~~Statutory language shall be construed strictly, though fairly, and in keeping with the ordinary meaning of the language employed (Group Health Co-op of Puget Sound, Inc. v. Wash. State Tax Comm'n., 72 Wn.2d 424, (1967))—in favor of the public and the right to tax. Thurston County v. Sisters of Charity of House of Providence, 14 Wash. 264 (1896). Taxation is the rule; exemption is the exception (Spokane County v. Spokane, 169 Wash. 355 (1932)).~~

(2) ~~If a justifiable doubt exists as to the meaning of an exemption statute, that doubt shall be construed in favor of the power to tax. Spokane County v. Spokane, 169 Wash. 355 (1932).~~

(3) ~~If an exemption from taxation is found to exist, that exemption shall not be enlarged by construction, since the state legislature has presumably granted in express terms all that it intended to grant. Norwegian Lutheran Church v. Wooster, 176 Wash. 581 (1934).~~

(4) ~~Applicants claiming initial and continuing property tax exemption will make this property available for visitation, investigation or examination at all times and upon request provide to the employee of the department of revenue all records, documents or facts required so that the department may determine the exempt or taxable status of the property.~~

~~Failure to fully cooperate with the examining employee of the department may result in a taxable determination for that year's taxes.~~

(5) ~~The burden rests upon the one claiming exemption to show clearly that the property is within the exempting statute (Pacific Northwest Conference of the Free Methodist Church of North America v. Barlow, 77 Wn.2d 487). The burden of proof is upon the one alleging the exemption. (In Re All State Construction Co., Inc., 70 Wn.2d 657.) When implementing the foregoing, the department of revenue shall adhere to and operate within the bounds of the overriding principle that its duty is to effectuate to the fullest extent the legislative intent (Thurston County v. Sisters of Charity of House of Providence, 14 Wash. 264 (1896)).~~

~~The principles herein enumerated are set forth as guidelines for assisting in statutory construction, and shall not be interpreted as a license for unjustifiably denying any exemption, and thereby forcing the organizations, corporations, or associations to establish their exempt status through court action.)~~ (1) Introduction. This section explains how statutes exempting property from taxation should be read and interpreted.

(2) General rules of construction. All property located in Washington is subject to assessment and taxation, except property expressly exempted from taxation by law. The following principles shall govern the construction of statutes that exempt property from taxation:

(a) There is no need to construe a statute when its language is plain.

(b) The burden of proving entitlement to a property tax exemption rests upon the taxpayer claiming exemption.

(c) Statutes exempting property from taxation shall be strictly construed, though fairly and in keeping with the ordinary meaning of the language employed.

(d) If there is any doubt regarding the exact meaning of a statute exempting property from taxation, the statute shall be construed in favor of the power to tax and against the person claiming the exemption because taxation is the rule and exemption is the exception.

(e) If the legislature has created an exemption, the exemption must not be enlarged by construction since it is reasonable to presume that the legislature has granted in express terms all that it intended to grant. An exemption must be limited to the very terms of the statute enacted; if not so limited, the exemption would be enlarged beyond what the legislature intended to exempt.

(f) Property shall be exempt from taxation only when the legislature has created an exemption by clear and explicit language.

(3) General requirements. Applicants seeking an initial or continuing property tax exemption shall make the subject property available to the department of revenue at reasonable times for physical inspection, investigation, or examination. Applicants shall also provide to the department of revenue, upon request, all records, documents, or facts necessary for the department to determine the exempt or taxable status of the property. Failure to fully cooperate with the department may result in a determination that the property is taxable for the current year.

AMENDATORY SECTION (Amending Order PT 85-1, filed 2/15/85)

**WAC 458-16-110 Applications—Who must file, ((filing requirement, application forms, what covered, filing fee, financial statement, evidence of timely filing)) initial applications, renewal applications, annual certifications.** ((All foreign national governments, cemeteries, nongovernmental nonprofit corporations, organizations, and associations, and soil and water conservation districts seeking exemption from ad valorem property taxation under the provisions of chapter 84.36 RCW shall make application for exemption with the State of Washington Department of Revenue General Administration Building, Olympia, WA 98504.

(1) Initial applications for exemption shall be filed on or before March 31 or within sixty days of the date of acquisition or conversion to an exempt use. Renewal applications and annual recertifications shall be filed on or before March 31.

Initial and renewal applications and recertifications received after the due date are subject to late filing penalties. The department of revenue shall allow a reasonable extension of time for filing upon written request filed on or before the required filing date and for good cause shown.

(a) Initial applications: The original application an organization files or an application by such organization for additional property not currently claimed for exemption.— Fee due.

(b) Renewal application: The claim for continued exemption filed every fourth year after the latest initial application.— Fee due.

(c) Recertifications: A certification on department of revenue forms, that the use and exempt status of the real and personal property claimed by the exempt organization has not changed.— No fee due.

All initial and renewal applications and recertifications for exemption shall be filed on forms prescribed by the department of revenue and shall be signed by an authorized agent. On or before January 1 of each year the department shall mail the forms to each legal owner that was granted an exemption for the previous year. Applications shall be available from the department of revenue or from the county assessor's office. No property shall be granted an exempt status without the owner first filing for exemption, for the specific property for which exemption is sought. The filing shall be due regardless of whether the legal owner has received forms for exemption from the department.

To retain exempt status, applicants except nonprofit cemeteries must file a renewal application on or before March 31 of every fourth year following the date of the initial application. When an applicant previously granted exemption acquires or otherwise converts real property to exempt status, such applicant shall file an initial application within sixty days following the conversion of such real property to exempt status without penalty. Failure to file an initial application within sixty days of conversion of such real property to exempt status shall result in a late filing penalty. See WAC 458-16-111 for computation of penalty.

In the years renewal applications are not due, an applicant previously granted exemption shall annually file a recertification: *Provided*, That when the annual filing has not been made by March 31, the ten dollars per month filing penalty will apply to the date the application is completed. Failure to file an annual claim will result in a taxable determination for current year taxes.

(2) The property covered by each application for property tax exemption shall include all the real and personal property which is contiguous, and which is used as a homogeneous unit.

(a) The term "homogeneous unit" means property under the control of a single applicant, the operation and use of which is integrated with and directly related to the activity of the entity seeking exemption.

(b) The term "contiguous" means all property which is geographically one unit without separation except for separations caused by public streets and roads.

**Examples:**

A church owns a single piece of property upon which is constructed a church, parsonage, and elementary school. All three buildings are owned by the church and constitute a homogeneous unit in that they are integrated with and directly related to the activities of the church. This requires only one application because the property is geographically contiguous and is a homogeneous unit.

○ corporation, the supervising entity of a nonprofit recognized religious denomination, holds title to five separate units in a county. The operation of each church unit is integrated with the activity of and supervised by ○. To properly apply for an exemption for these five church units

~~One would be required to file a separate application for each church unit as they are geographically separate.~~

~~No application shall be acted upon until complete. To be complete an applicant must have on file with the department of revenue copies of their articles of incorporation and all amendments and a copy of their current bylaws. All initial applications must be accompanied by an accurate map identifying by dimension the use or proposed use of all areas including building sites, parking, landscaping, and vacant areas from which an accurate determination for exemption or a segregation for partial exemption can be made. Legal descriptions and county parcel numbers must also be provided. The department of revenue will not act on any application until all fees and penalties have been submitted.~~

~~Organizations claiming exemption under RCW 84.36.030 through 84.36.480 are required to provide financial information to the department of revenue upon request.~~

~~Property leased may be claimed by the lessor or lessee, provided the lessee has permission of the lessor to claim exemption. Property claimed by the lessee must be specifically identified by owner and location of the property. Claims for leased property must be accompanied by a complete copy of the lease agreement.~~

~~The department of revenue shall have access to all books and records necessary to determine if the requirements for exemption have been complied with. The department of revenue shall have the authority to request additional information relevant to the claim for exemption as the department deems necessary.)~~ (1) **Introduction.** This section explains the procedures property owners must follow to apply for and to renew all real and personal property tax exemptions provided under chapter 84.36 RCW for which the taxpayer must apply to receive.

(2) **Application required.** All foreign national governments, cemeteries, nongovernmental nonprofit corporations, organizations, and associations, and soil and water conservation districts seeking exemption from ad valorem property taxation under the provisions of chapter 84.36 RCW shall apply for exemption with the department of revenue. Unless otherwise exempted by law, no real or personal property shall be exempt from taxation unless an application has first been filed and exemption has been granted therefor.

(3) **Initial applications.** In general, initial applications for exemption of real or personal property shall be filed with the department of revenue on or before March 31. However, when real property that may qualify for exemption is acquired or when real property is converted to a use that may qualify the property for exemption, in order for the property to be granted exemption, an initial application must be filed with respect to the property within sixty days following acquisition or conversion; if this application is not received within this period, the penalties set forth in WAC 458-16-111 will be applied. All initial applications shall comply with the following:

(a) The application shall be made on a form prescribed by the department and signed by an authorized agent of the applicant.

(b) To the extent exemption is sought for real property, each application may include all property that is contiguous and part of a homogeneous unit. Except with respect to applications for exemption of church property involving a noncontiguous parsonage or convent, a separate application

must be submitted for real property that is not both contiguous and part of a homogeneous unit.

(i) **Contiguous property** means real property adjoining other real property, all of which is under the control of a single applicant even though the properties may be separated by public roads, railroads, rights of way or waterways.

(ii) A homogeneous unit means one where the property is under the control of a single applicant and the operation and use of the property is integrated with and directly related to the activity of the applicant.

(c) The application shall include copies of the articles of incorporation or association, or constitution or other establishing document, together with all current amendments thereto, and also include a copy of the bylaws of the applicant. The application shall also include a copy of any current letter from the Internal Revenue Service that grants the applicant exemption from payment of federal income taxes, unless the nonprofit organization, association, or corporation is part of a larger organization, association, or corporation, like a church or the boy scouts, that has been issued a group 501 (c)(3) exemption ruling by or is otherwise exempt from filing with the Internal Revenue Service. If copies of these documents have previously been filed with the department and are still current, the application need not include them.

(d) The application shall include an accurate map identifying by dimension the use or proposed use of all real property including buildings, building sites, parking areas, landscaping, vacant areas, and, if requested by the department, floor plans of multistoried buildings from which a determination exempting the total area can be made or from which a segregation for partial exemption can be made.

(e) The application shall accurately describe the real and personal property for which exemption is sought. The application shall include a legal description of all real property and provide the county tax parcel number for each parcel of real property. A copy of the current deed relative to the real property shall also be included with the application.

(f) The application shall indicate whether any of the real or personal property that is the subject of the application is leased or loaned from or to others, and if so, include a copy of the lease agreement and further indicate the following:

(i) Which property is leased or loaned;

(ii) The amount of the rent or other consideration;

(iii) To whom or from whom the property is loaned or leased;

(iv) What use is being made of the property; and

(v) What is the monthly amount of operation and maintenance costs.

(4) **Renewal applications.** In order to requalify for exemption, each applicant (except nonprofit cemeteries) shall submit a renewal application not later than March 31 of each fourth year following the date of the most recent initial application. The renewal application shall be made on forms prescribed by the department and signed by an authorized agent of the applicant, and shall include information regarding any change in use or in exempt status or any change in the items covered in subsection (3)(b) through (f) of this section, since the filing of the initial application or since the filing of the previous renewal application.

**(5) Annual certifications - affidavit.** In order to retain the exemption from property taxation, each applicant (except nonprofit cemeteries) that has previously been granted exemption shall annually file an affidavit with the department certifying that the use and exempt status of the real and personal property claimed as exempt has not changed. These affidavits shall be on forms prescribed by the department and shall be in accordance with the following:

(a) The department shall annually on or before January 1 mail affidavit forms or, when appropriate, renewal forms to owners of record of exempt property at their last known address.

(b) The affidavit form or renewal form shall be filed with the department no later than March 31 and signed by an authorized agent of the applicant. The filing shall be due by March 31 regardless of whether the form was received by the applicant from the department.

(c) If the applicant fails to file the affidavit or renewal form within a reasonable time after the due date, and after the department has mailed an additional notice to the applicant at the applicant's last known address, the department may remove the exemption from the property and upon removal shall so notify the assessor in the county where the property is located.

**(6) Failure to file renewal application or annual certification.** When the exemption has been removed as a result of an applicant's failure to file a renewal application or an annual certification, if the applicant wishes to requalify for exemption:

(a) Within the same assessment year, the applicant must complete and file a renewal application or an annual certification together with any required late filing penalties; or

(b) Within a subsequent assessment year, the applicant must file an initial application together with the initial filing fee and any required late filing penalties.

**(7) Filing fees and penalties.** All initial applications, renewal applications or annual certifications are subject to the filing fees and penalties set forth in WAC 458-16-111.

**(8) Effective date of exemption.** Applications that are approved shall be effective for property taxes due and payable the year following the year of application. Applications for previous years, up to a maximum of three years from the date of payment of the tax, may be accepted if the applicant provides proof acceptable to the department that the property qualified for exemption in the assessment year prior to the tax year for which exemption is claimed and the initial filing fee and late filing penalties are paid.

**(9) Where to obtain application forms.** Applications for exemption may be obtained from any county assessor's office or from the department of revenue.

**AMENDATORY SECTION** (Amending Order PT 88-8, filed 6/9/88)

**WAC 458-16-111 Filing fees, penalties and refunds.**

~~((Filing fee:~~

~~The filing fee of \$35.00 shall be collected before the department of revenue considers either an initial or renewal application (as defined in WAC 458-16-110) for property tax exemption.~~

~~Late penalties:~~

~~A late filing penalty of \$10.00 per month or portion of a month shall be collected before the department of revenue will consider any claim for property tax exemption when the completed claim is not filed by the due date. Late filing penalties are computed from the date the filing should have been made to the date the claim was received. The department will allow a two week period in writing when notifying applicants of late filing penalties needed. Applicants not completing the application in the period allowed, must be assessed late filing penalties to the date all fees are received. Applications for previous years' taxes may be accepted if the applicant provides proof the property was used for exempt purposes in the assessment year prior to the tax year and the initial filing fees and late filing penalties are submitted for the period the application for exemption should have been filed to the date the application is completed.~~

~~Refunds:~~

~~Fees and penalties will be refunded if:~~

~~(1) A duplicate claim for the same property is filed by the same legal owner for the same year.~~

~~(2) A claim is improperly received by the department of revenue and it has no authority to consider it. (Example: Claim filed by government entity.)~~

~~(3) A request for withdrawal of the application for exemption is received in writing prior to the department issuing a determination. The request shall include a signed statement clearly withdrawing the claim for exemption. The person requesting the withdrawal must be the same person who signed the application or another person authorized by the legal owner.~~

~~The department of revenue has no authority to refund fees or penalties after a determination is issued.)~~

**(1) Introduction.** This section explains the fee that must accompany an initial application or renewal application for property tax exemption made under the provisions of chapter 84.36 RCW. This section also describes the late filing penalty that is assessed whenever an initial application, renewal application, or annual certification is received after the filing deadline.

**(2) Filing fee.** A filing fee of thirty-five dollars is due with each initial application and each renewal application, as these applications are described in WAC 458-16-110. There is no fee for annual certifications.

**(3) Late filing penalty.** A late filing penalty of ten dollars is due for every month or portion thereof when initial applications, renewal applications or annual certifications are filed after the due date. (See WAC 458-16-110 for the specific deadlines for each type of application or certification.) Late filing penalties are calculated from the date the filing was due to the date of the postmark.

**(4) Full payment required before application or certification will be considered.** The department will not consider an application or a certification for property tax exemption until all filing fees and penalties have been paid. Upon receipt of an application or certification accompanied by less than the full amount due, the department shall promptly notify the applicant in writing of the amount due.

**(5) Refunds.** No filing fees or late filing penalties will be refunded after a determination on the application or certification is issued by the department. However, filing fees and late filing penalties will be refunded under the following circumstances:

(a) When a duplicate application or certification for exemption for the same property is filed for the same year;

(b) When an application for exemption is received by the department and the department has no authority to consider the application. For example, an application filed by a governmental entity is not one which the department may consider; or

(c) When a written request for withdrawal of the application for exemption is received before a determination has been issued by the department. The request for withdrawal must be signed by an authorized agent of the applicant.

AMENDATORY SECTION (Amending Order PT 88-8, filed 6/9/88)

WAC 458-16-130 ((~~Real property sold or acquired by property owner deemed to be exempt.~~) **Change in taxable status of nongovernmental real property.** ((As required by RCW 84.36.855, real property which is transferred or converted by an exempt body to taxable ownership or use or which is no longer exempt for any reason shall be subject to a prorata portion of taxes allocable to that property for the remaining portion of that year, after the date of the execution of the instrument of sale, contract or exchange, or the conversion to a taxable use or the date the property is no longer exempt as provided in RCW 84.40.350 through 84.40.390. Real property exempted pursuant to RCW 84.36.030, 84.36.037, 84.36.040, 84.36.050 and 84.36.060 is also subject to the provisions of RCW 84.36.810.

When any property owner determined to be, or could be, exempt under chapter 84.36 RCW acquires ownership of real property which was in other ownership as of January 1 or converts real property from a taxable to an exempt use must apply for and provide proof that under the specific RCW section and appropriate WAC, the property is entitled to exemption or continued exemption from time of transfer or conversion.

When organizations acquire or convert real property to an exempt use, the property will upon approval of the application for exemption, be entitled to exemption for the following year. Exempt property transferring from one nonprofit organization to another, will enjoy a continuing exemption upon approval, of proper application by the purchasing organization. If the taxes have been paid or if the timing of granting the exemption requires it, the department of revenue will reconvene the June session of the county board of equalization, under the provisions of RCW 84.56.400, in order to cancel the taxes and/or to institute a refund as provided in chapter 84.69 RCW.) **(1) Introduction.** This section explains what occurs when a change in ownership or use of real property owned or used by a nongovernmental entity causes the property to either gain or lose its tax exempt status.

**(2) Definitions.** For purposes of this section, the following definitions apply:

(a) "Cessation of use" means that an owner or user of exempt real property has ceased to physically use the property for an exempt use. The term also refers to property that has lost its exempt status because it was transferred, loaned, or rented to an owner that is not entitled to an exemption.

(b) "Real property" means real property owned or used by a nongovernmental organization, association, corporation, or private individual.

(c) "Rollback" refers to the provisions of RCW 84.36.810 that make previously exempt property subject to back taxes and interest because of a change in ownership or a cessation of an exempt use unless the subject property has been exempt for at least ten years.

**(3) Exempt to taxable status.** A change in the ownership or use of real property that makes the property no longer exempt from taxation shall cause the real property to be assessed and taxed as of the date of the cessation of use or change of ownership, as provided in RCW 84.40.350 through 84.40.390. If the owner or new owner begins to use the property for an exempt use within one hundred twenty days of the date the previous exempt use ceased, the property will not be placed back on the tax assessment roll as of the date of cessation. However, if an agreement establishing an alternate exempt use has not been signed or an alternative exempt use has not been found within one hundred twenty days, the property will be placed back on the assessment roll and, if appropriate, the rollback provisions of RCW 84.36.810 will be applied as of the date the cessation of use occurred. All real property that is no longer exempt from taxation shall be subject to a pro rata share of taxes allocable for the remaining portion of the year in which the cessation of use or change in ownership occurred. If only a portion of the property no longer qualifies for tax exemption, only that portion shall be assessed and taxed.

(a) Real property changes from exempt to taxable status whenever the property:

(i) Is transferred through either sale, exchange, gift, or contract from tax exempt ownership to taxable ownership;

(ii) Is transferred through either sale, exchange, gift, or contract from tax exempt ownership to another nonprofit organization, association, or corporation that has not applied for a property tax exemption;

(iii) Is converted to a taxable use; or

(iv) When it otherwise loses its exempt status.

**(b) Examples.**

(i) Example 1. For five years, nonprofit "A" operates a rehabilitative social service facility and receives a property tax exemption for this property. Nonprofit "A" transfers this property to nonprofit "B," who continues to receive the exemption for this property. Two years after acquiring the property nonprofit "B" ceases to use the exempt property for an exempt purpose. One hundred days after the exempt activity ceased, nonprofit "B" sells the exempt property to XYZ Printing Company, a profit seeking business. This property became taxable at the time nonprofit "B" vacated the premises. The provisions of RCW 84.34.810 will be applied as of the date of the move.

(ii) Example 2. A nonprofit hospital owns and occupies a building for which it receives a property tax exemption. The hospital ceases to use the property on January 1, 1992, and does not intend to use or occupy the exempt property any longer. It intends to rent this property to another nonprofit organization and actively advertises and looks for such a tenant. On April 15, 1992, a nonprofit nursing home signs a lease agreement with the hospital to use and occupy the property for an exempt purpose effective June 1, 1992.

In this instance, the property will not be subject to taxation for the interim period.

(c) The taxes owing when property changes from exempt to taxable ownership shall be prorated as of:

(i) The date the instrument of sale, exchange, gift, or contract is executed; or

(ii) The date the property is converted to a taxable use.

(d) When the status of real property changes from exempt to taxable, the rollback provisions of RCW 84.36.810 apply. Taxes are collected by the county treasurer in accordance with that statute if this property was previously exempt from ad valorem taxation under any of the following provisions:

(i) It was owned and used by:

(A) A nonprofit organization, association or corporation for character building, benevolent, protective, or rehabilitative social services (RCW 84.36.030);

(B) A nonprofit church, denomination, group of churches, or an organization or association, the membership of which is comprised solely of churches and/or their qualified representatives, as a church camp (RCW 84.36.030);

(C) An organization or society of veterans of any war of the United States (RCW 84.36.030);

(D) Corporations formed under an act of congress to furnish volunteer aid to members of the armed forces of the United States (RCW 84.36.030);

(E) Corporations formed under an act of congress to carry on a system of national and international relief to mitigate and to prevent suffering caused by pestilence, famine, fire, floods, and other national calamities (RCW 84.36.030);

(F) Nonprofit organizations exempt from federal income tax under section 501 (c)(3) of the Internal Revenue Code that are guarantee agencies under the federal guaranteed student loan program or guarantee agencies that issue debt to provide or acquire student loans (RCW 84.36.030);

(G) Nonprofit organizations, associations or corporations in connection with the operation of a public assembly hall, public meeting place, community meeting hall, or community celebration facility (RCW 84.36.037);

(H) Nonprofit organizations for solicitation or collection of gifts, donations, or grants for character building, benevolent, protective, or rehabilitative social services or for distribution to at least five other nonprofit organizations or associations that provide such social services (RCW 84.36.550);

(I) Associations maintaining and exhibiting art, scientific or historical collections for the benefit of the general public and not for profit (RCW 84.36.060);

(J) Fire companies for preventing and fighting fires (RCW 84.36.060); or

(K) Humane societies (RCW 84.36.060).

(ii) It was used by:

(A) Nonprofit day care centers (RCW 84.36.040);

(B) Free public libraries (RCW 84.36.040);

(C) Nonprofit orphanages (RCW 84.36.040);

(D) Nonprofit homes for the sick or infirm or nonprofit hospitals for the sick (RCW 84.36.040);

(E) Nonprofit outpatient dialysis facilities (RCW 84.36.040); or

(F) Nonprofit homes for the aging (RCW 84.36.041).

(iii) It was owned or used for nonprofit schools or colleges (RCW 84.36.050).

(iv) It was owned or leased, and used by:

(A) Nonprofit organizations providing emergency or transitional housing to low-income homeless persons or victims of domestic violence (RCW 84.36.043); or

(B) Associations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit (RCW 84.36.060).

(e) When real property that was previously exempt under the provisions of RCW 84.36.260, that is, the property was used to conserve ecological systems, natural resources, or open space, becomes taxable, the rollback provisions of RCW 84.36.262 shall apply.

(4) Acquiring tax exempt status. Within sixty days of acquiring real property that may qualify for exemption, or within sixty days of converting real property to a use that may qualify for exemption, any nongovernmental organization, association, or corporation that wishes to have the property exempted from ad valorem taxation must file an application with the department of revenue relating to the subject property seeking either a new or continued exemption from property tax under the provisions of chapter 84.36 RCW. All applications must comply with the requirements set forth in WAC 458-16-110 and 458-16-111.

(a) If the application is approved, the property will be exempt from taxes payable the following year.

(b) If exempt property is transferred from one nonprofit organization, association, or corporation to another, the property shall continue to be exempt from taxation upon the timely receipt of the required application from the purchasing organization and after approval of this application.

AMENDATORY SECTION (Amending Order PT 86-2, filed 5/30/86)

WAC 458-16-150 Cessation of use—Taxes collectible for prior years. ((Upon cessation of any use exempted under RCW 84.36.030, 84.36.037, 84.36.040, 84.36.050 and 84.36.060, the taxes that would have been paid had the property not been exempt during the three years preceding, or for the life of the exemption, if such be less than three years, shall be collectible.

If the property has been exempt for more than ten years the rollback will not be implemented.

The property owner, county assessor, or any other public official having information or knowledge of any change in use, including lease or rental of all or a part of such properties, which may constitute cessation of use, shall notify the department of any such changes in use which may be brought to their attention. The department shall notify the current property owner, and the legal owner previously granted exemption, of the reported change in use and if necessary examine the property to determine if the reported change has taken place. The property owner shall have 30 days from the time of notification by the department to submit any information which may be relevant to the question of changing use.

The department shall determine, upon the information supplied by the assessor or the public official, the property

owner, or from the inspection of the property, whether such a cessation of use as warrants the rollback has occurred.

The county treasurer, upon notification from the department of revenue, shall compute the taxes payable, together with interest, at the same rate and computed in the same manner as that upon delinquent property taxes. The tax shall be distributed by the county treasurer in the same manner as taxes were distributed for those years that taxes would have been paid if the property had not been exempt. The interest shall be placed in the county current expense fund. If such a cessation of use involves a portion of the total property, the taxes collectible shall attach to only that portion affected. The rollback will be implemented only upon transfer of the property or when 51% or more of the property has ceased to qualify for exemption. The percentage of nonqualifying use will be determined separately for the land and improvements.

If the cessation of use resulted solely from one of the six conditions identified as (3)(a) through (f) in RCW 84.36.810, the provisions of this section shall not apply.

Lease or rental of all or part of such properties may constitute a cessation of use and knowledgeable authorities should report same to the department of revenue.

"Relocation of the activity" means the use of another location or site for the same activity that was carried on at the original site to the extent that it is a new location or site, or it is an existing site whose facilities have expanded to accommodate the relocated activity.

Property exempted for an intended use, but never put to such use will be subject to a rollback for the life of the exemption when sold or put to a disqualifying use, or when it is determined the intended use will not be achieved.)) (1)

**Introduction.** This section explains what occurs when property loses its tax exempt status and is placed back on the tax rolls, as well as the back taxes and interest that are collected under the provisions of RCW 84.36.810 when an exempt use ceases, unless the property has been exempt for more than ten years or is otherwise exempt from the provisions of this statute.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Cessation of use" means that an owner or user of exempt real property has ceased to physically use the property for an exempt purpose. The term also refers to property that has lost its exempt status because it was transferred, loaned, or rented to an owner that is not entitled to an exemption.

(b) "Relocation of the activity" means that a portion or all of an exempt use has been relocated from the original site to a new location. The term shall not include undeveloped property of camp facilities.

(c) "Rollback" refers to the provisions of RCW 84.36.810 that make previously exempt property subject to back taxes and interest because of a cessation of an exempt use or a change in ownership unless the subject property has been exempt for at least ten years.

(3) **Applicability of this section.** In accordance with RCW 84.36.810, upon cessation of any exempt use the county treasurer shall collect all taxes that would have been paid if the property had not been exempt during the preceding three years, or for the life of the exemption, whichever is less, plus interest computed at the same rate and in the

same manner as that upon delinquent property taxes. If the property has been exempt for more than ten years, this section is not applicable.

(a) When the status of real property changes from exempt to taxable, the rollback provisions of RCW 84.36.810 apply. Taxes are collected by the county treasurer in accordance with that statute if this property was previously exempt from ad valorem taxation under any of the following provisions:

(i) It was owned and used by:

(A) A nonprofit organization, association or corporation for character building, benevolent, protective, or rehabilitative social services (RCW 84.36.030);

(B) A nonprofit church, denomination, group of churches, or an organization or association, the membership of which is comprised solely of churches and/or their qualified representatives, as a church camp (RCW 84.36.030);

(C) An organization or society of veterans of any war of the United States (RCW 84.36.030);

(D) Corporations formed under an act of congress to furnish volunteer aid to members of the armed forces of the United States (RCW 84.36.030);

(E) Corporations formed under an act of congress to carry on a system of national and international relief to mitigate and to prevent suffering caused by pestilence, famine, fire, floods, and other national calamities (RCW 84.36.030);

(F) Nonprofit organizations exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code that are guarantee agencies under the federal guaranteed student loan program or guarantee agencies that issue debt to provide or acquire student loans (RCW 84.36.030);

(G) Nonprofit organizations, associations or corporations in connection with the operation of a public assembly hall, public meeting place, community meeting hall, or community celebration facility (RCW 84.36.037);

(H) Nonprofit organizations for solicitation or collection of gifts, donations, or grants for character building, benevolent, protective, or rehabilitative social services or for distribution to at least five other nonprofit organizations or associations that provide such social services (RCW 84.36.550);

(I) Associations maintaining and exhibiting art, scientific or historical collections for the benefit of the general public and not for profit (RCW 84.36.060);

(J) Fire companies for preventing and fighting fires (RCW 84.36.060); or

(K) Humane societies (RCW 84.36.060).

(ii) It was used by:

(A) Nonprofit day care centers (RCW 84.36.040);

(B) Free public libraries (RCW 84.36.040);

(C) Nonprofit orphanages (RCW 84.36.040);

(D) Nonprofit homes for the sick or infirm or nonprofit hospitals for the sick (RCW 84.36.040);

(E) Nonprofit outpatient dialysis facilities (RCW 84.36.040); or

(F) Nonprofit homes for the aging (RCW 84.36.041).

(iii) It was owned or used for nonprofit schools or colleges (RCW 84.36.050).

(iv) It was owned or leased, and used by:

(A) Nonprofit organizations providing emergency or transitional housing to low-income homeless persons or victims of domestic violence (RCW 84.36.043); or

(B) Associations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit (RCW 84.36.060).

(b) This section applies only when the ownership of the property is transferred or when fifty-one percent or more of the area has lost its exempt status. For example, if a nonprofit school or college that owns or uses two hundred acres for educational purposes and is receiving a property tax exemption for this property transfers ten acres, the ten acres are subject to the rollback provisions set forth in subsection (3) of this section if the property has been exempt for less than ten years. The nonprofit school or college will continue to receive a property tax exemption for the remaining one hundred ninety acres as long as the exempt property is used for the exempt use.

(c) This additional tax shall not be imposed if the cessation of use results solely from any of the following:

(i) Transfer to a nonprofit organization, association, or corporation for a use that also qualifies for and is granted exemption under the provisions of chapter 84.36 RCW;

(ii) A taking through an exercise of the power of eminent domain;

(iii) A sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of this power;

(iv) An official action by an agency of the state of Washington or by the county or city within which the exempt property is located that disallows the present exempt use of the property;

(v) A natural disaster (such as a flood, windstorm, earthquake, or other such calamity) that changes the use of the property;

(vi) Relocation of the activity and use of another location or site;

(vii) Cancellation of a lease on property previously exempt as:

(A) A nonprofit day care center;

(B) A library;

(C) An orphanage;

(D) A home for the sick or infirm;

(E) A hospital;

(F) An outpatient dialysis facility;

(G) A nonprofit home for the aging;

(H) A nonpermanent shelter for low-income homeless persons or victims of domestic violence; and

(I) An organization that either produces or performs, or both, musical, dance, artistic, dramatic, or literary works.

(viii) A change in the exempt portion of a home for the aging, as long as some portion of the home remains exempt; or

(ix) The conversion of a home for the aging from full exemption to a partial exemption or to taxable status for taxes payable in 1994, 1995, and 1996 (RCW 84.36.041).

(4) Duty to notify.

(a) An owner of exempt property who knows of or who has information regarding a change in the use of exempt property shall notify the department of revenue of this change. An owner of exempt property must also report the loan or rental of all or a portion of the exempt property since

the loan or rental of exempt property may change its taxable status.

(b) Any other person who knows or has information regarding a change in use of exempt property shall notify the county assessor of any such change. The assessor, in turn, shall report this information to the department of revenue.

(c) After being notified about a change in use of exempt property, the department may physically inspect the property to determine if the reported change has taken place.

(d) After a change in use, the final determination of the taxable status of the subject property will be made by the department of revenue.

(5) Notice to owner. When it is determined that a change in use has occurred and the rollback provisions may apply, the department of revenue shall notify the current owner of exempt property and, in the case of a transfer, the previous legal owner of exempt property that the change in use changed the taxable status of the property and that the property may be subject to the rollback provisions set forth in subsection (3) of this section. The owner(s) of this property shall have thirty days from the date of the notice to submit any comments or information to the department as to why the rollback provisions should not be applied. The department shall then issue a final determination.

(6) County treasurer. Upon notification from the department of revenue that the exempt use of the property has ceased, the county treasurer shall compute and collect the taxes payable, including interest computed at the same rate and in the same manner as that upon delinquent property taxes. The interest collected shall be placed in the county current expense fund.

AMENDATORY SECTION (Amending Order PT 77-2, filed 5/23/77)

WAC 458-16-180 Cemeteries. ~~((The following property shall be exempt from taxation, when used without discrimination as to race, color, national origin, or ancestry:~~

~~All lands, and buildings required for necessary administration and maintenance of public burying grounds or cemeteries, which are used, or to the extent used exclusively for public burying grounds or cemeteries. Use shall be evidenced in one of the following manners:~~

~~(1) Actual entombment of human remains;~~

~~(2) A contractual limitation to limit the use of the property to entombment of human remains, i.e., sale of grave plot;~~

~~(3) Dedication of property as a cemetery as provided under chapter 68.24 RCW; provided other nonqualifying use is not made of the property.~~

~~Lands owned by a nonprofit cemetery association, exempted under the provisions of RCW 68.20.110, but not exceeding 80 acres. Expansion, by additional 20-acre sections, when necessary for continuing the operation of the cemetery, may be included; this limitation does not apply to a corporation sole.~~

~~Necessary administration and maintenance of cemeteries shall be construed to mean those functions, the necessity of which would be nonexistent but for the presence of the cemetery, the performance of which is a direct benefit to the cemetery. This may include the groundskeeping or maintenance building and the administration building used in~~

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connection with the general conduct of a cemetery business. Residential use of the grounds is not generally within the scope of this construction, but under certain circumstances, listed below, the department may allow such use in a limited manner.

(1) The residence is necessary for the protection of the property.

and

(2) The size is reasonable for the purpose.

and

(3) The caretaker is required to be on the premises 365 days a year without exception unless a substitute is in place. This requirement would apply to all hours that the cemetery would be normally closed or during the time when vandalism or other damage is most likely to take place.

and

(4) No rent is paid to the cemetery by the caretaker but is provided to him as part of his employment.

and

(5) Protection is afforded by the caretakers, not merely by their presence, but that they regularly patrol the grounds, lock gates if necessary, and generally act in the capacity of ensuring the property is secure.

Exempt properties held by families or individuals for the purposes of burial are not subject to the requirement applying for exemption.

Nonprofit cemeteries are only required to file an initial application and additional filings are not required on property approved for exemption by the state department of revenue.) (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.020 to public burying grounds or cemeteries.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Burial" means the placement of uncremated human remains in the ground.

(b) "Dedicated" means a written declaration of dedication of the property to which the exemption is to be applied has been filed with the county auditor in the county where the property is located, dedicating the property exclusively as a public burying ground or cemetery.

(c) "Entombment" means the placement of uncremated human remains in a crypt in a mausoleum.

(d) "Interment" means the disposition of human remains by cremation and inurnment, entombment, or burial in a place used, or intended to be used, and dedicated, for a public burying ground or cemetery.

(e) "Inurnment" means placing cremated remains in an urn or other container.

(f) "Necessary administration and maintenance" means those administrative and maintenance functions necessary to administer and maintain the cemetery and the necessity of which would be nonexistent but for the presence of the cemetery.

(g) "Public burying grounds or cemeteries" means places used, and dedicated, for the interment of human remains, and also includes:

(i) An "abandoned cemetery," "historical cemetery," and "historic grave" as defined in chapter 68.60 RCW;

(ii) Indian graves as protected under chapter 27.44 RCW; and

(iii) Nonprofit cemeteries owned or operated by any recognized religious denomination or any of its churches that qualifies for a property tax exemption under the provisions relating to churches under the provisions of RCW 84.36.020.

(3) **Exemption.** The following property shall be exempt from taxation when used without discrimination as to race, color, national origin, or ancestry:

(a) All lands used, or to the extent used, exclusively for public burying grounds or cemeteries.

(b) All buildings required for and used, or to the extent used, exclusively for necessary administration and maintenance of public burying grounds or cemeteries including, but not limited to, the groundskeeping or maintenance building and the administration building. This exemption does not generally include a residential building; however, a caretaker's residence may be exempt if the following conditions are met:

(i) The caretaker's duties include regular surveillance and patrolling of the property;

(ii) The size of the residence is reasonable and appropriate in light of the caretaker's duties and the size of the exempt property;

(iii) The caretaker, or the caretaker's substitute, is required on the premises at all hours the cemetery is closed or at least during the time when vandalism or other damage is most likely to occur; and

(iv) The caretaker receives the use of the residence as part of his or her compensation and does not pay rent. Reimbursement of utilities expenses created the caretaker's presence will not be considered as rent.

(4) **Applications and annual certifications.** Nonprofit cemetery corporations or associations are only required to file an initial application for exemption as described in WAC 458-16-110. For profit cemetery corporations or associations shall file renewal applications and annual certifications as required by WAC 458-16-110.

**AMENDATORY SECTION** (Amending Order PT 82-8, filed 11/2/82)

**WAC 458-16-190 Churches, parsonages and convents.** ((All churches and grounds that are owned by religious organizations and exclusively used for church purposes shall be exempt to the following extent:

(1) The area upon which a church and parsonage is or shall be built, not exceeding five acres of land. The area exempt includes the ground covered by the church, parsonage, and convent, the buildings and improvements required for the maintenance and security of such property and the structures and ground necessary for street access, parking, light and ventilation. (AGO 5-1-1952; PTB No. 217)

(2) If the requirements of subsection (1) are met the exemption will apply to a parsonage or convent and a church built on noncontiguous lots, or to the construction of separate parsonages for a minister and assistant minister (AGO 4-9-1947), and to caretakers quarters when the following conditions are met:

(a) ~~The residential use is necessary for the protection of property.~~

~~and~~

(b) ~~The size is reasonable for the purpose.~~

~~and~~

(c) ~~The caretaker is required to provide security or provide custodial service indicated in (c)(i) or (c)(ii).~~

~~and~~

(d) ~~No rent is paid to the church by the caretaker. Living quarters are provided in lieu of wages or salary. The service provided by the caretaker is considered of equal or greater value than the provision of living quarters. Reimbursement of utilities expense created by the caretaker will not be considered as rent.~~

~~and~~

(e)(i) ~~Protection is afforded by the caretakers, not merely by their presence, but their duties will include periodic inspection of the property to ensure its security.~~

~~or~~

(e)(ii) ~~Necessary on a daily basis to open and close the premises at irregular hours, activate or shut down environmental systems, and other maintenance activities necessary for the effective operation and utilization of the facilities.~~

(3) ~~Land unoccupied or not covered by a church, parsonage or convent, and not occupied for church or related purposes, is exempt up to an area the equivalent of 120 feet by 120 feet, except where additional unoccupied land may be required to conform with state or local codes, zoning, or licensing requirements.~~

(4) ~~Where property is used for nonchurch purposes, the exemption is lost. If a portion of the church building or grounds is used for commercial rather than church purposes, that portion must be segregated and taxed whether or not the profit reserved by the church from the commercial use is applied to church purposes. (*Norwegian Lutheran Church v. Wooster*, 176 Wash. 581 (1934).)~~

(5) ~~The rental or lease of any portion of the church building or grounds is subject to the following provisions:~~

(a) ~~Must be to a nonprofit organization, association, corporation or school.~~

(b) ~~Must be for an eleemosynary use (see definition below).~~

(c) ~~Rental must be reasonable and solely for operation and maintenance of property.~~

(6) ~~Definitions:~~

(a) ~~"Church purposes" shall be construed to mean the use of real and personal property owned by a nonprofit religious organization for religious worship or related administrative, educational, eleemosynary, and social activities. This definition is to be broadly construed.~~

(b) ~~"Eleemosynary" shall be construed to mean charitable; not limited to the distribution of alms, but also includes activities when some social objective is served or general welfare is advanced, and where, but for the activity, government might be required to provide the service.~~

(c) ~~"Convent" means a house or set of buildings occupied by a community of clergymen or nuns devoted to religious life under a superior.~~

(d) ~~"Parsonage" means a residence, owned in fee or contract purchase by the church, which is occupied by a clergyman who is designated for a particular congregation and who holds regular services therefor. Property, title of which will be transferred to an individual upon completion of a tour of duty or other obligations, will not qualify for property tax exemption.~~

(e) ~~"Clergyman" means the female as well as the male gender.~~

(f) ~~"Owned" means owned in fee or by contract purchase.~~

~~With regard to property covered by this rule, the department of revenue may request additional information, in the area of finances, relative to the lease rental or license to use the properties claimed for exemption. This shall not be construed as a license to require general information relating to the amount of revenue received as donations, gifts, bequests, or tithes. The department shall have access to financial information, where necessary, to establish nonprofit status, if requested in writing.)~~ (1) Introduction. This section explains the property tax exemption available under the provisions of RCW 84.36.020 to churches, parsonages, and convents.

(2) Definitions. For purposes of this section, the following definitions apply:

(a) "Church purposes" means the use of real and personal property owned by a nonprofit religious organization for religious worship or related administrative, educational, eleemosynary, and social activities. This definition is to be broadly construed. The term "use" includes real property owned by a nonprofit religious organization upon which a church shall be built.

(b) "Clergy person" means a person ordained or regularly licensed for religious service and includes both male and female individuals.

(c) "Commercial" refers to an activity or enterprise that has profit making as one of its primary purposes.

(d) "Convent" means a house or set of buildings occupied by a community of clergy or nuns devoted to religious life under a superior.

(e) "Eleemosynary" means charitable, including types of activities in which some social objective is served or general welfare is advanced.

(f) "Owned" means owned in fee or by contract purchase.

(g) "Parsonage" means a residence, owned by a church, that is occupied by a clergy person designated for a particular congregation and who holds regular services for that congregation.

(h) "Regular services" means religious services that are conducted on a routine and systematic basis at prearranged times, days, and places. This term includes religious services that are conducted by a visiting or circuit clergy person who may only hold services once a month in a particular location if that person is scheduled to conduct services on a routine and prearranged basis on the exempt property.

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(i) "Unoccupied land" means land that is undeveloped, unused, and upon which no structures or improvements have been built.

(A) This land includes, but is not limited to, greenbelt, wetland, and other undeveloped areas contiguous to an exempt church, parsonage, or convent.

(B) This land does not include parking lots, landscaped grounds, or playing fields.

(3) Property exempt and extent of exemption. All churches and the ground upon which a church is or shall be built, together with a parsonage, convent, structures and ground necessary for street access, parking, light, ventilation, and buildings and improvements required to maintain and safeguard the property owned by a nonprofit religious organization and wholly used for church purposes shall be exempt from property taxation to the following extent:

(a) The exempt area shall not exceed five acres of land, including ground that is occupied and unoccupied. Occupied ground is ground covered by the church, parsonage, convent, structures and ground necessary for street access, parking, light, ventilation, and buildings and improvements required for the maintenance and security of such property.

(b) The unoccupied land included within this five-acre limitation may not exceed one-third of an acre (fourteen thousand four hundred square feet), unless additional unoccupied land is required to conform with state or local codes, zoning, or licensing requirements.

(4) Noncontiguous property. A parsonage or convent may qualify for exemption even if located on land that is not contiguous to the church property; however, the five acre limitation still applies, as does the limitation described in subsection (3)(b) of this section with respect to unoccupied land.

(5) Exemption of caretaker's residence. A caretaker's residence located on church property may qualify for exemption if the following conditions are met:

(a) The caretaker's duties include regular surveillance and patrolling of the property;

(b) The size of the residence is reasonable and appropriate in light of the caretaker's duties and the size of the exempt property;

(c) The caretaker is required to provide either security or maintenance service described as follows:

(i) Security of the premises is provided by the caretaker, not merely by his or her presence, but by regular surveillance and patrolling of the grounds, locking gates if necessary, and generally acting in a manner to ensure the security of the property; or

(ii) Maintenance service is provided on a daily basis to open and close the premises, activate or shut down environmental systems, and provide other maintenance and custodial services necessary for the effective operation and utilization of the facilities; and

(d) The caretaker receives the use of the residence as part of his or her compensation and does not pay rent. Reimbursement of utilities expenses created by the caretaker's presence will not be considered as rent.

(6) Property not used for church purposes. When property is not used for church purposes, the exemption is lost. If a portion of the exempt property is used for commercial rather than church purposes, that portion must be segregated and taxed whether or not the proceeds received

by the church from the commercial use are applied to church purposes.

(7) Loan or rental of exempt property. The tax exempt status of any property exempt under this section will not be affected if it is loaned or rented under the following conditions:

(a) The loan or rental must be to a nonprofit organization, association, corporation, or school;

(b) The loan or rental must be for an eleemosynary activity; and

(c) The rental income must be reasonable and devoted solely to the operation and maintenance of the property.

(8) Fund-raising activities. The use of exempt property for fund-raising activities sponsored by an exempt organization, association, or corporation does not subject the property to taxation if the fund-raising activities are consistent with the purposes for which the exemption was granted. The term "fund-raising" means any revenue-raising activity limited to less than five days in length, that disburses fifty-one percent or more of the profits realized from the activity to the exempt nonprofit organization, association, or corporation that is holding the fund-raising, and that takes place on exempt property.

(a) Example 1. A nonprofit social service agency holds an art auction in the church basement to raise funds. Since the fund-raising activity is being held on exempt property, the activity must be less than five days in length and fifty-one percent of the profits must be disbursed to the social agency.

(b) Example 2. The women's auxiliary of the church has a candy sale to raise funds for the church's program to provide meals to the homeless during which the candy is sold door-to-door by members of the auxiliary. Since the candy sale is not being held on the exempt property, the sale is not limited to five days in duration nor do fifty-one percent of the profits from this fund-raising activity have to be remitted to the church.

AMENDATORY SECTION (Amending Order PT 77-2, filed 5/23/77)

WAC 458-16-200 ((Grounds)) Land upon which a church or parsonage shall be built. ((Any church claiming exemption from ad valorem taxation on the property upon which a church, parsonage, or convent is to be built, shall have a specific plan and clear intent to hold such land for this and no other purpose.

It shall be the responsibility of such organizations to sustain the burden of proof that a reasonably specific and active program is being carried out to accomplish the construction of a church, parsonage, or convent within a reasonable period of time. Such proof should include sufficient information from which the department may be able to determine what portion of the property will qualify for exemption when construction is completed.

Proof which may be submitted to evidence the required intent to build may include, but is not limited to:

(1) Affirmative action by the board of directors, trustees, or governing body toward an active program of construction.

(2) Itemized reasons for the proposed construction, such as

(a) Need for expansion due to growth;

- ~~(b) Replacement of wornout buildings;~~
- ~~(c) Initial facilities for a newly organized congregation;~~
- ~~(3) Clearly established plans for financing the construction.~~

~~(4) Proposed architectural plans which would tend to show what portion of the property will be under actual use.~~

~~(5) Building permits.~~

~~(6) Such other proof as the department may deem relevant to show an active program aimed at construction. The length of time under which a property may be held for future construction shall be dependent upon the intent evidenced under the circumstances of each individual situation.)~~ **(1) Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.020 to land upon which a church is to be built or upon which a parsonage or convent is being built in conjunction with and on land contiguous to a church.

**(2) Exemption.** Any property upon which a church is to be built may be exempt from ad valorem taxation if the church has a specific plan and clear intent to use the land for this and no other purpose.

(a) This property may include land upon which a parsonage or convent is to be built on land contiguous to a church.

(b) A parsonage or convent to be built on noncontiguous real property shall not be entitled to exemption until the parsonage or convent is built and occupied by a clergy person.

**(3) Burden of proof.** A nonprofit religious organization claiming this exemption must submit proof that a reasonably specific and active program is being carried out to construct a church within a reasonable period of time. Such proof shall include sufficient information from which the department will be able to determine what portion of the property will qualify for exemption when construction is completed.

**(4) Proof of required intent.** Proof that may be submitted to evidence the required intent to build may include, but is not limited to:

(a) Affirmative action by the board of directors, trustees, or governing body of the nonprofit religious organization toward an active program of construction.

(b) Itemized reasons for the proposed construction, such as:

- (i) Need for expansion due to growth;
- (ii) Replacement of wornout buildings; or
- (iii) Initial facilities for a newly organized congregation or nonprofit religious organization;

(c) Clearly established plans for financing the construction;

(d) Proposed architectural plans that would show what portion of the property will be under actual exempt use;

(e) Building permits; or

(f) Any other proof the department may deem relevant to show an active program aimed at construction.

**(5) Time limit regarding future construction.** The length of time under which a property may be held for future construction under this section shall be dependent upon the intent evidenced under the circumstances of each individual situation. If there is no evidence of progress towards construction within a calendar year, the exemption will be removed.

AMENDATORY SECTION (Amending Order PT 87-10, filed 12/28/87)

**WAC 458-16-210 Nonprofit(~~nonsectarian~~) organizations or associations organized and conducted for nonsectarian purposes.** ~~((1) The real and personal property owned by nonsectarian organizations is exempt from taxation, provided that: (a) The organization is nonprofit and is organized and conducted primarily for nonsectarian purposes, (b) the property is, except as provided in RCW 84.36.805 and subsections (2) and (4) of this section, used for character building, benevolent, protective, rehabilitative social services directed at persons of all ages or used by a student loan agency and (c) if these organizations were not conducting these activities the government would provide this service.~~

~~These are the primary uses and the word "fraternal" is not among them, therefore, organizations whose main function is fraternal would not qualify under this section.~~

~~This exemption extends to property of nonprofit, nonsectarian organizations which are used for benevolent, protective or rehabilitative social services and those which are actually related to those purposes. If any portion of the property of the organization is used for commercial rather than nonsectarian purposes, that portion must be segregated and taxed. Thrift store operations, restricted to the sale of "donated merchandise" will not jeopardize the exemption if the claimant can verify the proceeds are directed to an exempt purpose.~~

~~Organizations claiming exemption on property used to provide short term emergency shelter to homeless persons will upon request provide complete financial information regarding the claimed property, and will also provide the policy used in screening clients, the maximum term of stay, the fee schedule and the number of persons housed.~~

~~(2) The loan or rental of the property does not subject the property to tax if (a) the rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented, and (b) the property would be exempt from tax if owned by the organization to which it is loaned or rented. (RCW 84.36.805): *Provided, however,* That the loan or rental of property to other nonprofit organizations, for periods of less than fifteen days shall not be subject to the restrictions of (a) of this subsection so long as all income received therefrom is devoted exclusively to exempt purposes. Maintenance and operating expenses means those items of rental expense as allowed and defined in generally accepted accounting principles. Property rented or leased for the purpose of deriving revenue from it, shall not be exempt and must be segregated and taxed whether or not such revenue is devoted to exempt purposes. For purposes of this subsection the term "revenue" means income received from the loan, lease or rental of property when such income exceeds the amount of the maintenance and operation expenses attributable to the term and portion of the property loaned or rented.~~

~~(3) Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:~~

~~(a) The contract is written to clearly reflect all receipts and expenses are to be administered by the exempt organization.~~

~~(b) The financial records of the exempt organization will identify all receipts and expenses of the programs.~~

~~(c) The program is compatible and consistent with the purposes of the exempt organization.~~

~~(d) A summary of all receipts and expenses of the program will be provided to the department upon request.~~

Programs provided under a personal service contract, whereby the contractor will reimburse the organization for expenses pertaining to the program will be viewed as a rental agreement between the exempt organization and an individual or for-profit user and will subject that portion of property to tax.

(4) The use of the property for fund-raising activities sponsored by the exempt organization does not subject the property to tax if the fund-raising activities are consistent with the purposes for which exemption is granted. The term "fund-raising" means any revenue-raising activity limited to less than five days in length including but not limited to art auctions, use of the property by professional organizations for conferences, seminars, or other activities which enhance the reputation of the organization-)) (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.030(1) to nonprofit organizations or associations organized and conducted for nonsectarian purposes.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Benevolent" refers to social services or programs that are directed at persons of all ages, that arise from or are prompted by motives of charity or a sense of benevolence, that are marked by a kindly disposition to promote the happiness and prosperity of others, by generosity in and pleasure at doing good works, or that are organized for the purpose of doing good. For example, a benevolent organization may provide a food bank, a soup kitchen, or counseling services at cost.

(b) "Character building" means social services or programs that are designed for the general public good, that assist people with general living skills, that develop interview and job seeking skills, or that assist people in working towards independent living and self-sufficiency. These services include, but are not limited to, programs designed to develop an individual's moral or ethical strength, leadership, integrity, self-discipline, fortitude, self-esteem, and reputation.

(c) "Commercial" refers to an activity or enterprise that has profit making as its primary purpose.

(d) "Community outreach group" means a nonprofit group organized to extend social services to a particular segment of the community; for example, a rescue mission organized to feed the homeless or a program that targets juveniles "at risk" of criminal or abusive behavior.

(e) "Nonsectarian purpose" means a purpose that is not associated with or limited to a particular religious group.

(f) "Protective" refers to activities that are meant to cover, to guard, or to shield other persons from injury or destruction or to save others from financial loss. For example, a protective organization may provide housing for battered persons or for the developmentally disabled or may

assist persons with behavioral problems by providing encouragement, support, and training.

(g) "Rehabilitative or rehabilitation" refers to activities designed to restore individuals to a former capacity, to a condition of health, or to useful or constructive activity. For example, a rehabilitative organization may assist persons to overcome alcohol or substance abuse, or to overcome the affects of a physical injury, stroke, or heart attack.

(h) "Social service" means programs designed to help people resolve problems, become more self-sufficient, prevent dependency, strengthen family relationships, and/or enhance the functioning of individuals in society. These services include, but are not limited to, programs in the general categories of:

(i) Socialization and development; and

(ii) Therapy, help, rehabilitation, and social protection.

(3) **Exemption.** The real and personal property owned by a nonprofit organization or association is exempt from taxation if the organization, association, or corporation is organized and conducted for nonprofit and nonsectarian purposes. To be exempt, the property must be used for and integrally related to character-building, benevolent, protective, or rehabilitative social services directed at persons of all ages.

(a) To qualify for this exemption, there must be an element of gift and giving in the nonprofit organization's, association's, or corporation's activities, in relation to the people it serves. This element of gift and giving requires giving something of value with no expectation of compensation or remuneration. The words "gift" and "giving," within the context of this section, mean a voluntary act. In order to meet this requirement of gift and giving, the nonprofit organization, association, or corporation must annually meet one of the following conditions:

(i) Provide goods and/or services free of charge or at a rate that is at least twenty percent below the total actual cost of such goods and/or services to a minimum of fifteen percent of the total number of people assisted by that nonprofit organization, association, or corporation; or

(ii) Contribute at least ten percent of its total annual income towards the support of character-building, benevolent, protective or rehabilitative social services or programs. "Total annual income" refers to the total income reported to the Internal Revenue Service for that year and includes, but is not limited to, funds received through direct and indirect public support, government grants, membership fees, and other contributions. The term does not include funds that are specifically donated or contributed for capital improvements.

(A) In order to meet this ten percent requirement, a nonprofit organization, association, or corporation may include, but is not limited to, the value of time volunteers donate to carry out program services and functions, the loan of its facilities to community outreach groups, and gifts of scholarships and other fee subsidies.

(B) If a nonprofit organization utilizes volunteer time to reach the ten percent requirement, it must maintain records identifying the individuals who donate their services and the number of hours they donate. The value of donated time will be calculated by using the federal minimum wage standard.

(C) If a nonprofit organization allows community outreach groups to use its facilities free of charge, it must maintain records identifying the community outreach groups that used the exempt property and the number of hours each group used the exempt property. The value of this use will be calculated by multiplying the number of hours, or any portion of an hour, the facility is used by these groups times the usual and customary charge the nonprofit organization, association, or corporation charges to rent its facility to any other group.

(b) A nonprofit organization, association, or corporation may not impose conditions or restrictions on the use of the exempt property by persons who do not personally pay the total actual cost of a social service, except conditions or restrictions that are reasonably necessary to safeguard the exempt property and to comply with the purposes of this exemption.

(c) Property used by a fraternal organization or association for fraternal purposes does not qualify for an exemption under this section.

(d) If any portion of the organization's or association's property is used for a commercial rather than a nonprofit, nonsectarian exempt purpose that portion must be segregated and taxed.

(e) The sale of donated merchandise shall not be considered a commercial use of the property if the proceeds are dedicated to the exempt purpose associated with the nonprofit, nonsectarian organization or association. For example, thrift store operations that are restricted to the sale of "donated merchandise" will not jeopardize this exemption if the claimant can verify the proceeds are directed to an exempt purpose.

(4) Additional requirements. Any organization or association that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.030.

AMENDATORY SECTION (Amending Order PT 86-2, filed 5/30/86)

WAC 458-16-220 Church camps. ((The property owned by a nonprofit church or an organization or association comprised solely of churches or their qualified representatives which is, except as provided in RCW 84.36.805 and subsections (1) and (3) of this section, used exclusively or jointly used for organized and supervised recreational or educational activities and church purposes as related to such camp facilities are exempt from ad valorem taxation up to a maximum of 200 acres as selected by the church, including buildings and other improvements thereon.

(1) The loan or rental of the property does not subject the property to tax if (a) the rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and (b) the property would be exempt from tax if owned by the organization to which it is loaned or rented. (RCW 84.36.805): Provided, however, That the loan or rental of property to other nonprofit organizations, for periods of less than fifteen days shall not be subject to the restrictions of (a)

of this subsection so long as all income received therefrom is devoted exclusively to exempt purposes. Maintenance and operating expenses means those items of rental expense as allowed and defined in generally accepted accounting principles. Property rented or leased for the purpose of deriving revenue from it, shall not be exempt and must be segregated and taxed whether or not such revenue is devoted to exempt purposes. For purposes of this subsection the term "revenue" means income received from the loan, lease or rental of property when such income exceeds the amount of the maintenance and operation expenses attributable to the term and portion of the property loaned or rented.

(2) Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

(a) The contract is written to clearly reflect all receipts and expenses are to be administered by the exempt organization.

(b) The financial records of the exempt organization will identify all receipts and expenses of the programs.

(c) The program is compatible and consistent with the purposes of the exempt organization.

(d) A summary of all receipts and expenses of the program will be provided to the department upon request.

Programs provided under a personal service contract, whereby the contractor will reimburse the organization for expenses pertaining to the program will be viewed as a rental agreement between the exempt organization and an individual or for-profit user and will subject that portion of property to tax.

(3) The use of the property for fund raising activities sponsored by the exempt organization does not subject the property to tax if the fund raising activities are consistent with the purposes for which exemption is granted. The term "fund raising" means any revenue raising activity limited to less than five days in length including but not limited to art auctions, use of the property by professional organizations for conferences, seminars, or other activities which enhance the reputation of the organization.

It shall be the burden of the organization owning the property to insure that the lessee abides by the terms of the statute under which the exemption is obtained and provide evidence of compliance upon request.) (1) Introduction. This section explains the property tax exemption available under the provisions of RCW 84.36.030(2) to property used as a church camp and owned by a nonprofit church, denomination, group of churches, or an organization or association of churches.

(2) Definitions. For purposes of this section, the following definitions apply:

(a) "Church purposes" means the use of real and personal property as a church camp and owned by a nonprofit religious organization for religious worship or related administrative, educational, eleemosynary, and social activities.

(b) "Property" means real or personal property owned by a nonprofit church, denomination, group of churches, or an organization or association of churches.

(3) Exemption. Property owned by a nonprofit church, denomination, group of churches, or an organization or association comprised solely of churches or their qualified representatives that is used exclusively on a regular and

scheduled basis for organized and supervised recreational or educational activities and church purposes related to such camp facilities is exempt from ad valorem taxation up to a maximum of two hundred acres as selected by the church, including buildings and other improvements thereon.

(4) Additional requirements. Any organization or association that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.030.

AMENDATORY SECTION (Amending Order PT 86-2, filed 5/30/86)

**WAC 458-16-230 Character building organizations.**

~~((1) Property, including buildings and improvements required for the maintenance and safeguarding of such property, which is owned by organizations and associations engaged in character building of boys and girls under eighteen years of age, is exempt from taxation to the extent that it is, except as provided in RCW 84.36.805 and subsections (2) and (4) of this section, solely used, or to the extent used, for such purposes and uses: *Provided*, That (a) the group is nonprofit, and (b) the purposes of the group are for the general good and its properties are devoted to the general public benefit. Only that property solely used is exempt, and property used for other purposes, whether commercial or otherwise, must be segregated and taxed.~~

~~If the existing charters of such organizations or associations provide for services to boys and girls up to the age of twenty one years, then such organizations or associations shall be deemed qualified under this rule.~~

~~(2) The loan or rental of the property does not subject the property to tax if (a) the rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and (b) the property would be exempt from tax if owned by the organization to which it is loaned or rented. (RCW 84.36.805): *Provided, however*, That the loan or rental of property to other nonprofit organizations, for periods of less than fifteen days shall not be subject to the restrictions of (a) of this subsection so long as all income received therefrom is devoted exclusively to exempt purposes. Maintenance and operating expenses means those items of rental expense as allowed and defined in generally accepted accounting principles. Property rented or leased for the purpose of deriving revenue from it, shall not be exempt and must be segregated and taxed whether or not such revenue is devoted to exempt purposes. For purposes of this subsection the term "revenue" means income received from the loan, lease or rental of property when such income exceeds the amount of the maintenance and operation expenses attributable to the term and portion of the property loaned or rented.~~

~~(3) Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:~~

~~(a) The contract is written to clearly reflect all receipts and expenses are to be administered by the exempt organization.~~

~~(b) The financial records of the exempt organization will identify all receipts and expenses of the programs.~~

~~(c) The program is compatible and consistent with the purposes of the exempt organization.~~

~~(d) A summary of all receipts and expenses of the program will be provided to the department upon request.~~

~~Programs provided under a personal service contract, whereby the contractor will reimburse the organization for expenses pertaining to the program will be viewed as a rental agreement between the exempt organization and an individual or for profit user and will subject that portion of property to tax.~~

~~(4) The use of the property for fund raising activities sponsored by the exempt organization does not subject the property to tax if the fund raising activities are consistent with the purposes for which exemption is granted. The term "fund raising" means any revenue raising activity limited to less than five days in length including but not limited to art auctions, use of the property by professional organizations for conferences, seminars, or other activities which enhance the reputation of the organization.)~~ (1) Introduction. This section explains the property tax exemption available under the provisions of RCW 84.36.030(3) to property owned by a nonprofit organization or association engaged in character building of children under eighteen years of age.

(2) Definitions. For purposes of this section, the following definitions apply:

(a) "Character building" refers to activities for children under eighteen years of age that are for the general public good. The activities may build, improve, or enhance a child's moral constitution by developing moral or ethical strength, leadership, integrity, self-discipline, fortitude self-esteem, and reputation. For example, "character building" activities may involve organized and supervised recreational activities including, but not limited to, exploring, hiking, beachcombing, swimming, fishing, studying, and discussion groups.

(b) "Commercial" refers to as activity or enterprise that has profit making as its primary purpose.

(c) "Property" means real and personal property owned and used by a nonprofit organization or association engaged in character building of children under eighteen years of age and includes all buildings, structures, and improvements required to maintain and to safeguard the property.

(3) Exemption. Property that is owned by nonprofit organizations or associations engaged in character building of children under eighteen years of age is exempt from taxation if it is exclusively used, or to the extent it is exclusively used, to promote character building.

(a) To be entitled to receive this exemption, the organization or association must be nonprofit and its purpose must be for the general public good. All property of a character building organization or association must be devoted to the general public benefit.

(b) Only property that is exclusively used for character building is exempt under this section. If the property is used for any other purpose, whether commercial or otherwise, it must be segregated and taxed.

(c) A nonprofit character building organization or association may also qualify for this exemption if, prior to 1971, its articles of incorporation or charter mandated the

organization or association to provide services to children up to the age of twenty-one years.

(4) Additional requirements. Any organization or association that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.030.

(5) Related statute. See RCW 82.04.4271; if a "nonprofit youth organization" is exempt from property taxation under RCW 84.36.030, it may deduct membership fees and certain service fees in calculating the amount of business and occupation tax due.

AMENDATORY SECTION (Amending Order PT 86-2, filed 5/30/86)

WAC 458-16-240 Veterans organizations. ((+) Property of veterans organizations, which are recognized by the department of defense and nationally chartered, are exempted from taxation. To qualify, these organizations shall have as their general purpose and objectives; (a) the preservation of war memories and associations, and (b) consecration of their efforts toward mutual helpfulness and patriotic or community services. To be exempt the property must be, except as provided in RCW 84.36.805 and subsections (2) and (4) of this section, used for the purposes and objectives of the organization.

(2) The loan or rental of the property does not subject the property to tax if (a) the rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and (b) the property would be exempt from tax if owned by the organization to which it is loaned or rented. (RCW 84.36.805): Provided, however, That the loan or rental of property to other nonprofit organizations, for periods of less than fifteen days shall not be subject to the restrictions of (a) of this subsection so long as all income received therefrom is devoted exclusively to exempt purposes. Maintenance and operating expenses means those items of rental expense as allowed and defined in generally accepted accounting principles. Property rented or leased for the purpose of deriving revenue from it, shall not be exempt and must be segregated and taxed whether or not such revenue is devoted to exempt purposes. For purposes of this subsection the term "revenue" means income received from the loan, lease or rental of property when such income exceeds the amount of the maintenance and operation expenses attributable to the term and portion of the property loaned or rented.

(3) Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

(a) The contract is written to clearly reflect all receipts and expenses are to be administered by the exempt organization.

(b) The financial records of the exempt organization will identify all receipts and expenses of the programs.

(c) The program is compatible and consistent with the purposes of the exempt organization.

(d) A summary of all receipts and expenses of the program will be provided to the department upon request.

Programs provided under a personal service contract, whereby the contractor will reimburse the organization for expenses pertaining to the program will be viewed as a rental agreement between the exempt organization and an individual or for profit user and will subject that portion of property to tax.

(4) The use of the property for fund-raising activities sponsored by the exempt organization does not subject the property to tax if the fund-raising activities are consistent with the purposes for which exemption is granted. The term "fund raising" means any revenue raising activity limited to less than five days in length including but not limited to art auctions, use of the property by professional organizations for conferences, seminars, or other activities which enhance the reputation of the organization-)) (1) Introduction. This section explains the property tax exemption available under the provisions of RCW 84.36.030(4) for real and personal property owned by organizations and societies of veterans of any war of the United States.

(2) Definitions. For purposes of this section, the following definitions apply:

(a) "Inadvertent use or inadvertently used" means any unintentional or accidental use of exempt property by an individual, organization, association, or a corporation to promote business activities through either carelessness, lack of attention, lack of knowledge, mistake, surprise, or neglect.

(b) "Maintenance and operation expenses" means items of expense allowed under generally accepted accounting principles.

(c) "Property" means real and personal property owned by organizations or societies of war veterans.

(3) Exemption. Property owned by organizations or societies of war veterans, which are recognized by the department of defense and nationally chartered, is exempt from taxation.

(a) The general purposes and objectives of these organizations or societies shall be:

(i) To preserve memories and associations incident to war service; and

(ii) To devote their members' efforts to mutual helpfulness and to patriotic and community service to state and nation.

(b) In order to qualify for this exemption, the property must be used in a manner reasonably necessary to carry out the purposes and objectives of the organization or society of war veterans. For example, a building owned by a chapter of the veterans of foreign wars that is used to hold meetings to plan a Veterans Day celebration may qualify for exemption.

(c) The tax exempt status of the property will not be affected if it is loaned or rented and the amount of rent or donations collected for the use, loan, or rental of the exempt property:

(i) Is reasonable; and

(ii) Does not exceed the maintenance and operation expenses that are created by the corresponding use, loan, or rental.

(4) Use of property for pecuniary gain or to promote business activities. If property owned by an organization or society of veterans that is exempt under subsection (3) of this section is used for pecuniary gain or to promote business activities, the property tax exemption will be lost for the

assessment year in which the exempt property was so used. The exemption will not be lost if:

(a) The exempt property is used for pecuniary gain not more than three days a year; or

(b) The exempt property is inadvertently used by an individual, organization, association, or a corporation to promote business activities as long as the inadvertent use is not a pattern of use. A "pattern of use" is presumed when an inadvertent use of the property to promote business activities is repeated within the same assessment year or within two or more successive assessment years.

(5) Additional requirements. Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.030.

AMENDATORY SECTION (Amending Order PT 87-10, filed 12/28/87)

WAC 458-16-260 Nonprofit day care centers, libraries, orphanages, ((homes for the aged,)) homes for sick or infirm, hospitals, outpatient dialysis facilities. ((Buildings, grounds, and other real and personal property to the extent used, except as provided for in RCW 84.36.805 and subsections (9) and (11) of this section, by the following institutions are exempt from taxation:

(1) Day care centers, as defined by RCW 74.15.020;

(2) Preschools;

(3) Free public libraries;

(4) Orphanages and orphan asylums;

(5) Homes for the aged;

(6) Homes for the sick or infirm;

(7) Hospitals for the sick including any portion of the hospital building or other buildings used as a nurse's home or residence for hospital employees, or operated as a portion of the hospital unit;

(8) Outpatient dialysis facilities.

Any portion of property owned by an organization which is used in a manner not furthering the purposes of the institution, (for example, hospital property used by a physician for private practice) must be segregated and taxed. (AGO 7-3-1935)

Property owned by an organization exempt under this rule which is irrevocably dedicated to the purposes of the organization is included in this exemption. *Provided*, That the organization can evidence irrevocable intent to put the property to a qualifying use. The forms of proof set forth in WAC 458-16-200 may be utilized for this purpose. To be exempted, the property must be in use or under construction which is designed for use.

The superintendent or manager of the organization claiming exemption under this statute shall allow the department of revenue access to the books and records of the organization and shall make, under oath, a report to the department showing that the income and receipts thereof, including donations to it, have been applied to the actual expenses of operating and maintaining it, or for its capital expenses and to no other purposes, also including a state-

ment of the receipts and the disbursements of said organization.

An exemption may be granted to the real or personal property leased or rented by any organization, corporation, or association exempted under the provisions of RCW 84.36.040 and used exclusively by it. *Provided*, That the benefit of the exemption inures to the user. Such property must be specifically identified as leased in filing for exemption.

For the purposes of this rule a "hospital" is an organization primarily engaged in providing medical, surgical, nursing and/or related health care services in the prevention, diagnosis or treatment of human disease, pain, injury, disability, deformity or physical condition, or mental illness or retardation, and the equipment and facilities used by such organization to deliver such services on an inpatient basis. This definition shall include any portion of a hospital building, or other buildings used in connection therewith, and the equipment therein, operated as a portion of the hospital unit, or used as a residence for persons engaged or employed in the operation of a hospital.

(9) The loan or rental of this property does not subject the property to tax if (a) the rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and (b) the property would be exempt from tax if owned by the organization to which it is loaned or rented. (RCW 84.36.805) Maintenance and operating expenses means those items of rental expense as allowed and defined in generally accepted accounting principles.

(10) Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

(a) The contract is written to clearly reflect all receipts and expenses are to be administered by the exempt organization.

(b) The financial records of the exempt organization will identify all receipts and expenses of the programs.

(c) The program is compatible and consistent with the purposes of the exempt organization.

(d) A summary of all receipts and expenses of the program will be provided to the department upon request.

Programs provided under a personal service contract, whereby the contractor will reimburse the organization for expenses pertaining to the program will be viewed as a rental agreement between the exempt organization and an individual or for profit user and will subject that portion of property to tax.

(11) The use of the property for fund-raising activities sponsored by the exempt organization does not subject the property to tax if the fund raising activities are consistent with the purposes for which exemption is granted. The term "fund raising" means any revenue raising activity limited to less than five days in length including but not limited to art auctions, use of the property by professional organizations for conferences, seminars, or other activities which enhance the reputation of the organization-)) (1) Introduction. This section explains the property tax exemption available under the provisions of RCW 84.36.040 to property used by nonprofit day care centers, libraries, orphanages, homes for the sick or infirm, hospitals, and outpatient dialysis facilities.

**(2) Definitions.** For purposes of this section, the following definitions apply:

(a) "Convalescent and chronic care" means any or all procedures commonly employed in caring for the sick including, but not limited to, administering medicines, preparing special diets, providing bedside nursing care, applying dressings and bandages, and carrying out any treatment prescribed by a duly licensed practitioner of the healing arts.

(b) "Day care center" means a facility that regularly provides care for a group of children for periods of less than twenty-four consecutive hours.

(c) "Home for the sick or infirm" means any home, place, or institution that operates or maintains facilities to provide convalescent or chronic care, or both, for three or more persons not related by blood or marriage to the operator, who by reason of illness or infirmity, are unable to properly care for themselves.

(i) The services must be provided to persons over a continuous period of twenty-four hours or more.

(ii) A boarding home, guest home, hotel, or similar institution that is held forth to the public as providing and supplying only room, board, or laundry services to persons who do not need medical or nursing treatment or supervision is not considered a "home for the sick or infirm" for purposes of this section.

(d) "Hospital" means a nonprofit organization, association, or corporation engaged in providing medical, surgical, nursing or related health care services for the prevention, diagnosis or treatment of human disease, pain, injury, disability, deformity, mental illness, or retardation, as well as the equipment and facilities used by a nonprofit organization, association, or corporation to deliver such services to inpatients. These services must be provided over a continuous period of twenty-four hours or more.

(i) "Hospital" also means any portion of a hospital building, or other buildings used in connection therewith, and the equipment therein operated as a part of a hospital unit or used as a residence for persons engaged or employed in the operation of a hospital including, but not limited to, a nurse's home or a residence for hospital employees.

(ii) "Hospital" does not mean:

(A) Hotels or similar places that furnish only food and lodging or simple domiciliary care;

(B) Clinics or physician's offices where patients are not regularly kept as bed patients for twenty-four hours or more;

(C) Nursing homes as defined in chapter 18.51 RCW; and

(D) Maternity homes as defined in 18.46 RCW.

(e) "Hospital unit" means all buildings or properties that are part of an integrated, interrelated, homogeneous unit exclusively used for exempt hospital purposes. The term includes residential units exclusively used to temporarily house families of inpatients in an integrated program of hospital therapy.

(f) "Property" means real or personal property used by a nonprofit organization, association, or corporation.

**(3) Exemption for exclusively used property.** All real and personal property exclusively used by a nonprofit organization, association, or corporation for the following institutions shall be exempt from taxation:

(a) Day care centers;

(b) Preschools;

(c) Free public libraries;

(d) Orphanages and orphan asylums;

(e) Homes for the sick or infirm;

(f) Hospitals for the sick; and

(g) Outpatient dialysis facilities.

**(4) Exemption for loaned or rented property.**

Property loaned to or rented by an institution listed in subsections (3)(a) through (g) of this section shall also be exempt from taxation if:

(a) The property is exclusively used by the nonprofit organization, association, or corporation;

(b) The benefit of the exemption inures to the user; and

(c) The property was specifically identified as loaned or rented when the application for exemption was made.

**(5) Exclusive use required.** Any portion of property exempt under either subsection (3) or (4) of this section that is not exclusively used in a manner furthering the exempt purposes of the nonprofit organization, association, or corporation must be segregated and taxed. For example, hospital property used by a physician to conduct his private practice must be segregated and taxed.

**(6) Actual use and irrevocable dedication required.**

To be exempt from taxation under this section, all property owned by a nonprofit organization, association, or corporation must be:

(a) In use; and

(b) Irrevocably dedicated to the exempt purpose of the nonprofit organization, association, or corporation.

**(7) Additional requirements.** Any organization or association that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.040.

**AMENDATORY SECTION** (Amending Order PT 85-1, filed 2/15/85)

**WAC 458-16-270 Schools and colleges.** ((The property owned or used by any nonprofit school or college within this state shall be exempt to the extent that:

(1) The property is used for educational purposes, or cultural or art educational programs as defined in RCW 82.04.4328. The term "educational purposes" includes systematic instruction in any and all branches of learning from which a substantial public benefit is derived. In addition, the term "educational purposes" includes all purposes which seek to promote education.

(2) The real property so exempt shall not exceed four hundred acres in extent and except as provided in RCW 84.36.805 and subsections (6) and (8) of this section shall be used exclusively for college or campus purposes. College or campus purposes shall be construed to mean that the need for such property would be nonexistent, but for the presence of such school or college and the property is principally designed to further the educational functions of such college or schools. As used in this subsection, the term "educational functions" means any function, action, or activity sponsored by the nonprofit school, which promotes education or advances educational purposes.

(3) Institutions claiming exemption for property which is not a portion of the main campus must provide in detail when requested by the department of revenue:

- (a) The courses taught on site;
- (b) A calendar of uses; and
- (c) The number of students participating on site.

(4) The institution must be open to all persons on equal terms. However, there is no limitation on the types of courses which the institution may offer.

(5) For purposes of this exemption, "schools and colleges" will mean (a) those nonprofit educational institutions which are either accredited by the state or whose students and credentials are accepted without examination by schools and colleges established under Title 28A or 28B RCW and which offer to students an educational program of a general academic nature, or (b) those nonprofit institutions meeting the following criteria:

- (i) It must have a definable curriculum for a specific group with definable and measurable outcomes;
- (ii) It must have a qualified and/or certified faculty;
- (iii) It must have facilities and equipment that are designed for the primary purpose of the educational program;
- (iv) It must have an attendance specification;
- (v) It must have a schedule or course of study supporting the instructional curriculum;
- (vi) It must have accreditation or recognition by a professional association.

(6) The loan or rental of the property does not subject the property to tax if (a) the rents and donations received for the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the term and portion of the property loaned or rented; and (b) the property would be exempt from tax if owned by the organization to which it is loaned or rented. (RCW 84.36.805): *Provided, however,* That the loan or rental of school or college property to other nonprofit organizations, for periods of less than fifteen days shall not be subject to the restrictions of this subsection so long as all income received therefrom is devoted exclusively to the support and maintenance of the school or college. Maintenance and operating expenses means those items of rental expense as allowed and defined in generally accepted accounting principles. Property of nonprofit schools owned, controlled, rented or leased for the purpose of deriving revenue from it, shall not be exempt and must be segregated and taxed whether or not such revenue is devoted to educational purposes. For purposes of this subsection the term "revenue" means income received by the school or college for the loan, lease, or rental of its property when such income exceeds the amount of the maintenance and operation expenses attributable to the term and portion of the property loaned or rented.

(7) Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

- (a) The contract is written to clearly reflect all receipts and expenses are to be administered by the exempt organization.
- (b) The financial records of the exempt organization will identify all receipts and expenses of the programs.
- (c) The program is compatible and consistent with the purposes of the exempt organization.

(d) A summary of all receipts and expenses of the program will be provided to the department upon request.

Programs provided under a personal service contract, whereby the contractor will reimburse the organization for expenses pertaining to the program will be viewed as a rental agreement between the exempt organization and an individual or for-profit user and will subject that portion of property to tax.

(8) The use of the property for fund-raising activities sponsored by the exempt organization does not subject the property to tax if the fund-raising activities are consistent with the purposes for which exemption is granted. The term "fund-raising" means any revenue raising activity limited to less than five days in length including but not limited to art auctions, use of school property by professional organizations for conferences, seminars, or other activities which enhance the reputation of the school or college, or the use of school property for any educational purpose.

(9) Institutions claiming exemption within this rule shall allow the department of revenue access to all books and records of the institution and shall annually make, under oath, a report to the department showing that the income and receipts thereof, including donations to it, have been applied to the actual expenses of operating and maintaining it or for capital expenses for endowments, the income of which shall be used for the operation, maintenance or capital expenditures and to no other purpose, also including a statement of the receipts and disbursements of said organization. In addition, institutions claiming exemption under this rule shall submit a list of all property claimed to be exempt, the purpose for which it is used, the revenue derived from it during the preceding year, the use to which the revenue was applied, the number of students in attendance at the institution, the total revenues of the institution and the source from which they were derived, and the purposes to which such revenues were applied, giving the items of such revenues and expenditures in detail. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.050 to property owned by or used for a nonprofit school or college.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Campus purposes" means property that is only needed because of the presence of the nonprofit school or college and is principally designed to further the educational purposes and functions of a nonprofit school or college.

(b) "Cultural or art education program" includes and is limited to:

(i) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(ii) A musical or dramatic performance or series of performances; or

(iii) An educational seminar or program, or series of such programs, offered by a nonprofit school or college to the general public on an artistic, cultural, or historical subject.

(c) "Educational purposes" means systematic instruction, either formal or informal, in any and all branches of learning directed to an indefinite class of persons and from which a substantial public benefit is derived. The term includes all purposes that seek to promote or advance education.

(d) "Schools and colleges" means:

(i) Nonprofit educational institutions that are approved by the superintendent of public instruction or whose students and credentials are accepted without examination by schools and colleges established under either Title 28A or 28B RCW and offer students an educational program of a general academic nature; or

(ii) Nonprofit institutions that meet the following criteria:

(A) They have a definable curriculum and measurable outcomes for a specific group of students;

(B) They have a qualified or certified faculty;

(C) They have facilities and equipment that are designed for the primary purpose of the educational program;

(D) They have an attendance policy and requirement;

(E) They have a schedule or course of study that supports the instructional curriculum; and

(F) They are accredited, recognized, or approved by an external agency that certifies educational institutions and the transferability of courses.

(e) "Revenue" means income received from the loan or rental of exempt property when the income exceeds the amount of the maintenance and operation expenses attributable to the portion of the property loaned or rented.

(3) Exemption. Property owned or used by any nonprofit school or college within this state shall be exempt to the extent that it is used exclusively for educational purposes or cultural or art educational programs.

(a) Real property exempt under this section shall not exceed four hundred acres and shall be used exclusively for school, college, or campus purposes. The property shall include, but is not limited to:

(i) Buildings and grounds principally designed for the educational, athletic, or social programs of the nonprofit school or college and the need for which would be nonexistent except for the existence of the school or college;

(ii) Buildings that house part-time or full-time students;

(iii) Buildings that house religious faculty; and

(iv) Buildings that house the chief administrator.

(b) The use of exempt property by professional organizations for conferences, seminars, or other activities that enhance the reputation of the nonprofit school or college will not nullify the exemption. Similarly, the use of exempt property owned by a nonprofit school or college for any education purpose will not nullify the exemption.

(c) All property that is not part of the main campus of a school or college and for which the institution wishes to obtain an exemption under this section, the department may require said institution to provide, in detail, the following information:

(i) The names of courses taught at the off-campus site;

(ii) A calendar of dates and times that shows how the subject property was used; and

(iii) The number of students that participated in the educational activities conducted at the off-campus site.

(d) To be eligible to receive this exemption, the nonprofit school or college must be open to all persons regardless of race, color, national origin, or ancestry. However, there is no limitation on the type of courses the institution may offer.

(4) Property leased to a nonprofit school or college.

If property is leased to a nonprofit school or college, in order to be exempt, the property must be:

(a) Irrevocably dedicated to the purpose for which exemption has been granted; and

(b) The benefit of the exemption must inure to the user.

(c) For example, if a nonprofit foundation leases real or personal property to a nonprofit school or college to be used for educational purposes or cultural or art educational programs, the leased property may qualify for exemption if it meets the requirements of subsection (3)(a), (b), and (c) of this section.

(5) Production of financial records. In addition to the financial records that must be produced to comply with the requirements of WAC 458-16-165, a nonprofit school or college claiming exemption under this section shall annually submit a detailed summary containing the following information regarding the previous calendar year:

(a) A list of all property that it claimed was exempt;

(b) The purpose for which the property was used;

(c) The income derived from the property;

(d) The manner in which the income received was applied;

(e) The number of students who attended the school or college;

(f) The total income of the school or college and the sources from which it was derived; and

(g) The purposes to which the total income of the school or college was applied including, but not limited to, all income received and expenditures made.

(6) Additional requirements. Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.050.

AMENDATORY SECTION (Amending Order PT 86-2, filed 5/30/86)

WAC 458-16-280 Art, scientific, and historical collections(~~—Fire companies—Humane societies~~)). ((~~(1) All art, scientific, or historical collections, together with all real and personal property used exclusively, except as provided in RCW 84.36.805 and subsections (4) and (6) of this section, for the safekeeping, maintaining or exhibiting of such, which are maintained or exhibited for the general public and not for profit, shall be exempt from taxation under the following conditions:~~

(~~a) Such organization must be organized and operated exclusively for artistic, scientific, historical, literary or educational purposes, and~~

(~~b) Receive a substantial part of its income (exclusive of income received in the exercise or performance by such organization of its purpose or function) from the United States, any state or political subdivision thereof, or from direct or indirect contributions from the general public.~~

(~~2) Fire engines and other implements used to put out fires, and the buildings or fire stations to the extent that they are exclusively used for the safekeeping of such equipment, and to hold fire company meetings, shall be exempt, provid-~~

~~ed that such properties are owned by either a city, town or nonprofit fire company.~~

~~(3) Property within the state which is owned and actually used by humane societies shall be exempt.~~

~~(4) The loan or rental of the property does not subject the property to tax if (a) the rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and (b) the property would be exempt from tax if owned by the organization to which it is loaned or rented. (RCW 84.36.805): *Provided, however,* That the loan or rental of property to other nonprofit organizations, for periods of less than fifteen days shall not be subject to the restrictions of (a) of this subsection so long as all income received therefrom is devoted exclusively to exempt purposes. Maintenance and operating expenses means those items of rental expense as allowed and defined in generally accepted accounting principles. Property rented or leased for the purpose of deriving revenue from it, shall not be exempt and must be segregated and taxed whether or not such revenue is devoted to exempt purposes. For purposes of this subsection the term "revenue" means income received from the loan, lease or rental of property when such income exceeds the amount of the maintenance and operation expenses attributable to the term and portion of the property loaned or rented.~~

~~(5) Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:~~

~~(a) The contract is written to clearly reflect all receipts and expenses are to be administered by the exempt organization.~~

~~(b) The financial records of the exempt organization will identify all receipts and expenses of the programs.~~

~~(c) The program is compatible and consistent with the purposes of the exempt organization.~~

~~(d) A summary of all receipts and expenses of the program will be provided to the department upon request.~~

~~Programs provided under a personal service contract, whereby the contractor will reimburse the organization for expenses pertaining to the program will be viewed as a rental agreement between the exempt organization and an individual or for profit user and will subject that portion of property to tax.~~

~~(6) The use of the property for fund raising activities sponsored by the exempt organization does not subject the property to tax if the fund raising activities are consistent with the purposes for which exemption is granted. The term "fund raising" means any revenue raising activity limited to less than five days in length including but not limited to art auctions, use of the property by professional organizations for conferences, seminars, or other activities which enhance the reputation of the organization.)) (1) Introduction. This section explains the property tax exemption available under the provisions of RCW 84.36.060 to art, scientific, or historical collections.~~

~~(2) Definitions. For purposes of this section, the following definitions apply:~~

~~(a) "Governmental entity" means any political unit or division of the federal, state, city, county, or municipal government.~~

(b) "Property" means all real and personal property exclusively used to secure, maintain, or exhibit art, scientific, or historical collections.

(3) **Exemption.** All art, scientific, or historical collections maintained for and exhibited to the general public and not for profit, as well as all real and personal property used exclusively to secure, maintain, or exhibit the collections, shall be exempt from taxation under the following conditions:

(a) An organization, association, or corporation must be organized and operated exclusively for artistic, scientific, historical, literary or educational purposes.

(b) The organization, association, or corporation organized and operated for artistic, scientific, historical, literary, or educational purposes must receive a substantial part of its income from a governmental entity or through direct or indirect contributions of money, real or personal property, or services from the general public. Admission or entrance fees derived from exercising or performing its purpose or function shall not be included within the figures used to calculate "a substantial part" of the organization's, association's, or corporation's income.

(i) For example, an art museum may receive support from a city government and from donations made by the general public in addition to general admission fees paid by visitors. When determining whether the art museum receives a substantial part of its income from a governmental entity or through contributions from the general public, the admission fees may not be considered as contributions from the general public.

(ii) Any organization, association, or corporation that relies on services donated by the general public for a substantial part for its support must maintain records identifying the individuals who donate their services and the number of hours they donate. The value of donated time will be calculated by using the federal minimum wage standard.

(4) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.060.

AMENDATORY SECTION (Amending Order PT 86-2, filed 5/30/86)

WAC 458-16-282 Musical, dance, artistic, dramatic and literary associations. ((The real and personal property owned by or leased to nonprofit organizations whose purpose is to produce and/or perform musical, dance, artistic, dramatic or literary works, for the benefit of the general public and not for profit. To be exempt the property must be used exclusively, except as provided for in RCW 84.36.805 and subsections (5) and (7) of this section, in accordance with the following rules:

(1) Must be organized and operated exclusively for the purpose of the exemption.

(2) Must receive a substantial portion of its support, exclusive of moneys received from admissions to its performances, from governmental entities or from direct or indirect

contributions of money, real or personal property and/or services from the general public. Organizations relying on services donated by the general public to meet the substantial portion of its support, must maintain records identifying the individuals and the number of hours donated. Donated time will be valued under the federal minimum wage standards.

(3) Applications for leased property must include a copy of the lease agreement.

(4) The property meets all the conditions of RCW 84.36.800 through 84.36.865.

(5) The loan or rental of the property does not subject the property to tax if (a) the rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and (b) the property would be exempt from tax if owned by the organization to which it is loaned or rented. (RCW 84.36.805): *Provided, however,* That the loan or rental of property to other nonprofit organizations, for periods of less than fifteen days shall not be subject to the restrictions of (a) of this subsection so long as all income received therefrom is devoted exclusively to exempt purposes. Maintenance and operating expenses means those items of rental expense as allowed and defined in generally accepted accounting principles. Property rented or leased for the purpose of deriving revenue from it, shall not be exempt and must be segregated and taxed whether or not such revenue is devoted to exempt purposes. For purposes of this subsection the term "revenue" means income received from the loan, lease or rental of property when such income exceeds the amount of the maintenance and operation expenses attributable to the term and portion of the property loaned or rented.

(6) Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

(a) The contract is written to clearly reflect all receipts and expenses are to be administered by the exempt organization.

(b) The financial records of the exempt organization will identify all receipts and expenses of the programs.

(c) The program is compatible and consistent with the purposes of the exempt organization.

(d) A summary of all receipts and expenses of the program will be provided to the department upon request.

Programs provided under a personal service contract, whereby the contractor will reimburse the organization for expenses pertaining to the program will be viewed as a rental agreement between the exempt organization and an individual or for-profit user and will subject that portion of property to tax.

(7) The use of the property for fund-raising activities sponsored by the exempt organization does not subject the property to tax if the fund-raising activities are consistent with the purposes for which exemption is granted. The term "fund raising" means any revenue raising activity limited to less than five days in length including but not limited to art auctions, use of the property by professional organizations for conferences, seminars, or other activities which enhance the reputation of the organization. (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.060 to organizations, associa-

tions, or corporations that either produce or perform, or both, musical, dance, artistic, dramatic, or literary works.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Governmental entity" means any political unit or division of the federal, state, county, city, or municipal government.

(b) "Property" means all real and personal property exclusively used to produce or perform musical, dance, artistic, dramatic, or literary works.

(3) **Exemption.** All real and personal property owned by or leased to a nonprofit organization, association, or corporation whose purpose is either to produce or perform or to produce and perform musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit shall be exempt from taxation under the following conditions:

(a) The property must be used exclusively to produce or perform musical, dance, artistic, dramatic, or literary works.

(b) An organization, association, or corporation must be organized and operated exclusively for musical, dance, artistic, dramatic, literary, or educational purposes.

(c) The organization, association, or corporation organized and operated for musical, dance, artistic, dramatic, literary, or educational purposes must receive a substantial portion of its income from a governmental entity or through direct or indirect contributions of money, real or personal property, or services from the general public. Admission or entrance fees derived from exercising or performing its purpose or functions shall not be included within the figures used to calculate "a substantial part" of the organization's, association's or corporation's income.

(i) For example, a theater may receive support from a city government and from donations made by the general public in addition to ticket sales for admission to its performances. When determining whether the theater receives a substantial part of its income from a governmental entity or through contributions from the general public, the ticket sales may not be considered as contributions from the general public.

(ii) Any organization that relies on services donated by the general public for a substantial portion of its support must maintain records identifying the individuals who donate their services and the number of hours they donate. The value of donated time will be calculated by using the federal minimum wage standard.

(4) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.060.

**AMENDATORY SECTION** (Amending Order PT 77-2, filed 5/23/77)

**WAC 458-16-290 Nature conservancy lands.** ((The real property or leaseholds, exclusively used for the conservation of ecological systems or natural resources owned or held under contract purchase by any nonprofit corporation or association, the primary purpose of which is the conducting

~~or facilitating of scientific research or the conserving of natural resources for the general public, shall be exempt under either of the following conditions:~~

~~(1) The property shall be used and effectively dedicated primarily for the purpose of providing scientific research or educational opportunities, or the preservation of native plants or animals or biotic communities, or works of ancient man, or geological or geographical formations of distinct scientific and educational interests, and shall be open to the general public subject to reasonable restrictions designed for its protection and not for the pecuniary benefit of any person or company; or~~

~~(2) That such property shall be subject to an option, accepted in writing, for the purchase thereof by the United States, the state, a county or a city at a price to be determined by the criteria set forth in RCW 84.36.260(2).~~

~~Property used merely for recreational activities does not qualify for an exemption.~~

~~Upon cessation of the use which has given rise to this exemption, the county treasurer shall collect all taxes which would have been paid had the property not been exempt during the ten years preceding, or the life of such exemption if such is less, together with interest at the same rate and computed in the same way as upon delinquent property taxes.~~

~~Such properties shall be subject to the provisions of WAC 458-16-150.) (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.260 to a nonprofit corporation or association, primary purpose of which is to conduct or facilitate scientific research or to conserve natural resources or open space for the general public.~~

~~(2) **Definitions.** For purposes of this section, the following definitions apply:~~

~~(a) "Cessation of use" means a nonprofit association or corporation that has an interest in, or a nonprofit association or corporation that exclusively used exempt real property, has ceased to physically use the property for a use exempt under the provisions of subsection (3) of this section. The term also refers to the situation where the property is no longer being used for an exempt use even though the owner intends to find or is pursuing an alternative exempt use for the property. "Cessation of use" also refers to property that has lost its exempt status because it was transferred, loaned, or rented to an entity that is not qualified to be exempt from ad valorem taxes.~~

~~(b) "Conservation futures" means rights in perpetuity to the future development of any open space land, farm and agricultural land, and timber land, so designated under the provisions of chapter 84.34 RCW and taxed at the current use assessment rate as provided by that chapter that are purchased or acquired (except by eminent domain) by a county, city, town, municipal corporation, nonprofit historic preservation corporation, or nonprofit conservancy corporation or association.~~

~~(c) "Governmental entity" means any political unit or division of the federal, state, county, city, or municipal government.~~

~~(d) "Nonprofit conservancy corporation or association" means an organization that qualifies as being tax exempt under 29 U.S.C. Sec. 501(c)(3) of the United States Internal Revenue Code as it existed on June 25, 1976, and that has~~

as one of its principal purposes: The conducting or facilitating of scientific research; the conserving of natural resources, including but not limited to biological resources, for the general public; or the conserving of open spaces, including but not limited to wildlife or plant habitat to be utilized as public access areas, for the use and enjoyment of the general public.

(e) "Nonprofit historical preservation corporation" means an organization that qualifies as being tax exempt under 29 U.S.C. Sec. 501(c)(3) of the United States Internal Revenue Code of 1954, as amended, and has as one of its principal purposes the conducting or facilitating of historic preservation activities within a state including, but not limited to, the conservation or preservation of historic sites, districts, buildings, and artifacts.

(f) "Person or company" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political unit or division of the state of Washington, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States and any instrumentality thereof.

(g) "Real property interests" means any interest in real property including, but not limited to, fee simple or a lesser ownership interest, developmental rights, easements, covenants, and conservation futures.

(h) "Rollback" refers to the provisions of RCW 84.36.262 that make previously exempt property subject to back taxes and interest because of the cessation of an exempt use or a change in ownership.

(3) **Exemption.** All real property interests exclusively used to conserve ecological systems, natural resources, or open space, including park lands, by a nonprofit association or corporation whose primary purpose is to conduct or facilitate scientific research or to conserve natural resources or open space for the general public shall be exempt from ad valorem taxation if either of the following conditions is met:

(a) The property, to the extent feasible considering the nature of the interest involved, is:

(i) Used and effectively dedicated primarily to providing scientific research or educational opportunities to the general public or to preserving native plants, animals, biotic communities, works of ancient man, or geological or geographical formations of distinct scientific and educational interests;

(ii) Open to the general public for educational and scientific research purposes subject to reasonable restrictions designed to protect the property; and

(iii) Not for the pecuniary benefit of any person or company; or

(b) The property is subject to an option, which has been accepted in writing by any political unit or department of the federal, state, county, or city government, for purchase by the United States, a state, a county, or a city at a price not exceeding the lesser of the following amounts:

(i) The sum of the original purchase price paid by the nonprofit association or corporation plus interest from the date of acquisition at the rate of six percent per annum compounded annually to the date the option is exercised; or

(ii) The appraised value of the property interest, as determined by the department of revenue, at the time the option is accepted in writing.

(4) Property used for recreational activities. Property used merely for recreational activities does not qualify for an exemption under this section.

(5) Application for exemption under this section. A nonprofit association or corporation that wants to obtain the property tax exemption described in subsection (3) of this section must submit an application for exemption.

(a) No real property shall be exempt from taxation unless an application has been filed and exemption has been granted therefor.

(b) Prior to approval, the department of revenue must receive a copy of the application and, if the property is subject to an option for purchase, a copy of the option agreement and the written acceptance thereof.

(6) Cessation of exempt use. Upon cessation of the use that gave rise to the exemption set forth in subsection (3) of this section, the county treasurer shall collect all taxes that would have been paid if the property had not been exempt during the preceding ten years, or for the life of the exemption, whichever is less, plus interest computed at the same rate and in the same manner as that upon delinquent property taxes.

(a) Type of property affected. The provisions of this section apply to the cessation of use relating to exempt property:

(i) Used to provide scientific research or educational opportunities to the general public (RCW 84.36.260(1));

(ii) Used to preserve native plants, animals, biotic communities, works of ancient man, or geological or geographic formations of distinct scientific and educational interests (RCW 84.36.260(1)); or

(iii) Subject to an option for purchase by the United States, a state, a county, or a city (RCW 84.36.260(2)).

(b) Duty to notify.

(i) An owner of exempt property who knows of or who has information regarding a change in the use of exempt property shall notify the department of revenue of this change. An owner of exempt property must also report the loan or rental of all or a portion of the exempt property since loaning or renting this property may change the taxable status of exempt property.

(ii) Any other person who knows or has information regarding a change in use of exempt property shall notify the county assessor of any such change. The assessor, in turn, shall report this information to the department of revenue.

(iii) After being notified about a change in use of exempt property, the department may physically inspect the property to determine if the reported change has taken place.

(iv) After a change in use, the final determination of the taxable status of the subject property will be made by the department of revenue.

(c) Notice to owner. When it determines that a change in use has occurred, the department of revenue shall notify the current owner of exempt property and, in the case of a transfer, the previous legal owner of exempt property that the change in use may change the taxable status of the property and that the property may be subject to the rollback provisions set forth in subsection (6) of this section. The owner(s) of this property shall have thirty days from the date

of the notice to submit any comments or information relevant to this change in use to the department. The department shall then issue a final determination about the taxable status of this property.

(d) County treasurer. Upon notification from the department of revenue that the exempt use of the property has ceased, the county treasurer shall compute the taxes payable, including interest computed at the same rate and in the same manner as that upon delinquent property taxes. The interest collected shall be placed in the county current expense fund.

AMENDATORY SECTION (Amending Order PT 81-14, filed 10/8/81)

WAC 458-16-300 Public meeting ((facilities)) hall—Public meeting place—Community meeting hall. ((Real and personal property used exclusively for public assembly or meeting places shall be exempt from taxation in accordance with the following rules:

(1) In order to qualify, the following conditions must be met:

(a) It is owned by a nonprofit organization;

(b) The area to be exempted does not exceed one acre;

(c) The owning organization has publicized fee schedules, a policy on the availability, and any restrictions on the use of the facility;

(d) The rental fee charged does not exceed the maintenance and operating expenses created by the users thereof;

(e) It is not used to promote business or pecuniary gain, except fund raising activities conducted by nonprofit organizations; and

(f) The applicant has provided to the department on an annual basis:

(i) A schedule of all users and the purpose of their use for the previous year; and

(ii) A detailed statement of income and expenses for the previous year.

(2) Other community meeting halls whose owners schedule regular meetings of their organizations will also qualify for the exemption if they meet the conditions in subsection (1) of this section, and:

(a) The scheduled uses by the owner do not exceed twenty five percent of the useable time and such facility is available for public gatherings and for meetings of other organizations or persons at all other times; and

(b) The facility is used for public gatherings an equal or greater number of times as the owning organization.

(3) Public gathering shall mean any gathering that is open to the general public and shall include meetings of organizations which allow attendance by nonmembers.

(4) Facilities used more than fifty percent of the time for meetings of organizations which disallow attendance by nonmembers do not qualify for this exemption.

(5) The loss of the exemption for a year will not subject the property to the provisions of RCW 84.36.810, provided that if the loss of the exemption was due to sale or transfer of the property or due to false information, RCW 84.36.810 shall apply-))

(1) Introduction. This section explains the property tax exemption available under the provisions of RCW 84.36.037 for real and personal property owned by a nonprofit organization, association, or corporation and used

exclusively as a public meeting hall, public meeting place, or community meeting hall.

(2) Definitions. For purposes of this section, the following definitions apply:

(a) "Inadvertent use or inadvertently used" means any unintentional or accidental use of exempt property by an individual, organization, association, or a corporation to promote business activities through either carelessness, lack of attention, lack of knowledge, mistake, surprise, or neglect.

(b) "Public gathering" means any social function that the general public could, if invited, attend. For example, a public gathering includes, but is not limited to, a wedding, reception, funeral, reunion, or meeting of any organization, association, or corporation that is open to nonmembers. The term does not mean a meeting to which only members of a specific organization, association, or corporation are allowed to attend.

(c) "Maintenance and operation expenses" means items of expense allowed under generally accepted accounting principles.

(d) "Owner" means a nonprofit organization, association, or corporation.

(e) "Property" means real or personal property owned by a nonprofit organization, association, or corporation.

(3) Exemption. Real and personal property owned by a nonprofit organization, association, or corporation and used exclusively as a public assembly hall, public meeting place, or community meeting hall shall be exempt from taxation under the following conditions:

(a) Exclusive use. The property is used exclusively for public gatherings and is available to any individual, organization, association, or corporation that may desire to use the property. However, membership in a particular organization, association, or corporation shall not be a prerequisite to use the property.

(b) Exemption for real property - area. The area of real property exempt under this section shall not exceed one acre. This area shall include the building(s), the land under the building(s), and any additional area needed for parking.

(c) Statement of availability and fees required. The owner of the property shall prepare and make available upon request a schedule of fees, a policy on the availability of the facility, and any restrictions on the use of the facility. The owner may impose any conditions or restrictions reasonably necessary to safeguard the property and to comply with the purposes of this exemption.

(d) Annual summary required. The owner shall provide the department of revenue a detailed summary containing the following information regarding the use during the preceding year of all property it claimed to be exempt under this section:

(i) The name of any person, organization, association, or corporation that used the property;

(ii) The date(s) on which the property was used;

(iii) The purpose for which the property was used;

(iv) The income derived from the rental of the property;

and

(v) The expenses incurred relating to the use of the property.

(e) Entities that schedule regular meetings. Any property owned by a nonprofit organization, association, or

corporation that schedules regular meetings of its members or shareholders will also qualify for this exemption if:

(i) The owner meets the conditions set forth in (a) through (d) of this subsection;

(ii) The owner does not use the property more than twenty-five percent of the useable time; and

(iii) The facility is used an equal number or greater number of times for public gatherings than the number of times it is used by the owner for gatherings not open to the general public.

(f) Loan or rental of property. The tax exempt status of the property will not be affected if it is loaned or rented and the amount of rent or donations collected for the use, loan, or rental of the exempt property:

(i) Is reasonable; and

(ii) Does not exceed the maintenance and operation expenses that are created by the corresponding use, loan, or rental.

(g) Property not included within this exemption. Property that is used more than fifty percent of the time by a nonprofit organization, association, or corporation that allows only members to attend its activities does not qualify for this exemption.

(4) Use of property for pecuniary gain or to promote business activities. If a public meeting hall, public meeting place, or community meeting hall exempt under subsection (3) of this section is used for pecuniary gain or to promote business activities, the property tax exemption will be lost for the assessment year following the year in which the exempt property is so used. The exemption will not be lost if:

(a) The exempt property is used for pecuniary gain not more than three days a year; or

(b) The exempt property is inadvertently used by an individual, organization, association, or a corporation to promote business activities if the inadvertent use is not a pattern of use. A "pattern of use" is presumed when an inadvertent use of the property to promote business activities is repeated within the same assessment year or within two or more successive assessment years.

(5) Additional requirements. Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.037.

AMENDATORY SECTION (Amending Order PT 81-14, filed 10/8/81)

WAC 458-16-310 Community celebration facilities. ((Real and personal property used for community celebration events shall be exempt from taxation in accordance with the following rules:

(1) It is owned by a nonprofit organization;

(2) The area to be exempted does not exceed twenty-nine acres;

(3) The property has been primarily used for community celebration events for the last ten years;

(4) The purpose of the property is to provide a facility for the annual gathering;

~~(5) The owning organization has publicized fee schedules, a policy on the availability and any restrictions on the use of the facility;~~

~~(6) The rental fee charged does not exceed the maintenance and operating expenses created by the users thereof;~~

~~(7) It is not used to promote business or pecuniary gain, except fund-raising activities conducted by nonprofit organizations;~~

~~(8) Any enclosed structures other than restroom facilities will not qualify; and~~

~~(9) The applicant has provided to the department on an annual basis:~~

~~(a) A schedule of all users and the purpose of their use, for the previous year; and~~

~~(b) A detailed statement of income and expenses for the previous year.)~~

(1) Introduction. This section explains the property tax exemption available under the provisions of RCW 84.36.037 for real and personal property owned by a nonprofit organization, association, or corporation and used primarily for annual community celebration events.

(2) Definitions. For purposes of this section, the following definitions apply:

(a) "Inadvertent use or inadvertently used" means any unintentional or accidental use of exempt property by an individual, organization, association, or corporation to promote business activities through either carelessness, lack of attention, lack of knowledge, mistake, surprise, or neglect.

(b) "Public gathering" means any social function that the general public could, if invited, attend. For example, a public gathering includes, but is not limited to, a wedding, reception, funeral, reunion, or meeting of any organization, association, or corporation that is open to nonmembers. The term does not mean a meeting to which only members of a specific organization, association, or corporation are allowed to attend.

(c) "Maintenance and operation expenses" means items of expense allowed under generally accepted accounting principles.

(d) "Property" means real or personal property owned by a nonprofit organization, association, or corporation.

(3) Exemption. Real and personal property owned by a nonprofit organization, association, or corporation and used primarily for annual community celebration events shall be exempt from taxation under the following conditions:

(a) Exemption for real property - area. The area of real property to be exempt shall not exceed twenty-nine acres.

(b) Primary use. The property has been primarily used for annual community celebration events for at least ten years.

(c) Essentially unimproved property. The property is essentially unimproved except for restroom facilities and covered shelters. A "covered shelter," for example, may consist of a covered area that is unenclosed but allows some protection from the elements or it may provide a sheltered eating area with or without a picnic table or outside grill, or both.

(d) Purpose. The purpose of the property is to provide a facility for an annual community celebration.

(e) Statement of availability and fees required. The owner of the property shall prepare and make available upon request a schedule of fees, a policy on the availability of the facility, and any restrictions on the use of the facility. The

owner may impose conditions and restrictions that are reasonably necessary to safeguard the property and to promote the purposes of this exemption.

(f) Annual summary required. The owner shall annually provide the department of revenue a detailed summary containing the following information regarding the use during the preceding year of all property it claimed to be exempt under this section:

(i) The name of any person, organization, association, or corporation that used the property;

(ii) The date(s) on which the property was used;

(iii) The purpose for which the property was used;

(iv) The income derived from the rental of the property; and

(v) The expenses incurred relating to the use of the property.

(g) Loan or rental of property. The tax exempt status of the property will not be affected if it is loaned or rented and the amount of rent or donations collected for the use, loan, or rental of the exempt property:

(i) Is reasonable; and

(ii) Does not exceed the maintenance and operation expenses that are created by the corresponding use, loan, or rental.

(4) Use of property for pecuniary gain or to promote business activities. If a community celebration facility exempt under subsection (3) of this section is used for pecuniary gain or to promote business activities, the property tax exemption will be lost for the assessment year following the year in which the exempt property is so used. The exemption will not be lost if:

(a) The exempt property is used for pecuniary gain not more than three days a year; or

(b) The exempt property is inadvertently used by an individual, organization, association, or a corporation to promote business activities if the inadvertent use is not a pattern of use. A "pattern of use" is presumed when an inadvertent use of the property to promote business activities is repeated within the same assessment year or within two or more successive assessment years.

(5) Additional requirements. Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.037.

## NEW SECTION

**WAC 458-16-165 Conditions under which nonprofit organizations, associations, or corporations may obtain a property tax exemption.** (1) **Introduction.** Nonprofit organizations, associations, and corporations may obtain a property tax exemption under the provisions of RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.047, 84.36.050, 84.36.060, 84.36.350, 84.36.480, and 84.36.550. To be exempt from property taxation, these nonprofit organizations, associations, or corporations must also comply with the requirements contained in RCW 84.36.805 and RCW 84.36.840. This section explains the conditions and requirements set forth in

RCW 84.36.805 and 84.36.840. Property exempt under RCW 84.36.030 is not subject to the requirements of RCW 84.36.840.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Maintenance and operation expenses" means items of expense allowed under generally accepted accounting principles.

(b) "Revenue" means income received from the loan or rental of exempt property when the income exceeds the amount of the expenses of maintenance and operation attributable to the portion of the property loaned or rented.

(c) "Personal service contract" means a contract between a nonprofit organization, association, or corporation and an independent contractor under which the independent contractor provides a service on the organization's, association's, or corporation's tax exempt property. (See example contained in subsection (3)(c) of this section.)

(3) **Exclusive use.** Unless the applicable statute states otherwise, the exempt property shall be exclusively used for the actual operation of the nonprofit organization, association, or corporation that applied for and received the property tax exemption and the amount of exempt property shall not exceed an area reasonably necessary for that purpose.

(a) **Loan or rental of exempt property.** As a general rule, the loan or rental of the property or a portion of the property does not subject the property to taxation if the rents or donations received for the use of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented and the property would be exempt from tax if owned by the organization to which it is loaned or rented, except for property owned by organizations and societies of war veterans, public assembly halls, public meeting places, community meeting halls, and community celebration facilities.

(i) **Exception - loaned or rented for less than fifteen days.** If exempt property is loaned or rented the tax exempt status of the property will not be affected if:

(A) The property is loaned or rented for a period of fifteen consecutive days or less;

(B) The property is loaned or rented to another nonprofit organization, association, or corporation that would qualify for exemption if it owned the loaned or rented property, unless the property is owned by organizations and societies of war veterans, public assembly halls, public meeting places, community meeting halls, and community celebration facilities; and

(C) All income received from the rental is devoted exclusively to the exempt purpose of the nonprofit organization, association, or corporation that receives the tax exemption.

(ii) **Loaned or rented to produce income.** If the property is loaned or rented and the lessor or lessee intends to produce revenue from the loan or rental, the subject property shall not be exempt. Property loaned or rented from which revenue is to be produced must be segregated and taxed whether or not the revenue is devoted to exempt purposes.

(iii) **Example.** If a room or floor within a building owned by a nonprofit hospital is rented to a social service agency and the social service agency intends to use this area to produce revenue, the rented portion of the building must

be segregated from the remainder of the building that is being used for exempt purposes. The segregated and rented portion of the building will then be subject to ad valorem property taxes.

(b) **Fund-raising activities.** The use of exempt property for fund-raising activities sponsored by an exempt organization, association, or corporation does not subject the property to taxation if the fund-raising activities are consistent with the purposes for which the exemption was granted. The term "fund raising" means any revenue-raising activity limited to less than five days in length that disburses fifty-one percent or more of the profits realized from the activity to the exempt nonprofit organization, association, or corporation that is holding the fund raising.

(i) **Example 1.** A nonprofit social service agency holds an art auction in the auditorium of its tax exempt facility to raise funds. Since the fund-raising activity is being held on exempt property, the activity must be less than five days in length and fifty-one percent of the profits must be disbursed to the social service agency.

(ii) **Example 2.** A nonprofit school has a magazine subscription drive to raise funds during which the subscriptions are sold door-to-door by students. Since the subscription drive is not being held on exempt property, the drive is not limited to less than five days and fifty-one percent of the profits from this fund-raising activity do not have to be remitted to the school.

(c) **Personal service contract - exempt programs.** Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

(i) The program is compatible and consistent with the purposes of the exempt organization, association, or corporation;

(ii) The exempt organization, association, or corporation maintains separate financial records as to all receipts and expenses related to the program; and

(iii) A summary of all receipts and expenses of the program will be provided to the department of revenue upon request.

(iv) **Example.** A nonprofit school may decide to offer aerobic classes to promote general health and fitness. All brochures and bulletins that advertise these classes must show that the school is sponsoring the classes. Under the terms of the contract between the nonprofit school and the aerobic instructor, an independent contractor, the instructor must provide the classes for a predetermined fee. All fees collected from the participants of the classes must be received by the school; the school, in turn, will absorb all costs related to the classes.

(d) **Personal service contract - nonexempt programs.** Programs provided under a personal service contract (i) that require the contractor to reimburse the nonprofit organization for program expenses or (ii) in which the instructor is paid a fee based on the number of people that attend the program will be viewed as a rental agreement and will subject the property to ad valorem property tax.

(4) **Irrevocable dedication required.** The property must be irrevocably dedicated to the purpose for which the exemption was granted. Upon liquidation, dissolution, or abandonment by a nonprofit organization, association, or corporation, said property shall not directly or indirectly benefit any shareholder or individual except a nonprofit

organization, association, or corporation that would be entitled to a property tax exemption if it applied for it.

**Exception:** If, under the terms of a loan or rental agreement, a nonprofit organization, association, or corporation receives the benefit of the property tax exemption, the property need not be irrevocably dedicated if it is loaned or rented to a nonprofit organization, association, or corporation for use as:

- (a) A nonprofit day care center (RCW 84.36.040);
  - (b) A library (RCW 84.36.040);
  - (c) An orphanage (RCW 84.36.040);
  - (d) A home for the sick or infirm (RCW 84.36.040);
  - (e) A hospital (RCW 84.36.040);
  - (f) An outpatient dialysis facility (RCW 84.36.040);
  - (g) A nonprofit home for the aging (RCW 84.36.041);
  - (h) A nonpermanent shelter to low-income homeless persons or victims of domestic violence (RCW 84.36.043);
- or

(i) A facility used to produce or perform musical, dance, artistic, dramatic, or literary works (RCW 84.36.060).

(5) **No discrimination allowed.** The facilities located on and the services offered on the exempt property shall be available to all persons regardless of race, color, national origin, or ancestry.

(6) **Compliance with licensing or certification requirements.** The nonprofit organization, association, or corporation shall comply with all applicable licensing and certification requirements when a law or regulation of the federal, state, or local government requires it.

(7) **Property sold subject to an option to repurchase.** If property is sold to a nonprofit organization, association, or corporation subject to an option to repurchase by the seller, the property shall not qualify for exempt status.

(8) **Duty to produce financial records.** In order to determine whether an organization, association, or corporation is exempt under the provisions of chapter 84.36 RCW and before the exemption is renewed each year, the organization, association, or corporation claiming a property tax exemption under chapter 84.36 shall file a signed statement, made under oath, with the department of revenue on forms furnished by the director or his/her designee, that its income and receipts, including donations, have been applied to the actual expenses of maintenance and operation or for its capital expenditures and to no other purpose. This signed statement shall also include a statement of the receipts and disbursements of the organization, association, or corporation.

(a) The provisions of this subsection do not apply to an organization, association, or corporation either applying for or receiving exemption under RCW 84.36.030.

(b) When an organization, association, or corporation has been granted exemption from ad valorem taxation, this signed statement must be submitted on or before April 1 each year. If this statement is not received on or before April 1, the department shall remove the tax exemption from the property. However, the department shall allow a reasonable extension of time for filing if the tax exempt organization, association, or corporation has submitted a written request for this extension on or before the required filing date and for good cause shown therein.

(9) **Caretaker's residence.** If a nonprofit organization, association, or corporation exempt under chapter 84.36 RCW

employs a caretaker to provide either security or maintenance service and a caretaker's residence is located on exempt property, the residence may qualify for exemption if the following conditions are met:

(a) The caretaker's duties include regular surveillance, patrolling of the exempt property, and routine maintenance services;

(b) The size of the residence is reasonable and appropriate in light of the caretaker's duties and the size of the exempt property; and

(c) The caretaker receives the use of the residence as part of his or her compensation and does not pay rent. Reimbursement of utilities expenses created by the caretaker's presence will not be considered as rent.

#### NEW SECTION

**WAC 458-16-245 Student loan agencies.** (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.030(6) to a nonprofit organization, association, or corporation that is exempt from federal income taxation and either guarantees student loans or issues debt to provide or acquire student loans.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Student loan agency" means a nonprofit organization or association that is exempt from federal income tax under section 501(c)(3) of the Federal Internal Revenue Code of 1954 (as amended) and:

(i) Is a guarantee agency under the federal guaranteed student loan program; or

(ii) Issues debt to provide or acquire student loans.

(b) "Property" means real or personal property owned by a nonprofit organization, association, or corporation that qualifies as a "student loan agency."

(c) "Commercial" refers to an activity or enterprise that has profit making as its primary purpose.

(3) **Exemption.**

(a) Property owned and used by a nonprofit organization, association, or corporation that is a guarantee agency under the federal guaranteed student loan program or that issues debt to provide or acquire student loans is exempt from taxation.

(b) If any portion of the organization's, association's, or corporation's property is used for a commercial rather than an exempt purpose that portion must be segregated and taxed.

(4) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165 that explains the additional conditions and requirements necessary to obtain a property tax exemption pursuant to RCW 84.36.030.

#### NEW SECTION

**WAC 458-16-284 Fire companies.** (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.060 to fire companies.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Fire company" means any nonprofit organization, association, or corporation whose purpose is to extinguish or prevent fires in any city or town within the state of Washington.

(b) "Property" means real or personal property that is owned by a city, town, or nonprofit fire company.

(c) "Commercial" refers to an activity or enterprise that has profit making as its primary purpose.

(3) **Exemption.** The following property shall be exempt from property taxes if it is owned by a city, town, or nonprofit fire company located within a city or town:

(a) All fire engines and other equipment used to extinguish or fight fires;

(b) Buildings or other structures that are exclusively used, or to the extent that they are exclusively used, to store or to safeguard fire fighting equipment; and

(c) Buildings or other structures that are exclusively used, or to the extent they are exclusively used, for meetings of the fire company. If any portion of the fire company's property is used for a commercial rather than an exempt purpose that portion must be segregated and taxed.

(4) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165 that explains the additional conditions and requirements necessary to obtain a property tax exemption pursuant to RCW 84.36.060.

#### NEW SECTION

**WAC 458-16-286 Humane societies.** (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.060 to humane societies.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Humane society" means a nonprofit organization, association, or corporation, the primary purpose of which is to prevent cruelty to animals, place unwanted animals in homes, provide other services relating to "lost and found" pets, and provide animal care education to the public, as well as sponsoring a neutering program to control the animal population.

(b) "Actual use" means that the property is currently being used by a humane society to provide services or care related to homeless animals or "lost and found" pets, or to prevent cruelty to animals within the state.

(c) "Property" means real or personal property that is owned and is actually used by a humane society.

(d) "Commercial" refers to an activity or enterprise that has profit making as its primary purpose.

(3) **Exemption.** Property that is owned and in actual use by a humane society shall be exempt from taxation. Any portion of this property that is not in actual use by the humane society or that is used for a commercial rather than an exempt purpose must be segregated and taxed.

(4) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165 that explains the additional conditions and requirements necessary to obtain a property tax exemption pursuant to RCW 84.36.060.

#### NEW SECTION

**WAC 458-16-320 Emergency or transitional housing.** (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.043 to real and personal property used by a nonprofit organization, association, or corporation to provide emergency or transitional housing to low income persons or victims of domestic violence who are homeless for personal safety reasons.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Emergency housing" means a facility whose primary purpose is to provide temporary or transitional shelter and supportive services to the homeless in general or to a specific population of the homeless for no more than sixty days.

(b) "Homeless" means a person, persons, family, or families who do not have fixed, regular, adequate, or safe shelter nor sufficient funds to pay for such shelter.

(c) "Low-income" means income that does not exceed eighty percent of the median income for the standard metropolitan statistical area in which the city or town is located.

(d) "Supportive services" means resume writing, training, vocational and psychological counselling, or other similar programs designed to assist the homeless into independent living.

(e) "Transitional housing" means a facility that provides housing and supportive services to homeless individuals or families for up to two years and whose primary purpose is to enable homeless individuals or families to move into independent living and permanent housing.

(f) "Victim(s) of domestic violence" means either an adult(s) or a child(ren) who have been physically or mentally abused and who fled his or her home out of fear for his or her safety.

(g) "Property" means real or personal property used by a nonprofit organization, association, or corporation in providing emergency or transitional housing and supportive services for low-income homeless persons or victims of domestic violence.

(h) "Commercial" refers to an activity or enterprise that has profit making as its primary purpose.

(3) **Exemption.** The real and personal property exclusively used, or to the extent that it is exclusively used, by a nonprofit organization, association or corporation to provide emergency or transitional housing to low-income homeless persons or victims of domestic violence shall be exempt from taxation if the following conditions are met:

(a) The amount of the charge or fee for the housing does not exceed maintenance and operation expenses;

(b) The property is either:

(i) Owned by a nonprofit organization, association, or corporation; or

(ii) For taxes payable in 1992 through 2000, rented or leased by a nonprofit organization, association, or corporation and the benefit of the exemption inures to a nonprofit organization, association, or corporation; and

(c) If any portion of the organization's, association's or corporation's property is used for a commercial purpose

rather than for an exempt purpose, that portion of the property must be segregated and taxed.

(4) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165 that explains the additional conditions and requirements necessary to obtain a property tax exemption pursuant to RCW 84.36.043.

#### NEW SECTION

**WAC 458-16-330 Sheltered workshops for the handicapped.** (1) **Introduction.** This section explains the property tax exemption available under the provisions of RCW 84.36.350 to real and personal property owned by a nonprofit organization, association, or corporation and used in operating a sheltered workshop for handicapped persons.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Handicapped person" means an individual who is physically, mentally, or developmentally disabled. For purposes of this section, a substance, either drug or alcohol, abuser is considered physically disabled.

(b) "Sheltered workshop" means a facility, or any portion thereof, operated by a nonprofit organization, association, or corporation where business activities are carried on and whose primary purpose is:

(i) To provide gainful employment or rehabilitative services to the handicapped as an interim step in the rehabilitation process to individuals who cannot be readily absorbed into the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist; or

(ii) To provide evaluation and work adjustment services to handicapped individuals.

(c) "Property" means real or personal property owned and used by a nonprofit organization, association, or corporation in operating a sheltered workshop for handicapped persons.

(d) "Commercial" refers to an activity or enterprise that has profit making as its primary purpose.

(3) **Exemption.** The real or personal property owned and used by a nonprofit organization, association, or corporation in connection with the operation of a sheltered workshop for handicapped persons and used primarily to manufacture and handle, sell, or distribute goods constructed, processed, or repaired in a sheltered workshop is exempt from ad valorem taxation.

(a) Inventory owned by a sheltered workshop is also exempt from taxation if the inventory is for sale or lease by the sheltered workshop or the inventory is to be furnished under a contract of service. For example, "inventory" includes, but is not limited to, raw materials, work in process, and finished products.

(b) The primary use of any property exempt under this section must be to provide training, gainful employment, or rehabilitation services to persons who meet the definition of "handicapped person" contained in subsection (2) of this section.

(c) Example. A sheltered workshop that teaches trade skills and work habits to the blind so that trainees might enter the competitive labor market may qualify for this

exemption. This workshop may also qualify if it provides training in recreational activities and living skills, such as housekeeping and cooking.

(d) If any portion of the organization's, association's, or corporation's property is used for a commercial purpose rather than for an exempt purpose, that portion of the property must be segregated and taxed.

(4) **Cross reference to excise tax exemption.** A nonprofit organization, association, or corporation that receives a property exemption under RCW 84.36.350 may also be exempt from certain excise taxes. See RCW 82.04.385 for more specific information.

(5) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16-165 that explains the additional conditions and requirements necessary to obtain a property tax exemption pursuant to RCW 84.36.350.

**WSR 94-07-010**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**  
[Filed March 4, 1994, 12:43 p.m.]

Date of Adoption: January 31, 1994.

Purpose: To promulgate amended rules for the regulation of radioactive air emissions.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-247-050, 246-247-070, and 246-247-090; and amending WAC 246-247-001, 246-247-010, 246-247-020, 246-247-030, 246-247-040, 246-247-060, 246-247-080, and 246-247-100.

Statutory Authority for Adoption: Chapter 70.98 RCW.

Other Authority: Chapter 70.94 RCW and chapter 173-480 WAC.

Pursuant to notice filed as WSR 94-01-142 on December 21, 1993.

Changes Other than Editing from Proposed to Adopted Version: Other than minor corrections and clarifications the following changes were made: Deletion of a "de minimus" level of emissions for purposes of reporting. This is necessary to eliminate conflict with EPA's regulations; in order to minimize dual regulation with the Nuclear Regulatory Commission, commercial nuclear power plants may request exemption from some of the requirements of the proposed rule; and applicant must explicitly indicate technology standards they will comply with. This will facilitate staff review. No changes are substantive changes in accordance with RCW 34.05.340(2).

Effective Date of Rule: Thirty-one days after filing.

March 4, 1994

Bruce A. Miyahara  
Secretary

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

**WAC 246-247-001 Purpose.** The purpose of this chapter is to establish ~~((procedures for the monitoring, control, and reporting of airborne radionuclide emissions from specific sources to assure compliance with applicable~~

PERMANENT

standards)) application requirements and procedures for the issuance of a radioactive air emissions license and for the regulation of those emissions by the department of health (hereinafter referred to as "the department") to assure compliance with the standards for radioactive air emissions set by the department of ecology pursuant to RCW 70.94.331, promulgated in chapter 173-480 WAC, and with the rules and regulations of this chapter.

**NEW SECTION**

**WAC 246-247-002 Authority.** (1) Rules and regulations set forth herein are adopted and enforced by the department pursuant to the provisions of chapter 70.98 RCW which:

- (a) Designate the department as the state's radiation control agency having sole responsibility for the administration of the regulatory, licensing, and radiation control provisions of chapter 70.98 RCW;
- (b) Vest in the department the authority to formulate, adopt, promulgate, and repeal codes, rules, and regulations related to the control of sources of ionizing radiation;
- (c) Authorize the department to implement an independent state-wide program to monitor radioactive air emissions from sources within the state;
- (d) Authorize the department to conduct inspections of facilities, both private and public, to determine whether or not there is compliance with or violation of the provisions of chapter 70.98 RCW and rules and regulations issued thereunder; and
- (e) Authorize the department to require registration of sources of ionizing radiation.

(2) In addition, RCW 70.94.422 (Washington Clean Air Act) grants to the department the enforcement powers contained in that chapter.

**AMENDATORY SECTION** (Amending Order 121, filed 12/27/90, effective 1/31/91)

**WAC 246-247-010 Applicability.** (1) The standards and requirements of this chapter ((shall)) apply state-wide((-These provisions apply to)) at the following types of facilities that emit radionuclides to the air:

- ~~((1))~~ (a) Facilities licensed by the department or by the United States Nuclear Regulatory Commission (NRC);
- ~~((2))~~ (b) United States Department of Energy (DOE) facilities;
- ~~((3))~~ (c) Non-DOE federal facilities ~~((that emit radionuclides to the air; and~~
- ~~(4) Any other facilities having emissions of radionuclides to the air in amounts that can potentially cause a dose equivalent in excess of five mrem/year to the whole body or 15 mrem/year to the critical organ of any member of the public.~~
- ~~(5) These provisions do not apply to facilities regulated under other state authorities, specifically:~~
  - ~~(a) Uranium mill sites (chapter 402-52 WAC);~~
  - ~~(b) Nuclear power reactors (chapter 463-54 WAC));~~
  - ~~(d) Uranium fuel cycle facilities;~~
  - ~~(e) Uranium mills that are processing material; and~~
  - ~~(f) Any other facility that the department determines emits or has the potential to emit radionuclides to the ambient air.~~

(2) The standards and requirements of this chapter apply to point sources, nonpoint sources, and fugitive emissions.

(3) The standards and requirements of this chapter apply to stationary and mobile emission units, whether temporary or permanent.

(4) The control technology standards and requirements of this chapter apply to the abatement technology and indication devices of facilities and emission units subject to this chapter. Control technology requirements apply from entry of radionuclides into the ventilated vapor space to the point of release to the environment.

(5) In accordance with RCW 70.94.161(10), air operating permits issued under chapter 173-401 WAC shall incorporate all applicable requirements of this chapter. Therefore, all facilities listed in subsection (1) of this section that are also subject to the operating permit regulations in chapter 173-401 WAC shall be considered in compliance with the requirements of this chapter if they comply with all the applicable requirements of the air operating permit issued under chapter 173-401 WAC. These applicable requirements shall be contained in the radioactive air emissions license which shall be incorporated as part of the air operating permit. In accordance with RCW 70.94.422(1), the department shall enforce all the requirements contained in the radioactive air emissions license.

(6) Should any of the federal regulations that have been adopted by reference in this chapter be rescinded, the affected facilities shall nonetheless comply with all other applicable requirements of this chapter.

(7) An applicant may obtain a copy of any document referenced in this chapter by contacting the department's division of radiation protection, air emissions and defense wastes section at (206) 586-5504. Mail reports, applications, and other written correspondence to the Air Emissions and Defense Wastes Section at Airdustrial Park, Building 5, P.O. Box 47827, Olympia, Washington, 98504-7827.

**AMENDATORY SECTION** (Amending Order 121, filed 12/27/90, effective 1/31/91)

**WAC 246-247-020 Exemptions.** (1) The following types of facilities ((listed in Table I)) or sources of radiation are exempt from the requirements of this chapter because they ((either)) release no airborne radioactivity, or ((because it has been determined that)) they ((would)) prima facie ((be in compliance)) comply with the standards((-) in WAC 246-247-040, or they are already adequately regulated under other requirements:

((TABLE I))

- ~~((1))~~ (a) Users of only sealed sources((-);
- ~~((2) Low energy))~~ (b) Sealed sources;
- ~~((c) Accelerators ((<)) less than 200 MeV((-);~~
- ~~((3) Reserved.)~~ (d) Nuclear-powered vessels underway or moored dockside unless under a maintenance condition with a potential-to-emit;
- (e) Uranium mill tailings piles disposed of under 40 CFR Part 192.
- (2) Exemption determinations.
  - (a) Any exemptions shall be consistent with 40 CFR 61. No exemptions from the standards in WAC 246-247-040 will be granted.

(b) A nonfederal facility may request exemption from some of the requirements of WAC 246-247-060 and 246-247-075 if the potential-to-emit, for the emission unit(s) under consideration, results in compliance at level I of the COMPLY computer code or level I of the NCRP's Commentary No. 3, or equivalent as approved by the department.

(c) A federal facility may request exemption from some of the requirements of WAC 246-247-060 and 246-247-075 if the potential-to-emit, for the emission unit(s) under consideration, results in a TEDE to the MEI from all pathways less than 0.1 mrem/yr.

(d) The facility shall submit all the data necessary to make the exemption determinations of (b) and (c) of this subsection. The department shall determine if any exemptions apply.

(e) Commercial nuclear power plants may request exemption from some of the requirements of this chapter in order to minimize dual regulation with the NRC.

(3) The department may require a facility with exempt emission units to submit a radioactive air emissions report to confirm compliance with applicable standards. The department reserves the right to conduct inspections and audits of the facility to confirm the status of its exempt emission units.

(4) Naturally occurring airborne radionuclides are exempt from the requirements of this chapter unless the concentrations or rates of emissions have been enhanced by industrial processes.

#### AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

**WAC 246-247-030 Definitions.** ~~((As))~~ Terms used in this chapter~~((, these terms))~~ have the definitions set forth below with reference to radioactive air emissions.

~~((1))~~ "Best available radionuclide control technology (BARCT)" means technology which will result in a radionuclide emission limitation based on the maximum degree of reduction for radionuclides which would be emitted from any proposed stationary source or modification of a source which the permitting authority on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques. In no event shall application of best available radionuclide technology result in emissions of radionuclides which would exceed the ambient annual standard limitation specified in this chapter.

(2) "Critical organ" means the most exposed human organ or tissue exclusive of the integumentary system (skin) and the cornea.

(3) "Department" means the department of social and health services.

(4) "Dose equivalent" means the product of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body. Units of dose equivalent are mrem.

(5) "Emission source" means the point of release of airborne emissions of radioactive materials.

(6) "Radionuclide" means any nuclide that emits radiation.

(7) "Whole body" means all human organs or tissue exclusive of the integumentary system (skin) and the cornea.) (1) "Abatement technology" means any mechanism, process or method that has the potential to reduce public exposure to radioactive air emissions. Abatement control features include automatic mechanisms and administrative controls used in the operation and control of abatement technology from entry of radionuclides into the ventilated vapor space to release to the environment.

(2) "Administrative control" means any policy or procedure that limits the emission of radionuclides.

(3) "ALARA" means as low as reasonably achievable making every reasonable effort to maintain exposures to radiation as far below the dose standards in this chapter as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other socioeconomic considerations, and in relation to the utilization of nuclear energy, ionizing radiation, and radioactive materials in the public interest. See WAC 246-220-007.

(4) "As low as reasonably achievable control technology" (ALARACT) means the use of radionuclide emission control technology that achieves emission levels that are consistent with the philosophy of ALARA. ALARACT compliance is demonstrated by evaluating the existing control system and proposed nonsignificant modifications in relation to applicable technology standards and other control technologies operated successfully in similar applications. In no event shall application of ALARACT result in emissions of radionuclides that could cause exceedance of the applicable standards of WAC 246-247-040. See the definition of ALARA in this section. Note that ALARACT is equivalent to, but replaces, RACT in the May 7, 1986, version of chapter 173-480 WAC.

(5) "Annual possession quantity" means the sum of the quantity of a radionuclide on hand at the beginning of the calendar year and the quantity of that radionuclide received or produced during the calendar year.

(6) "Best available radionuclide control technology" (BARCT) means technology that will result in a radionuclide emission limitation based on the maximum degree of reduction for radionuclides from any proposed newly constructed or significantly modified emission units that the licensing authority determines is achievable on a case-by-case basis. A BARCT compliance demonstration must consider energy, environmental, and economic impacts, and other costs through examination of production processes, and available methods, systems, and techniques for the control of radionuclide emissions. A BARCT compliance demonstration is the conclusion of an evaluative process that results in the selection of the most effective control technology from all known feasible alternatives. In no event shall application of BARCT result in emissions of radionuclides that could exceed the applicable standards of WAC 246-247-040. Control technology that meets BARCT requirements also meets ALARACT requirements. See WAC 173-480-030 and 246-247-120.

(7) "Committed effective dose equivalent" (CEDE) means the sum of the products of absorbed dose from

internally deposited radionuclides and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man over a fifty-year period.

(8) "Construction" means fabrication, erection, or installation of a new building, structure, plant, process, or operation within a facility that has the potential to emit airborne radionuclides. Construction includes activities of a permanent nature aimed at completion of the emission unit, such as pouring concrete, putting in a foundation, or installing utilities directly related to the emission unit. It does not include preliminary activities such as tests to determine site suitability, equipment procurement and storage, site clearing and grading, and the construction of ancillary buildings.

(9) "Decommissioning" means actions taken to reduce or eliminate the potential public health and safety impacts of a building, structure, or plant that has permanently ceased operations, including, but not limited to, actions such as decontamination, demolition, and disposition.

(10) "Emission unit" means any single location that emits or has the potential to emit airborne radioactive material. This may be a point source, nonpoint source, or source of fugitive emissions.

(11) "Facility" means all buildings, structures, plants, processes, and operations on one contiguous site under control of the same owner or operator.

(12) "Fugitive emissions" are radioactive air emissions which do not and could not reasonably pass through a stack, vent, or other functionally equivalent structure, and which are not feasible to directly measure and quantify.

(13) "Indication device" means any method or apparatus used to monitor, or to enable monitoring, the operation of abatement controls or the potential or actual radioactive air emissions.

(14) "License" means a radioactive air emissions license, either issued by the department or incorporated by the department as an applicable portion of an air operating permit issued by the department of ecology or a local air pollution control authority, with requirements and limitations listed therein to which the licensed or permitted party must comply. Compliance with the license requirements shall be determined and enforced by the department.

(15) "Maximally exposed individual" (MEI) means any member of the public (real or hypothetical) who abides or resides in an unrestricted area, and may receive the highest TEDE from the emission unit(s) under consideration, taking into account all exposure pathways affected by the radioactive air emissions.

(16) "Modification" means any physical change in, or change in the method of operation of, an emission unit that could increase the amount of radioactive materials emitted or may result in the emission of any radionuclide not previously emitted. This definition includes the cleanup of land contaminated with radioactive material, the decommissioning of buildings, structures, or plants where radioactive contamination exists, and changes that will cause an increase in the emission unit's operating design capacity. This definition excludes routine maintenance, routine repair, replacement-in-kind, any increases in the production rate or hours of operation, provided the emission unit does not exceed the release quantities specified in the license application or the operating design capacity approved by the department,

addition of abatement technology as long as it is not less environmentally beneficial than existing, approved controls, and changes that result in an increase in the quantity of emissions of an existing radionuclide that will be offset by an equal or greater decrease in the quantity of emissions of another radionuclide that is deemed at least as hazardous with regard to its TEDE to the MEI.

(17) "Monitoring" means the measurement of radioactive material released to the ambient air by means of an in-line radiation detector, and/or by the withdrawal of representative samples from the effluent stream. Ambient air measurements may be acceptable for nonpoint sources and fugitive emissions.

(18) "Nonpoint source" is a location at which radioactive air emissions originate from an area, such as contaminated ground above a near-surface waste disposal unit, whose extent may or may not be well-defined.

(19) "Notice of construction" (NOC) is an application submitted to the department by an applicant that contains information required by WAC 246-247-060 for proposed construction or modification of a registered emission unit(s), or for modification of an existing, unregistered emission unit(s).

(20) "Point source" is a discrete, well-defined location from which radioactive air emissions originate, such as a stack, vent, or other functionally equivalent structure.

(21) "Potential-to-emit" means the rate of release of radionuclides from an emission unit based on the actual or potential discharge of the effluent stream that would result if all abatement control equipment did not exist, but operations are otherwise normal. Determine the potential-to-emit by one of the following methods:

(a) Multiply the annual possession quantity of each radionuclide by the release fraction for that radionuclide, depending on its physical state. Use the following release fractions:

- (i) 1 for gases;
- (ii)  $10^{-3}$  for liquids or particulate solids; and
- (iii)  $10^{-6}$  for solids.

Determine the physical state for each radionuclide by considering its chemical form and the highest temperature to which it is subjected. Use a release fraction of one if the radionuclide is subjected to temperatures at or above its boiling point; use a release fraction of  $10^{-3}$  if the radionuclide is subjected to temperatures at or above its melting point, but below its boiling point. If the chemical form is not known, use a release fraction of one for any radionuclide that is heated to a temperature of one hundred degrees Celsius or more, boils at a temperature of one hundred degrees Celsius or less, or is intentionally dispersed into the environment. Other release fractions may be used only with the department's approval; or

(b) Perform a back-calculation using measured emission rates and *in situ* measurements of the control equipment efficiencies, as approved by the department; or

(c) Measure the quantities of radionuclides captured in each control device, coupled with *in situ* measurements of the control equipment efficiencies, as approved by the department; or

(d) Sample the effluent upstream from all control devices, as approved by the department; or

(e) Use an alternative method approved by the department.

(22) "Replacement-in-kind" means the substitution of existing systems, equipment, components, or devices of an emission unit's control technology with systems, equipment, components, or devices with equivalent, or better, performance specifications that will perform the same function(s).

(23) "Routine" means:

(a) Maintenance, repair, or replacement-in-kind performed on systems, equipment, components, or devices of an emission unit's abatement technology as a planned part of an established inspection, maintenance, or quality assurance program that does not increase the emission unit's operating design capacity; or

(b) Normal, day-to-day operations of a facility.

(24) "Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix, or radioactive material in airtight containers, designed to prevent release and dispersal of the radioactive material under the most severe conditions encountered in normal use and handling.

(25) "Significant" means the potential-to-emit airborne radioactivity at a rate that could increase the TEDE to the MEI by at least 1.0 mrem/yr as a result of a proposed modification.

(26) "Total effective dose equivalent" (TEDE) means the sum of the dose equivalent due to external exposures and the CEDE due to internal exposures.

(27) "Uranium fuel cycle" means the operations of milling uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity in a nuclear power plant that uses uranium fuel, and reprocessing of spent uranium fuel, to the extent that these operations solely support the production of electrical power for public use. Excluded are mining operations, waste disposal sites, transportation of any radioactive material, and the reuse of recovered nonuranium special nuclear and by-product materials from the cycle.

**AMENDATORY SECTION** (Amending Order 121, filed 12/27/90, effective 1/31/91)

**WAC 246-247-040 Standards.** ((The ambient air quality standards and emission limits for radionuclides shall be those promulgated by the department of ecology in chapter 173-480 WAC. The WDOE ambient standard requires that emissions of radionuclides to the air shall not cause a dose equivalent of more than 25 mrem/year to the whole body or 75 mrem/year to a critical organ of any member of the public. Doses due to Radon-220, Radon-222, and their respective decay products are excluded from this chapter. These standards are consistent with Environmental Protection Agency Final Rules for National Emission Standards for Hazardous Air Pollutants (Standards for Radionuclides published in 40 CFR Part 61 on February 6, 1985).)) (1) Standards for radioactive air emissions in the state of Washington are contained in WAC 173-480-040, 173-480-050, and 173-480-060 and in 40 CFR Part 61, subparts H and I published in the *Federal Register* on December 15, 1989. In accordance with WAC 173-480-050(3), the department shall enforce the most stringent standard in effect, notwithstanding any agreement between

EPA and any other agency, including those agreements made pursuant to 42 USC 7412(d)(9).

(2) In addition to the radioactive air emission standards of subsection (1) of this section, the department's radioactive materials licensees shall comply with the limitations on radioactive air emissions contained in WAC 246-221-070.

(3) All new construction and significant modifications of emission units commenced after August 10, 1988 (the date this chapter originally became effective) shall utilize BARCT (see Appendix B).

(4) All existing emission units and nonsignificant modifications shall utilize ALARACT (see Appendix C).

(5) In order to implement these standards, the department may set limits on emission rates for specific radionuclides from specific emission units and/or set requirements and limitations on the operation of the emission unit(s) as specified in a license.

(6) All emissions of radionuclides, including those due to emergency conditions resulting from startup, shutdown, maintenance activities, or process upsets are subject to the standards of this section and, therefore, subject to the enforcement actions of WAC 246-247-100.

**AMENDATORY SECTION** (Amending Order 121, filed 12/27/90, effective 1/31/91)

**WAC 246-247-060 ((Airborne emission permits--)) Applications, registration and licensing.** ((Each operator of radioactive airborne emission sources shall obtain a permit issued by the department to operate those sources. The department shall grant these permits only after receipt of the appropriate fees and registration materials and a full review of those materials by the department.

(1) For emission sources at facilities licensed by the department, air emission permits shall be part of the source operator's radioactive materials license.

(2) For emission sources at the United States Department of Energy (DOE) Hanford Site, the department shall issue one permit for each major production, processing, or research area, e.g., 200 East Area.

(3) For emission sources at non-DOE federal facilities, the department shall issue one permit for each base or installation, e.g., Puget Sound Naval Shipyard.)) This section describes the information requirements for approval to construct, modify, and operate an emission unit. Any notice of construction (NOC) requires the submittal of the information listed in Appendix A. Complex projects may require additional information. The applicant should contact the department early in the conceptual design phase for guidance on applicable control technologies to consider.

Appendices B and C outline the procedures to demonstrate compliance with the BARCT and ALARACT standards. Based on the Appendix A information provided, the department may advise the applicant which subset of technologies to consider as candidates for meeting BARCT or ALARACT requirements.

For those facilities subject to the operating permit regulations in chapter 173-401 WAC, the radioactive air emissions license will be incorporated as an applicable portion of the air operating permit issued by the department of ecology or a local air pollution control authority. The department will be responsible for determining the facility's

compliance with and enforcing the requirements of the radioactive air emissions license.

(1) Requirements for new construction or modification of emission units.

(a) Early in the design phase, the applicant shall submit a NOC containing the information required in Appendix A.

(b) Within thirty days of receipt of the NOC, the department shall inform the applicant if additional information is required. The department may determine, on the basis of the information submitted, that the requirements of BARCT or ALARACT have been met, or may require the applicant to submit a BARCT or ALARACT demonstration compatible with Appendix B or C, respectively.

(c) Within sixty days of receipt of all required information, the department shall issue an approval or denial to construct. The department may require changes to the final proposed control technology.

(d) The applicant may request a phased approval process by so stating and submitting a limited application. The department may grant a conditional approval to construct for such activities as would not preclude the construction or installation of any control or monitoring equipment required after review of the completed application.

(e) The department shall issue a license, or amend an existing license, authorizing operation of the emission unit(s) when the proposed new construction or modification is complete. For facilities subject to the air operating permit requirements of chapter 173-401 WAC, the license shall become part of the air operating permit issued by the department of ecology or a local air pollution control authority. For new construction, this action shall constitute registration of the emission unit(s).

(2) Requirements for modification of unregistered emission units that are not exempt from these regulations.

(a) The applicant shall submit an application containing the information required in Appendix A.

(b) Within thirty days of receipt of the application, the department shall inform the applicant if additional information is required. The department may determine, on the basis of the information submitted, that the requirements of BARCT or ALARACT have been met, or may require the applicant to submit a BARCT or ALARACT demonstration compatible with Appendix B or C, respectively.

(c) Within sixty days of receipt of all required information, the department shall issue or amend the license. For facilities subject to the air operating permit requirements of chapter 173-401 WAC, the license shall become part of the air operating permit issued by the department of ecology or a local air pollution control authority. This action shall constitute registration of the emission unit(s). A determination of noncompliance may result in the issuance of a notice of violation.

(d) The department reserves the right to require the owner of an existing, unregistered emission unit to make modifications necessary to comply with the applicable standards of WAC 246-247-040.

(3) If an emission unit is in violation of any standards contained in WAC 246-247-040, the facility shall either submit a compliance plan which describes how it intends to achieve compliance with the standards, and/or cease operation of the emission unit(s). The facility shall submit the compliance plan within forty-five days of the notice of

violation. The cessation of operation of the emission unit(s) shall not necessarily exempt the facility from the requirements of this chapter if active or passive ventilation and radioactive air emission controls will still be required. The department reserves the right to take further enforcement action, if necessary, in accordance with WAC 246-247-100.

(4) The facility shall notify the department at least seven calendar days prior to any planned preoperational tests of new or modified emission units that involve emissions control, monitoring, or containment systems of the emission unit(s). The department reserves the right to witness or require preoperational tests involving the emissions control, monitoring, or containment systems of the emission unit(s).

(5) The license shall specify the requirements and limitations of operation to assure compliance with this chapter. The facility shall comply with the requirements and limitations of the license.

(6) All radioactive air emissions licenses issued by the department, except those issued to radioactive materials licensees, shall have an expiration date of five years from date of issuance or as specified in the air operating permit. For radioactive material licensees, the requirements and limitations for the operation of emission units shall be incorporated into their radioactive materials license, and shall expire when the radioactive materials license expires.

(7) Each federal facility that comes under the authority of this chapter shall hold one license for each site, base, or installation. When applicable, the license shall be part of the facility's air operating permit.

(8) Facilities may request a single categorical license which identifies limits and conditions of operation for similar multipurpose temporary and/or portable emission units. When applicable, the license shall be part of the facility's air operating permit.

(9) All facilities with licensed emission units, except for radioactive materials licensees, shall submit a request to the department for renewal of their radioactive air emissions license at least sixty days prior to expiration of the license or as required by the air operating permit. All renewal requests shall include a summary of the operational status of all emission units, the status of facility compliance with the standards of WAC 246-247-040, and the status of any corrective actions necessary to achieve compliance with the requirements of this chapter. Facilities with licensed emission units that also hold a radioactive materials license issued by the department shall submit this information along with their radioactive material license renewal submittal. If the department is unable to renew a radioactive air emissions license before its expiration date, the existing license, with all of its requirements and limitations, remains in force until the department either renews or revokes the license.

(10) For commercial nuclear power plants or any other thermal energy facility subject to chapter 80.50 RCW and to the requirements of this chapter, the radioactive air emissions license and amendments thereto shall be issued pursuant to a memorandum of agreement between the energy facility site evaluation council (EFSEC) and the department.

NEW SECTION

**WAC 246-247-065 Fees.** (1) All facilities under the authority of this chapter shall submit fees in accordance with WAC 246-254-160.

(2) Those facilities required by WAC 246-254-160(2) to submit an application fee, shall submit the fee with the application.

NEW SECTION

**WAC 246-247-075 Monitoring, testing and quality assurance.** (1) All radioactive air emissions monitoring, testing, and quality assurance requirements of 40 CFR 61, Subparts H and I published in the *Federal Register* on December 15, 1989, are adopted by reference, as applicable as specified by the referenced subparts.

(2) Equipment and procedures used for the continuous monitoring of radioactive air emissions shall conform, as applicable, to the guidance contained in ANSI N13.1, ANSI N42.18, ANSI N323, ANSI N317, reference methods 1, 1A, 2, 2A, 2C, 2D, 4, 5, and 17 of 40 CFR Part 60, Appendix A, 40 CFR Part 52, Appendix E, and any other methods approved by the department.

(3) The operator of an emission unit with a potential-to-emit of less than 0.1 mrem/yr TEDE to the MEI may estimate those radionuclide emissions, in lieu of monitoring, in accordance with 40 CFR 61 Appendix D, or other procedure approved by the department. The department may require periodic confirmatory measurements (e.g., grab samples) during routine operations to verify the low emissions. Methods to implement periodic confirmatory monitoring shall be approved by the department.

(4) The department may allow a facility to use alternative monitoring procedures or methods if continuous monitoring is not a feasible or reasonable requirement.

(5) The following types of facilities shall determine radionuclide emissions in accordance with either a methodology referenced in subsections (1) through (4) of this section or the respective document referenced below:

(a) Nuclear power reactors licensed by the NRC: Offsite Dose Calculation Manual;

(b) Fuel fabrication plants licensed by the NRC: NRC's Regulatory Guide 4.16, dated December 1985;

(c) Uranium mills that are processing material: NRC's Regulatory Guide 4.14, dated April 1980.

(6) Licensed facilities shall conduct and document a quality assurance program. Except for those types of facilities specified in subsection (5) of this section, the quality assurance program shall be compatible with applicable national standards such as ANSI/ASME NQA-1-1988, ANSI/ASME NQA-2-1986, QAMS-004, and QAMS-005.

(7) Those types of facilities specified in subsection (5) of this section shall conduct and document a quality assurance program compatible with either the applicable national standards referenced in subsection (6) of this section or the NRC's Regulatory Guide 4.15, dated February 1979.

(8) Facilities shall monitor nonpoint and fugitive emissions of radioactive material.

(9) The department may conduct an environmental surveillance program to ensure that radiation doses to the public from emission units are in compliance with applicable standards. The department may require the operator of any

emission unit to conduct stack sampling, ambient air monitoring, or other testing as necessary to demonstrate compliance with the standards in WAC 246-247-040.

(10) The department may require the owner or operator of an emission unit to make provision, at existing emission unit sampling stations, for the department to take split or collocated samples of the emissions.

(11) The planning for any proposed new construction or significant modification of the emission unit must address accidental releases with a probability of occurrence during the expected life of the emission unit of greater than one percent.

(12) All facilities must be able to demonstrate that appropriate supervisors and workers are adequately trained in the use and maintenance of emission control and monitoring systems, and in the performance of associated test and emergency response procedures.

(13) All facilities must be able to demonstrate the reliability and accuracy of the radioactive air emissions monitoring data.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

**WAC 246-247-080 ((Monitoring and reporting-))  
Inspections, reporting, and recordkeeping. ((~~(1) The department may conduct an environmental surveillance program to assure that radiation exposures to the public from airborne radionuclide emission sources are in compliance with applicable standards.~~**

~~(2) As a part of the surveillance program, the department may require the operator of any facility under the jurisdiction of the department to conduct stack sampling, ambient air monitoring, or other testing as necessary and to report the results to the department. Such testing may include computer dose modeling and verification.~~

~~(3) The use of continuous monitoring equipment by the facility operator is encouraged but may not be feasible for some radionuclides. If the department determines that continuous monitoring is not a feasible or reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These may take the form of stack tests conducted at a frequency sufficient to establish emission levels over time and to monitor deviations in these levels.~~

~~(4) The facility operator or owner shall submit a semiannual inventory of emissions from the source upon a form, and according to instructions, issued by the department.~~

~~(5) The semiannual inventory shall specify the quantities of each of the principal radionuclides released to unrestricted areas in airborne emissions during the previous six months. This data shall be reported in a manner that will permit the department to confirm the potential annual radiation doses to the public. Reports shall be due in writing by May 1 and November 1 of each year.~~

~~(6) To determine compliance with applicable standards, radionuclide emissions shall be determined and dose equivalent to members of the public shall be calculated using EPA approved sampling procedures, EPA codes AIRDOS-EPA and RADRISK, or other procedures, including those based on environmental measurements, that the department has~~

~~determined to be suitable. In most cases, compliance will be determined by calculating the dose to members of the public at the point of maximum annual air concentration in an unrestricted area.~~

~~(7) The following is a list of approved procedures: (to be provided later)~~

~~(8) In order to demonstrate compliance with this chapter, the department may require that a test be made of the emission source. The operator of the source may be required to provide a sampling platform and sampling ports for the department to perform an emission test. The department shall be allowed to obtain a sample from any emissions unit. The operator may observe the sampling and may obtain a sample at the same time.)~~ (1) The department reserves the right to inspect and audit all construction activities, equipment, operations, documents, data, and other records related to compliance with the requirements of this chapter. The department may require a demonstration of ALARACT at any time.

(2) All reporting and recordkeeping requirements of 40 CFR 61, Subparts H and I published in the *Federal Register* on December 15, 1989, are adopted by reference, as applicable as specified by the referenced subparts.

(3) The facility shall annually submit to the department the information requirements adopted in subsection (2) of this section, as applicable, along with the following additional information, as applicable:

(a) The results of emission measurements for those emission units subject only to periodic confirmatory measurements;

(b) Wind rose or joint frequency table;

(c) Annual average ambient temperature;

(d) Annual average emission unit gas temperature, if available;

(e) Annual total rainfall;

(f) Annual average emission unit flow rate and total volume of air released during the calendar year.

If this additional information is available in another annual report, the facility may instead provide a copy of that report along with the information requirements in this subsection. Annual reports are due by June 30 for the previous calendar year's operations.

(4) Any report or application that contains proprietary or procurement-sensitive information shall be submitted to the department with those portions so designated. The department shall hold this information confidential, unless required to release the information pursuant to laws, regulations, or court order.

(5) The facility shall notify the department within twenty-four hours of any shutdown, or of any transient abnormal condition lasting more than four hours or other change in facility operations which, if allowed to persist, would result in emissions of radioactive material in excess of applicable standards or license requirements. If requested by the department, the facility shall submit a written report within ten days including known causes, corrective actions taken, and any preventive measures taken or planned to minimize or eliminate the chance of recurrence.

(6) The facility shall file a report of closure with the department whenever operations producing emissions of radioactive material are permanently ceased at any emission unit (except temporary emission units) regulated under this

chapter. The closure report shall indicate whether, despite cessation of operations, there is still a potential for radioactive air emissions and a need for an active or passive ventilation system with emission control and/or monitoring devices. If decommissioning is planned and will constitute a modification, a NOC is required, as applicable, in accordance with WAC 246-247-060.

(7) The facility shall maintain a log for each emission unit that has received categorical approval under WAC 246-247-060(8). The log shall contain records of important operations parameters including the date, location, and duration of the release, measured or calculated radionuclide concentrations, the type of emissions (liquid, gaseous, solid), and the type of emission control and monitoring equipment.

(8) The facility shall maintain readily retrievable storage areas for all records and documents related to, and which may help establish compliance with, the requirements of this chapter. The facility shall keep these records available for department inspection for at least five years.

(9) The facility shall ensure all emission units are fully accessible to department inspectors. In the event the hazards associated with accessibility to a unit require training and/or restrictions or requirements for entry, the facility owner or operator shall inform the department, prior to arrival, of those restrictions or requirements. The owner or operator shall be responsible for providing the necessary training, escorts, and support services to allow the department to inspect the facility.

(10) The facility shall make available, in a timely manner, all documents requested by the department for review. The facility shall allow the department to review documents in advance of an inspection. The facility shall allow access to classified documents by representatives of the department with the appropriate security clearance and a demonstrable need-to-know.

(11) The facility shall respond in writing in a timely manner, or within a time limit set by the department, to inspection results which require the facility to implement corrective actions or any other actions so directed by the department.

## NEW SECTION

**WAC 246-247-085 Compliance determination for existing emission units and facilities.** (1) All procedures for determining compliance with the dose equivalent standards of 40 CFR 61, Subparts H and I published in the *Federal Register* on December 15, 1989, are adopted by reference, as applicable as specified by the referenced subparts.

(2) Facilities subject to 40 CFR 61 shall use computer codes or procedures approved by the EPA to determine the TEDE to the MEI; all other facilities shall use computer codes or procedures approved by the department.

(3) The determination of compliance with the dose equivalent standard of WAC 246-247-040 shall include all radioactive air emissions resulting from routine and nonroutine operations for the past calendar year.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

**WAC 246-247-100 ((Regulatory)) Enforcement actions.** ((The department may take any of the following regulatory actions to enforce this chapter.

~~(1) Notice of violation. Whenever the department 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) Compliance orders. The department 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.~~

~~(3) Assurance of discontinuance. The department 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) Violations. An injunction or other court order may be obtained prohibiting any violation of any provision of the act or any regulation or order issued thereunder. Any person who violates any provision of the act or any regulation or order issued thereunder may be guilty of a gross misdemeanor and upon conviction, may be punished by fine or imprisonment or both, as provided by law.~~

~~(5) Impoundment. Sources of radiation shall be subject to impoundment pursuant to WAC 402-12-140.)~~ (1) In accordance with RCW 70.94.422, the department may take any of the following actions to enforce compliance with the provisions of this chapter:

(a) Notice of violation and compliance order (RCW 70.94.332).

(b) Restraining order or temporary or permanent injunction (RCW 70.94.425; also RCW 70.98.140).

(c) Penalty: Fine and/or imprisonment (RCW 70.94.430).

(d) Civil penalty: Up to ten thousand dollars for each day of continued noncompliance (RCW 70.94.431 (1) through (7)).

(e) Assurance of discontinuance (RCW 70.94.435).

(2) The department, in accordance with RCW 70.98.050(4)(1), may issue subpoenas in order to compel attendance of witnesses and/or production of records or documents in connection with any adjudicative or other administrative proceeding.

(3) The department, in accordance with RCW 70.98.160, may impound sources of ionizing radiation.

(4) The secretary of the department, in accordance with RCW 43.70.190, is authorized to bring an action to prohibit a violation or a threatened violation of any department rules

or regulation, or to bring any legal proceeding authorized by law to a county superior court.

(5) Any party, against which an enforcement action is brought by the department, has the right to submit an application for the adjudicative process in accordance with chapter 246-10 WAC and chapter 34.05 RCW.

#### NEW SECTION

**WAC 246-247-110 Appendix A—Application information requirements.** (1) Name and address of the facility, and location (latitude and longitude) of the emission unit(s).

(2) Name, title, address, and phone number of the responsible manager.

(3) Identify the type of proposed action for which this application is submitted:

(a) Construction of new emission unit(s);

(b) Modification of existing emission unit(s); identify whether this is a significant modification;

(c) Modification of existing unit(s), unregistered.

(4) If this project is subject to the requirements of the State Environmental Policy Act (SEPA) contained in chapter 197-11 WAC, provide the name of the lead agency, lead agency contact person, and their phone number.

(5) Describe the chemical and physical processes upstream of the emission unit(s).

(6) Describe the existing and proposed (as applicable) abatement technology. Describe the basis for the use of the proposed system. Include expected efficiency of each control device, and the annual average volumetric flow rate(s) in meters<sup>3</sup>/sec for the emission unit(s).

(7) Provide conceptual drawings showing all applicable control technology components from the point of entry of radionuclides into the vapor space to release to the environment.

(8) Identify each radionuclide that could contribute greater than ten percent of the potential-to-emit TEDE to the MEI, or greater than 0.1 mrem/yr potential-to-emit TEDE to the MEI.

(9) Describe the effluent monitoring system for the proposed control system. Describe each piece of monitoring equipment and its monitoring capability, including detection limits, for each radionuclide that could contribute greater than ten percent of the potential-to-emit TEDE to the MEI, or greater than 0.1 mrem/yr potential-to-emit TEDE to the MEI, or greater than twenty-five percent of the TEDE to the MEI, after controls. Describe the method for monitoring or calculating those radionuclide emissions. Describe the method with detail sufficient to demonstrate compliance with the applicable requirements.

(10) Indicate the annual possession quantity for each radionuclide.

(11) Indicate the physical form of each radionuclide in inventory: Solid, particulate solids, liquid, or gas.

(12) Indicate the release form of each radionuclide in inventory: Particulate solids, vapor, or gas. Give the chemical form and ICRP 30 solubility class, if known.

(13) Release rates.

(a) New emission unit(s): Give predicted release rates without any emissions control equipment (the potential-to-emit) and with the proposed control equipment using the efficiencies described in subsection (6) of this section.

(b) **Modified emission unit(s):** Give predicted release rates without any emissions control equipment (the potential-to-emit) and with the existing and proposed control equipment using the efficiencies described in subsection (6) of this section. Provide the latest year's emissions data or emissions estimates.

In all cases, indicate whether the emission unit is operating in a batch or continuous mode.

(14) Identify the MEI by distance and direction from the emission unit(s). The MEI is determined by considering distance, windrose data, presence of vegetable gardens, and meat or milk producing animals at unrestricted areas surrounding the emission unit.

(15) Calculate the TEDE to the MEI using an approved procedure (see WAC 246-247-085). For each radionuclide identified in subsection (8) of this section, determine the TEDE to the MEI for existing and proposed emission controls, and without any emission controls (the potential-to-emit) using the release rates from subsection (13) of this section. Provide all input data used in the calculations.

(16) Provide cost factors for construction, operation, and maintenance of the proposed control technology components and system, if a BARCT or ALARACT demonstration is not submitted with the NOC.

(17) Provide an estimate of the lifetime for the facility process with the emission rates provided in this application.

(18) Indicate which of the following control technology standards have been considered and will be complied with in the design and operation of the emission unit(s) described in this application:

**ASME/ANSI AG-1**, Code on Nuclear Air and Gas Treatment (where there are conflicts in standards with the other listed references, this standard shall take precedence)

**ASME/ANSI N509**, Nuclear Power Plant Air-Cleaning Units and Components

**ASME/ANSI N510**, Testing of Nuclear Air Treatment Systems

**ANSI/ASME NQA-1**, Quality Assurance Program Requirements for Nuclear Facilities

**40 CFR 60, Appendix A**, Methods 1, 1A, 2, 2A, 2C, 2D, 4, 5, and 17

**ANSI N13.1**, Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities

For each standard not so indicated, give reason(s) to support adequacy of the design and operation of the emission unit(s) as proposed.

## NEW SECTION

**WAC 246-247-120 Appendix B—BARCT compliance demonstration. Purpose.** A BARCT demonstration is used to choose control technologies for the mitigation of emissions of radioactive material from new emission units or significant modifications to emission units. The bases for the BARCT demonstration requirements are the BARCT standard given in WAC 246-247-040, and the definition of BARCT given in WAC 246-247-030. This procedure incorporates certain implementing criteria that enable the department to evaluate a facility's compliance with the BARCT standard. It is the applicant's responsibility to demonstrate the effectiveness of their BARCT determination to the department. The facility should contact the depart-

ment at the conceptual design phase for guidance on the BARCT demonstration requirements. The department may adjust this demonstration procedure on a case-by-case basis, as needed, to ensure compliance with the substantive standard.

**Scope.** The BARCT demonstration includes the abatement technology and indication devices that demonstrate the effectiveness of the abatement technology from entry of radionuclides into the ventilated vapor space to release to the environment. The applicant shall evaluate all available control technologies that can reduce the level of radionuclide emissions.

**Technology Standards.** The BARCT demonstration and the emission unit design and construction must meet, as applicable, the technology standards shown below if the unit's potential-to-emit exceeds 0.1 mrem/yr TEDE to the MEI. If the potential-to-emit is below this value, the standards must be met only to the extent justified by a cost/benefit evaluation.

**ASME/ANSI AG-1**, Code on Nuclear Air and Gas Treatment (where there are conflicts in standards with the other listed references, this standard shall take precedence)

**ASME/ANSI N509**, Nuclear Power Plant Air-Cleaning Units and Components

**ASME/ANSI N510**, Testing of Nuclear Air Treatment Systems

**ANSI/ASME NQA-1**, Quality Assurance Program Requirements for Nuclear Facilities

**40 CFR 60, Appendix A**, Methods 1, 1A, 2, 2A, 2C, 2D, 4, 5, and 17

**ANSI N13.1**, Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities

The following standards and references are recommended as guidance only:

**ANSI/ASME NQA-2**, Quality Assurance Requirements for Nuclear Facilities

**ANSI N42.18**, Specification and Performance of On-Site Instrumentation for Continuously Monitoring Radioactivity in Effluents

**ERDA 76-21**, Nuclear Air Cleaning Handbook

**ACGIH 1988**, Industrial Ventilation, A Manual of Recommended Practice, 20th ed., American Conference of Governmental Industrial Hygienists

### **BARCT Demonstration Procedure.**

**Step 1. Define facility process variables.** Describe the physical and chemical process. Include the potential radionuclide release rates (by isotope, in units of curies/year), process variables (such as flow rate, temperature, humidity, chemical composition), and other technical considerations. Base the radionuclide release rate on the potential-to-emit.

Radionuclides selected for consideration in the BARCT demonstration shall include those which contribute more than ten percent of the potential TEDE to the MEI or more than 0.1 mrem/yr, and any others which the department determines are necessary.

**Step 2. Gather information on all available control technologies.** Search for all available technologies that can reduce the emissions levels for the radionuclides selected in Step 1. Sources of information shall include previous BARCT demonstrations, regulatory authorities, industry or regulatory agency data bases, literature searches, information from technology vendors, research and development reports,

and any other means necessary to identify all available technologies. "Available technology" includes any technology that is commercially available. Recently completed searches may be used with department approval.

**Step 3. Determine technical feasibility.** Determine technical feasibility by evaluating vendor specifications for available control technologies identified in Step 2 with respect to the process variables identified in Step 1. Evaluate combinations of abatement technology and control devices by component, and the system as a whole.

If a control technology has poor safety, reliability, or control effectiveness as achieved in practice under the proposed process conditions, or the technology is not applicable to the emission unit under consideration, the technology may be eliminated with supporting documentation of the technical infeasibility.

**Step 4. List all feasible control technologies in order of effectiveness.** Evaluate feasible control technologies for efficiency (effectiveness) in reducing the TEDE to the MEI. List them in order, with the most effective first. If the most effective feasible technology is proposed as BARCT, the demonstration is complete at this step.

**Step 5. Evaluate the environmental, energy, and economic impacts.** Evaluate each control technology in succession, beginning with the most effective. Present an objective evaluation considering both beneficial and adverse impacts. Quantify the data where possible. Impact cost and effectiveness evaluations are incremental and include only that portion of the facility which comes under the authority of this chapter. Evaluate at least the following impacts:

**Environmental impact** - Determine the incremental environmental impact, both beneficial and adverse. Evaluate the beneficial impact of reduction in the TEDE to the surrounding population or, at a minimum, to the MEI due to the abatement of radioactive air emissions. Consider the adverse impacts from waste generation (radioactive and nonradioactive, air and nonair), disposal and stabilization, construction of control equipment, and the health and safety to both radiation workers and the general public.

**Energy impact** - Determine the incremental energy impact. Include the impact of any resulting need for new services such as energy distribution systems.

**Economic impact** - Determine the incremental economic impact. Determine capital and expense costs including design, development, procurement, construction, operation, maintenance, taxes, waste disposal, and any other applicable financial components. Base all costs on the expected lifetime of the emission unit and reduce to an annualized cost for evaluation and comparison.

The adverse economic impact compared to the beneficial impact, including reduction in TEDE to the surrounding population or the MEI, is a measure of the cost versus benefit for the control technology evaluated.

The most effective technology may be eliminated from consideration if the applicant can demonstrate to the department's satisfaction that the technology has unacceptable impacts. State clearly the basis for this conclusion and proceed to the next most effective control technology. If the next most effective technology is proposed as BARCT, the demonstration is complete; otherwise, evaluate the control technology for impacts in accordance with this step.

If the control technology cannot be eliminated on the basis of its impacts, it is proposed as BARCT.

**Reporting.** Prepare a BARCT compliance demonstration report for department review. Provide sufficient information such that the department can validate essential results. If no control technology is feasible, and/or emissions are unacceptable, the department reserves the right to prohibit the construction and operation of the emission unit(s).

#### NEW SECTION

**WAC 246-247-130 Appendix C—ALARACT compliance demonstration. Purpose.** An ALARACT demonstration is used for inspection or audit purposes, and to demonstrate compliance with the substantive ALARACT technology standard as required by this chapter. An ALARACT demonstration is used to evaluate the adequacy of control technology on existing emission units and to choose control technologies for proposed nonsignificant modifications of emission units. The bases for the ALARACT demonstration requirements are the ALARACT standards given in WAC 246-247-040 and the definition of ALARACT given in WAC 246-247-030. It is the applicant's responsibility to demonstrate the effectiveness of their ALARACT determination to the department. The department may adjust this demonstration procedure on a case-by-case basis, as needed, to ensure compliance with the substantive standard.

**Scope.** The ALARACT demonstration includes the abatement technology and indication devices, from entry of radionuclides into the ventilated vapor space to release to the environment. The facility shall evaluate the existing control system in relation to applicable technology standards, and other control technologies that have been successfully operated for similar applications.

**Technology Standards.** The ALARACT demonstration and the emission unit design and construction must meet, as applicable, the technology standards shown below if the unit's potential-to-emit exceeds 0.1 mrem/yr TEDE to the MEI. If the potential-to-emit is below this value, the standards must be met only to the extent justified by a cost/benefit evaluation.

**ASME/ANSI AG-1**, Code on Nuclear Air and Gas Treatment (where there are conflicts in standards with the other listed references, this standard shall take precedence)

**ASME/ANSI N509**, Nuclear Power Plant Air-Cleaning Units and Components

**ASME/ANSI N510**, Testing of Nuclear Air Treatment Systems

**ANSI/ASME NQA-1**, Quality Assurance Program Requirements for Nuclear Facilities

**40 CFR 60**, Appendix A, Methods 1, 1A, 2, 2A, 2C, 2D, 4, 5, and 17

**ANSI N13.1**, Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities

The following standards and references are recommended as guidance only:

**ANSI/ASME NQA-2**, Quality Assurance Requirements for Nuclear Facilities

**ANSI N42.18**, Specification and Performance of On-Site Instrumentation for Continuously Monitoring Radioactivity in Effluents

**ERDA 76-21**, Nuclear Air Cleaning Handbook  
**ACGIH 1988**, Industrial Ventilation, A Manual of Recommended Practice, 20th ed., American Conference of Governmental Industrial Hygienists

**ALARA References.** "Health Physics Manual of Good Practice for Reducing Radiation Exposure to Levels that are As Low As Reasonably Achievable (ALARA)", PNL-6577, June, 1988; prepared for the USDOE by Pacific Northwest Laboratories (Battelle Memorial Institute).

"A Guide to Reducing Radiation Exposure to As Low As Reasonably Achievable (ALARA)", DOE/EV/1830-T5, April, 1980, R.L. Kathren and J.M. Selby; prepared for the USDOE by Pacific Northwest Laboratories (Battelle Memorial Institute).

"A Practical Method of Performing Cost-Benefit Analysis of Occupational and Environmental Protective Measures", WHC-SA-0484-FP, March, 1989, G.F. Boothe and D.E. Webb; prepared for the USDOE by Westinghouse Hanford Company.

### REPEALER

The following sections of the Washington Administrative Code are repealed:

|                 |                           |
|-----------------|---------------------------|
| WAC 246-247-050 | Registration.             |
| WAC 246-247-070 | New and modified sources. |
| WAC 246-247-090 | Special reports.          |

**AMENDATORY SECTION** (Amending Order 208, filed 10/29/91, effective 11/29/91)

**WAC 246-254-160 Fees for airborne emissions of radioactive materials.** (1) The department shall ~~((include fees for emission units at))~~ waive the fee of one thousand dollars for each air emission permit application for those facilities ~~((licensed by the department, as part of the license))~~ who pay the fees specified in WAC 246-254-070, 246-254-080, 246-254-090, and 246-254-100; however, those facilities shall pay costs associated with direct staff time of the air emissions program in accordance with WAC 246-254-120 (1)(e).

(2) For emission units at all other facilities:

(a) Application. The applicant shall submit a fee of one thousand dollars for each air emission ~~((permit))~~ license to the department with each application.

(i) The department shall process only those applications accompanied by the fee prescribed in (a) of this subsection. The department shall return any application submitted without the prescribed fee to the applicant.

(ii) The applicant shall pay any additional actual costs involved with processing the application upon receipt of a bill from the department on a calendar quarter basis.

(iii) The department shall credit the initial application fee to the applicant's quarterly billings.

(b) Operations. The department shall charge each emission unit operator the actual expenses incurred by the department in determining compliance with the provisions of established regulations and conditions of the air emission ~~((permit))~~ license; and:

(i) Bill the operator each calendar quarter until the ~~((permit))~~ air emission license is terminated by the department.

(ii) Specify in the quarterly bill the staff, laboratory, and support service costs associated with the regulatory activities conducted by the department.

(c) Amendment. The department shall add and include the actual costs incurred by the department in reviewing and processing an amendment to an air emission ~~((permit))~~ license in the department's calendar quarter charge for regulatory activities.

**WSR 94-07-012**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**  
 [Filed March 4, 1994, 12:50 p.m.]

Date of Adoption: March 3, 1994.

Purpose: To establish rules for computer adaptive testing (CAT) which will replace the paper and pencil test as the national test in April 1994 and eliminate the need for interim permits to practice.

Statutory Authority for Adoption: RCW 18.88.140.

Pursuant to notice filed as WSR 94-01-132 on December 20, 1993.

Effective Date of Rule: Thirty-one days after filing.

March 3, 1994

Patricia O. Brown, RN, MSN  
 Executive Director  
 Board of Nursing

**AMENDATORY SECTION** (Amending Order 214B, filed 11/19/91, effective 12/20/91)

**WAC 246-839-020 Documents which indicate authorization to practice registered nursing in Washington.** The following documents are the only documents that indicate legal authorization to practice as a registered nurse in Washington.

(1) Active license. A license is issued upon completion of all requirements for licensure - confers the right to use the title registered nurse and the use of its abbreviation, R.N. and to practice as a registered nurse in the state of Washington.

(2) Inactive license. A license issued to a person previously holding an active license in this state who desires to retire temporarily from the practice of nursing in this state.

~~(3) Interim permit. An interim permit may be issued to a graduate from an approved nursing school who has met all qualifications, has filed an application for examination and is eligible for admission to the licensing examination.~~

~~(a) This permit expires when a license is issued, when the candidate receives first notice of failure, or within one year from the date of issuance, whichever is the earliest date. The permit is not renewable.~~

~~(b) An applicant who does not write the examination on the date scheduled shall return the permit to the division of professional licensing.~~

~~(c) The interim permit authorizes the holder to perform functions of registered nursing as described in chapter 18.88 RCW. It is in violation of the law regulating the practice of registered nursing to use the title "registered nurse." The title "interim permit nurse" or "graduate nurse" may be used.~~

(4) (3) Limited educational license. A limited educational license may be issued to a person who has been on nonpracticing status for three years or more and who wishes to return to active status (see WAC 246-839-120).

(5) (4) Advanced registered nurse practitioner (ARNP) recognition document. An ARNP recognition document may be issued to any person who meets the requirements of the board as contained in WAC 246-839-300. Only persons holding this recognition document shall have the right to use the title "advanced registered nurse practitioner" or the abbreviation "ARNP" or any title or abbreviation which may indicate that the person is entitled to practice at an advanced and specialized level as a nurse practitioner, a specialized nurse practitioner, a nurse midwife, or a nurse anesthetist. This document authorizes the ARNP to engage in the scope of practice allowed for his or her specialty area and is valid only with a current registered nurse license.

(6) (5) ARNP interim permit. An interim permit may be issued following satisfactory completion of an advanced formal education program, registration for the first certification examination of an approved program following completion of the education and filing of an application, fee and requested documentation. If the applicant passes the examination the department shall grant advanced registered nurse practitioner status. If the applicant fails the examination, the interim permit shall expire upon notification and is not renewable.

(7) (6) ARNP prescriptive authorization. A notation of prescriptive authorization may be placed on the ARNP recognition document issued to any person who meets the requirements of the board as contained in WAC 246-839-410. This authorizes the ARNP to prescribe legend drugs within his or her scope of practice and is valid only with a current registered nurse license.

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 214B, filed 11/19/91, effective 12/20/91)

**WAC 246-839-030 Qualification/eligibility to write take the licensing examination.** (1) Graduates from Washington state board approved schools of nursing holding a degree/diploma from such a school shall be eligible to write the examination provided all other requirements are met.

(2) Graduates from a nursing school approved by a board of nursing in another U.S. jurisdiction shall be eligible to write take the examination provided that:

(a) The nursing school meets the minimum standards approved for state board school of nursing in Washington at the time of the applicant's graduation;

(b) Graduate holds a degree/diploma from the approved school of nursing; has completed all institutional requirements for the degree/diploma in nursing education per attestation from the administrator of the approved nursing education program;

(c) All other requirements of the statute and regulations shall be met.

(3) ~~An interim permit (WAC 246-839-020(3)) and a notice of eligibility for admission to the licensing examina-~~

~~tion may be issued to all new graduates from board approved schools of nursing after filing of a completed application, payment of the application fee, and official notification from the school certifying that the individual has successfully completed all requirements for the diploma/degree. The results of the licensing examination will not be released until the candidate's official transcript is on file with the 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.

AMENDATORY SECTION (Amending Order 116B, filed 3/18/91, effective 4/18/91)

**WAC 246-839-040 Filing of application for licensing examination.** (1) All applicants shall file with the Washington state board of nursing a completed notarized application, with the required fee prior to May 1, for the July examination and December 1 for the February examination. 60 days prior to the anticipated date of examination.

(2) Applicants shall request the school of nursing to send an official transcript directly to the board of nursing.

(3) Applicants shall also file an examination application, along with the required fee directly with the testing service.

(4) Applicants who have filed the required applications and met all qualifications will be notified of their eligibility, and only such applicants will be admitted to the examination.

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 116B, filed 3/18/91, effective 4/18/91)

**WAC 246-839-050 Licensing examination.** (1) The current series of the National Council of the State Board of Nursing Registered Nurse Licensing Examination (NCLEX) Computerized Adaptive Test (NCLEX CAT) shall be the official examination for registered nurse license.

(2) The NCLEX will consist of ~~four ninety minute tests~~ a Computerized Adaptive Test that will be individualized with the overall score for the examination reported as either pass or fail. Specific parameters of the exam will be as prescribed by contract with National Council of State Boards of Nursing, Inc. (NCSBN).

(3) Examinations shall be conducted ~~twice a year, in February and July.~~ throughout the year.

(4) The executive secretary of the board shall negotiate with ~~The National Council of State Boards of Nursing, Inc. (NCSBN)~~ NCSBN for the use of the NCLEX CAT.

(5) The examination shall be administered in accord with the NCSBN security measures and contract.

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 214B, filed 11/19/91, effective 12/20/91)

**WAC 246-839-060 Release of results of examination.** (1) Candidates shall be notified regarding the examination results by mail only.

(2) Candidates who pass shall receive a license to practice as a registered nurse provided all other requirements are met.

(3) Candidates who fail shall receive a letter of notification regarding their eligibility to rewrite the examination.

~~(4) In addition to a listing of the names of graduates indicating whether each passed or failed the examination, each school of nursing in Washington shall receive a statistical report of the examination results of candidates from that school.~~

~~(5) (4) The candidate's examination results will be maintained in his/her application file in the division of professional licensing services, department of health. Board of Nursing records.~~

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 116B, filed 3/18/91, effective 4/18/91)

**WAC 246-839-070 Failures—Repeat examination.**

~~(1) The application forms to rewrite the examination and fees shall be filed on or before May 1 for the July examination and December 1 for the February examination. The retest may be scheduled no sooner than 90 days following the date of the last exam taken.~~

(2) Request to retake the exam must be submitted to the Board no less than 45 days prior to the anticipated test date.

~~(2) (3) Candidates who fail the examination will be permitted to rewrite retake the examination three times within the two-year period from the month of first writing examination taken.~~

~~(3) (4) Candidates who fail to pass the examination within the time period specified in subsection (2) (3) of this section shall be required to complete a program of study approved by the board. Upon successful completion of the approved program, the candidate shall be required to write take the entire examination.~~

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 214B, filed 11/19/91, effective 12/20/91)

**WAC 246-839-080 Applicants previously licensed in a foreign country.** (1) Applicants for licensure educated in a country outside the United States or its territories shall meet the following requirements for licensure:

(a) Satisfactory completion of a basic nursing education program approved in the country of original licensure.

(i) The nursing education program shall be equivalent to the minimum standards prevailing for state board approved schools of nursing in Washington at the time of graduation.

(ii) Any deficiencies in the nursing program (theory and clinical practice in medical, psychiatric, obstetric, surgical and pediatric nursing) shall be satisfactorily completed in a state board approved school of nursing.

(b) Satisfactory passage of the screening examination for foreign nurses. As of May 1, 1981, all applicants from countries outside the United States, and never before licensed

in one of the United States jurisdictions shall have passed the commission on graduates of foreign nursing schools (CGFNS) qualifying examination.

(c) Applicants licensed under the laws of a country outside the United States or its territories shall be required to take the current series of the National Council of State Boards of Nursing Registered Nurse Examination (NCLEX) as provided in WAC 246-839-050: *Provided*, That those persons meeting the requirements of WAC 246-839-090(2) are exempt from this requirement.

(d) All other requirements of the statute and regulation shall be met.

(2) Applicants for examination shall:

(a) File with the board of nursing a completed notarized license application with the required fee 60 days prior to ~~May 1 for the July examination and prior to December 1 for the February examination.~~ the anticipated date of the examination.

(b) Request the school of nursing to submit an official transcript directly to the division of professional licensing.

(c) Applicants shall also file an examination application, along with the required fee directly with the testing service.

(d) Persons applying for licensure shall submit, in addition to the other requirements, evidence to show compliance with the education requirements of WAC 246-839-100.

(e) Request the licensing agency in the country of original license to submit evidence of licensure.

(f) Submit a notarized copy of the certificate issued by the CGFNS.

(g) If the applicant's original documents (education and licensing) are on file in another state or with the CGFNS, the applicant may request that the state board or the CGFNS send notarized copies in lieu of the originals.

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 214B, filed 11/19/91, effective 12/20/91)

**WAC 246-839-090 Licensure by interstate endorsement.** (1) A license to practice as a registered nurse in Washington may be issued without examination provided the applicant meets all of the following requirements:

(a) The applicant has graduated and holds a degree/diploma from a state board approved school of nursing preparing candidates for licensure as a registered nurse provided such nursing program is equivalent to the minimum nursing educational standards prevailing for state board approved schools of nursing in Washington at the time of the applicant's graduation.

(i) Applicants who were licensed prior to January 1, 1953, shall have scored at least 75% on the state board examination in the state of original licensure.

(ii) Applicants licensed after January 1, 1953, but before June 1, 1982, shall have passed the state board test pool examination for registered nurse licensure with a minimum standard score of 350 in each test.

(iii) Applicants licensed after July 1, 1982, shall have passed with a minimum standard score ~~of 1600 for the total examination.~~ as established by contract with the National Council of State Boards of Nursing.

(b) The applicant holds a valid current license to practice as a registered nurse in another state or territory.

(c) The applicant complies with the education requirements of WAC 246-839-100.

(d) The application shall be completed and notarized, the fee must be filed with the application. The fee is not refundable. A notarized copy of a valid current license shall be filed with the application.

(e) Verification of licensure by examination shall be obtained from the state or territory of original licensure. Any fee for verification required by the state or territory of original license shall be paid by the applicant.

(2) Applicants from countries outside the United States who were granted a license in another United States jurisdiction or territory prior to December 31, 1971, and who were not required to pass the state board test pool examination shall meet the following requirements:

(a) The nursing education program shall meet the minimum approved standards prevailing for schools of nursing in Washington at the time of the applicant's graduation.

(b) The applicant holds a valid current license to practice as a registered nurse in another United States jurisdiction or territory.

(c) The applicant shall submit to the board:

(i) A complete notarized application. The nonrefundable fee must be filed with the application.

(ii) Verification of original licensure obtained in the United States jurisdiction or territory.

(iii) Notarized copies of educational preparation and licensure by examination submitted directly from the country of original licensure or from the state board or territory of original United States licensure.

(iv) Verification of current nursing practice for three years prior to application for Washington licensure.

(v) Evidence to show compliance with the education requirements of WAC 246-839-100.

(d) The applicant shall meet all requirements of chapter 18.88 RCW and regulations of the board.

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 94-07-013**

**PERMANENT RULES**

**DEPARTMENT OF ECOLOGY**

[Order 93-38—Filed March 7, 1994, 11:27 a.m.]

Date of Adoption: March 7, 1994.

Purpose: Adoption of revised shoreline master program for the city of Port Townsend into the state master program, chapter 173-19 WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 173-19-2401 City of Port Townsend shoreline management master program.

Statutory Authority for Adoption: RCW 90.58.200 Shoreline Act of 1971.

Pursuant to notice filed as WSR 94-05-038 on February 8, 1994.

Changes Other than Editing from Proposed to Adopted Version: Correct maps have been included. The word "disappropriate" has been retained in Section 7.1046c.

Effective Date of Rule: Thirty-one days after filing.

March 7, 1994

Mary Riveland

Director

**AMENDATORY SECTION** (Amending Order 93-13, filed 8/17/93, effective 9/17/93)

**WAC 173-19-2401 Port Townsend, city of.** City of Port Townsend master program approved December 20, 1974. Revision approved March 7, 1989. Approved for adoption March 23, 1993. Revision approved August 16, 1993. Revision approved March 7, 1994.

**WSR 94-07-018**

**PERMANENT RULES**

**SECRETARY OF STATE**

[Filed March 8, 1994, 10:02 a.m.]

Date of Adoption: March 8, 1994.

Purpose: To adopt new election certification and training rules into Washington Administrative Code.

Statutory Authority for Adoption: RCW 29.60.020.

Pursuant to notice filed as WSR 94-01-010 on December 2, 1993.

Changes Other than Editing from Proposed to Adopted Version: WAC 434-60-240, "Election administrators and deputy election administrators shall, within 'eighteen' months . . ."; WAC 434-60-300 (2)(k), deleted the words "Attaining of"; WAC 434-60-320(1), added "Title 434 WAC" to training program for county canvassing board members; WAC 434-60-330, added "from the office of the secretary of state." Immediately next the words "of completion" were deleted; and WAC 434-60-340, was changed to read ". . . under this chapter . . . and shall receive a certificate of completion by the secretary of state, county auditor or equivalent."

Effective Date of Rule: Thirty-one days after filing.

March 8, 1994

Ralph Munro

Secretary of State

Karen Flynn, Chair

Election Administration

and Certification Board

**CERTIFICATION OF ELECTION ADMINISTRATORS**

**NEW SECTION**

**WAC 434-60-210 Intent.** It is the intent of this chapter to provide procedures to be followed for the certification and training of election administrators, deputy election administrators, and the training of county canvassing board members, and election observers as required by chapter 29.60 RCW.

PERMANENT

NEW SECTION

**WAC 434-60-215 Definitions.** As used in this chapter:

(1) "Election administrator" means the person or persons appointed by the county auditor of each county to conduct primaries and elections, general or special, as required by RCW 36.22.220 and those persons employed by the secretary of state elections division;

(2) "County canvassing board members" means the county auditor, the county prosecuting attorney, and the chair of the county legislative authority or their designated representatives, for each county;

(3) "Election observers" means those persons designated by the county political party central committee chair person to observe the counting of ballots and related elections procedures;

(4) "Deputy election administrator" means any person employed as a regular employee of an elections division other than those designated as election administrators;

(5) "Election administration and certification board" means that board created pursuant to the provisions of RCW 29.60.010;

(6) "Creditable training hours" means each creditable training hour contemplated in WAC 434-60-230 shall feature a minimum of fifty minutes of instructional activity programmed for the purpose of mastering information beneficial to the performance of the duties of administering elections.

NEW SECTION

**WAC 434-60-220 Certification of election administrators and deputy election administrators.** Election administrators and deputy election administrators may not become certified under this section until they have been involved in the administration of an even-year general election and an odd-year general election. For initial certification, an accumulation of fifteen credits is required which must include as a minimum:

(1) Mandatory orientation (two credits);

(2) Two years' service in election administration (up to five credits);

(3) Taking and passing an open book written test on Title 29 RCW, Title 434 WAC, and applicable state and federal election laws (two credits);

(4) Participation in conferences and workshops sponsored by: (Five credits minimum including two from (a) and/or (b) of this subsection)

(a) Washington Association of County Auditors;

(b) Secretary of state;

(c) The elections center;

(d) The International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT);

(e) The Federal Election Commission;

(f) Other national associations related to elections or government administration, approved by the Election Administration and Certification Board; or

(g) Other conferences or courses approved by the Election Administration and Certification Board.

(5) Any combination of the following:

(a) Formal education (up to five credits);

(b) Participation in other education activities (up to five credits).

NEW SECTION

**WAC 434-60-230 Certification credit system.** The credit system gives measured values to a number of different activities which contribute to developing skills and knowledge appropriate to the duties of an election administrator.

NEW SECTION

**WAC 434-60-240 Mandatory orientation.** (1) All election administrators and deputy election administrators shall, within eighteen months of undertaking those responsibilities or by July 1, 1994, whichever is later, attend a mandatory orientation workshop sponsored by the secretary of state to be eligible for certification. Mandatory orientation workshops will be offered for new election administrators and deputy election administrators annually.

(2) Mandatory orientation will consist of twelve hours of training in election-related subjects. The twelve hours will be worth two credits.

NEW SECTION

**WAC 434-60-250 Experience as an election administrator, or as a deputy election administrator.** For initial certification a minimum of two years service in elections administration and working in an election related capacity during an even-year general election and an odd-year general election is required. Up to five of the total initial certification credits can be earned for experience.

(1) One credit for each year served as an election supervisor or director.

(2) One credit for every two years of experience in any other election administration position.

NEW SECTION

**WAC 434-60-260 Open book written test.** The secretary of state elections division will prepare an open book written test on Title 29 RCW, Title 434 WAC and applicable state and federal laws to be given annually to election administrators at the completion of the mandatory orientation session. Taking and passing the test will be worth two credits for initial certification.

NEW SECTION

**WAC 434-60-270 Participation in conferences and workshops.** A minimum of five credits must be earned for conference participation for initial certification of which two shall be from conferences or workshops sponsored by the Washington Association of County Auditors or the secretary of state.

(1) One credit for each eight hours of attendance at training events;

(2) One credit each for serving as a panelist, speaker, or chairperson at training events in which a minimum of two hours of preparation time is documented.

NEW SECTION

**WAC 434-60-280 Formal education.** No more than five of the total initial certification credits can be earned for formal education.

- (1) One credit for a high school diploma or equivalent;
- (2) One credit, up to a maximum of two, for each successfully completed year of postsecondary higher education in a college or a business school;
- (3) One credit for each academic or professional degree earned;
- (4) One credit for each professional certification related to the duties of an election administrator.

**NEW SECTION**

**WAC 434-60-290 Participation in other education activities.** No more than five of the initial certification credits can be earned for other education activities.

One credit for each eight hours of other education activities which are approved by the election administration and certification board.

**NEW SECTION**

**WAC 434-60-300 Maintaining certification.** After attaining initial certification the election administrator is responsible for maintenance of his or her certification on an ongoing basis. Maintenance of certification shall consist of:

(1) Election administration: The continued conduct of elections as an elections administrator or deputy elections administrator;

(2) Continuing education: It is the position of the election administration and certification board that attendance at the annual election administrator's conference is of critical importance in maintaining certification as an election administrator. In addition to the annual election conference, continuing education shall consist of training programs which emphasize the duties and functions of administering elections. Participation in a minimum of eighteen hours of continuing education shall be required each year to maintain certification. These training programs may include the following:

- (a) Public administration;
- (b) Public and media relations;
- (c) Election and voter registration law;
- (d) Personnel management;
- (e) Organizational management;
- (f) Information systems management;
- (g) Voting systems and equipment;
- (h) Budget or fiscal management;
- (i) Stress management;
- (j) Visiting other county election departments for training and/or orientation purposes;
- (k) Additional professional or academic degrees;
- (l) Any election oriented training offered by the organizations listed in WAC 434-60-220 (4)(a) through (g).

**NEW SECTION**

**WAC 434-60-310 Certification of minimum requirements.** The secretary of state shall distribute applications for certification annually to the county auditors, or equivalent. The county auditors shall, before December 1 of each year, certify to the election administration and certification board the completion of the requirements for initial certification for members of his or her staff.

**NEW SECTION**

**WAC 434-60-320 Training program for county canvassing board members.** The secretary of state elections division shall prepare a training program for county canvassing board members or their designated representatives. The training program shall be made available to county canvassing board members annually at their respective conferences sponsored by the Washington Association of County Officials. Upon completion of the training program, county canvassing board members shall receive a certificate of completion. The training program for county canvassing board members or their designated representatives may include the following:

- (1) Election law (Title 29 RCW; Title 434 WAC);
- (2) Voting systems;
- (3) Canvassing board policies and procedures.

**NEW SECTION**

**WAC 434-60-330 Training program for election observers.** The secretary of state elections division shall prepare a training program for election observers. The training shall be made available regionally on an annual basis. Upon completion of the training, election observers shall receive a certificate from the office of the secretary of state. The training for election observers may include the following:

- (1) Election law (Title 29 RCW, Title 434 WAC);
- (2) Voting systems;
- (3) Logic and accuracy test procedures.

**NEW SECTION**

**WAC 434-60-340 Training video tapes available.** An election administrator, canvassing board member, or election observer who is unable to travel to training programs conducted under this chapter may request audio or video recordings of the training programs and shall receive a certificate of completion by the secretary of state, county auditor or equivalent.

**NEW SECTION**

**WAC 434-60-350 Approval of training programs.** All training and orientation programs referenced in these rules shall be subject to review and approval of the election administration and certification board.

**WSR 94-07-019**  
**PERMANENT RULES**  
**BIG BEND**  
**COMMUNITY COLLEGE**  
 [Filed March 8, 1994, 10:03 a.m.]

Date of Adoption: February 28, 1994.

Purpose: To amend rules and procedures of the college Family Educational Rights and Privacy Act.

Citation of Existing Rules Affected by this Order: Amending chapter 132R-190 WAC.

Statutory Authority for Adoption: RCW 28B.50.140.  
 Pursuant to notice filed as WSR 94-01-049 on December 8, 1993.

Effective Date of Rule: Thirty-one days after filing.  
 March 3, 1994  
 Robert O. Sorenson  
 Vice-President  
 Administrative Services

AMENDATORY SECTION (Amending WSR 90-02-019, filed 12/26/89, effective 1/26/90)

**WAC 132R-190-010 Purpose.** The purpose of this chapter is to ((comply with the requirements of Public Law 93-380, § 513, of 1974, also annotated as 20 U.S.C.A. 1232, which law represents amendments to the General Education Provisions Act. As indicated in the aforesaid law, its purpose is to assure the students attending institutions of higher education such as Big Bend Community College shall have a right to inspect certain records and files intended for school use or made available to parties outside the college)) implement 20 U.S.C. Sec. 1232g, the Family Educational Rights and Privacy Act of 1974, by establishing rules and procedures to ensure that information contained in student records is accurate and is handled in a responsible manner by the college and its employees. Further information on policies and procedures relative to student records is available in the ("Student Rights and Responsibilities" handbook section 300 Student Records and section 509 Maintenance of Records, as adopted by the Big Bend Community College board of trustees.) student records section of the "Student Handbook."

AMENDATORY SECTION (Amending Order 76-9, filed 3/9/76)

**WAC 132R-190-020 Definitions.** The following definitions shall apply in interpreting these regulations:

(1) (~~"His" when used throughout these regulations shall accomplish reference to both male and female sexes.~~) "Directory information" means information contained in a student's education record which is general in nature and does not constitute an invasion of privacy if disclosed. The college has designated directory information in WAC 132R-190-035.

(2) "Education records" means those records, files, documents and other materials which contain information directly related to a student and are maintained by the college(~~The definition of "education records," however, does not include any materials used by any college instructor in the course of assessing a student's academic performance, including but not limited to academic grades conferred, essays, tests, written evaluations given during the course of directed studies, and the like, nor materials maintained by the college's counseling center and the college's health services center, or by any other psychologist or paraprofessional acting in his or her professional or paraprofessional capacity for the benefit of the college, nor does it include campus security records.~~

(3) ~~"Disciplinary records" shall be kept separate and apart from academic records, and transcripts of a student's academic record shall contain no notation of any disciplinary action. Special precautions shall be exercised to insure that information from disciplinary or counseling files is not revealed to unauthorized persons. Provisions shall be made~~

~~for periodic review and routine destruction of inactive disciplinary records by offices maintaining such records.~~

(4) ~~"Student" is defined as a person who is currently enrolled in a regularly scheduled class conducted at the college. Regularly scheduled classes shall include those classes occurring during fall, winter, spring and summer quarters and those classes in which residence credits are conferred regardless of the location. A person is a student for purposes of these regulations even though he is not currently enrolled in summer quarter but was regularly enrolled during the previous spring quarter), except:~~

(a) A personal record kept by educational, supervisor and administrative personnel which belongs solely to the maker of the records and which has never been disclosed or made available to any other person except the maker's temporary substitute.

(b) An employment record used only in relation to an individual's employment.

(c) Records made and maintained by a Big Bend Community College counselor acting in his or her professional capacity which are used only in connection with the treatment of the student are not available to anyone except that the records may be personally reviewed by a physician or other appropriate professional of the student's choice.

(d) Alumni records which contain information about a student after he or she is no longer in attendance at the college and which do not relate to the person as a student.

(3) "Student" means any individual who is or has been in attendance at Big Bend Community College and on whom educational records are maintained.

AMENDATORY SECTION (Amending Order 76-9, filed 3/9/76)

**WAC 132R-190-030 Right of inspection.** Any student shall have a right, subject to the procedural requirements outlined in WAC 132R-190-070 through 132R-190-090 of these regulations, to inspect any and all education records directly related to him or her that is intended for school use or that is available for parties outside the school (~~or school system. In the case of any education records relating to a student which also include information regarding another student, the responsible college officials shall delete any personally identifiable information relating to the identity of such other student).~~ Education records will be made available to the student within fifteen working days after receipt of the request to inspect the records. Copies may be requested and shall be provided at a fee not to exceed the actual cost to the college of providing the copies.

The college reserves the right to refuse to permit a student to inspect and review the following education records:

(1) The financial statement of the student's parents.

(2) Statements and letters of recommendation prepared by college officials or submitted with the student's application for admission which were placed in the student's records before January 1, 1975, or for which the student has waived his or her right of access in writing. Except that if these statements and letters have been used for any purpose other than that for which they were originally prepared, the student may inspect and review them. When a record contains personally identifiable information about more than

one student, a student may inspect only that information which relates to him or her.

(3) Records connected with an application to attend the college if that application was denied.

(4) Those records which are excluded from the definition of "education records" in WAC 132R-190-020(2).

AMENDATORY SECTION (Amending Order 76-9, filed 3/9/76)

**WAC 132R-190-035 Availability of directory information.** ~~((Except as hereinafter provided, the following information contained in a student's education records shall be available to members of the public:))~~ The following personally identifiable information contained in a student's education record shall be deemed "directory information" and unless restricted by the student may be disclosed without a student's prior written consent: Student's name, address, telephone listing, date of birth, participation in officially recognized activities and sports, weight and height of members of athletic teams, ((dates of athletic teams,)) dates of attendance ((at the college)), honor roll, degrees and awards received, and the most recent previous educational agency or institution attended by the student. ((Such information shall be deemed "directory information." The college will give public notice to students of the matters contained in the above designated "directory information" that is available to members of the public at the time the student registers for enrollment in the academic quarter. On the day of such registration each student shall indicate on the college registration form whether he will not consent to the college's release of such directory information to others without his consent.)) The college will give public notice to students annually of the matters contained in the above-designated "directory information." Each student will have ten days from the day of registration to decide if he or she wishes to have directory information released without written consent.

AMENDATORY SECTION (Amending Order 76-9, filed 3/9/76)

**WAC 132R-190-040 Access permitted to college and certain other officials without consent.** (1) The following persons, individuals, agencies, or organizations shall be entitled to access to official education records((- files, and data)) of any student((-)) subject to the limitations outlined in subsection (2) of this section, ~~((WAC 132R-190-040;))~~ without prior written consent of the student:

(a) ~~((Other school officials, including instructors within the college who have a legitimate educational interest;))~~ College officials, including administrators, faculty, instructors and staff who have a legitimate educational interest within the performance of their responsibilities to the college;

(b) Officials of other colleges, schools, or school systems, upon the condition that the student is notified of the transfer and receives a copy of the record if he or she desires it and has the opportunity to challenge the content of the record, per the procedures outlined in WAC ~~((132R-190-090))~~ 132R-190-100;

(c) Authorized representatives of the ~~((Controller))~~ Comptroller General of the United States, the Secretary ((of Health, Education and Welfare, and administrative head of

an education agency as defined in § 409 of Public Law 93-380, or state of Washington educational authorities)), or state and local educational authorities. State and local officials, organizations conducting studies for educational agencies or institutions provided, that except when collection of personally identifiable data is specifically authorized by federal law, any data collected by ((the controller general, the secretary, administrative head of a United States education agency or state educational authorities)) these representatives with respect to individual students shall not include information ((including social security numbers)) which permit the personal identification of such students((-);

~~((d))~~ ((Authorized representatives of the Office of Education at the U.S. Department of Health, Education and Welfare, the Law Enforcement Assistance Administration of the U.S. Department of Justice, the U.S. Veterans Administration, the Bureau of Indian Affairs, the Washington state department of social and health services,)) Lending institutions receiving applications from students or granting to students financial aid, and individual organizations or institutions that provide scholarships to any applicant student when such organizations or individuals make requests for students' education records in connection with a student's application for, or receipt of, financial aid;

(e) Accrediting organizations to carry out their accrediting functions;

(f) Parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954;

(g) Any person or entity authorized by judicial order or lawfully issued subpoena to receive such records or information, upon condition that the student is notified of all such orders or subpoenas in advance of compliance therewith by the college;

(h) Appropriate parties in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

(2) The college shall maintain a record, kept with the education records of each student, ~~((which will indicate all the agencies or organizations referenced in subparagraphs (1)(b) and (1)(e) of this section))~~ indicating all agencies or organizations which have requested or obtained access to the student's education records. The ((college employee who is the custodian charged with the maintenance of such student education records shall further)) custodian of the records shall indicate specifically the legitimate interest each such agency or organization has in obtaining this information. The record may be reviewed by the student.

~~((3))~~ If any of the agencies or organizations described in subparagraphs (1)(b) or (1)(e) of this section, request access to the education records of ten or more students, they may do so on a form provided by the college that indicates the request is being made on a blanket basis. Such form shall also require the agency to identify the legitimate interest the agency has regarding student's education records. The college employee who is the custodian of each student education record requested by an agency or organization referenced in subparagraphs (1)(b) and (1)(e) of this section shall then enter in such education record notice of such agency's or organization's request and the place where the request may be found.))

AMENDATORY SECTION (Amending Order 76-9, filed 3/9/76)

**WAC 132R-190-050 Distribution of information to others.** The college shall not furnish ~~((in any form))~~ any personally identifiable information contained in education records directly related to a student to any person, agency, or organization other than those designated in WAC 132R-190-040, unless ~~((it first obtains))~~ a written consent from the student ~~((, which written consent also specifically identifies))~~ is obtained. The written consent should specifically identify the records to be released, the reason~~((s))~~ for ~~((such))~~ the release~~((r))~~ and to whom ~~((such personally identifiable information is))~~ the records are to be released. ~~((In the case any such personally identifiable information contained in a student's education records is to be furnished in compliance with a judicial order or pursuant to a lawfully issued subpoena, the college shall notify the student in advance of compliance therewith.))~~

AMENDATORY SECTION (Amending Order 76-9, filed 3/9/76)

**WAC 132R-190-060 Notice of rights given under Family Educational Rights and Privacy Act ~~((of 1974))~~.** ~~((In accordance with the requirements of the aforesaid federal statute, the college will make its best efforts to notify all students of their rights under this act. Such notification shall be done through the Washington Administrative Code procedures provided for by the Higher Education Administrative Procedures Act, and such other publications))~~ The college shall annually notify students currently in attendance of their rights under this chapter and the Family Educational Rights and Privacy Act. This notification shall be provided through the college catalog and student handbook and may be included in such other publications and media ~~((that))~~ as the college deems appropriate.

AMENDATORY SECTION (Amending Order 76-9, filed 3/9/76)

**WAC 132R-190-070 Requests for access to student records.** ~~((1) No personally identifiable information relating to a student's education records will be furnished to any person whatsoever unless such person makes a written request to do so and provides to the custodian of such records information sufficient to identify the requesting party as a person who has a right to access to such records. By way of example and not limitation, a requesting party who identifies himself as a student to whom such record relates must provide a driver's license sufficient to establish the identity of such student. In the case of any persons in the category of those individuals, persons, agencies, or organizations identified in WAC 132R-190-040 no personally identifiable information contained in any student's education record will be disclosed without providing information of the same type and nature as that required of a student plus other information as the custodian of the record deems sufficient to ascertain the official capacity of such requesting party.))~~ Personally identifiable information regarding a student will only be furnished to persons making a written request and providing to the custodian of the records information

sufficient to identify the requesting party as a person who has a right to access to such records.

AMENDATORY SECTION (Amending Order 76-9, filed 3/9/76)

**WAC 132R-190-080 Determination regarding records.** The college reserves the right to determine that a record regarding a student is not an education record or material defined in WAC 132R-190-020 ~~((or that the provision of)).~~ A determination that personally identifiable information ~~((relating to a student))~~ was properly given to an authorized agency per WAC 132R-190-040 will be made by the college. Such written determinations ~~((shall))~~ may be made ~~((in writing and may be accomplished))~~ in consultation with any of the records officers of the college as designated in chapter 132R-175 WAC.

AMENDATORY SECTION (Amending Order 76-9, filed 3/9/76)

**WAC 132R-190-090 ~~((Hearing procedure.))~~ Challenges—To content of records—To release of records—Or to denial of access to records.** ~~((1) Any person objecting to a denial of a request for any college record relating to a student, or any student who contests whether the transfer of any college record relating to him is permitted under these regulations, may petition for prompt review of such denial or written objection to transfer. Such written request shall:~~

(a) Be served upon the public records officer provided for in chapter 132R-175 WAC;

(b) Demand prompt review; and

~~((c) In the case of objection to transfer, specifically reference the party to whom he does not want the record transferred and contain a written statement by the record custodian denying the person's request. Upon receipt of a proper written objection to transfer of a student record, the college public records officer shall cause such records to not be transferred pending outcome of the hearing proceeding provided for in these regulations.~~

~~((2) Within ten days after receipt of the written request by a person petitioning for prompt review of a decision by a custodian of student records, the president of the college or any of his designees shall consider such petition.~~

~~((3) The president or his designee may at the end of the ten day period either meet the objecting party's objection and advise him of the same in writing, or in the alternative, set the matter up for a hearing before a hearing officer designated by the president or the president's designee. Such hearing shall be conducted within thirty days after the objecting party served his objections on the college's public records officer and shall be an informal hearing. The president or his designee shall determine the time and place for such hearing. At the hearing, the objecting party shall further explain and identify his exact purpose for seeking the record he has been denied or why he has lodged objections to transfer of a student record. Failure by the person requesting the review to appear at such informal hearing shall be deemed a waiver of that person's right to insist upon completion of the review of his request.~~

~~((4) During the course of the informal hearing conducted by the president, his designee, the person conducting hearing~~

shall consider the obligation of the college to fully comply with the Family Educational Rights and Privacy Act, but shall also consider the exemptions provided in the course of these regulations. A record shall be made of the informal hearing by mechanical transcriptions or any other means satisfactory to the college.

(5) Within ten days after the hearing has occurred, the president, or his designee, or the hearing officer appointed to conduct the informal hearing shall provide the objecting party with a written decision, which decision shall be binding upon the college and upon the objecting party.) (1) Any student who believes that inaccurate, misleading, or otherwise inappropriate data is contained within his or her education records shall be permitted to have included within the record a written explanation by the student concerning the content of the records.

(2) A student shall have the right, in accordance with the procedures set forth in WAC 132R-190-100, to:

(a) Challenge the content of education records in order to ensure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student;

(b) Have the opportunity to correct or delete inaccurate, misleading, or otherwise inappropriate data contained within education records;

(c) Challenge the release of education records to specific persons as contrary to the provisions of this chapter; and

(d) Challenge a decision by the college to deny the student access to particular types of records.

(3) A student shall not be permitted under this chapter to challenge the validity of grades given in academic courses, except on the grounds that, as a result of clerical error, the student's records fail to accurately reflect the grades actually assigned by an instructor.

AMENDATORY SECTION (Amending Order 76-9, filed 3/9/76)

~~WAC 132R-190-100 ((Right of students to register objections.)) Procedure for challenges. ((Any student who objects to the accuracy or truthfulness of any information contained in any Big Bend Community College education records or portion thereof that is related to him may submit to the college's public records officer his written views regarding the same, which written objection shall then be included in such education records provided, however, no student has any right to post his objections to academic grades and have the same appear on his academic transcripts.))~~ (1) A student wishing to exercise the rights set forth in WAC 132R-190-090 shall first discuss with the director of admissions and registrar the nature of the corrective action sought by the student.

(2) If the informal proceedings required in subsection (1) of this section fail to resolve the student's challenge, the student may file with the public records officer provided for in chapter 132R-175 WAC a written request for a hearing (brief adjudicative proceeding pursuant to chapter 132R-02 WAC).

(3) Within a reasonable time after submission of a request for hearing, the president or his or her designee will appoint a hearing officer. The hearing officer may not have a direct interest in the outcome of the hearing.

(a) The hearing officer shall conduct a hearing concerning the student's request for corrective action within a reasonable time and shall reasonably in advance of the hearing notify the student of the date, time and place of the hearing.

(b) The student may, at his or her expense, be represented by one or more individuals of his or her choice at the hearing.

(c) The student and the college shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request for the hearing. A record shall be made of the hearing by means satisfactory to the college.

(d) Within ten days of the completion of the hearing, the hearing officer shall provide the parties with a written decision based solely on the evidence presented at the hearing. The decision will include a summary of the evidence presented and the reasons for the decision. The decision shall be binding upon the college and the student.

(4) If the education records are held to be accurate, or not misleading or in violation of the student's right of privacy, the college will notify the student of his or her right to place in the record a statement commenting on the challenged information and/or a statement setting forth the reasons for disagreeing with the decision. Such statement will be maintained as part of the student's education records as long as the contested portion is maintained and must be disclosed if the college discloses the contested portion of the record.

(5) If information in the education record is held to be inaccurate, misleading, or in violation of the student's right of privacy, the college will amend the record and so notify the student in writing.

AMENDATORY SECTION (Amending Order 76-9, filed 3/9/76)

~~WAC 132R-190-110 ((Emergency release.)) Disciplinary records. ((Information from education records may be released to appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of a student or other person(s).))~~ Disciplinary records shall be kept separate and apart from academic records, and transcripts of a student's academic record shall contain no notation of any disciplinary action. Special precautions shall be exercised to ensure that information from disciplinary or counseling files is not revealed to unauthorized persons. Provisions shall be made for periodic review and routine destruction of inactive disciplinary records by offices maintaining such records. However, the results of any disciplinary proceeding, concerning a crime of violence as defined by 18 U.S.C. Sec. 16 may be released to an alleged victim of that crime.

**WSR 94-07-020**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Institutions)

[Order 3710—Filed March 8, 1994, 11:37 a.m.]

Date of Adoption: March 8, 1994.

Purpose: Allows implementation of the federally mandated waiver of the Title XIX program. New chapter 275-56 WAC, WAC 275-56-600, 275-56-610, 275-56-630, 275-56-640, 275-56-650, 275-56-660, 275-56-670, 275-56-680, 275-56-690, 275-56-700, 275-56-710, and 275-56-720.

Citation of Existing Rules Affected by this Order: Amending WAC 275-56-015 Definitions.

Statutory Authority for Adoption: Chapter 71.24 RCW.

Other Authority: Title XIX waiver.

Pursuant to notice filed as WSR 94-02-003 on December 22, 1993.

Effective Date of Rule: Thirty-one days after filing.

March 8, 1994

Dewey Brock, Chief  
Office of Vendor Services

AMENDATORY SECTION (Amending Order 3391, filed 5/19/92, effective 6/19/92)

**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.

(4) "Case management" means assistance to the consumer and family or significant others to obtain, maintain, or develop appropriate resources for the consumer. This involves obtaining or providing the full range of needed services 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.

(5) "Child" or "children" means a person or persons seventeen years of age and younger.

(6) "Chronically mentally ill" means a child or adult having a mental disorder, in the case of a child as defined by chapter 71.34 RCW, 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) In the case of a child, has been placed by the department or its designee two or more times outside of the home, where the placements:

(i) Are due to a mental disorder (as defined in chapter 71.34 RCW); and

(ii) Progress toward a more restrictive setting. Placements by the department shall include but not be limited to placements by child protective services and child welfare services;

(c) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months duration within the preceding year;

(d) Has been unable to engage in substantial gainful activity (subsection (50) of this section) by reason of any mental disorder lasting for a continuous period of not less than twelve months; or

(e) In the case of a child, has been subjected to continual distress as indicated by repeated physical or sexual abuse or neglect.

(7) "Clinical staff member" means a regularly employed or contracted staff member or supervisor engaged in providing direct evaluative, diagnostic, or therapeutic services to 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:

(a) For non-RSN counties before July 1, 1995, services for priority population consumers including:

(i) Discharge planning for 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.

(ii) Contacts with consumers, families, schools, or significant others to provide for an effective program of community maintenance; and

(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 consumers 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 the mental health information system for priority populations; and

(xii) Other services required by priority populations as 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 persons with appropriate knowledge and experience to make recommendations. This definition does not constitute a definition of consultation and education.

(13) "Consultation and education services" means those services provided to assist others in the community in understanding and caring for priority populations including:

(a) Consultation to other community providers; and

(b) Educational and public information services.

(14) "Crisis" means a situation where a person is acutely mentally ill or experiencing serious disruption in cognitive, volitional, psychosocial, or 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)~~ ~~(the)~~ in the individual's 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 services for mentally ill consumers, including training in basic living and social skills, supported work, vocational rehabilitation activities, and may include therapeutic treatment.

(18) "Department" means the department of social and health services.

(19) "Direct treatment services" means clinical services provided directly to consumers meeting the consumer's mental health needs, as distinct from activities conducted with other persons, organizations, or groups on behalf of consumers, and also as distinct from supervisory, consultative, or training activities conducted with regard to consumers or services.

(20) "Disabled" means an individual with a developmental disability, or a serious physical or sensory impairment.

(21) "Elderly" means a person sixty years of age or older.

(22) "Emergency services" means those responses and intervention services provided to consumers experiencing mental health emergencies or crises, including:

(a) Twenty-four-hour telephone service; and

(b) Twenty-four-hour crisis intervention and outreach services.

(23) "Employment services" means supported employment, transitional work, placement in competitive employment, and other work-related services that result in persons with a mental illness becoming engaged in meaningful and gainful full-time or part-time work.

(24) "Enrolled recipient" means, for purposes of a prepaid health plan (PHP), a person eligible for categorically needy and medically needy services, and eligible to receive community mental health rehabilitation services.

(25) "Fair hearing" means an adjudicative proceeding as defined under chapter 34.05 RCW.

(26) "Geriatric long-term rehabilitative services" means long-term rehabilitative services (subsection (32) of this section) for individuals fifty-five years of age and over, or fifty-four years of age and under who, because of psychoneurological impairments, are appropriate for this level of care.

~~((25))~~ (27) "Governing body" means the final decision-making body for a provider.

~~((26))~~ (28) "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 such person's essential human needs of health or safety; or

(b) Manifests severe deterioration in routine functioning:

(i) Evidenced by repeated and escalating loss of cognition or volitional control over such person's actions; and

(ii) Is not receiving such care as is essential for such person's health or safety.

~~((27))~~ (29) "Individualized service plan ~~(("))~~ (ISP)" means the plan developed by resource management services assuring continuity of a person's care and identifying needed residential and community support services.

~~((28))~~ (30) "Individualized treatment plan ~~(("))~~ (ITP)" means the plan developed by the service provider identifying a person's treatment needs and methods of treatment and, in RSNs, is consistent with the ISP.

~~((29))~~ (31) "Integrated work setting" means that all work is done in settings which offer regular contact with nondisabled co-workers and includes social interaction and integration at the work site.

~~((30))~~ (32) "Less restrictive setting" means that service in which the consumer functions at maximum independence in the most normative environment possible.

~~((31))~~ (33) "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.

~~((32))~~ (34) "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.

~~((33))~~ (35) "Material adjustment" means a budget revision equaling ten percent of a cost center.

~~((34))~~ (36) "Mental disorder" means organic, mental, or emotional impairment having substantial adverse effect on an individual's cognitive or volitional functions.

~~((35))~~ (37) "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.

~~((36))~~ (38) "Mental health services" means services required 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;
  - (ii) Outpatient services;
  - (iii) Day treatment;
  - (iv) Consultation and education services; and
  - (v) Community support services.

(b) When RSNs are established, or after July 1, 1995, "mental health services" shall mean all services provided by RSNs.

~~((37))~~ (39) "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.

~~((38))~~ (40) "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; or

(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; and

(iii) An unenrolled Indian: A person considered Indian by a federally or nonfederally recognized Indian tribe or an off-reservation Indian/Alaskan native community organization.

(b) Asian or Pacific Islander;

(c) Black; or

(d) Hispanic.

~~((39))~~ (41) "Outpatient services" means those services provided to priority populations needing less intensive treatment than that provided through inpatient, residential, or day treatment programs. Services shall include, but are not limited to:

(a) Evaluation;

(b) Individual, family, and group psychotherapy; and

(c) Medication management.

~~((40))~~ (42) "Preadmission screening services" means those services provided for consumers being considered for voluntary admission to state hospitals to determine the appropriateness of admission and availability of alternatives.

~~((41))~~ (43) "Prepaid health plan (PHP)" means an organization that provides and/or pays for Medicaid mental health services provided to an eligible enrolled recipient for a prepaid capitated rate under the terms of a contract with the department.

(44) "Prevocational services" means activities which are oriented toward job or career exploration and training that is designed to lead toward integrated, competitive employment; transitional employment; supported employment; or volunteer vocational experience.

~~((42))~~ (45) "Primary care provider (PCP)" means a person with primary responsibility for implementing the individualized plan for community mental health rehabilitation services with the enrolled recipient.

(46) "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.

~~((43))~~ (47) "Provider" means licensed service provider as defined in chapter 71.24 RCW.

~~((44))~~ (48) "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.

~~((45))~~ (49) "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.

~~((46))~~ (50) "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.

~~((47))~~ (51) "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))~~ the mentally ill adults' and children's ISP by county-designated mental health professionals, evaluation and treatment facilities, and others as determined by the RSN.

~~((48))~~ (52) "Secretary" means the secretary of the department of social and health services.

~~((49))~~ (53) "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 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.

~~((50))~~ (54) "Substantial gainful activity" is work 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.

~~((51))~~ (55) "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.

~~((52))~~ (56) "Supervision" means regular or occasional monitoring of the administrative, clinical, or clerical work

performance of staff, students, volunteers, or contracted employees by persons with the authority to give direction and require change.

~~((53))~~ (57) "Supported employment" is competitive employment in an integrated work setting with ongoing support services for individuals with mental illness, for whom competitive employment has not traditionally occurred or which has been interrupted.

~~((54))~~ (58) "Supported living services" means nonfacility residential programs for adults and children requiring a flexible array of services and supports to successfully live in ~~((their))~~ the adults' or children's homes, adult family homes, or foster homes.

~~((55))~~ (59) "Training" means planned educational events or activities designed to instill or enhance skills and to increase knowledge.

~~((56))~~ (60) "Transitional employment" means competitive work in an integrated setting for individuals with mental illness who may need support services (but not necessarily job skill training services), provided either at the work site or away from the work site. The job placement may not necessarily be a permanent employment outcome for the individual.

~~((57))~~ (61) "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 275-56-600 Managed care—Purpose.** For contracts effective on or after October 1, 1993, the department may contract with prepaid health plans (PHPs) to:

(1) Provide community health rehabilitation services directly to an enrolled recipient; or

(2) Arrange for an enrolled recipient to receive community mental health rehabilitation services according to the contract between the department and a PHP.

#### NEW SECTION

**WAC 275-56-610 Managed care—Eligible consumers.** (1) The department shall enroll a person receiving categorically needy or medically needy assistance in a PHP when the person resides in the PHP's contracted service area. A person's residence shall be designated by the community services office (CSO) in the Title XIX eligibility record, except as provided under WAC 275-56-630.

(2) An enrolled recipient requesting or receiving nonemergency community mental health rehabilitation services shall request and receive such services from the assigned PHP.

#### NEW SECTION

**WAC 275-56-630 Managed care—Managed care exemptions.** (1) The department shall not require a person to enroll or continue enrollment in a PHP when the person has good cause for exemption.

(2) A person requesting an exemption from enrolling in the designated PHP shall file a request with the department. The department shall, in writing, timely notify the person of the exemption decision and the reasons for the decision.

(3) The person may request a fair hearing when the person is not satisfied with the department's decision regarding exemption.

#### NEW SECTION

**WAC 275-56-640 Managed care—Enrolled recipient's choice of primary care provider.** (1) Each enrolled recipient receiving nonemergency community mental health rehabilitation services shall have a primary care provider (PCP). For an enrolled recipient with an assigned case manager, the PCP shall be the case manager.

(2) An enrolled recipient requesting or receiving community mental health rehabilitation services shall have the right to choose a PCP from available staff in the PHP.

(3) A PHP shall assign an enrolled recipient to a PCP when the enrolled recipient requests community mental health rehabilitation services and does not choose a PCP in the PHP.

(4) A person enrolled in a PHP shall have the right to change the person's PCP:

- (a) One time during a calendar year for any reason;
- (b) For subsequent changes during the calendar year, only for documented good cause; and
- (c) The enrolled recipient shall notify the PHP of the:
  - (i) Desired change, including the name of the new PCP; and
  - (ii) Reason for a desired change.

#### NEW SECTION

**WAC 275-56-650 Managed care—Other services.** (1) The department shall pay for mental health or other services covered under the department's medical care programs that are excluded from the community mental health rehabilitation services managed care contract.

(2) The department's mental health or ancillary services may include, but are not limited to:

- (a) Transportation as described under WAC 388-86-085; and
- (b) Inpatient services.

#### NEW SECTION

**WAC 275-56-660 Managed care—Emergency services.** The department shall exempt emergencies and transportation for emergencies required by the enrolled recipient within the PHP from any routine pre-service authorization procedures employed by the PHP.

#### NEW SECTION

**WAC 275-56-670 Managed care—Enrolled recipient grievances.** An enrolled recipient aggrieved by a decision of a PHP or the department shall have the right to a fair hearing, as required under WAC 388-81-040. The PHP shall establish a grievance process which:

(1) Is published and made known to enrolled recipients who are current or potential users of community mental

health rehabilitation services in a readily understandable language and manner;

(2) Gives enrolled recipients the opportunity to report grievances, and have the grievances investigated, and resolved promptly;

(3) Ensures retaliation, formal or informal, against a grievant does not occur;

(4) Ensures the retention of full records of all grievances in confidential files, separate from the grievant's case records, for five years from completion of the grievance process;

(5) Ensures the availability of ombuds service staff to assist grievants at all levels of the grievance and fair hearing processes;

(6) May progress through levels as established by the PHP, beginning at the provider level and ending at the PHP governance board or the board's designee. The PHP shall:

(a) Ensure the entire process, from the written request for grievance up to the request for fair hearing, shall not exceed thirty days. If the enrolled recipient orally requests a grievance, the PHP shall promptly refer the enrolled recipient to the ombuds service for assistance in writing the request; and

(b) Notify the grievant in writing of the reason for the decision and the right to request a fair hearing;

(7) Allows the participation of other persons at the grievant's choice; and

(8) Allows the grievant to request a fair hearing when the grievance concerns eligibility, enrollment, or disenrollment for Title XIX community mental health rehabilitation services, or the medical necessity for such services and the:

(a) Grievance decision is adverse to the grievant;

(b) The PHP does not respond in writing within thirty days from the date the grievant submitted the grievance in writing; or

(c) The PHP denies an enrolled recipient urgently needed community mental health rehabilitation services and the enrolled recipient files a grievance in writing.

#### NEW SECTION

**WAC 275-56-680 Managed care—Enrolled recipient request for a second opinion.** (1) An enrolled recipient in a PHP shall have the right to a second opinion by another participating staff in the enrolled recipient's assigned PHP:

(a) When the enrolled recipient needs more information as to the medical necessity of treatment recommended by the PCP; or

(b) If the enrolled recipient believes the PCP is not authorizing medically necessary community mental health rehabilitation services.

(2) When medically necessary, the PHP shall refer the enrolled recipient to another participating staff of the PHP staff.

#### NEW SECTION

**WAC 275-56-690 Managed care—Enrollment termination.** (1) The department may terminate enrollment of an enrolled recipient in a PHP when:

(a) An enrolled recipient loses eligibility for Title XIX categorically needy and medically needy services;

(b) An enrolled recipient requests disenrollment from the PHP, and the department approves the request; or

(c) A PHP requests in writing to the department the disenrollment of the enrolled recipient from the PHP and the PHP's requested disenrollment is approved by the department.

(2) The department shall:

(a) Disenroll only when the enrolled recipient:

(i) Is no longer eligible for Title XIX categorically and medically needy services;

(ii) Is deceased; or

(iii) Requests disenrollment from the PHP and meets the requirements of WAC 275-56-630.

(b) Make a decision on the requested disenrollment within fifteen days of the receipt of the request; and

(c) Notify the enrolled recipient ten days in advance of the effective date of the proposed disenrollment for any approved disenrollment.

#### NEW SECTION

**WAC 275-56-700 Managed care—Continuous quality improvement.** (1) The PHP shall:

(a) Establish a continuous quality improvement system which collects information and takes steps to ensure enrolled recipient needs are met and enrolled recipient welfare is protected;

(b) Establish and maintain a quality review team;

(c) Take no measures or actions which might threaten, intimidate, or otherwise diminish the ability of the quality review team to fairly and independently execute the team's duties;

(d) Establish bylaws concerning the size, appointment, removal and tenure, and decision-making process of the quality review team;

(e) Appoint members of the quality review team. At least fifty-one percent of the team members shall be consumers, past consumers, or family members;

(f) Ensure that all team members successfully complete state-sponsored training when offered; and

(g) Ensure the quality review team has reasonable access at reasonable times to interested enrolled recipients and service sites;

(2) The quality review team shall:

(a) Regularly review provider and PHP performance and meet with interested enrolled recipients and family members, allied service providers, underserved communities, and other members of the community to determine whether services are accessible and address the needs of enrolled recipients;

(b) Include involvement of representatives of an underserved group in developing recommendations which affect an underserved group;

(c) Submit regular reports on noted strengths and areas for improvement to the provider, PHP, RSN advisory board, and mental health division (MHD);

(d) Work with interested enrolled recipients, service providers, the PHP, and the department to resolve identified problems;

(e) Identify in writing to the PHP reasonable and necessary service changes. The PHP shall respond in writing to the quality review team within thirty days with either a plan of action or other reasonable explanation. If

the PHP fails to reasonably respond within thirty days, or subsequently fails to implement a mutually agreed upon plan of action, the quality review team may request the department to review or audit the PHP or its providers. The department may take action following review or audit pursuant to this chapter or the terms of the PHP's contract with the department; and

(f) Maintain enrolled recipient confidentiality consistent with this chapter.

#### NEW SECTION

**WAC 275-56-710 Managed care—Ombuds service.** The PHP shall establish an independent ombuds service, as set forth in this section and contract between the department and the PHP.

(1) The PHP shall assure the ombuds service:

(a) Is independent of service provision;

(b) Receives enrolled recipient complaints and assists in the complaint's resolution at the lowest possible level;

(c) Has reasonable access at reasonable times to enrolled recipients, service sites, and records relating to the enrolled recipient, upon written consent pursuant to this chapter for the purposes of outreach and resolving complaints;

(d) Is performed by paid persons who:

(i) May be assisted by volunteers;

(ii) Are hired by the PHP; or

(iii) Work under contract to the PHP; and

(iv) Are consumers or past consumers, and may also include family members of consumers.

(e) Completes state-sponsored orientation, when offered.

(f) Intercedes on behalf of enrolled recipients, and at the enrolled recipient's request, in the complaint and grievance process.

(2) The ombuds service staff shall:

(a) Be accessible to all persons, including members of underserved populations;

(b) Involve other persons, at the enrolled recipient's choice;

(c) Assist enrolled recipients in the pursuit of informal resolution of complaints;

(d) If necessary, continue to assist the enrolled recipient through the grievance and, if applicable, fair hearing processes;

(e) Maintain copies of all complaints and the resolutions for at least five years;

(f) Periodically provide summaries of all grievances and the resolutions to the department; and

(g) Maintain enrolled recipient confidentiality consistent with this chapter.

#### NEW SECTION

**WAC 275-56-720 Managed care—Audit.** (1) At least once a year, the department shall conduct a PHP audit to promote the quality and accessibility of community mental health rehabilitation services a PHP provides or arranges for enrolled recipients.

(2) The PHP shall permit the department to conduct a managed care audit.

(3) The department may conduct or contract independently for such a managed care audit.

**WSR 94-07-022**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Public Assistance)

[Order 3712—Filed March 8, 1994, 11:42 a.m.]

Date of Adoption: March 8, 1994.

Purpose: Establishes a new rule on when the department shall pay for a hearing aid, repair a hearing aid, and replace a hearing aid. New WAC 388-86-04001 Hearing aids.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 388-86-040 Hearing aids.

Statutory Authority for Adoption: RCW 74.08.090.

Pursuant to notice filed as WSR 94-05-043 on February 9, 1994.

Changes Other than Editing from Proposed to Adopted Version: Subsection (1)(e), 3000 hertz has been added to the auditory screen levels. Subsection (7) is added to reinstate the use of a waiver statement to allow adults to decline medical evaluations as allowed under RCW 18.35.110.

Effective Date of Rule: Thirty-one days after filing.

March 8, 1994

Dewey Brock, Chief  
Office of Vendor Services

NEW SECTION

**WAC 388-86-04001 Hearing aids.** (1) The department shall pay for the purchase of one hearing aid for a client when the:

- (a) Client is eighteen years of age and older;
- (b) Client is eligible under the categorically needy or the medical care services programs;
- (c) Client's attending physician prescribes the hearing aid;
- (d) Purchased hearing aid is covered by a one-year warranty;
- (e) Client has a fifty decibel minimum hearing loss in the better ear based on auditory screening at five hundred, one thousand, two thousand, and three thousand Hertz (Hz) with effective masking as indicated; and
- (f) Hearing aid is medically necessary.

(2) The department shall pay for hearing aids for a child under eighteen years of age when the child:

(a) Is referred to the local children with special health care needs (Title V) program administered by the local health districts; and

(b) Meets the eligibility requirements of the categorically needy, medically needy or children's health program.

(3) The department shall provide an adult client with a one-time replacement hearing aid in a five-year period when the:

- (a) Hearing aid:
  - (i) Is lost; or
  - (ii) Broken beyond repair.
- (b) Client continues to meet the same criteria in subsection (1) of this section; and

(c) Provider's records document the replacement necessity.

(4) The department shall not be responsible for purchase of batteries, ear trumpets, and tinnitus markers.

(5) The department shall pay for repair of a hearing aid when the:

- (a) Repair has a ninety-day warranty;
- (b) Cost of repair is less than fifty percent of the cost of a new hearing aid; and

(b) Provider's records document the repair and replacement cost requirement.

(6) The department shall not permit group screening for hearing aids under the program, except as provided under the early and periodic screening, diagnosis and treatment program/healthy kids under WAC 388-86-027.

(7) Clients eighteen years of age and over may sign a waiver statement declining a medical evaluation as allowed under RCW 18.35.110.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-86-040 Hearing aids.

**WSR 94-07-029**  
**PERMANENT RULES**  
**LOTTERY COMMISSION**  
[Filed March 8, 1994, 4:36 p.m.]

Date of Adoption: March 4, 1994.

Purpose: To establish the game play rules and criteria for determining winners of Instant Game Nos. 118 (Aces Wild), 119 (Big Bucks), 120 (Lucky Deal), and 121 (Hog Mania); and to amend WAC 315-34-040.

Citation of Existing Rules Affected by this Order:  
Amending WAC 315-34-040.

Statutory Authority for Adoption: RCW 67.70.040.

Pursuant to notice filed as WSR 94-03-099 on January 19, 1994.

Changes Other than Editing from Proposed to Adopted Version: In WAC 315-34-040, the fourth prize was proposed as being 9.66 percent of sales. The rule was adopted with a fourth prize of \$3.00.

Effective Date of Rule: Thirty-one days after filing.

March 8, 1994

Evelyn P. Yenson  
Director

NEW SECTION

**WAC 315-11A-118 Instant Game Number 118 ("Aces Wild").** (1) **Definitions for Instant Game Number 118.**

(a) Play symbols: The following are the "play symbols": "8," "9," "10," "J," "Q," "K," and "A." One of these play symbols appears in each of the five play spots under the latex covering on the front of the ticket. The latex covered area shall be known as the playfield. One of the five play spots shall be labeled "winning card."

(b) Play symbol 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 abbreviated form of the play symbol. One and only one of these captions appears under each play symbol. The three-digit ticket number shall appear before each play symbol caption. For Instant Game Number 118, the captions which correspond with and verify the play symbols are:

| <u>PLAY SYMBOL</u> | <u>CAPTION</u> |
|--------------------|----------------|
| 8                  | EGT            |
| 9                  | NIN            |
| 10                 | TEN            |
| J                  | JAC            |
| Q                  | QUE            |
| K                  | KNG            |
| A                  | ACE            |

(c) Prize symbols: The following are the "prize symbols": "\$1.00," "\$2.00," "\$7.00," "\$12.00," "\$21.00," "\$40.00," "\$400.00," and "\$4,000." One of these prize symbols appears below each of the play symbol captions, except that no prize symbol appears below the caption of the play symbol labeled "winning card."

(d) Prize symbol captions: The small printed characters which appear below the prize symbol and verify and correspond with that prize symbol. The prize symbol caption is a spelling out, in full or abbreviated form, of the prize symbol. For Instant Game Number 118, the prize symbol captions which correspond with and verify the prize symbols are:

| <u>PRIZE SYMBOL</u> | <u>CAPTION</u> |
|---------------------|----------------|
| \$ 1.00             | ONE DOL        |
| \$ 2.00             | TWO DOL        |
| \$ 7.00             | SVN DOL        |
| \$ 12.00            | TLV DOL        |
| \$ 21.00            | TTN DOL        |
| \$ 40.00            | \$FORTY\$      |
| \$ 400.00           | FORHUND        |
| \$ 4,000            | FORTHOU        |

(e) Validation number: The unique nineteen-digit number on the front of the ticket. The number is covered by latex.

(f) Pack-ticket number: The twelve-digit number of the form 11800001-1-000 printed on the front of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number 118 constitute the "pack number" which starts at 11800001; the last three digits constitute the "ticket number" which starts at 000 and continues through 199 within each pack of tickets.

(g) Retailer verification codes: Codes consisting of small letters found under the removable covering on the front of the ticket which the lottery retailer uses to verify instant winners of \$600.00 or less. For Instant Game Number 118, the retailer verification code is a three-letter code, with each letter appearing in a varying three of six locations beneath the removable covering and among the play symbols on the front of the ticket. The retailer verification codes are:

| <u>VERIFICATION CODE</u> | <u>PRIZE</u>                                        |
|--------------------------|-----------------------------------------------------|
| ONE                      | \$ 1.00                                             |
| FOR                      | \$ 4.00 (\$1, \$1, \$1, AND \$1; \$2, \$1, AND \$1) |
| SVN                      | \$ 7.00 (\$2, \$2, \$2, AND \$1; \$7)               |
| TLV                      | \$ 12.00 (\$7, \$2, \$2, AND \$1; \$12)             |
| TTN                      | \$ 21.00 (\$12, \$7, AND \$2; \$21)                 |
| FRY                      | \$ 40.00                                            |
| FRH                      | \$ 400.00                                           |

(h) Pack: A set of two hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

**(2) Criteria for Instant Game Number 118.**

(a) The price of each instant game ticket shall be \$1.00.

(b) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

(i) When any of the four play symbols matches exactly the play symbol labeled "winning card," the matching play symbol shall be a winning play symbol, and the bearer of the ticket shall win the prize below the winning play symbol.

(ii) The bearer of a ticket which has an "A" play symbol shall be entitled to the prize shown below the "A."

(iii) The bearer of a ticket which has more than one winning play symbol shall win the total of the prizes below each winning play symbol.

(c) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(d) 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 118 set forth in subsection (3) of this section, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(e) Notwithstanding any other provisions of these rules, the director may:

(i) Vary the length of Instant Game Number 118; and/or

(ii) Vary the number of tickets sold in Instant Game Number 118 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

**(3) Ticket validation requirements for Instant Game Number 118.**

(a) In addition to meeting all other requirements in these rules and regulations, to be a valid instant game ticket for Instant Game Number 118 all of the following validation requirements apply:

(i) Exactly one play symbol must appear in each of the five play spots in the playfield on the front of the ticket.

(ii) Each play symbol must have a play symbol caption below it and each must agree with its caption.

(iii) Each of the play symbol captions, except for the "winning card" play symbol caption, shall have a prize symbol below it. Each of the prize symbols shall also have a prize symbol caption below it.

(iv) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the artwork on file

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with the director. The numbers, letters, and symbols shall be printed as follows:

|                            |                   |
|----------------------------|-------------------|
| Play Symbols               | Play Symbol Font  |
| Prize Symbols              | Prize Symbol Font |
| Captions                   | Caption Font      |
| Pack-Ticket Number         | Validation Font   |
| Validation Number          | Validation Font   |
| Retailer Verification Code | Validation Font   |

(v) Each of the play symbols and its caption, the validation number, pack-ticket number, and retailer verification code must be printed in black ink.

(vi) Each of the play symbols must be exactly one of those described in subsection (1)(a) of this section and each of the play symbol captions must be exactly one of those described in subsection (1)(b) of this section.

(vii) Each of the prize symbols must be exactly one of those described in subsection (1)(c) of this section and each of the prize symbol captions must be exactly one of those described in subsection (1)(d) of this section.

(b) Any ticket not passing all the validation requirements in WAC 315-10-070 and in (a) of this subsection is invalid and ineligible for any prize.

**NEW SECTION**

**WAC 315-11A-119 Instant Game Number 119 ("Big Bucks"). (1) Definitions for Instant Game Number 119.**

(a) Play symbols: The following are the "play symbols": "1," "2," "3," "4," "5," "6," and "9." One of these play symbols appears in each of the seven play spots under the latex covering on the front of the ticket. The latex covered area shall be known as the playfield. Two of the seven play spots shall be labeled "winning number."

(b) Play symbol 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 abbreviated form of the play symbol. One and only one of these captions appears under each play symbol. The three-digit ticket number shall appear before each play symbol caption. For Instant Game Number 119, the captions which correspond with and verify the play symbols are:

| <u>PLAY SYMBOL</u> | <u>CAPTION</u> |
|--------------------|----------------|
| 1                  | ONE            |
| 2                  | TWO            |
| 3                  | THR            |
| 4                  | FOR            |
| 5                  | FIV            |
| 6                  | SIX            |
| 9                  | NIN            |

(c) Prize symbols: The following are the "prize symbols": "\$1.00," "\$2.00," "\$3.00," "\$5.00," "\$10.00," "\$20.00," "\$50.00," "\$100.00," and "\$10,000." One of these prize symbols appears below each of the play symbol captions, except that no prize symbol appears below the caption of the play symbols labeled "winning number."

(d) Prize symbol captions: The small printed characters which appear below the prize symbol and verify and correspond with that prize symbol. The prize symbol caption is a spelling out, in full or abbreviated form, of the prize symbol. For Instant Game Number 119, the prize

symbol captions which correspond with and verify the prize symbols are:

| <u>PRIZE SYMBOL</u> | <u>CAPTION</u> |
|---------------------|----------------|
| \$ 1.00             | ONE DOL        |
| \$ 2.00             | TWO DOL        |
| \$ 3.00             | THR DOL        |
| \$ 5.00             | FIV DOL        |
| \$ 10.00            | TEN DOL        |
| \$ 20.00            | TWY DOL        |
| \$ 50.00            | \$FIFTY\$      |
| \$ 100.00           | ONEHUND        |
| \$ 10,000           | TENTHOU        |

(e) Validation number: The unique nineteen-digit number on the front of the ticket. The number is covered by latex.

(f) Pack-ticket number: The twelve-digit number of the form 11900001-1-000 printed on the front of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number 119 constitute the "pack number" which starts at 11900001; the last three digits constitute the "ticket number" which starts at 000 and continues through 199 within each pack of tickets.

(g) Retailer verification codes: Codes consisting of small letters found under the removable covering on the front of the ticket which the lottery retailer uses to verify instant winners of \$600.00 or less. For Instant Game Number 119, the retailer verification code is a three-letter code, with each letter appearing in a varying three of six locations beneath the removable covering and among the play symbols on the front of the ticket. The retailer verification codes are:

| <u>VERIFICATION CODE</u> | <u>PRIZE</u>                                                |
|--------------------------|-------------------------------------------------------------|
| TWO                      | \$ 2.00 (\$1 AND \$1; \$2)                                  |
| THR                      | \$ 3.00 (\$1, \$1, AND \$1; \$3)                            |
| SIX                      | \$ 6.00 (\$2, \$2, AND \$2; \$2, \$2, \$1, AND \$1)         |
| TEN                      | \$ 10.00 (\$2, \$2, \$2, \$2, AND \$2; \$5 AND \$5)         |
| TWY                      | \$ 20.00 (\$10, \$5, AND \$5; \$10, \$5, \$2, \$2, AND \$1) |
| FTY                      | \$ 50.00                                                    |
| OHN                      | \$ 100.00 (\$50 AND \$50)                                   |

(h) Pack: A set of two hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

**(2) Criteria for Instant Game Number 119.**

(a) The price of each instant game ticket shall be \$2.00.

(b) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

(i) When any of the five play symbols matches exactly one of the two play symbols labeled "winning number," the matching play symbol shall be a winning play symbol, and the bearer of the ticket shall win the prize below the winning play symbol.

(ii) The bearer of a ticket which has more than one winning play symbol shall win the total of the prizes below each winning play symbol.

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(c) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(d) 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 119 set forth in subsection (3) of this section, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(e) Notwithstanding any other provisions of these rules, the director may:

(i) Vary the length of Instant Game Number 119; and/or

(ii) Vary the number of tickets sold in Instant Game Number 119 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

**(3) Ticket validation requirements for Instant Game Number 119.**

(a) In addition to meeting all other requirements in these rules and regulations, to be a valid instant game ticket for Instant Game Number 119 all of the following validation requirements apply:

(i) Exactly one play symbol must appear in each of the seven play spots in the playfield on the front of the ticket.

(ii) Each play symbol must have a play symbol caption below it and each must agree with its caption.

(iii) Each of the play symbol captions, except for the "winning number" play symbol captions, shall have a prize symbol below it. Each of the prize symbols shall also have a prize symbol caption below it.

(iv) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the artwork on file with the director. The numbers, letters, and symbols shall be printed as follows:

|                            |                   |
|----------------------------|-------------------|
| Play Symbols               | Play Symbol Font  |
| Prize Symbols              | Prize Symbol Font |
| Captions                   | Caption Font      |
| Pack-Ticket Number         | Validation Font   |
| Validation Number          | Validation Font   |
| Retailer Verification Code | Validation Font   |

(v) Each of the play symbols and its caption, the validation number, pack-ticket number, and retailer verification code must be printed in black ink.

(vi) Each of the play symbols must be exactly one of those described in subsection (1)(a) of this section and each of the play symbol captions must be exactly one of those described in subsection (1)(b) of this section.

(vii) Each of the prize symbols must be exactly one of those described in subsection (1)(c) of this section and each of the prize symbol captions must be exactly one of those described in subsection (1)(d) of this section.

(b) Any ticket not passing all the validation requirements in WAC 315-10-070 and in (a) of this subsection is invalid and ineligible for any prize.

NEW SECTION

**WAC 315-11A-120 Instant Game Number 120 ("Lucky Deal"). (1) Definitions for Instant Game Number 120.**

(a) Play symbols: The following are the "play symbols": "8," "9," "10," "J," "Q," and "K." One of these play symbols appears in each of the six play spots under the latex covering on the front of the ticket. The latex covered area shall be known as the playfield. One of the six play spots shall be labeled "winning card."

(b) Play symbol 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 abbreviated form of the play symbol. One and only one of these captions appears under each play symbol. The three-digit ticket number shall appear before each play symbol caption. For Instant Game Number 120, the captions which correspond with and verify the play symbols are:

| <u>PLAY SYMBOL</u> | <u>CAPTION</u> |
|--------------------|----------------|
| 8                  | EGT            |
| 9                  | NIN            |
| 10                 | TEN            |
| J                  | JAC            |
| Q                  | QUE            |
| K                  | KNG            |

(c) Prize symbols: The following are the "prize symbols": "\$1.00," "\$4.00," "\$7.00," "\$14.00," "\$21.00," "\$50.00," "\$500.00," and "\$5,000." One of these prize symbols appears below each of the play symbol captions, except that no prize symbol appears below the caption of the play symbol labeled "winning card."

(d) Prize symbol captions: The small printed characters which appear below the prize symbol and verify that prize symbol. The prize symbol caption is a spelling out, in full or abbreviated form, of the prize symbol. For Instant Game Number 120, the prize symbol captions which correspond with and verify the prize symbols are:

| <u>PRIZE SYMBOL</u> | <u>CAPTION</u> |
|---------------------|----------------|
| \$ 1.00             | ONE DOL        |
| \$ 4.00             | FOR DOL        |
| \$ 7.00             | SVN DOL        |
| \$ 14.00            | FRN DOL        |
| \$ 21.00            | TTN DOL        |
| \$ 50.00            | \$FIFTY\$      |
| \$ 500.00           | FIVHUND        |
| \$ 5,000            | FIVTHOU        |

(e) Validation number: The unique nineteen-digit number on the front of the ticket. The number is covered by latex.

(f) Pack-ticket number: The twelve-digit number of the form 12000001-1-000 printed on the front of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number 120 constitute the "pack number" which starts at 12000001; the last three digits constitute the "ticket number" which starts at 000 and continues through 199 within each pack of tickets.

(g) Retailer verification codes: Codes consisting of small letters found under the removable covering on the front of the ticket which the lottery retailer uses to verify instant winners of \$600.00 or less. For Instant Game Number 120, the retailer verification code is a three-letter code, with each letter appearing in a varying three of six locations beneath the removable covering and among the play symbols on the front of the ticket. The retailer verification codes are:

| <u>VERIFICATION CODE</u> | <u>PRIZE</u>                                     |
|--------------------------|--------------------------------------------------|
| ONE                      | \$ 1.00                                          |
| FOR                      | \$ 4.00 (\$1, \$1, \$1, AND \$1; \$4)            |
| SVN                      | \$ 7.00 (\$4, \$1, \$1, AND \$1; \$7)            |
| FRN                      | \$ 14.00 (\$7 AND \$7; \$14)                     |
| TTN                      | \$ 21.00 (\$14 AND \$7; \$7, \$7, AND \$7; \$21) |
| FTY                      | \$ 50.00                                         |
| FVH                      | \$ 500.00                                        |

(h) Pack: A set of two hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

**(2) Criteria for Instant Game Number 120.**

(a) The price of each instant game ticket shall be \$1.00.

(b) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

(i) When any of the five play symbols matches exactly the play symbol labeled "winning card," the matching play symbol shall be a winning play symbol, and the bearer of the ticket shall win the prize below the winning play symbol.

(ii) The bearer of a ticket which has more than one winning play symbol shall win the total of the prizes below each winning play symbol.

(c) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(d) 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 120 set forth in subsection (3) of this section, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(e) Notwithstanding any other provisions of these rules, the director may:

(i) Vary the length of Instant Game Number 120; and/or

(ii) Vary the number of tickets sold in Instant Game Number 120 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

**(3) Ticket validation requirements for Instant Game Number 120.**

(a) In addition to meeting all other requirements in these rules and regulations, to be a valid instant game ticket for Instant Game Number 120 all of the following validation requirements apply:

(i) Exactly one play symbol must appear in each of the six play spots in the playfield on the front of the ticket.

(ii) Each play symbol must have a play symbol caption below it and each must agree with its caption.

(iii) Each of the play symbol captions, except for the "winning number" play symbol caption, shall have a prize

symbol below it. Each of the prize symbols shall also have a prize symbol caption below it.

(iv) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the artwork on file with the director. The numbers, letters, and symbols shall be printed as follows:

|                            |                   |
|----------------------------|-------------------|
| Play Symbols               | Play Symbol Font  |
| Prize Symbols              | Prize Symbol Font |
| Captions                   | Caption Font      |
| Pack-Ticket Number         | Validation Font   |
| Validation Number          | Validation Font   |
| Retailer Verification Code | Validation Font   |

(v) Each of the play symbols and its caption, the validation number, pack-ticket number, and retailer verification code must be printed in black ink.

(vi) Each of the play symbols must be exactly one of those described in subsection (1)(a) of this section and each of the play symbol captions must be exactly one of those described in subsection (1)(b) of this section.

(vii) Each of the prize symbols must be exactly one of those described in subsection (1)(c) of this section and each of the prize symbol captions must be exactly one of those described in subsection (1)(d) of this section.

(b) Any ticket not passing all the validation requirements in WAC 315-10-070 and in (a) of this subsection is invalid and ineligible for any prize.

**NEW SECTION**

**WAC 315-11A-121 Instant Game Number 121 ("Hog Mania"). (1) Definitions for Instant Game Number 121.**

(a) Play symbols: The following are the "play symbols": "1," "2," "3," "4," "5," "6," and "9." One of these play symbols appears in each of the five play spots under the latex covering on the front of the ticket. The latex covered area shall be known as the playfield. One of the five play spots shall be labeled "winning number."

(b) Play symbol 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 abbreviated form of the play symbol. One and only one of these captions appears under each play symbol. The three-digit ticket number shall appear before each play symbol caption. For Instant Game Number 121, the captions which correspond with and verify the play symbols are:

| <u>PLAY SYMBOL</u> | <u>CAPTION</u> |
|--------------------|----------------|
| 1                  | ONE            |
| 2                  | TWO            |
| 3                  | THR            |
| 4                  | FOR            |
| 5                  | FIV            |
| 6                  | SIX            |
| 9                  | NIN            |

(c) Prize symbols: The following are the "prize symbols": "\$1.00," "\$3.00," "\$5.00," "\$8.00," "\$16.00," "\$24.00," "\$40.00," "\$80.00," and "\$8,000." One of these prize symbols appears below each of the play symbol

captions, except that no prize symbol appears below the caption of the play symbol labeled "winning number."

(d) Prize symbol captions: The small printed characters which appear below the prize symbol and verify and correspond with that prize symbol. The prize symbol caption is a spelling out, in full or abbreviated form, of the prize symbol. For Instant Game Number 121, the prize symbol captions which correspond with and verify the prize symbols are:

| <u>PRIZE SYMBOL</u> | <u>CAPTION</u> |
|---------------------|----------------|
| \$ 1.00             | ONE DOL        |
| \$ 3.00             | THR DOL        |
| \$ 5.00             | FIV DOL        |
| \$ 8.00             | EGT DOL        |
| \$ 16.00            | SXT DOL        |
| \$ 24.00            | TTF DOL        |
| \$ 40.00            | \$FORTY\$      |
| \$ 80.00            | \$EIGHTY       |
| \$ 8,000            | EGTTHOU        |

(e) Validation number: The unique nineteen-digit number on the front of the ticket. The number is covered by latex.

(f) Pack-ticket number: The twelve-digit number of the form 12100001-1-000 printed on the front of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number 121 constitute the "pack number" which starts at 12100001; the last three digits constitute the "ticket number" which starts at 000 and continues through 199 within each pack of tickets.

(g) Retailer verification codes: Codes consisting of small letters found under the removable covering on the front of the ticket which the lottery retailer uses to verify instant winners of \$600.00 or less. For Instant Game Number 121, the retailer verification code is a three-letter code, with each letter appearing in a varying three of six locations beneath the removable covering and among the play symbols on the front of the ticket. The retailer verification codes are:

| <u>VERIFICATION CODE</u> | <u>PRIZE</u>                          |
|--------------------------|---------------------------------------|
| ONE                      | \$ 1.00                               |
| THR                      | \$ 3.00 (\$1, \$1, AND \$1; \$3)      |
| EGT                      | \$ 8.00 (\$5, \$1, \$1, AND \$1; \$8) |
| SXT                      | \$ 16.00 (\$8 AND \$8; \$16)          |
| TTF                      | \$ 24.00 (\$8, \$8, AND \$8; \$24)    |
| FRY                      | \$ 40.00                              |
| ETY                      | \$ 80.00                              |

(h) Pack: A set of two hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

**(2) Criteria for Instant Game Number 121.**

(a) The price of each instant game ticket shall be \$1.00.

(b) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

(i) When any of the four play symbols matches exactly the play symbol labeled "winning number," the matching play symbol shall be a winning play symbol, and the bearer of the ticket shall win the prize below the winning play symbol.

(ii) The bearer of a ticket which has more than one winning play symbol shall win the total of the prizes below each winning play symbol.

(c) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(d) 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 121 set forth in subsection (3) of this section, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(e) Notwithstanding any other provisions of these rules, the director may:

(i) Vary the length of Instant Game Number 121; and/or

(ii) Vary the number of tickets sold in Instant Game Number 121 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

**(3) Ticket validation requirements for Instant Game Number 121.**

(a) In addition to meeting all other requirements in these rules and regulations, to be a valid instant game ticket for Instant Game Number 121 all of the following validation requirements apply:

(i) Exactly one play symbol must appear in each of the five play spots in the playfield on the front of the ticket.

(ii) Each play symbol must have a play symbol caption below it and each must agree with its caption.

(iii) Each of the play symbol captions, except for the "winning number" play symbol caption, shall have a prize symbol below it. Each of the prize symbols shall also have a prize symbol caption below it.

(iv) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the artwork on file with the director. The numbers, letters, and symbols shall be printed as follows:

|                            |                   |
|----------------------------|-------------------|
| Play Symbols               | Play Symbol Font  |
| Prize Symbols              | Prize Symbol Font |
| Captions                   | Caption Font      |
| Pack-Ticket Number         | Validation Font   |
| Validation Number          | Validation Font   |
| Retailer Verification Code | Validation Font   |

(v) Each of the play symbols and its caption, the validation number, pack-ticket number, and retailer verification code must be printed in black ink.

(vi) Each of the play symbols must be exactly one of those described in subsection (1)(a) of this section and each of the play symbol captions must be exactly one of those described in subsection (1)(b) of this section.

(vii) Each of the prize symbols must be exactly one of those described in subsection (1)(c) of this section and each of the prize symbol captions must be exactly one of those described in subsection (1)(d) of this section.

(b) Any ticket not passing all the validation requirements in WAC 315-10-070 and in (a) of this subsection is invalid and ineligible for any prize.

PERMANENT

**AMENDATORY SECTION** (Amending WSR 93-03-008, filed 1/8/93, effective 2/8/93)

**WAC 315-34-040 Prizes for Lotto.** (1) The prize amounts to be paid to each Lotto player who selects a winning combination of numbers in the first, second, third and fourth prize categories vary due to parimutuel calculation of prizes.

| WINNING COMBINATIONS                                            | PRIZE CATEGORIES      | ODDS OF WINNING<br>(ONE PLAY) |
|-----------------------------------------------------------------|-----------------------|-------------------------------|
| All six winning numbers in one play                             | First Prize (Jackpot) | 1:13,983,816                  |
| Any five but not six winning numbers in one play                | Second Prize          | 1:54,201                      |
| Any four but not five or six winning numbers in one play        | Third Prize           | 1:1,033                       |
| Any three but not four, five or six winning numbers in one play | Fourth Prize          | 1:57                          |

(2) ~~((Prize allocation. The prize allocation consists of forty eight percent of Lotto revenue. The prize allocation will be divided between the prize pool and the prize reserve as follows: prize pool forty six percent of Lotto revenue; prize reserve two percent of Lotto revenue.))~~ Reserved.

(3) Prize amounts.

(a) First prize (jackpot). The first prize will be the amount announced by the director as the Lotto jackpot. The jackpot will be divided equally among all players who selected all six winning numbers in one play (in any sequence). ~~((The director may utilize the prize reserve to augment the cash available to fund the jackpot prize. Any revenue remaining in the prize pool after providing sufficient moneys for payment of all first, second, third, and fourth prizes of that drawing shall be placed in the Lotto prize reserve for use pursuant to the terms of WAC 315-34-040 (3)(e).))~~

(b) Second prize. ~~((Five percent of the prize pool is to))~~ 2.3 percent of the sales for the drawing shall be divided equally among all players who selected five of the six winning numbers in one play (in any sequence).

(c) Third prize. ~~((Ten percent of the prize pool is to))~~ 4.6 percent of the sales for the drawing shall be divided equally among all players who selected four of the six winning numbers in one play (in any sequence).

(d) Fourth prize. ~~((Twenty one percent of the prize pool is to be divided equally among all))~~ A \$3.00 prize is to be paid to each player((\*) who selected three of the six winning numbers in one play (in any sequence).

(e) ~~((Prize reserve. The prize reserve will be held for payment of prizes at the discretion of the director.))~~ Reserved.

(f) Second and third prizes will be rounded down to the nearest dollar. ~~((Fourth prize will be rounded to the nearest dollar. The remainder or shortages, if any, from the rounding process shall be placed in or taken from the prize reserve.))~~

(g) The holder of a winning ticket may win only one prize per play in connection with the winning numbers

drawn and shall be entitled only to the highest prize category won by those numbers.

(h) The holder of two or more jackpot winning tickets with a cumulative total cash value of \$250,000 or more may elect to receive a single prize based on the total cash value with prize payments in accordance with subsection (5)(a) or (b) of this section.

(i) In the event any player who has selected three, four, five, or six of the six winning numbers does not claim the prize won within one hundred eighty days after the drawing in which the prize was won, that player's prize shall be retained in the state lottery account for further use as prizes, pursuant to RCW 67.70.190.

(4) Roll-over feature.

(a) If no player selects all six winning numbers for any given drawing, the jackpot accumulated for that drawing will be added to the jackpot accumulation for the next drawing. This process is repeated until the jackpot is won.

(b) If no player selects five of the six winning numbers for any given drawing, the second prize allocation will be added to the jackpot accumulation for the next drawing ~~((or placed in the prize reserve for future consideration at the discretion of the director)).~~

(c) If no player selects four of the six winning numbers for any given drawing, the third prize allocation will be added to the jackpot accumulation for the next drawing ~~((or placed in the prize reserve for future consideration at the discretion of the director)).~~

(d) If no player selects three of the six winning numbers for any given drawing, the fourth prize allocation will be added to the jackpot accumulation for the next drawing ~~((or placed in the prize reserve for future consideration at the discretion of the director)).~~

(5) Prize payments will be made in accordance with WAC 315-30-030(6).

(a) Each prize that has a cash value of \$500,000 or more shall be paid in twenty annual payments.

(b) Each prize that has a cash value of more than \$250,000 but less than \$500,000 shall, at the discretion of the director, be paid either in ten annual payments or twenty annual payments.

(c) Each prize that has a cash value of \$250,000 or less shall be paid in a single payment.

(d) For prizes paid over a period of years, the lottery will make the first annual payment. The remaining payments will be paid in the form designated by the director.

**WSR 94-07-030**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Public Assistance)

[Order 3714—Filed March 9, 1994, 8:24 a.m.]

Date of Adoption: March 9, 1994.

Purpose: Adds additional services not needing authorization. Adds that when medically necessary, the department may approve additional services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-86-073 Occupational therapy, 388-86-

090 Physical therapy, and 388-86-098 Speech therapy services.

Statutory Authority for Adoption: RCW 74.08.090.

Pursuant to notice filed as WSR 94-04-022 on January 25, 1994.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-86-098 (2)(c) adds that in schools, "a person who has completed the academic program and is acquiring supervised work experience to qualify for a certificate of clinical competence from the American speech, hearing and language association" may provide speech therapy. This change only affects schools.

Effective Date of Rule: Thirty-one days after filing.

March 9, 1994

Dewey Brock, Chief  
Office of Vendor Services

AMENDATORY SECTION (Amending Order 3679), filed 12/8/93, effective 1/8/94)

**WAC 388-86-073 Occupational therapy.** (1) The department shall pay for occupational therapy when the occupational therapy is provided:

- (a) By a licensed occupational therapist;
  - (b) By a licensed occupational therapy assistant supervised by a licensed occupational therapist; or
  - (c) In schools, by an occupational therapy aide trained and supervised by a licensed occupational therapist.
- (2) The department shall pay for occupational therapy:
- (a) Effective September 1, 1993, as part of an outpatient treatment program for adults and children;
  - (b) By a home health agency as described under WAC 388-86-045;
  - (c) As part of the physical medicine and rehabilitation program as described under WAC 388-86-112;
  - (d) In a neuromuscular center; or
  - (e) By a school district or educational service district as part of an individual education program or individualized family service plan as described under WAC 388-86-022.
- (3) The department shall not pay for occupational therapy when payment for occupational therapy is included as part of the reimbursement for other treatment programs including, but not limited to, hospital inpatient diagnosis related group services or nursing facility services.

(4) The department shall pay for the following occupational therapy services in a calendar year when the attending health professional determines the services are medically appropriate:

- (a) One occupational therapy assessment;
- (b) Two durable medical equipment needs assessments;
- (c) Twelve occupational therapy sessions; ~~(and)~~
- (d) ~~((A maximum of))~~ Twenty-four additional outpatient occupational therapy sessions if ~~((services are specifically identified in the medical assistance administration billing instructions and))~~ the diagnosis is associated with:
  - (i) A medically necessary condition for developmentally delayed clients;
  - (ii) Surgeries involving extremities:
    - (A) Fractures; or
    - (B) Open wounds with tendon involvement ~~((or~~ ~~(C) Dorsal rhizotomy))~~.
  - (iii) Intracranial injuries;

- (iv) Burns;
- (v) Traumatic injuries;
- (vi) Cerebral palsy;
- (vii) Downs Syndrome;
- (viii) Meningomyelocele;
- (ix) Severe oral/motor problems:
  - (A) Dyspraxia;
  - (B) Cleft palate and/or cleft lip; or
  - (C) That interfere with adequate nutrition.
- (x) Symptoms involving nervous and musculoskeletal systems:
  - (A) Abnormality of gait; or
  - (B) Lack of coordination; or
  - (xi) Post-completed/approved inpatient physical medicine and rehabilitation program when the client no longer needs nursing services, but continues to require specialized outpatient therapy.

(e) Additional one hundred twenty-four outpatient occupational therapy sessions if the condition is post-surgery diplegic/congenital diplegia; and

(f) Additional sessions when requested and approved through department of health's children with special health care needs program;

(g) Subject to department approval, additional occupational therapy services regardless of diagnosis when such services are medically necessary.

(5) For the purposes of this section, a "session" means not less than fifteen minutes and up to one hour of therapy in one day.

(6) The department shall pay for occupational therapy provided to a client eligible under the:

- (a) Categorically needy, children's health, general assistance unemployable and ADATSA programs;
- (b) Medically needy program only when the client is:
  - (i) Twenty years of age or younger and referred by a screening provider under the early and periodic screening, diagnosis and treatment program/healthy kids program as described under WAC 388-86-027; or
  - (ii) Receiving home health care services as described under WAC 388-86-045.

(c) Medically indigent program as part of the treatment program under home health care services as described under WAC 388-86-045

(7) The department shall pay for occupational therapy provided to a client receiving services from a school district or educational service district as part of an individual education program or individualized family service plan as described under WAC 388-86-022.

AMENDATORY SECTION (Amending Order 3679, filed 12/8/93, effective 1/8/94)

**WAC 388-86-090 Physical therapy.** (1) The department shall pay for physical therapy as an outpatient service when:

- (a) The attending physician prescribes physical therapy;
- (b) A licensed physical therapist or physiatrist, a physical therapist assistant supervised by a licensed physical therapist, or, in schools, a physical therapy aide trained and supervised by a licensed physical therapist provides the treatment; and

(c) The therapy assists the client:

- (i) In avoiding hospitalization or nursing facility care; or
- (ii) In becoming employable; or
- (iii) Who suffers from severe motor disabilities to obtain a greater degree of self-care or independence; or
- (iv) As part of a treatment program intended to restore normal function of a body part following injury, surgery, or prolonged immobilization.

(2) The department shall pay for the following physical therapy services in a calendar year when the attending health professional determines the services are medically appropriate:

- (a) One medical diagnostic evaluation;
- (b) Twelve physical therapy sessions; and
- (c) ~~((A maximum of))~~ Twenty-four additional outpatient sessions, when the services are ((specifically identified in the medical assistance administration billing instructions and are)) for:

(i) Post-completed/approved inpatient physical medicine and rehabilitation program when the client no longer needs nursing services but continues to require specialized outpatient therapy; or

(ii) Medically necessary conditions for developmentally delayed clients;

(iii) Surgeries involving extremities:

- (A) Fractures;
- (B) Open wounds with tendon involvement(~~(+ or~~
- ~~(C) Dorsal rhizotomy))~~.

(iv) Intracranial injuries;

(v) Burns;

(vi) Cerebral palsy;

(vii) Downs Syndrome;

(viii) Meningocele;

(ix) Traumatic injuries; or

(x) Symptoms involving nervous and musculoskeletal systems(~~(+ or~~

~~(A))~~ with abnormality of gait(~~(+ or~~

~~((B))~~ lack of coordination.

(d) Additional sessions when requested and approved through department of health's children with special health care needs program;

(e) Additional one hundred twenty-four outpatient physical therapy sessions if the condition is post-surgery diplegic/congenital diplegia; and

(f) Subject to department approval, additional physical therapy services regardless of diagnosis when such services are medically necessary.

(3) For the purposes of this section, "session" means not less than fifteen minutes and up to one hour of therapy in one day.

(4) The department shall not pay for physical therapy when payment for physical therapy is included as part of the reimbursement for other treatment programs including, but not limited to, hospital inpatient diagnosis related group services and nursing facility services.

(5) The department shall pay for outpatient physical therapy for a client eligible under the:

(a) Categorically needy, children's health, general assistance unemployable and ADATSA programs;

(b) Medically needy program only when the client is:

(i) Twenty years of age or under and referred by a screening provider under the early and periodic screening,

diagnosis, and treatment program/healthy kids program as described under WAC 388-86-027; or

(ii) Receiving home health care services as described under WAC 388-86-045.

(c) Medically indigent program when receiving home health care services as described under WAC 388-86-045.

(6) The department shall pay for outpatient physical therapy for a client receiving services provided by a school district or educational service district as part of an individual education program or individualized family service plan as described under WAC 388-86-022.

AMENDATORY SECTION (Amending Order 3679, filed 12/8/93, effective 1/8/94)

**WAC 388-86-098 Speech therapy services.** (1) The department shall pay for speech therapy for conditions which are the result of medically recognized diseases and defects.

(2) The department shall pay for speech therapy when the services are provided:

(a) By a speech pathologist or audiologist who has been granted a certificate of clinical competence by the American Speech, Hearing and Language Association;

(b) By a person who completed the equivalent educational and work experience necessary for such a certificate; or

(c) In schools as described under WAC 388-86-022, by a person:

(i) Who has completed the academic program and is acquiring supervised work experience to qualify for a certificate of clinical competence from the American speech, hearing and language association; or

(ii) Trained and supervised by a speech pathologist or audiologist who has been granted a certificate of clinical competence by the American speech, hearing and language association or a person who has completed the equivalent educational and work experience necessary for such a certificate.

(3) The department shall pay for the following speech therapy services in a calendar year when the health professional determines the services are medically appropriate:

(a) One medical diagnostic evaluation;

(b) Twelve speech therapy sessions; ~~((and))~~

(c) ~~((A maximum of))~~ Twenty-four additional speech therapy sessions if the speech therapy service is for:

(i) Medically necessary conditions for developmentally delayed clients;

(ii) Cerebral Palsy;

(iii) Severe oral/motor problems:

(A) Dyspraxia;

(B) Cleft palate and/or cleft lip; or

(C) That interfere with adequate nutrition.

(iv) Meningocele;

(v) Neurofibromatosis; ~~((or))~~

(vi) Downs Syndrome;

(vii) Traumatic head/brain injury (TBI);

(viii) Cerebral vascular accident (recent only) of dominant hemisphere; or

(ix) Post-completed/approved inpatient physical medicine and rehabilitation program when the client no longer

needs nursing, but continues to require specialized outpatient therapy.

(d) Subject to department approval, additional speech therapy services regardless of diagnosis when such services are medically necessary.

(4) The department shall not pay for speech therapy when the speech therapy payment is part of the reimbursement for another treatment program including, but not limited to:

(a) Hospital inpatient diagnosis related group services; and

(b) Nursing facility services.

(5) The department shall pay for speech therapy provided to a client eligible under the:

(a) Categorically needy, children's health, general assistance unemployable and ADATSA programs;

(b) Medically needy program only when the client is:

(i) Twenty years of age and under and referred by a screening provider under the early and periodic screening, diagnosis and treatment program/healthy kids program; or

(ii) Receiving home health care services as described under WAC 388-86-045.

(c) Medically indigent program when receiving home health care services as described under WAC 388-86-045.

(6) The department shall pay for speech therapy provided to a client receiving medical services from a school district or educational service district as part of an individual education program or individualized family service plan as described under WAC 388-86-022.

**WSR 94-07-033  
PERMANENT RULES  
GROWTH PLANNING  
HEARINGS BOARDS**

[Filed March 9, 1994, 10:45 a.m.]

Date of Adoption: February 24, 1994.

Purpose: To amend the rules of practice and procedure, chapter 242-02 WAC, first adopted on an emergency basis on June 16, 1992, and on a permanent basis on October 15, 1992.

Citation of Existing Rules Affected by this Order: Amending chapter 242-02 WAC, WAC 242-02-040, 242-02-052, 242-02-072, 242-02-110, 242-02-140, 242-02-210, 242-02-220, 242-02-240, 242-02-250, 242-02-270, 242-02-280, 242-02-310, 242-02-320, 242-02-330, 242-02-340, 242-02-410, 242-02-440, 242-02-510, 242-02-522, 242-02-530, 242-02-540, 242-02-550, 242-02-554, 242-02-558, 242-02-570, 242-02-580, 242-02-620, 242-02-680, 242-02-830, 242-02-850, 242-02-880, 242-02-910, 242-02-920, and 242-04-050.

Statutory Authority for Adoption: RCW 36.70A.270(6).

Pursuant to notice filed as WSR 94-01-097 on December 15, 1993.

Effective Date of Rule: Thirty-one days after filing.

February 24, 1994  
M. Peter Phillely  
Rules Coordinator  
and Board Member

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-040 Definitions.** As used in this title, the following terms shall have the following meaning:

(1) "Act" means chapter 17, Laws of 1990 1st ex. sess. and chapter 32, Laws of 1991 sp. sess., and subsequent amendments.

(2) "Board" means the Eastern Washington, Western Washington or Central Puget Sound growth planning hearings board.

(3) "Hearing examiner" means an authorized agent of a board who has a demonstrated knowledge of land use planning and law, appointed to assist the board in the performance of its hearing function.

(4) "Joint boards" means the three independent boards meeting or acting jointly.

(5) "Party" means any person named in the caption of a case before a board.

(6) "Person" means any individual, partnership, corporation, association, governmental subdivision or unit, or public or private organization or entity of any character.

~~((6))~~ (7) "Petitioner" means a person ~~(, natural or otherwise,)~~ who appeals any matter ~~((to the board))~~ or who brings a petition for rule making to the board. A petitioner is a party to a case before the board.

~~((7))~~ (8) "Presiding officer" means any member of a board, or a hearing examiner, who is assigned to conduct a conference or hearing as directed by a board. The presiding officer shall have authority as provided by WAC 242-02-522.

~~((8))~~ (9) "Publication" means:

(a) For a city, the date the city publishes the ordinance or summary of the ordinance adopting a comprehensive plan, development regulations or subsequent amendment, as is required to be published;

(b) For a county, the date the county publishes the notice that it has adopted a comprehensive plan, development regulations or other enactments, or subsequent amendments pursuant to RCW 36.70A.290(2);

(c) The filing of a certificate with the secretary of state pursuant to RCW 43.62.035 showing the office of financial management's determination of population.

~~((9))~~ (10) "Respondent" means a person who is named as a responding party in any petition for review before a board.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-052 Petition for rule making.** (1) Right to petition for rule making. Any person may petition the joint boards for the adoption, amendment, or repeal of any rule. Said petition shall be filed with the Central Puget Sound board's office in Seattle, Washington.

(2) Form of petition. The form of the petition for adoption, amendment, or repeal of any rule shall generally adhere to the following:

(a) A caption in the following form:

PERMANENT

BEFORE THE JOINT GROWTH PLANNING  
HEARINGS BOARDS  
STATE OF WASHINGTON

No.

In the matter of  
the Petition of PETITION FOR RULE MAKING  
(Name of Petitioner)  
for Rule Making

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

(c) The petition shall be dated and signed by the ~~((person))~~ party named in the first paragraph or by the petitioner's attorney or other authorized representative. The original and nine copies shall be filed with the Central Puget Sound board at its office in Seattle, Washington.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-072 Principal offices.** The principal offices of each board are as follows:

- (1) Eastern Washington Growth Planning Hearings Board  
Suite ~~((118))~~ 818 Larson Building  
6 South 2nd Street  
Yakima, Washington 98901  
(509) 454-7803  
(509) 454-7292 FAX
- (2) Western Washington Growth Planning Hearings Board  
111 ~~((W-))~~ West 21st Avenue ~~((-))~~, Suite 1  
P.O. Box 40953  
Olympia, Washington 98504-0953  
(206) 664-8966  
(206) 664-8975 FAX
- (3) Central Puget Sound Growth Planning Hearings Board  
2329 One Union Square  
600 University Street  
Seattle, Washington 98101-1129  
(206) 389-2625  
(206) 389-2588 FAX

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-110 Appearance and practice before a board—Who may appear.** Practice before a board in hearings shall be open to the following persons who have met the standing requirements of chapter 36.70A RCW:

(1) A party to a case before the board may participate personally or, if the party is a corporation, organization, informal association, or other artificial person, by a duly authorized representative;

(2) Whether or not participating ~~((in person))~~ individually, any ~~((party))~~ person may be advised and represented at ~~((the party's))~~ one's own expense by an attorney or, if permitted by provision of law, other representative;

(3) Attorneys at law practicing before the board must be duly qualified and entitled to practice in the courts of the state of Washington; and

(4) Other persons permitted by law.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-140 Signing of pleadings, motions, and legal memoranda.** Every pleading, motion~~((s))~~ and legal memorandum of a party shall be dated and signed by the party ~~((or))~~, or the party's attorney or other authorized representative and include an address and telephone and FAX numbers.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-210 Petition for review—Forms—Contents.** A petition for review shall substantially contain:

(1) A caption in the following form:

BEFORE THE . . . . GROWTH PLANNING  
HEARINGS BOARD  
STATE OF WASHINGTON

Petitioner, Case No.

v.

Respondent. PETITION FOR REVIEW

(2) Numbered paragraphs stating:

(a) Petitioner's name, mailing address~~((s))~~ and telephone number and ~~((that))~~ those of the attorney or other authorized representative, if any;

(b) Date of the order, determination, publication, action~~((s))~~ or failure to act from which the appeal is taken;

(c) A detailed statement of issues presented for resolution by the board;

(d) A statement indicating the basis of the petitioner's standing before the board;

(e) The estimated length of the hearing;

(f) The relief sought, including the specific nature and extent;

(g) A statement that the petitioner has read the petition for review and believes the contents to be true, followed by the petitioner's signature or signature of ~~((his/her))~~ the attorney~~((s))~~ or ~~((qualified))~~ other authorized representative~~((s))~~, if any.

PERMANENT

(3) One copy of the document being appealed, if applicable, may be attached to the petition for review.

**AMENDATORY SECTION** (Amending WSR 93-11-068, filed 5/17/93, effective 6/17/93)

**WAC 242-02-220 Petition for review—Time for filing.** (1) A petition relating to whether or not an adopted comprehensive plan, development regulation, or subsequent amendments, is in compliance with the goals and requirements of the act shall be filed with a board within sixty days from the date of publication by the legislative body of the county or city as specified by RCW 36.70A.290(2).

(2) A petition relating to an adopted county-wide planning policy shall be filed within sixty days of its adoption as specified in RCW 36.70A.210(6).

(3) For all other matters, a petition must be filed with a board within sixty days of the final written decision, order, determination, publication, or action being entered.

(4) A petition relating to the failure of a state agency, city or county to take an action by a deadline specified in the act may be brought at any time after the deadline for action has passed.

**AMENDATORY SECTION** (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-240 Date of filing—Facsimile and telegraph.** (1) The date of filing shall be the date of actual receipt by a board at its office. The date stamp placed on the petition shall be presumptive evidence of the date of receipt.

(2) Filing of any documents with a board by electronic telefacsimile transmission is at the risk of the sender and shall not be deemed complete unless the following procedures are strictly observed:

(a) A facsimile document will only be stamped "received" by the board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped received on the following business day. The date and time indicated by the board's facsimile machine shall be presumptive evidence of the date and time of receipt of transmission.

(b) The original document and three copies must be ((filed with)) mailed or otherwise transmitted to the board within ((ten days from the date of)) twenty-four hours of sending the facsimile transmission.

(c) Documents over fifteen pages in length may not be filed by FAX without prior approval of the presiding officer.

(3) A FAX copy shall constitute an original solely for the purpose of establishing the date a document was filed.

**AMENDATORY SECTION** (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-250 Notice of appearance, answer and petition for cross review.** (1) The respondent~~((s representative))~~ shall file a notice of appearance with the board and serve a copy on the petitioner and all other parties promptly after having been served with a petition for review. The notice of appearance shall be dated, signed~~((s))~~ and contain

the ~~((representative's))~~ respondent's address and telephone and FAX numbers.

(2) The respondent, at its option, may file an answer to the petition for review. The respondent shall file the original and three copies with the board and serve a copy on the petitioner. Answers shall be filed no later than twenty days from the date of service of the petition for review. Answers shall be verified in the same manner as the petition for review.

(3) A respondent may file a petition for cross review. The respondent shall file the original and three copies with the board and serve a copy on all other parties within thirty days after the service of the petition for review or any amendment to the petition. The petition for cross review shall conform in all respects to the requirements for a petition for review.

**AMENDATORY SECTION** (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-270 Intervention.** (1) Any person whose interest may be substantially affected by a proceeding before a board may by motion request status as an intervenor in the case.

(2) In determining whether a person qualifies as an intervenor, the presiding officer shall apply the applicable superior court civil rules (CR) of ~~((the superior courts of))~~ this state.

(3) If the person qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the motion;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(4) The presiding officer shall timely grant or deny each motion and specify conditions, if any.

**AMENDATORY SECTION** (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-280 Amicus.** (1) Any person whose interest may be substantially affected by a proceeding before a board may by motion request status as an amicus in the case.

(2) In determining whether a person qualifies as an amicus, the presiding officer shall apply the applicable rules of ((the)) appellate procedure (RAP) of the appellate courts of this state.

(3) If the person qualifies for amicus, the presiding officer may impose conditions upon the amicus's participation in the proceedings, either at the time that amicus status is granted or at any subsequent time.

**AMENDATORY SECTION** (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-310 Service of papers.** (1) Parties filing pleadings, documents, exhibits(;;) and other papers with a board shall also promptly serve copies upon all (~~attorneys or representatives of record and upon~~) other parties (~~not represented~~).

(2) Service upon ~~(the)~~ a party's attorney or other authorized representative shall be considered valid service for all purposes upon the party represented.

(3) Decisions or orders of the board shall be served upon the parties (~~and~~) or their attorney or representative of record, if any.

**AMENDATORY SECTION** (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-320 Method of service.** Service of papers, specified in WAC 242-02-310(1) (~~except original service~~), shall be made personally or by first class, registered(;;) or certified mail, or by telegraph(;;) or by facsimile transmission.

**AMENDATORY SECTION** (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-330 Service of papers—When complete.** (1) Papers required to be filed with a board shall be deemed filed upon actual receipt during office hours at the board's office.

(2) All facsimile transmissions are sent at the risk of the sender and only pursuant to the procedures specified in WAC 242-02-240. (~~Service by facsimile shall be deemed complete only when the following procedure is observed:~~

~~(a) The original document must be filed with a board within ten days from the date of transmission.~~

~~(b) Facsimile confirmation of transmission.)~~

(3) This section shall not extend any applicable time for appeal to a board nor extend the time for providing notice of appeal to any named party.

**AMENDATORY SECTION** (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-340 Proof of service—Certificate.** Where proof of service is required by this chapter, by statute, or upon a board's request, filing (~~a copy of the papers~~) the original document with the board and serving copies upon all attorneys or other authorized representatives of record and upon parties not represented together with one of the following documents shall constitute proof of service:

(1) An acknowledgement of service;

(2) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon (~~all parties or~~) each party or the party's attorney or other authorized representative(~~s~~) of record in the proceeding by delivering a copy thereof in person to the named individuals;

(3) 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 case by:

(a) Mailing a copy, properly addressed with postage prepaid, to each party (~~in the case or his/her~~) or that

party's attorney(;;) or other authorized (~~agent, or~~) representative; or

(b) Telegraphing a copy, properly addressed with charges prepaid, to each party in the case or (~~his/her~~) that party's attorney, or other authorized (~~agent, or~~) representative; or

(c) Transmitting a copy by electronic telefacsimile device, and on the same day mailing a copy to each party in the case or (~~his/her~~) that party's attorney, or other authorized (~~agent, or~~) representative; or

(d) Depositing a copy, properly addressed with charges prepaid, with a commercial parcel delivery company or courier service.

**AMENDATORY SECTION** (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-410 Discovery—Limitation.** (1) Discovery shall not be permitted (~~unless all parties stipulate to it or~~) except upon an order of a board or its presiding officer.

(2) Insofar as applicable and not in conflict with this chapter, when discovery has been authorized by a board or presiding officer (~~or when the parties have stipulated to it~~), the statutes and court rules regarding pretrial procedures in civil cases in superior courts of the state of Washington shall be used. Such statutes and rules shall include but shall not be limited to those rules pertaining to discovery of evidence by parties to civil actions.

~~((3) All stipulations by the parties allowing discovery must be in writing, shall contain deadlines for the completion of discovery and shall be filed with the board.))~~

**AMENDATORY SECTION** (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-440 Subpoena—Service.** Service shall be made by delivering a copy of the subpoena to such person and tendering on demand, where the person is entitled to make a demand, the fees for one day's attendance and the mileage allowed by law. All costs, which include the cost of producing records, shall be paid by the party requesting issuance of the subpoena. A subpoena may be served by any suitable person at least eighteen years of age, by exhibiting and reading it to the witness or keeper of the records, or by giving (~~him or her~~) that person a copy or by leaving (~~such~~) a copy at (~~his/her~~) that person's office or place of residence.

**AMENDATORY SECTION** (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-510 Hearing—Setting of time and place.** (1) Within ten days of the filing of a petition for review, a board or presiding officer will schedule a hearing date and notify the parties of the date.

(2) The board or presiding officer will thereafter schedule a place for the hearing.

(3) A written notice of the date and location of the hearing shall be sent to all parties not less than twenty days prior to the hearing date.

(4) The notice shall identify the appeal to be heard, the names of the parties to the appeal and their attorneys or

other authorized representatives, if any, and shall specify the time and place of hearing. The notice shall include the information specified in RCW 34.05.434 and if the hearing is to be conducted by teleconference call the notice shall so state.

(5) The notice shall state that if a limited-English-speaking or hearing impaired party or witness needs an interpreter, a qualified interpreter will be appointed and that there will be no cost to the party or witness. The notice shall include a form for a party to indicate if an interpreter is needed and identification of the primary language, or if a participant is hearing impaired.

(6) The notice may also include an order fixing the prehearing date and/or deadlines as provided in these rules.

(7) Defects in notice may be waived if the waiver is knowing and voluntary.

**AMENDATORY SECTION** (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-522 Presiding officer—Powers and duties.** It shall be the duty of the presiding officer to conduct conferences or hearings as directed by a board in an impartial and orderly manner. The presiding officer shall have the authority, subject to the other provisions of the act or these rules to:

(1) Inspect the petition for review to determine whether, on its face, compliance with the jurisdictional and standing requirements of the act is shown, and if compliance is not shown, to recommend an action or to refer the issue to the full board for resolution;

(2) Take appropriate action with respect to the qualifications of the parties or the parties' attorney(s) or other authorized representative(s) to appear before a board;

(3) Administer oaths and affirmations if witnesses are permitted to testify;

~~((3))~~ (4) Issue subpoenas as provided in RCW 34.05.446;

~~((4))~~ (5) Rule on all procedural matters, objections~~((;))~~ and motions unless a board determination is required;

~~((5))~~ (6) Rule on all evidentiary matters including offers of proof ~~((and receive relevant evidence));~~

~~((6))~~ (7) When applicable, question witnesses called by the parties in an impartial manner as needed to develop any facts ~~((he or she deems))~~ deemed necessary to fairly and adequately decide the issue;

~~((7))~~ Secure and present in an impartial manner such evidence, in addition to that presented by the parties, as deemed necessary to fairly and equitably decide the issue;

~~((8))~~ Take appropriate action with respect to the representatives for the parties appearing before a board;

~~((9))~~ (8) Issue orders joining other parties, on motion of any party ~~((or on his/her own motion))~~, when it appears that such other parties may have an interest in, or may be affected by~~((;))~~ the case;

~~((10))~~ (9) Consolidate cases for hearing when such consolidation will expedite disposition and avoid duplication of testimony and when consolidation will not unduly prejudice the rights of any party;

~~((11))~~ (10) Hold conferences for the settlement or amplification of the issues;

~~((12))~~ (11) Regulate the course of the case prior to and during the hearing;

~~((13))~~ (12) Encourage the parties to stipulate to the admissibility of documents in advance of a hearing and to rule on issues concerning the content of the record;

~~((14))~~ (13) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver; and

~~((15))~~ (14) Take any other action necessary and authorized by these rules or the act.

**AMENDATORY SECTION** (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-530 Motions—Requirements.** (1) A motion is an application for an order or ruling. Every motion shall be in writing, unless made during a hearing; shall state with particularity the grounds; and shall set forth the relief or order sought. An original and three copies of the motion shall be filed with a board and a copy served on ~~((the))~~ each opposing party~~((parties))~~ or that party's attorney or other authorized representative.

(2) All motions shall be properly captioned and signed by the moving party~~((its))~~ or that party's attorney~~((;))~~ or other authorized representative.

(3) The motion shall specify the amount of time required for argument, whether appearance by telecommunication is requested, and the names and telephone numbers of all parties served with the motion.

(4) Dispositive motions on a limited record, similar to a motion for summary judgment in superior court or a motion on the merits in the appellate courts, are permitted. Time frames for making and responding to such a motion shall be established by the presiding officer.

**AMENDATORY SECTION** (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-540 New or supplemental evidence.** Generally, a board will review only the record developed by the city, county, or state in taking the action that is the subject of review by the board. A party by motion may request that a board allow such additional evidence as would be necessary or of substantial assistance to the board in reaching its decision, and shall state its reasons. A board may at any time prior to, during, or after the hearing order that new or supplemental evidence be provided.

**AMENDATORY SECTION** (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-550 Prehearing conference.** A prehearing conference is optional at the discretion of the presiding officer. The purpose of a prehearing conference is to:

(1) Determine the feasibility of and encourage settlement of the matter or any portion thereof;

(2) Obtain a stipulation of relevant facts ~~((to show))~~ including a board's jurisdiction and the party's standing in the matter;

(3) Obtain agreement as to the issues of law and fact presented and their simplification, limitation, or resolution;

(4) ~~(Determine the possibility of obtaining admissions of fact and authenticity of documents which will avoid unnecessary proof;~~

~~(5))~~ Determine the authenticity and admissibility of exhibits;

~~((6))~~ (5) Determine the qualifications of expert witnesses, if they are permitted to testify;

~~((7))~~ (6) Receive any motions concerning qualification of individual board members to hear the matter;

~~((8))~~ Obtain stipulation as to all or a part of the facts or documents involved in the case;

~~(9))~~ (7) Obtain information as to the number of expert and/or lay witnesses expected to be called by the parties and their names, addresses~~(;)~~ and telephone numbers, if the board has previously authorized supplemental or additional evidence to be presented at the hearing;

~~((10))~~ (8) Set subsequent deadlines, if and when appropriate, for filing final exhibit and witness lists, filing motions, and completing discovery; establish a briefing schedule, limit the length of briefs; and decide other matters related to the conduct of the hearing;

~~((11))~~ (9) Determine the approximate time necessary for the presentation of evidence and/or argument of the respective parties; and

~~((12))~~ (10) Obtain all other information which may aid in the prompt disposition of the matter.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-554 Prehearing conference—Documentary evidence.** (1) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of the Administrative Procedure Act and WAC 242-02-650.

(2) Where applicable, the presiding officer may order:

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

(b) That documentary evidence not submitted as required in (a) of this subsection not be received in evidence in the absence of a clear showing that the offering party had good cause for the failure to produce the evidence sooner, unless it is submitted for impeachment or rebuttal purposes~~(;)~~;

(c) That ~~((the authenticity of))~~ all documents so presented and examined be deemed ~~((admitted))~~ authentic unless written objection is filed within fourteen days after receipt. A party will be permitted to challenge such authenticity at a later time only upon a clear showing of good cause for failure to have filed such written objection.

(3) The presiding officer may limit the documentary evidence to that identified on a final list of exhibits. A party may submit additional documentary evidence at the time of hearing only upon a showing of good cause.

(4) When only portions of a document are to be relied upon, the offering party shall adequately identify and prepare the pertinent excerpts and shall supply copies of such excerpts to the presiding officer and to the other parties. However, the whole of the original document shall be made

available for examination and for use by all parties to the proceeding.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-558 Prehearing conference—Agreements.** At the conclusion of a prehearing conference, the presiding officer may require the parties to submit a proposed prehearing order. The presiding officer will issue an order reciting the action taken at the conference and any agreements of the parties or decisions of the presiding officer. The order may include provisions pertaining to:

(1) Jurisdiction and standing;

(2) Issues;

(3) Admissions;

(4) Witnesses, if permitted;

(5) Time ~~((and))~~, location and length of hearings;

(6) Authenticity and/or admissibility of exhibits;

(7) Qualification of witnesses, if permitted;

(8) ~~((Issues remaining;~~

~~(9))~~ Rulings of the board prior to the prehearing conference;

~~((10))~~ (9) Rulings of the presiding officer; and

~~((11))~~ (10) Any other matters that may expedite the hearing. Any objection to such order shall be made in writing within seven days after the date the order is ~~((mailed))~~ dated. A board shall serve its prehearing order on the same day that the order is dated. The order shall control ~~((subsequent))~~ ensuing proceedings unless modified for good cause by a subsequent order.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-570 Briefs.** ~~((A party may, at its own option or when directed by a board or presiding officer, submit a brief on one or more issues.))~~ (1) A petitioner, or a moving party when a motion has been filed, shall submit a brief on each legal issue it expects a board to determine. Failure by such a party to brief an issue shall constitute abandonment of the unbrieffed issue. Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order.

(2) The original and three copies of briefs shall be filed with a board at least five business days prior to the hearing unless otherwise provided by a board or presiding officer. When briefs are filed, a copy shall also be served on all other parties. A board or presiding officer may permit or require the filing of additional briefs.

(3) Clarity and brevity are expected~~(;)~~ to assist a board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-580 Stipulation to the facts.** ~~((Upon stipulation by all parties, or upon order of a board, that no facts are at issue, a matter may be submitted to a board or presiding officer for determination without additional testimony being taken. The board or presiding officer, in its~~

~~discretion, may require additional testimony-))~~ Parties are encouraged to stipulate to any undisputed facts.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-620 Hearing—Reporting—Recording—Recording devices.** (1) All hearings shall be officially recorded by manual, electronic, or other type of recording device.

(2) Photographic and recording equipment of others shall be permitted at hearings; however, the presiding officer may impose such conditions upon their use as deemed necessary to prevent disruption of the hearing, or when a statute or common law limits such use.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-680 Hearings—Board questions.** A hearing examiner or any member of a board may, at any time during the hearing, ask clarifying questions as necessary to understand the evidence or argument.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-830 Disposition of petition for review—Final decision and order.** (1) When the hearing on the petition for review has been heard by a majority of a board, a written final decision and order containing appropriate findings and conclusions, that is concurred in by at least two members, may be issued.

(2) After issuance of a final decision under this section, any party may file a petition for reconsideration with a board. Such petition must be filed within ten days of ~~((mailing))~~ service of the final decision. The original and three copies of the petition for reconsideration shall be filed with the board. At the same time, copies shall be served on all parties of record. A board may require other parties to supply an answer which shall be served in a like manner.

(3) The filing of a petition for reconsideration shall suspend the final decision of a board until the petition is denied or a modified decision is entered by the board.

(4) In response to a petition for reconsideration, the board may deny the petition, modify its decision, or reopen the hearing. A petition is deemed denied unless the board takes action within twenty days of filing of the petition or answer where a board has required other parties to provide such an answer pursuant to subsection (2) of this section.

(5) A decision in response to the petition for reconsideration shall constitute a final decision and order for purposes of judicial review. Copies of the final decision and order shall be ~~((mailed))~~ served by the board ~~((to))~~ on each party or ~~((to its))~~ the party's attorney or other authorized representative of record.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-850 Disposition of initial decision—Exceptions.** (1) Time for filing. Within ten days from the date of ~~((mailing))~~ service of the initial decision and order, any party may file with a board an original and three copies

of a written statement of exceptions and shall serve a copy on all other parties.

(2) The statement shall set forth the grounds for exception in detail and the party or parties filing the same shall be deemed to have waived all objections for irregularities not specifically set forth. A general exception to findings of fact on the ground that the weight of evidence is to the contrary shall not be considered sufficient compliance with this requirement, unless the exception shall refer to the evidence relied upon. If legal issues are involved, the statement of exception shall set forth the legal theory relied upon, citations of authority and supporting argument. The statement of exceptions should also contain proposed findings of fact or conclusions ~~((of law))~~ as appropriate, covering the factual and legal issues to which exceptions are being taken.

(3) Reply to exceptions. Any party may, within ten days of service, submit a written reply to exceptions. A board may, on its own motion, require the parties to submit written briefs or to appear and present oral argument regarding the matters on which exceptions were taken.

(4) Exceptions to rulings. If an exception is taken to a ruling or rulings of a presiding officer sustaining an objection to admissibility of evidence, or denying a continuance for the presentation of further evidence, and a board determines that the ruling or rulings were erroneous, the board may:

(a) Return the case to the presiding officer with appropriate instructions~~((;))~~; or

(b) Open the matter for further argument and decision by the board itself.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-880 Disposition of petition for review—Transcripts.** The following shall be the policy of each board with regard to transcription of the record:

(1) ~~((If less than two members of a board are present at the hearing and if exceptions to the proposed decision and order of the board or presiding officer have been timely filed as provided by WAC 242-02-850, the board may order a transcript or copy of an electronic recording. Any party may obtain a copy upon payment of the reasonable costs thereof.~~

~~((2)))~~ (2)) A board, in its discretion, may at any time cause a transcript to be printed. Any person may obtain a copy upon payment of the reasonable costs thereof.

~~((3)))~~ (2) In any case when a board shall not cause the transcript to be printed, it shall be the obligation of the party wishing a transcript, or portions of it, to assume the cost of producing the same.

~~((4)))~~ (3) When an appeal is taken from any final decision and order of a board to the Superior Court of Thurston County, the appealing party is responsible for ordering and paying for the transcript of the hearing.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-910 Petitions for declaratory ruling.** (1) Any person may petition a board for a declaratory ruling about the applicability to specific circumstances of a rule, order, or statute within a board's jurisdiction. The petition

shall set forth facts and reasons on which the petition relies to show:

- (a) That uncertainty necessitating resolution exists;
  - (b) That there is actual controversy arising from the uncertainty such that a declaratory ruling will not be merely an advisory opinion;
  - (c) That the uncertainty adversely affects the petitioner;
  - (d) That the adverse effect of (~~uncertainty~~) uncertainty outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and
  - (e) That the petition complies with any additional requirements established by the board.
- (2) Form of the petition. The form of the petition for declaratory ruling shall generally adhere to the following:
- (a) A caption in the following form:

BEFORE THE . . . . . GROWTH PLANNING  
HEARINGS BOARD  
STATE OF WASHINGTON  
  
No.

In the matter of  
the Petition of  
(name of Petitioner)  
for a Declaratory  
Ruling

PETITION FOR  
DECLARATORY RULING

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

(c) The original and three copies shall be filed with the board.

(3) Consideration of petition. A board shall consider the petition and within thirty days of its filing shall:

- (a) Issue a nonbinding declaratory ruling;
- (b) Notify the petitioner that no declaratory ruling is to be issued; or
- (c) Set a time and place for a hearing or for submission of written evidence on the matter, which shall occur within ninety days of the receipt of the petition, and give at least seven days notification to the petitioner of the time and place for such hearing or submission and of the issues involved.

(4) Disposition of petition. If the hearing is held or evidence is submitted as provided in subsection (3)(c) of this section, a board shall, within a reasonable time:

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

**AMENDATORY SECTION** (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-920 Declaratory ruling—Notice to other persons.** Within fifteen days after receipt of a petition for declaratory order, a board or presiding officer shall give

notice of the petition to all persons to whom notice is required by law, and may give notice to any other person it deems desirable. A board or presiding officer may elect to allow written or oral presentations from other interested persons.

**AMENDATORY SECTION** (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-04-050 Communications with each board or the joint boards.** (1) All communications with a board, including but not limited to the submission of materials pertaining to its operations and/or administration or enforcement of chapter 42.17 RCW and these rules, requests for copies of each board's decisions(;) and other matters, shall be addressed to the appropriate board's office as follows:

- (a) Eastern Washington Growth  
Planning Hearings Board  
Suite (~~(H18)~~) 818 Larson Building  
6 South 2nd Street  
Yakima, Washington 98901  
(509) 454-7803  
(509) 454-7292 FAX
- (b) Western Washington Growth  
Planning Hearings Board  
111 (~~(W-))~~ West 21st Avenue (--)<sub>2</sub> Suite 1  
P.O. Box 40953  
Olympia, Washington 98504-0953  
(206) 664-8966  
(206) 664-8975 FAX
- (c) Central Puget Sound Growth  
Planning Hearings Board  
2329 One Union Square  
600 University Street  
Seattle, Washington 98101-1129  
(206) 389-2625  
(206) 389-2588 FAX

(2) All communications with the joint boards, except a petition for rule making pursuant to WAC 242-02-052, shall be addressed in care of the Western Washington board.

**WSR 94-07-040**  
**PERMANENT RULES**  
**DEPARTMENT OF ECOLOGY**  
[Order 93-20—Filed March 9, 1994, 4:17 p.m.]

Date of Adoption: March 9, 1994.  
Purpose: Rescind the requirement to expand the oxygenated gasoline program.  
Citation of Existing Rules Affected by this Order: Amending WAC 173-492-070.  
Statutory Authority for Adoption: Chapter 70.94 RCW.  
Other Authority: 42 USC 7545 Sec. 211(m).  
Pursuant to notice filed as WSR 93-22-100 on November 3, 1993.  
Effective Date of Rule: Thirty-one days after filing.

March 9, 1994  
Mary Riveland  
Director

AMENDATORY SECTION (Amending Order 91-58, filed 11/30/92, effective 12/1/92)

**WAC 173-492-070 Control areas and control periods.** Beginning in 1992, the oxygenated gasoline requirements of this chapter shall apply to the following control areas during the following control periods:

| CONTROL AREA | COUNTIES                | CONTROL PERIOD |             |
|--------------|-------------------------|----------------|-------------|
|              |                         | BEGINNING      | ENDING      |
| Puget Sound  | King, Pierce, Snohomish | November 1     | February 29 |
| Southwest    | Clark                   | November 1     | February 29 |
| Spokane      | Spokane                 | September 1    | February 29 |

~~((Beginning November 1, 1994, the control areas shall expand, and the requirements of this chapter shall apply to the following control areas during the following control periods:~~

| CONTROL AREA | COUNTIES                                                   | CONTROL PERIOD |             |
|--------------|------------------------------------------------------------|----------------|-------------|
|              |                                                            | BEGINNING      | ENDING      |
| Puget Sound  | King, Kitsap, Pierce, Snohomish                            | November 1     | February 29 |
| Southwest    | Clark, Cowlitz, Lewis, Skamania, Wahkiakum                 | November 1     | February 29 |
| Northwest    | Island, Skagit, Whatcom, San Juan                          | November 1     | February 29 |
| Olympic      | Clallam, Grays Harbor, Jefferson, Mason, Pacific, Thurston | November 1     | February 29 |
| Spokane      | Spokane                                                    | September 1    | February 29 |

~~These oxygenated fuel requirements apply only to the counties on the above list.))~~

**WSR 94-07-043  
PERMANENT RULES  
BOARD OF TAX APPEALS**  
[Filed March 10, 1994, 11:21 a.m.]

Date of Adoption: March 10, 1994.

Purpose: To amend existing rules on election of formal or informal hearing to clarify procedures. To amend existing rules on date of filing an appeal to conform to statutory changes.

Citation of Existing Rules Affected by this Order: Amending WAC 456-10-010, 456-10-325, and 456-10-360.

Statutory Authority for Adoption: RCW 82.03.170.

Pursuant to notice filed as WSR 94-03-057 on January 13, 1994.

Effective Date of Rule: Thirty-one days after filing.

March 10, 1994

R. A. Virant  
Executive Director

AMENDATORY SECTION (Amending Order 89-03, filed 5/2/89)

**WAC 456-10-010 Formal, informal hearing—Distinction.** All persons appealing to the board of tax appeals may request that their appeal be heard either as a formal or informal hearing. Formal hearings are requested by parties wishing to carry the record of their appeals to court and are conducted pursuant to the Administrative Procedure Act. Judicial review of a board of tax appeals decision made in a formal hearing is limited to the record made of the proceedings before the board of tax appeals. All parties in formal hearings are normally represented by attorneys although taxpayers may represent themselves in such proceedings. A verbatim record is made of all formal hearings.

Informal hearings are requested by a majority of parties appearing before the board of tax appeals. Decisions entered in an informal appeal may not be appealed to court. Courts may have jurisdiction, however, to hear a timely filed action pursuant to RCW 82.32.180 or 84.68.020 (see RCW 82.03.180).

In all appeals over which the board has jurisdiction, a party taking an appeal may elect, with its notice of appeal, either a formal or informal hearing pursuant to RCW 82.03.140. Failure to elect a formal or informal hearing ~~((within the time provided by statute))~~ at the time of filing shall result in the proceeding being conducted as informal.

AMENDATORY SECTION (Amending WSR 90-11-106, filed 5/22/90, effective 6/22/90)

**WAC 456-10-325 Date of filing—Facsimile.** (1) Except as provided in subsection (3) of this section, the date of filing of a notice of appeal shall be the date of actual receipt by the board at its Olympia office if the appeal is to be hand delivered. The date stamp placed thereon shall be prima facie evidence of the date of receipt. If the filing of the notice of appeal is by mail, the postmark will control and shall be prima facie evidence of the date of filing.

(2) Except as provided in subsection (3) of this section, all documents may be filed with the board via facsimile machine. However, filing will not be deemed complete unless the following procedures are strictly observed:

(a) A facsimile document will only be stamped "received" by the board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped received on the following business day. The date and time indicated by the board's facsimile shall be prima facie evidence of the date and time of receipt of transmission.

(b) The original document must be filed with the board within ten days from the date of transmission.

(c) All transmissions are sent at the risk of the sender.

(3) In appeals pursuant to RCW 82.03.130(2) (appeal from board of equalization) the date of filing shall be the date of receipt by the county auditor or, in King County, the clerk of the county council if the appeal is to be hand delivered. The date stamp placed on the notice of appeal by the auditor or clerk shall be prima facie evidence of the date of receipt. If the filing of the notice of appeal is by mail,

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the postmark will control and shall be prima facie evidence of the date of filing.

**AMENDATORY SECTION** (Amending Order 91-02, filed 3/15/91, effective 4/15/91)

**WAC 456-10-360 Conversion of hearing.** (1) The ~~((assessor or taxpayer))~~ respondent, as a party to an appeal pursuant to RCW 84.08.130(2) (appeal from ~~((the))~~ board~~((s))~~ of equalization) may, within twenty days from the date of ~~((receipt))~~ mailing of the notice of appeal, file with the clerk of the board a notice of intention that the hearing be a formal hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

(2) In appeals under RCW 82.03.190 and 82.03.130(5), except as otherwise provided in this subsection and subsection (2) of this section, the department of revenue may, within thirty days of receipt of the notice of appeal, file with the board a notice of its intention that the hearing be held pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

(3) The parties may agree at any time before hearing, in writing, to convert the proceedings to either a formal or informal hearing.

**WSR 94-07-044**  
**PERMANENT RULES**  
**BOARD OF TAX APPEALS**  
[Filed March 10, 1994, 11:23 a.m.]

Date of Adoption: March 10, 1994.

Purpose: To amend existing rules on election of formal or informal hearing to clarify procedures. To amend existing rules on date of filing an appeal to conform to statutory changes.

Citation of Existing Rules Affected by this Order:  
Amending WAC 456-09-010, 456-09-325, and 456-09-365.

Statutory Authority for Adoption: RCW 82.03.170.

Pursuant to notice filed as WSR 94-03-056 on January 13, 1994.

Effective Date of Rule: Thirty-one days after filing.

March 10, 1994

R. A. Virant  
Executive Director

**AMENDATORY SECTION** (Amending Order 89-02, filed 5/2/89)

**WAC 456-09-010 Formal, informal hearing—Distinction.** All persons appealing to the board of tax appeals may request that their appeal be heard either as a formal or informal hearing. Formal hearings are requested by parties wishing to carry the record of their appeals to court and are conducted pursuant to the Administrative Procedure Act. Judicial review of a board decision made in a formal hearing is limited to the record made of the proceedings before the board of tax appeals. All parties in formal hearings are normally represented by attorneys although taxpayers may represent themselves in such proceedings. A verbatim record is made of all formal hearings.

Informal hearings are requested by a majority of parties appearing before the board of tax appeals. Decisions entered in an informal appeal may not be appealed to court. Courts may have jurisdiction, however, to hear a timely filed action pursuant to RCW 82.32.180 or 84.68.020 (see RCW 82.03.180).

In all appeals over which the board has jurisdiction, a party taking an appeal may elect, with its notice of appeal, either a formal or informal hearing pursuant to RCW 82.03.140. Failure to elect a formal or informal hearing ~~((within the time provided by statute))~~ at the time of filing shall result in the proceeding being conducted as informal.

**AMENDATORY SECTION** (Amending Order 91-01, filed 3/15/91, effective 4/15/91)

**WAC 456-09-325 Date of filing—Facsimile.** (1) Except as provided in subsection (3) of this section, the date of filing of a notice of appeal shall be the date of actual receipt by the board at its Olympia office if the appeal is to be hand delivered. The board's date stamp placed thereon shall be prima facie evidence of the date of receipt. If the filing of the notice of appeal is by mail, the postmark will control and shall be prima facie evidence of the date of filing.

(2) Except as provided in subsection (3) of this section, all documents may be filed with the board via facsimile machine. However, filing will not be deemed complete unless the following procedures are strictly observed:

(a) A facsimile document will only be stamped "received" by the board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped received on the following business day. The date and time indicated by the board's facsimile shall be prima facie evidence of the date and time of receipt of transmission.

(b) The original document must be filed with the board within ten days from the date of transmission.

(c) All transmissions are sent at the risk of the sender.

(3) In appeals pursuant to RCW 82.03.130(2) (appeal from board of equalization) the date of filing shall be the date of receipt by the county auditor or, in King County, the clerk of the county council if the appeal is to be hand delivered. The date stamp placed on the notice of appeal by the auditor or clerk shall be prima facie evidence of the date of receipt. If the filing of the notice of appeal is by mail, the postmark will control and shall be prima facie evidence of the date of filing.

**AMENDATORY SECTION** (Amending Order 91-01, filed 3/15/91, effective 4/15/91)

**WAC 456-09-365 Conversion of hearing.** (1) The ~~((assessor or taxpayer))~~ respondent, as a party to an appeal pursuant to RCW 84.08.130(2) (appeal~~((s))~~ from ~~((the))~~ board of equalization) may, within twenty days from the date of ~~((receipt))~~ mailing of the notice of appeal, file with the clerk of the board a notice of intention that the hearing be a formal hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

(2) In appeals under RCW 82.03.190 and 82.03.130(5), except as otherwise provided in this subsection and subsec-

tion (2) of this section, the department of revenue may, within thirty days of receipt of the notice of appeal, file with the board a notice of its intention that the hearing be held pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

(3) The parties may agree at any time before hearing, in writing, to convert the proceedings to either a formal or informal hearing.

**WSR 94-07-045**  
**PERMANENT RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Order R-409, Docket No. UE-931302—Filed March 10, 1994, 1:05 p.m.]

In the matter of amending WAC 480-107-020, 480-107-050, 480-107-060, 480-107-070, 480-107-080, 480-107-100, and 480-107-120 relating to purchases of electricity from qualifying facilities and independent power producers and purchases of electrical savings from conservation suppliers.

The Washington Utilities and Transportation Commission takes this action under Notice No. WSR 94-01-175, filed with the code reviser on December 21, 1993. The commission brings this proceeding pursuant to RCW 80.01.040.

This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

The rule change proposal would affect the commission's competitive bidding rules regarding electric utility companies' purchase of resources. It would allow price negotiation during the bid review process, clarify requirements for purchasing from qualifying facilities rated at one megawatt or less, rerank proposals subject to material changes in bids, and require retention of all RFP documents for seven years or until the utility's next general rate case.

The commission scheduled this matter for oral comment and adoption under Notice No. WSR 94-01-175, for 9:00 a.m., Wednesday, February 9, 1994, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission until January 19, 1994.

Written comments were presented by public counsel, Washington Water Power, PacifiCorp, Recomp of Washington, Puget Power and by the commission staff.

The rule change proposal was considered for adoption at the commission's regularly scheduled open public meeting on February 9, 1994, before Chairman Sharon L. Nelson and Commissioner Richard Hemstad. Oral comments were made by commission staff, Pacific Power and Light, Puget Power and public counsel. After considering the written and oral comment, the commission adopted the rule with an amendment to WAC 480-107-060, adding a means for interested persons to request notices of RFPs.

In reviewing the entire record, the commission determines that WAC 480-107-020, 480-107-050, 480-107-060,

480-107-070, 480-107-080, 480-107-100, and 480-107-120 should be amended to read as set forth in Appendix A, as a rule of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380.

**ORDER**

THE COMMISSION ORDERS That WAC 480-107-020, 480-107-050, 480-107-060, 480-107-070, 480-107-080, 480-107-100, and 480-107-120 are amended to read as set forth in Appendix A, as a rule of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380.

THE COMMISSION FURTHER ORDERS That this order and the rule shown below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the code reviser for filing pursuant to chapter 34.05 RCW and chapter 1-21 WAC.

THE COMMISSION Adopts the commission staff memoranda, presented at the times the commission considered noticing and adopting this proposal, as its brief explanatory statement of the reasons for adoption, and for variances between noticed and adopted versions, under RCW 34.05.355.

DATED at Olympia, Washington, this 9th day of March, 1994.

Washington Utilities and Transportation Commission  
Sharon L. Nelson, Chairman  
Richard D. Casad, Commissioner  
Richard Hemstad, Commissioner

AMENDATORY SECTION (Amending Order R-304, Docket No. U-89-2814-R, filed 7/18/89)

**WAC 480-107-020 Eligibility for long-run generating facility purchase rates.** (1) Any developer of a potential generating facility may participate in the bidding process. Qualifying facility developers proposing projects with a design capacity of one megawatt or less may at any time choose to receive long-run prototype contract B as defined in WAC 480-107-010 (3)(b). The purchase price for power from these projects shall be based on avoided energy and capacity costs as defined in WAC 480-107-050 (~~adjusted to reflect the most recent purchases under these rules~~).

(2) A soliciting electric utility may broaden the scope of the solicitation and bidding process to include other electric utilities, subject to the approval of the commission. Such a decision must be explained in the utility's RFP submittal.

(3) An electric utility may allow an affiliated generating subsidiary to participate in the bidding process as a power supplier, on conditions set forth in WAC 480-107-160. Such a decision must be explained in the utility's RFP submittal.

(4) A project developer must provide evidence that a generation site has or will be obtained (e.g., letter of intent) before signing a contract with the purchasing electric utility.

(5) The project developer shall specify, as part of the price bid, the costs of complying with environmental laws, rules, and regulations in effect at the time of the bid and those reasonably anticipated to be in effect during the term of the project.

(6) Any bid which involves the acquisition of energy from a hydroelectric project located in a protected area as

designated by the Northwest Power Planning Council must show in its project proposal that:

(a) Such project qualifies for exception or exemption under sections 1103 (b)(4)-(5) or section 1303(g) of the Columbia River Basin Fish and Wildlife Program, or corresponding provisions of the Northwest Conservation and Electric Power Plan; or

(b) The project developer has obtained the necessary approvals from all entities legally responsible for the protection or management of fish or wildlife resources affected by the project, including the Federal Energy Regulatory Commission. The bid shall specify the estimated costs of such compliance.

**AMENDATORY SECTION** (Amending Order R-304, Docket No. U-89-2814-R, filed 7/18/89)

**WAC 480-107-050 Avoided cost schedules.** The electric utility shall determine the avoided costs for the energy and capacity associated with the resource block calculated pursuant to WAC 480-107-040 on an annual basis for the greater of twenty years or the longest period over which power purchase contracts entered under these rules will be effective. This price stream will be referred to as the utility's avoided cost schedule. The avoided cost schedule and its supporting documentation shall be filed with the RFP and shall be reviewed by the commission. Revisions to the avoided cost schedule may be made during the period between solicitations by filing, with the commission and subject to the commission's approval, such revised schedule. The assumptions used in calculating the avoided cost schedule shall be consistent with the utility's least-cost plan. The electric utility shall use this stream of avoided costs to provide general information to potential bidders about the cost of new power supplies absent nonutility resources. For projects rated at one megawatt capacity or less, the most recently approved long-term avoided costs will be the basis for prices offered in prototype contract B negotiations. The avoided cost schedule applicable to any purchases in excess of one megawatt under this chapter shall be that which is filed and approved by the commission pursuant to this section, as adjusted to reflect the most recent purchases under these rules.

**AMENDATORY SECTION** (Amending Order R-304, Docket No. U-89-2814-R, filed 7/18/89)

**WAC 480-107-060 The solicitation process.** (1) The utility shall begin the solicitation process by issuing a request for proposals (RFP). The information which a bidder files in accordance with the utility's RFP will be referred to as the project proposal. Project proposals will be subject to a competitive ranking procedure to determine the group of bidders with which the utility will finalize long-run purchase contracts.

(2) Requirements for issuing a request for proposals:

(a) The electric utility shall solicit bids for electric power and electrical savings ((at least every two years)) in conjunction with its least cost planning schedule. The electric utility is required to file its draft request for proposal with the commission within ninety days of the electric utility's filing of its final least cost plan. More frequent solicitations shall be allowed at the discretion of the utility.

The solicitation must take the form of an RFP approved by the commission.

(b) The electric utility shall submit a proposed RFP and accompanying documentation to the commission at least ninety days before its proposed issuance date. Persons interested in receiving commission notice of a specific utility's RFP filing can request the commission to place their name on a mailing list for notification of future RFP filings by that utility. Interested persons shall have sixty days from the RFP's filing date with the commission to submit written comments to the commission on the proposed RFP. The commission shall take action on the proposed RFP within thirty days after the close of the comment period. The commission may suspend the RFP filing to determine whether its issuance is in the public interest.

(c) The RFP shall specify the resource block and the long-term avoided cost schedule as calculated in WAC 480-107-040 and 480-107-050.

(d) The RFP shall explain the evaluation and ranking procedure to be used by the utility. The RFP must also specify any minimum criteria that bidders must satisfy to be eligible for consideration in the ranking procedure.

**AMENDATORY SECTION** (Amending Order R-304, Docket No. U-89-2814-R, filed 7/18/89)

**WAC 480-107-070 Project ranking procedure.** (1) The electric utility shall adopt ranking procedures to evaluate project proposals on the basis of least-cost planning goals. The project ranking procedure must use explicitly stated criteria.

(2) The criteria used to rank project proposals are subject to commission approval and must be explained in the RFP. These factors must at a minimum address price, dispatchability, risks imposed on ratepayers, and environmental effects including those associated with resources that emit carbon dioxide.

(3) The electric utility's ranking procedures shall recognize differences in relative amounts of risk inherent among different technologies, fuel sources, financing arrangements, and contract provisions.

(4) Information submitted by the bidder pursuant to an approved RFP shall remain sealed until expiration of the solicitation period specified in the RFP. The utility shall make project proposal summaries and a final ranking available at its place of business for public inspection after the project proposals have been opened for the purpose of ranking. The commission shall retain the right to examine project proposals as originally submitted by potential developers. The electric utility shall keep all documents supplied by project bidders or on their behalf, and all documents generated by the electric utility relating to each bid, for a period of at least seven years from the close of the bidding process, or the conclusion of the electric utility's next general rate case, whichever is later.

**AMENDATORY SECTION** (Amending Order R-304, Docket No. U-89-2814-R, filed 7/18/89)

**WAC 480-107-080 Pricing and contracting procedures.** (1) On the basis of the ranked project proposals developed in accordance with WAC 480-107-060 and 480-107-070, the electric utility shall identify the bidders that

best meet the selection criteria and that are expected to produce the energy, capacity, and electrical savings as defined by the resource block.

(2) The price bid ~~((and))~~, the requested pricing configuration, and terms of the proposed bid services are ~~((not))~~ subject to negotiation. If a qualifying facility or other generating facility agrees to be operated under economic dispatch, then the price bid shall be adjusted by operating performance adjustments such as the project's equivalent availability factor. The methodology for such performance adjustments must be explained in the utility's RFP submittal.

**AMENDATORY SECTION** (Amending Order R-304, Docket No. U-89-2814-R, filed 7/18/89)

**WAC 480-107-100 Contract finalization.** (1) If, for the purposes of finalizing a particular contract, the project developer or electric utility requests changes in the long-run prototype contract, the project developer and utility may negotiate these items consistent with the provisions of this chapter. If after ninety days the parties cannot reach an agreement, either party may request a determination by the commission of the matter at issue.

(2) The electric utility is required to sign long-run prototype contracts for any appropriate time period specified in a selected project proposal for up to a twenty-year term. Longer term contracts can be signed if such provisions are specified in the utility's RFP. A selected project bidder or the utility may petition the commission, after the selection but before the contract is signed, to relieve the party of its obligation to enter into a final contract. The commission may, for good cause shown, relieve the petitioner of its obligation to sign a contract.

(3) If, ~~((during contract finalization, a project developer materially changes the representations it had made in its project proposal))~~ after project ranking material changes are made in the project proposal, including material price changes, the electric utility must suspend contract finalization with that party and rerank projects according to the ~~((new representations))~~ revised project proposal. If the ~~((new representations))~~ material changes cause the revised project proposal to rank lower than projects not originally selected, the utility shall dismiss the project proposal from further consideration and replace it with next ranked projects.

**AMENDATORY SECTION** (Amending Order R-304, Docket No. U-89-2814-R, filed 7/18/89)

**WAC 480-107-120 Obligations of electric utility to qualifying facilities.** (1) Obligation to purchase from qualifying facilities. Each electric utility's obligation to purchase from qualifying facilities shall be limited to one of the following:

(a) Energy and capacity from projects under long-run contract A pursuant to the solicitation and bidding process described in these rules;

(b) Energy or capacity offered at any time under long-run prototype contract B from qualifying facilities with a design capacity of one megawatt or less; or

(c) Energy offered under the short-run prototype contract.

(2) Obligation to sell to qualifying facilities. Each electric utility shall sell to any qualifying facilities, in

accordance with WAC 480-107-130, any energy and capacity requested by the qualifying facilities on the same basis as available to other customers of the utility in the same class.

(3) Obligation to interconnect. Any electric utility shall make such interconnections with any qualifying facilities as may be necessary to accomplish purchases or sales under this section. The obligation to pay for any interconnection costs shall be determined in accordance with WAC 480-107-150.

(4) Transmission to other electric utilities. At the request of a qualifying facility, an electric utility which would otherwise be obligated to purchase energy or capacity from such qualifying facility may, at the option of the utilities involved, transmit energy or capacity to any other electric utility. Nothing contained herein shall be construed to obligate the electric utility connected with the qualifying facility to transmit to other utilities or to obligate such other utilities to purchase from the qualifying facility.

(5) Parallel operation. Each electric utility shall offer to operate in parallel with a qualifying facility: *Provided*, That the qualifying facility complies with any applicable standards established in accordance with WAC 480-107-110.

**WSR 94-07-047**

**PERMANENT RULES**

**DEPARTMENT OF REVENUE**

[Filed March 10, 1994, 2:44 p.m.]

Date of Adoption: March 10, 1994.

Purpose: To provide tax reporting information to educational institutions, school districts, student organizations, and private schools.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-167.

Statutory Authority for Adoption: RCW 82.32.300.

Pursuant to notice filed as WSR 94-03-047 on January 12, 1994.

Effective Date of Rule: Thirty-one days after filing.

March 10, 1994

Russell W. Brubaker  
Assistant Director

**AMENDATORY SECTION** (Amending Order ET 83-15, filed 3/15/83)

**WAC 458-20-167 Educational institutions, school districts, student organizations, and private schools.** ~~((As used herein: An "educational institution" means only those institutions defined as such in WAC 458-20-114; the term "private school" means all schools which are excluded from said definition.~~

**~~Business and Occupation Tax~~**

~~Persons operating private schools are taxable under the service and other business activities classification upon gross income derived from tuition fees, rental of rooms and equipment and other service income.~~

~~Such persons are also taxable under the retailing classification upon gross retail sales of articles of tangible personal property sold by them, when the charge therefor is~~

~~specified and is not included within the charge made for tuition.~~

~~Educational institutions, school districts and student organizations are not subject to the business and occupation tax with respect to activities directly connected with the educational program, such as operation of a common dining room, sale of lab supplies, etc. Charges made for the operating of privately operated kindergartens are exempt from business tax.~~

### **Retail Sales Tax**

~~The retail sales tax applies upon all sales of tangible personal property made by educational institutions, private schools, and student organizations, when the charge therefor is specific and not included within the charge made for tuition. However, the sales tax does not apply to sales of tangible personal property made by agencies or institutions of the state of Washington, such as the University of Washington and the community colleges.~~

### **Certificates of Registration**

~~Persons engaged in the business of operating private schools are required to obtain a certificate of registration in accordance with the provisions of WAC 458-20-101.~~

~~Educational institutions other than agencies or institutions of the state of Washington making taxable retail sales of tangible personal property are also required to apply for and obtain from the department of revenue a certificate of registration:)) (1) **Introduction.** This section explains the application of Washington's B&O, retail sales, and use taxes to educational institutions, school districts, student organizations, and private schools. It also gives tax reporting information to persons operating nursery school, preschool, and day care. Educational institutions which are institutions of the state of Washington should also refer to WAC 458-20-189 (Sales to and by the state of Washington, etc.).~~

~~(2) **Definitions.** For the purposes of this section, the following definitions apply:~~

~~(a) The term "tuition fees" includes fees for instruction, library, laboratory, and health services. The term also includes special fees and amounts charged for room and board when the property or service for which such charges are made is furnished exclusively to the students or faculty of the institution.~~

~~(b) "Educational institutions" means the following:~~

~~(i) Institutions which are established, operated, and governed by this state or its political subdivisions under Title 28A, 28B, or 28C RCW.~~

~~(ii) Nonpublic schools, including parochial or independent schools or school districts, carrying out a program for any or all of the grades one through twelve, which have been approved by the Washington state board of education. (See also chapter 180-90 WAC.)~~

~~(iii) Degree-granting institutions offering educational credentials, instruction, or services prerequisite to or indicative of an academic or professional degree or certificate beyond the secondary level, provided the institution is accredited by an accrediting association recognized by the United States Secretary of Education and offers to students an educational program of a general academic nature. Degree-granting institutions should refer to chapter 28B.85~~

RCW for information about the requirement for authorization by the Washington higher education coordinating board.

(iv) Institutions which are not operated for profit, and which are privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture.

(v) On and after July 1, 1993, the term includes educational programs that an educational institution cosponsors with a nonprofit organization, as defined by the Internal Revenue Code Sec. 501 (c)(3), provided that educational institution grants college credit for course work successfully completed through the educational program. (See chapter 18, Laws of 1993 sp.s.)

(vi) On and after July 25, 1993, "educational institutions" includes certain branch campuses of foreign degree-granting institutions, provided the following requirements, among others, are satisfied:

(A) The branch campus must be owned and operated directly by a foreign degree-granting institution or indirectly through a Washington profit or nonprofit corporation in which the foreign degree-granting institution is the sole or controlling shareholder or member;

(B) Courses must be provided solely and exclusively to students enrolled in a degree-granting program offered by the institution;

(C) The branch campus must be approved by the Washington higher education coordinating board to operate in this state; and

(D) The branch campus must be recognized to be exempt from income taxes pursuant to 26 U.S.C. Sec. 501(c). (See chapter 181, Laws of 1993.)

(vii) "Educational institutions" does not include any entity defined as a "private vocational school" under chapter 28C.10 RCW and/or any entity defined as a "degree-granting private vocational school" under chapters 28C.10 and 28B.85 RCW (other than those described in (b)(iv) of this subsection).

(c) "Private schools" means all schools and institutions which are excluded from the above definition of "educational institutions." For example, an elementary school operated by a church organization is a "private school" if the school is not approved. It will be given the tax treatment of an "educational institution" for purposes of this section only if it has obtained approval from the Washington state board of education.

(3) **Business and occupation tax.** Departments and institutions of the state of Washington are not subject to the B&O tax. (See WAC 458-20-189.) School districts are also not subject to the B&O tax, except as to income derived from a public utility or enterprise activity. RCW 82.04.419. Private schools, student organizations, school districts engaging in utility or enterprise activities, and educational institutions which are not departments or institutions of the state of Washington are subject to the B&O tax as follows:

(a) **Service and other business activities.** The service B&O tax applies to the following activities or sources of income:

(i) Tuition fees received by private schools. However, educational institutions, as defined above, may deduct amounts derived from tuition fees. (Refer to RCW 82.04.4282.)

(ii) Rental of conference facilities to various organizations or groups.

(iii) Rental by private schools of dormitories or other student lodging facilities which are not generally available to the public and where the student does not have an absolute right of control and occupancy. (See WAC 458-20-118.) However, educational institutions may deduct the income from charges for lodging made to students. These amounts are defined by law as being tuition.

(iv) Amounts received by private schools for providing meals to students where the meals are provided exclusively for students, teachers, staff, and their guests. However, refer to the comments under retailing for the taxability of meals sold to guests of students. Income from providing meals to students by educational institutions is deductible.

(v) Amounts received from owners of coin operated vending machines or amusement devices for allowing the placement of those machines on the premises of the school. (Refer also to WAC 458-20-187.)

(b) Retailing. The retailing B&O tax applies to the following activities or sources of income:

(i) Sales of tangible personal property or services classified as retail sales. This includes sales of books and supplies to students where these materials are not supplied as part of the tuition charge.

(ii) Charges for making copies of public records or documents, such as transcripts.

(iii) Sales of meals to guests of students.

(iv) Sales of meals or prepared foods in facilities which are generally open to the public, including those sold to students. (See also WAC 458-20-119.)

(4) Retail sales tax. The retail sales tax applies to all sales of the type identified under retailing. Educational institutions, school districts, student organizations, and private schools, including departments or institutions of the state of Washington, are required to collect the retail sales tax on sales of tangible personal property and retail services to consumers, notwithstanding such sales may be exempt from the retailing B&O tax. Amounts derived from charges between departments or institutions of the state of Washington, or between departments of the same entity, constitute interdepartmental charges and are not subject to the retailing or retail sales tax. (See WAC 458-20-201.) Sales of certain food products are exempt from the retail sales tax. (See WAC 458-20-244.) Persons selling merchandise through vending machines should refer to WAC 458-20-187.

(5) Deferred sales or use tax. Educational institutions, school districts, student organizations, and private schools are required to report the deferred sales or use tax upon the use of all tangible personal property purchased or acquired under conditions whereby the Washington retail sales tax has not been paid. These organizations are the consumers of food or beverage products which are ingredients of meals that are furnished to students and faculty. However, certain food products are exempt from the retail sales and/or use tax. (Refer to WAC 458-20-244.) If items are purchased for dual purposes (i.e., for both consumption and resale), these organizations may claim a tax paid at source deduction for the cost of the articles resold upon which retail sales tax was paid. (See WAC 458-20-102.)

(6) Nursery schools, preschools, day care providers, and privately operated kindergartens. Income received by nursery schools, preschools, day care providers, and privately operated kindergartens for the care or education of children

who are under eight years of age and not enrolled in or above the first grade is exempt from the B&O tax. (Refer to RCW 82.04.4282.) Such persons are, however, subject to the service B&O tax upon the gross proceeds derived from providing child care to children who are eight years of age or older or enrolled in or above the first grade. Nursery schools, preschools, and day care providers receiving both taxable and exempt income must properly segregate such income in their books of account.

Effective June 11, 1992, the B&O tax does not apply to income derived by a church for the care of children of any age for periods of less than twenty-four hours, provided the church is exempt from property tax under RCW 84.36.020. (See chapter 81, Laws of 1992.)

(7) Examples. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(a) MN University is an educational institution created by the state of Washington. MN University operates a book store at which it sells text books, school supplies, and apparel to students and nonstudents. As an institution of the state of Washington, MN University is exempt from the B&O tax with respect to all sales, irrespective that sales are made to nonstudents. However, MN is required to collect and remit retail sales tax on its gross proceeds of sales made through its book store.

(b) DMG College is a degree-granting institution accredited by an accrediting association recognized by the United States Secretary of Education. DMG College is an educational institution operated by a church. DMG makes charges to its students for tuition, meals, and lodging. It also receives income for occasionally providing lodging and meals to guests of its students during the year. DMG also rents its conference and dormitory facilities to various groups during the summer, providing cafeteria services when needed. The income from tuition, meals, and lodging received from the students is exempt of B&O and retail sales tax because this entity comes within the definition of an educational institution. DMG must report the retailing B&O tax and collect and remit retail sales tax upon the gross proceeds derived from the sales of meals and prepared foods to the conference attendees and guests. The income derived from the rental of the conference and dormitory facilities to various groups and student guests is subject to the service B&O tax. The college is not considered as holding itself out for the sale of lodging to the general public.

(c) JB College is an educational institution which is not a department or institution of the state of Washington. JB College has converted five housing units from student use for use by nonstudents. Guests of the administration use these units for stays of two or three days, and are charged a specific amount per night. The college provides linen, towels, etc., to the users. These units are always rented for periods under thirty days. JB College must report this rental income under the retailing B&O tax and collect and remit retail sales tax. This income is not derived from the occasional rental of student lodging facilities, but is derived from the rental of accommodations specifically maintained for public use.

(d) Jane Doe operates a private preschool and kindergarten, providing care and elementary education for children. She also provides after hours child care. Jane Doe may claim a deduction for the income received for the care and education of children under eight years old and not enrolled in or above the first grade, provided this income is properly segregated in her books of account. The income attributable to the care of children at or above the first grade level, i.e., eight years old or enrolled in or above the first grade, is subject to the service B&O tax. However, no service B&O tax will be due if the measure of taxable income is less than the amount for which the B&O tax is required to be paid. (See WAC 458-20-104.)

**WSR 94-07-048**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**

[Filed March 10, 1994, 2:45 p.m.]

Date of Adoption: March 10, 1994.

Purpose: This rule explains business and occupation and retail sales tax applications to sales of agricultural products by farmers.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-210.

Statutory Authority for Adoption: RCW 82.32.300.

Pursuant to notice filed as WSR 94-03-034 on January 10, 1994.

Effective Date of Rule: Thirty-one days after filing.

March 10, 1994

Russell W. Brubaker

Assistant Director

AMENDATORY SECTION (Amending Order ET 86-18, filed 10/17/86)

WAC 458-20-210 Sales of agricultural products by ~~((persons producing the same))~~ farmers. (1) ~~((The term "agricultural products" as used herein means any agricultural or horticultural produce or crop, including any animal, bird, fish, or insect, or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom: *Provided*, That "fish" as used herein means fish which are cultivated and raised entirely within confined rearing areas on land owned by the person so raising the same or on land in which the person has a present right of possession.~~

~~((2) Persons engaging in the business of making retail sales of agricultural products produced by them are required to apply for and obtain a certificate of registration. The certificate shall remain valid as long as the person remains in business.))~~ Introduction. This section explains the B&O and retail sales tax applications to sales of agricultural products by farmers. Farmers should refer to WAC 458-20-101 to determine whether they must obtain a tax registration endorsement or a temporary registration certificate with the department of revenue. Farmers and persons making sales to farmers may also want to refer to the following sections of chapter 458-20 WAC:

(a) WAC 458-20-122 (Sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use);

(b) WAC 458-20-209 (Farming for hire and horticultural services performed for farmers); or

(c) WAC 458-20-239 (Sales to nonresidents of farm machinery or implements).

(2) Definitions. For the purposes of this section, the following definitions apply:

(a) "Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. The term does not include a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard, slaughter or packing house. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213.

(b) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to a product of horticulture, grain cultivation, vermiculture, or viticulture. "Agricultural product" includes plantation Christmas trees, animals, birds, insects, or the substances obtained from such animals. RCW 82.04.213. On and after July 1, 1993, "agricultural products" includes products of "aquaculture" and animals that are "cultured aquatic products," as those terms are defined by RCW 15.85.020. Also effective July 1, 1993, "turf" was added to the definition of "agricultural product," and "animals intended to be pets" were specifically excluded. (See chapter 25, Laws of 1993 sp.s.)

(3) Business and occupation tax. ~~((Persons))~~ Farmers selling agricultural products which they have not produced upon their own land or upon land which they have a present right of possession are subject to the provisions of the business and occupation tax, whether these products are sold at wholesale or retail. The business and occupation (B&O) tax applies to all sales of nonagricultural products. The B&O tax also applies to sales by persons operating a stockyard, slaughter or packing house who sell animal products raised by them.

(a) Wholesale sales. Farmers making wholesale sales of agricultural products produced by them upon land owned by ~~((or leased to))~~ them, or upon which they have a present right of possession, are not subject to the ~~((business and occupation))~~ B&O tax. ~~((This exemption does not extend to sales of manufactured or extracted products (see WAC 458-20-135 and 458-20-136.))~~ (See RCW 82.04.330.) However, this exemption does not apply to farmers who produce agricultural products for use in a manufacturing process, or who sell products at wholesale which they do not grow.

~~((4))~~ (b) Retail sales. Retail sales of agricultural products by ~~((persons))~~ farmers producing the same are subject to ~~((tax under))~~ the retailing ~~((classification of the business and occupation))~~ B&O tax. Thus, tax is due by any ~~((such person who holds himself out to the public as a seller by))~~ farmer engaging in the following activities:

~~((a))~~ (i) Conducting a roadside stand or a stand displaying agricultural products for sale at retail;

~~((b))~~ (ii) Posting signs on ~~((his))~~ the premises, or through other forms of advertising soliciting sales at retail;

~~((e))~~ (iii) Operating a regular delivery route from which agricultural products are sold at retail from door to door; or

~~((d))~~ (iv) Maintaining an established place of business for the purpose of making retail sales of agricultural products.

~~((5) Persons selling agricultural products not produced by them, should obtain information from the department of revenue with respect to their tax liability.~~

~~(6))~~ (c) Specific B&O tax exemptions. There are specific B&O tax exemptions provided by statute for certain sales of agricultural products which do not otherwise qualify for exemption under RCW 82.04.330. The B&O tax does not apply to the following:

(i) Amounts received for the sale of hatching eggs or poultry by farmers producing the same, when these products are for use in the production for sale of poultry or poultry products. RCW 82.04.410.

(ii) Amounts received by hop growers or dealers for hops shipped outside the state of Washington for first use, even though the hops have been processed into extract, pellets, or powder in this state. RCW 82.04.337. However, the processor or warehouse of such products is not exempt on amounts charged for processing or warehousing such products.

(4) Retail sales tax. ~~((Persons selling agricultural products produced by them are required to collect the retail sales tax upon all retail sales made by them, except sales of food products exempt under WAC 458-20-244. The sales tax exemption for food products also applies to sales of livestock sold for personal consumption as food.~~

~~(7) The retail sales tax applies to all sales of tangible personal property to persons for use as consumers in producing agricultural products, except for certain expressly tax exempt items (see WAC 458-20-122 and 458-20-157).~~

~~(8) Use tax. The use tax applies upon the value of all tangible personal property used as consumers by producers of agricultural products where the retail sales tax has not been paid, except for those items which are expressly exempt of retail sales tax.)~~ Farmers required to obtain a tax registration endorsement must collect and remit retail sales tax upon any retail sale for which a specific retail sales tax exemption is not provided. Retail sales tax exemptions are available for the following sales of agricultural products:

(a) Sales of food products for human consumption. This exemption also applies to sales of livestock sold for personal consumption as food. RCW 82.08.0293.

(b) Sales of pollen. RCW 82.08.0277.

(c) Sales of semen for use in the artificial insemination of livestock. RCW 82.08.0272.

(d) Sales of poultry for use in the production for sale of poultry or poultry products. RCW 82.08.0267.

(e) Sales of beef and/or dairy cattle for use by a farmer in producing an agricultural product. RCW 82.08.0259.

(f) Sales of purebred livestock for breeding purposes where the animals are registered in a nationally recognized breeding association. RCW 82.08.0259. Sellers claiming such an exemption should refer to WAC 458-20-122 for a description of the exemption certificate which must be retained by the seller.

(5) Deferred sales or use tax. If the seller fails to collect the appropriate retail sales tax, the purchaser is

required to pay the deferred sales or use tax directly to the department.

(6) Examples. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(a) BG Orchards produces apples at its own orchards. Most apples are sold at wholesale, but BG does operate a seasonal roadside fruit stand at which it sells apples at retail. The gross proceeds derived from the wholesale sale of apples is exempt from the business and occupation tax. However, the retailing B&O tax applies to the retail sales of apples, notwithstanding these sales qualify for the food product sales tax exemption.

(b) AC, Inc. owns and operates a hatchery which produces poultry from eggs. The resulting poultry is then sold to egg producers. AC, Inc. is making retail sales of poultry. However, the gross proceeds received from these sales are exempt from both the retailing B&O and retail sales taxes under the provisions of RCW 82.04.410 and 82.08.0267, respectively.

#### WSR 94-07-049

#### PERMANENT RULES

#### DEPARTMENT OF REVENUE

[Filed March 10, 1994, 2:48 p.m.]

Date of Adoption: March 10, 1994.

Purpose: This rule explains how sales of tangible personal property for farm use is taxed.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-122.

Statutory Authority for Adoption: RCW 82.32.300.

Pursuant to notice filed as WSR 94-03-035 on January 10, 1994.

Effective Date of Rule: Thirty-one days after filing.

March 10, 1994

Russell W. Brubaker

Assistant Director

AMENDATORY SECTION (Amending Order ET 86-18, filed 10/17/86)

WAC 458-20-122 Sales of feed, seed, fertilizer ~~((and))~~, spray materials, and other tangible personal property for farm use. (1) Introduction. This section explains the application of Washington's B&O and retail sales taxes to sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use. Farmers and persons making sales to farmers may also want to refer to the following sections of chapter 458-20 WAC:

(a) WAC 458-20-209 (Farming for hire and horticultural services performed for farmers);

(b) WAC 458-20-210 (Sales of agricultural products by farmers); and

(c) WAC 458-20-239 (Sales to nonresidents of farm machinery or implements).

(2) Definitions. ~~((As used in this ruling))~~ For the purposes of this section, the following definitions apply:

(a) ~~((The word))~~ "Feed" means ~~((a))~~ any substance used as food ~~((for))~~ to sustain or improve animals, birds, fish, or insects, and includes whole and processed grains or mixtures thereof, hay and forages or meals made therefrom, mill feeds and feeding concentrates, stock salt, hay salt, bone meal, cod liver oil, double purpose limestone grit, oyster shell, and other similar substances ~~((used to sustain or improve livestock or poultry. The word does not include substances which do not contribute directly to a resulting agricultural product, such as peat moss or litter, nor does it include hormones or products which are used as medicines rather than as food)).~~ "Feed" includes food additives which are given for their beneficial growth or weight effects. However, "feed" does not include hormones or similar products which do not make a direct nutritional or energy contribution to the body, nor does it include products which are used as medicines.

(b) ~~((The word))~~ "Seed" means propagative portions of plants, commonly used for seeding or planting whether true seeds, bulbs, plants, seedlike fruits, seedlings, or tubers.

(c) ~~((The word "fertilizer" means a substance which increases the productivity of the soil by adding plant foods or nutrients which improve and stimulate plant growth.~~

(d) The term "spray materials" means materials in liquid, powder or gaseous form used by agricultural producers as described in RCW 82.04.330 for the purpose of controlling or destroying insects, parasites, vermin, animals, fungi, weeds, pests or plants of a similar nature, deleterious to the growth or conservation of horticultural plants, animals, or products derived therefrom. It includes pesticides as defined in RCW 15.58.030(1). It does not include mechanical devices for the elimination of pests nor does it include materials used for spraying forest trees by commercial timber producers.

(e) The word "farmers" as used in this rule means any persons engaged in the business of growing or producing for sale at wholesale upon their own lands, or upon lands in which they have a present right of possession, any agricultural product whatsoever, including milk, eggs, wool, fur, meat, honey, or other substances obtained from animals, birds, or insects. "Farmers" does not mean persons selling such products at retail, persons using such products as ingredients in a manufacturing process, or persons growing or producing such products for their own consumption. It does not mean any person dealing in livestock as an operator of a stockyard, slaughter house, or packing house; nor does it mean any person who is an "extractor" within the meaning of WAC 458-20-135.

(2) Business and occupation tax. Persons engaged in the business of selling feed, seed, fertilizer or spray materials are taxable under either the retailing or wholesaling classification on gross proceeds of sales.) "Fertilizer" means any substance containing one or more recognized plant nutrients and which is used for its plant nutrient content and/or which is designated for use in promoting plant growth. "Fertilizer" includes limes, gypsum, and manipulated animal and vegetable manures.

(d) "Spray materials" means any substance or mixture of substances in liquid, powder, granular, dry flowable, or gaseous form, which is intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life

which is normally considered to be a pest. The term includes treated materials, such as grains, which are intended to destroy, control, or repel such pests. "Spray materials" also includes substances which act as plant regulators, defoliants, desiccants, or spray adjuvants.

(e) "Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. The term does not include a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard, slaughter or packing house. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213.

(f) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to a product of horticulture, grain cultivation, vermiculture, or viticulture. "Agricultural product" includes plantation Christmas trees, animals, birds, insects, or the substances obtained from such animals. RCW 82.04.213. On and after July 1, 1993, "agricultural product" includes products of "aquaculture" and animals that are "cultured aquatic products," as those terms are defined by RCW 15.85.020. Also effective July 1, 1993, "turf" was added to the definition of "agricultural product," and "animals intended to be pets" were specifically excluded. (See chapter 25, Laws of 1993 sp.s.)

(3) Business and occupation tax. Persons making sales of tangible personal property or services to farmers are generally subject to the business and occupation tax thereon. The B&O tax applies as follows:

(a) Wholesaling. Persons who make sales at wholesale are subject to the wholesaling B&O tax upon the gross proceeds from such sales. Sellers must obtain resale certificates from their customers to support the resale nature of any transaction. (Refer to WAC 458-20-102.) The following are examples of sales at wholesale:

(i) Sales of tangible personal property to farmers when such property is purchased for resale or is a container or will become part of a container to be resold with products produced for sale. Thus, sales of grain sacks which are resold with grain produced, sack twine used in binding such sacks, wire or twine for binding bales of hay and alfalfa which are sold, fruit and vegetable wrappers, and similar items are wholesale sales. (See also WAC 458-20-115, Sales of packing materials and containers.)

(ii) Sales to farmers of feed, seed, fertilizer, ~~((and))~~ spray materials ~~((to farmers as defined herein are taxable under the wholesaling other classification: Provided, That)),~~ and agents for enhanced pollination, including insects such as bees, for the purpose of producing an agricultural product for wholesale or retail sale. However, wholesale sales of certain unprocessed grain and legumes to farmers for use as feed may be taxable at a lower rate under the wholesaling wheat, oats, corn, barley, dry peas, dry beans, lentils, triticale B&O tax classification ~~((see WAC 458-20-161), even though the sale of such unprocessed grains or legumes is to a farmer for use as feed. Sales of feed, seed, fertilizer, and~~

~~spray materials to consumers other than farmers are taxable under the retailing classification. Sales of feed for use in the cultivating or raising for sale of fish are taxable under the retailing classification.~~

~~(3) Persons engaged in the business of spraying crops for hire are taxable under the service and other business activities classification on the gross income therefrom.~~

~~(4) Retail sales tax. The retail sales tax applies to sales of feed, seed, fertilizer, and spray materials to consumers other than "farmers" as defined herein, except as explained below.~~

~~(5) The tax applies upon sales of spray materials to persons who spray agricultural crops and other real property for hire, unless purchased for resale to others for a charge separate and apart from charges for the actual spreading of the spray materials.~~

~~(6) The sales tax also applies to sales). (Refer to WAC 458-20-161.)~~

~~(iii) Sales of feed, seed, fertilizer, spray materials, and agents for enhanced pollination, including insects such as bees, to persons who will resell the same without intervening use.~~

~~(iv) Sales of chemical sprays or washes to persons for the purpose of post-harvest treatment of fruit for the prevention of scald, fungus, mold, or decay.~~

~~(v) Sales to farmers of fertilizer or spray materials by persons spraying crops for hire, provided the charge for the fertilizer or spray materials is made separate and apart from the charge for the application of the spray. (See also WAC 458-20-209.)~~

~~(b) **Retailing.** Sales of tangible personal property to farmers are generally retail sales and subject to the retailing tax. The following are examples of retail sales:~~

~~(i) Sales of tangible personal property when the property is not a packing material or container which is resold with products produced for sale. For example, sales to farmers of binder twine or wire are retail sales when the hay, alfalfa, or similar item will not be resold, but will be used to feed the farmer's cattle.~~

~~(ii) Sales to farmers of tangible personal property which will be resold by the farmer, but which is put to intervening use prior to resale. For example, sales of litter, and the ingredients thereof, are sales for consumption and subject to the retailing tax even though the litter after use is resold or used as fertilizer.~~

~~(iii) Sales to farmers of machinery, machinery parts and repair, tools, and cleaning materials.~~

~~(iv) Sales of feed, seed, fertilizer, and spray materials to consumers for purposes other than producing agricultural products for sale. The following sales of feed, seed, fertilizer, and spray materials are retail sales:~~

~~(A) Sales of feed to riding clubs, race track operators, boarders, or similar persons who do not resell the feed at a specific charge.~~

~~(B) Sales of feed for feeding pets(7) and work animals, or for raising poultry, eggs, or other products for personal consumption. ((Also, the tax applies to))~~

~~(C) Sales of seed, fertilizer, and spray materials ((to persons)) for use on lawns, gardens, or any other personal use ((other than resale or the commercial production of agricultural products.~~

~~(7) Exemptions. The sales tax does not apply to sales of feed, seed, fertilizer, and spray materials to farmers, as defined herein (RCW 82.04.050).~~

~~(8) The tax does not apply to sales of feed to persons for use in cultivating or raising fish for sale, entirely within confined rearing areas on the persons own land or on land in which the person has a present right of possession (RCW 82.08.0294).~~

~~(9) The tax does not apply to sales of feed for feeding livestock at public livestock markets (RCW 82.08.0296).~~

~~(10) The burden of proving that a sale of any of said articles was not a sale at retail is upon the seller, and all sales will be deemed retail sales unless the seller shall take from the purchaser, whether a registered dealer or a farmer, a resale certificate in accordance with WAC 458-20-102.~~

~~(11) Use tax. The use tax does not apply upon the use of feed, seed, fertilizer, and spray materials in this state under such circumstances that the sale of such things is exempt of sales tax as explained earlier herein. In all other cases the use tax applies upon the first use by a consumer of such things if retail sales tax has not been paid upon their acquisition).~~

~~(D) Sales of fertilizers and spray materials to persons who spray agricultural crops and other real property for hire, unless these items will be resold for a charge separate and apart from charges for the actual spreading of the fertilizer or spray materials, in which case the sale is a wholesale sale. (See also WAC 458-20-209.)~~

~~(4) **Retail sales tax.** The retail sales tax generally applies to those sales identified above as being subject to the retailing B&O tax. However, a retail sales tax exemption is available for the following:~~

~~(a) Sales of feed for feeding livestock at public livestock markets. RCW 82.08.0296.~~

~~(b) Sales of pollen. RCW 82.08.0277.~~

~~(c) Sales of semen for use in the artificial insemination of livestock. RCW 82.08.0272.~~

~~(d) Sales of purebred livestock for breeding purposes where the animals are registered in a nationally recognized breed association. RCW 82.08.0259. Sellers claiming this exemption should refer to subsection (6) of this section for a description of the required documentation which must be retained by the seller.~~

~~(e) Sales of beef and/or dairy cattle for use by a farmer in producing an agricultural product. RCW 82.08.0259.~~

~~(f) Sales of poultry for use in the production for sale of poultry or poultry products. RCW 82.08.0267.~~

~~(g) Auction sales made by or through auctioneers of tangible personal property (including household goods) which has been used in conducting a farm activity, when the seller thereof is a farmer and the sale is held or conducted upon a farm. RCW 82.08.0257.~~

~~(h) Lease of irrigation equipment, provided:~~

~~(i) The irrigation equipment was purchased by the lessor for the purpose of irrigating land the lessor controlled;~~

~~(ii) The lessor has paid retail sales or use tax upon the irrigation equipment;~~

~~(iii) The irrigation equipment is attached to the land in whole or in part; and~~

~~(iv) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land, and is used solely on such land. RCW 82.08.0288.~~

(5) Deferred sales or use tax. If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department. If a deferred sales or use tax liability is incurred by a farmer who is not required to obtain a tax registration endorsement with the department of revenue (see WAC 458-20-101), the farmer must remit the appropriate tax upon a return to be filed with the department of revenue. This return must be filed on or before the twenty-fifth day of the month succeeding the end of the period in which the tax accrued. Forms and instructions for making returns will be furnished upon request made to the department at Olympia or to any of its branch offices.

(6) Purebred livestock exemption certificate. RCW 82.08.0259 provides a retail sales tax exemption for sales of purebred livestock for breeding purposes. To perfect a claim for this exemption, the seller must retain as a part of its records a copy of an exemption certificate, which is to be completed at the time of sale. This certificate must be substantially in the following form, and completed in its entirety:

Date of sale: \_\_\_\_\_  
Seller's name: \_\_\_\_\_  
Buyer's name: \_\_\_\_\_  
Address of buyer: \_\_\_\_\_  
Registered name of animal: \_\_\_\_\_  
Registering breed association: \_\_\_\_\_  
Purebred type: \_\_\_\_\_

I certify that the purebred animal named on this certificate is being purchased by me for breeding purposes.

Buyer's signature, Title: \_\_\_\_\_

(7) Examples. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(a) B Orchards is a commercial tree fruit grower which purchases substances which qualify as fertilizers. These substances are sprayed directly onto the tree leaves. B Orchards may purchase these fertilizers at wholesale, provided it gives the seller a resale certificate. There is no requirement that fertilizers be applied directly to the soil.

(b) AC Timber uses various pesticides to control weeds and pests in its stands of timber. These pesticides qualify as spray materials. AC must pay retail sales tax upon the purchase of these spray materials. AC Timber does not satisfy the statutory definition of "farmer."

(c) Bob Smith grows vegetables for retail sale at a local market. Bob purchases fertilizers and spray materials which he applies to the vegetable plants. Bob also purchases feed for poultry which he raises to produce eggs for his personal consumption. As the vegetables are an agricultural product produced for sale, retail sales tax does not apply to his purchase of the fertilizers and spray materials. Retail sales tax does apply to Bob's purchase of poultry feed, as the poultry is raised to produce eggs for Bob's personal consumption.

(d) DG Vineyards grows grapes which it uses to manufacture wine for sale. DG purchases pesticides and fertilizers which it applies to its vineyards. DG Vineyards

must remit retail sales tax upon the purchase of the pesticides and fertilizers. The statutory definition of "farmer" excludes persons raising agricultural products which they use as ingredients in a manufacturing process.

(e) John Doe operates a farm where he raises cattle for sale. John Doe raises his own hay which he bales and later uses as feed for his cattle. He is required to pay retail sales or use tax on the wire or twine he uses in baling the hay since he is the consumer of the wire or twine. If he were to sell the baled hay, he could give a resale certificate for these purchases.

**WSR 94-07-050**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**  
[Filed March 10, 1994, 2:49 p.m.]

Date of Adoption: March 10, 1994.

Purpose: This rule explains how persons providing horticultural services to farmers are taxed.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-209.

Statutory Authority for Adoption: RCW 82.32.300.

Pursuant to notice filed as WSR 94-03-036 on January 10, 1994.

Effective Date of Rule: Thirty-one days after filing.

March 10, 1994

Russell W. Brubaker  
Assistant Director

AMENDATORY SECTION (Amending Order ET 83-1, filed 3/30/83)

WAC 458-20-209 Farming ((operations performed) for hire and horticultural services performed for farmers. ((Persons engaging in the business of threshing grain, baling hay, cutting or binding hay or grain, tilling the land or performing for hire other services connected with farming activities are taxable under the service and other business activities classification of the business and occupation tax upon the gross income received from the performance of such services.

The extent to which the above functions are performed for others is determinative of whether or not a person is engaged in a taxable business in respect thereto. In other words, a person is not construed as being engaged in a taxable business when his activities are casual and incidental, such as a farmer owning baling equipment or threshing equipment which is used primarily for baling hay or threshing grain produced by himself but who may occasionally accommodate neighboring farmers by baling small quantities of hay or threshing small quantities of grain produced by them. On the other hand, persons owning baling equipment or threshing outfits whose primary business is baling hay or threshing grain for others are engaged in business and taxable with respect thereto, irrespective of the amount or extent of such business and are required to pay the retail sales tax upon the purchase of materials and equipment used in the performance of such services.

In cases where doubt exists in determining whether or not a person is engaging in the business of performing the

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aforementioned services, all pertinent facts should be submitted to the department of revenue for a specific ruling.-) (1) **Introduction.** This section provides tax reporting information for persons performing horticultural services for farmers. Persons providing horticultural services to persons other than farmers should refer to WAC 458-20-226. Farmers and persons making sales to farmers may also want to refer to the following sections of chapter 458-20 WAC:

(a) WAC 458-20-122 (Sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use);

(b) WAC 458-20-210 (Sales of agricultural products by farmers); and

(c) WAC 458-20-239 (Sales to nonresidents of farm machinery or implements).

(2) **Definitions.** For the purposes of this section, the following definitions apply:

(a) "Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. The term does not include a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard, slaughter or packing house. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213.

(b) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to a product of horticulture, grain cultivation, vermiculture, or viticulture. "Agricultural product" includes plantation Christmas trees, animals, birds, insects, or the substances obtained from such animals. RCW 82.04.213. On and after July 1, 1993, "agricultural product" includes products of "aquaculture" and animals that are "cultured aquatic products," as those terms are defined by RCW 15.85.020. Also effective July 1, 1993, "turf" was added to the definition of "agricultural product," and "animals intended to be pets" were specifically excluded. (See chapter 25, Laws of 1993 sp.s.)

(c) "Horticultural services" include services related to the cultivation of vegetables, fruits, grains, field crops, ornamental floriculture, and nursery products. The term "horticultural services" includes, but is not limited to, the following:

(i) Soil preparation services such as plowing or weed control before planting;

(ii) Crop cultivation services such as planting, thinning, pruning, or spraying; and

(iii) Crop harvesting services such as threshing grain, mowing and baling hay, or picking fruit.

(3) **Business and occupation tax.** Persons performing horticultural services for farmers are generally subject to the service and other business activities B&O tax upon the gross proceeds. However, if the person providing horticultural services also sells tangible personal property for a separate and distinct charge, the charge made for the tangible personal property will be subject to either the wholesaling or

retailing B&O tax, depending on the nature of the sale. Persons making sales of tangible personal property to farmers should refer to WAC 458-20-122 to determine whether the wholesaling or retailing tax applies, and under what circumstances retail sales tax must be collected.

(a) A farmer who occasionally assists another farmer in planting or harvesting a crop is generally not considered to be engaged in the business of performing horticultural services. These activities are generally considered to be casual and incidental to the farming activity. For example, a farmer owning baling equipment which is used primarily for baling hay produced by the farmer, but who may occasionally accommodate neighboring farmers by baling small quantities of hay produced by them, is not considered to be in business with respect thereto.

(b) The extent to which horticultural services are performed for others is determinative of whether or not they are considered taxable business activities. Persons who advertise or hold themselves out to the public as being available to perform farming for hire will be considered as being engaged in business. For example, a person who regularly engages in baling hay or threshing grain for others is engaged in business and taxable upon the gross proceeds derived therefrom, irrespective of the amount of such business or that this person also does some farming of his or her own land.

(c) In cases where doubt exists in determining whether or not a person is engaged in the business of performing horticultural services, all pertinent information should be submitted to the department of revenue for a specific ruling.

(4) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(a) Purchases of machinery, machinery parts and repair, tools, and cleaning materials by persons performing horticultural services are subject to retail sales tax.

(b) Persons taxable under the service and other business activities B&O tax classification are defined as consumers of anything they use in performing their services. (Refer to RCW 82.04.190.) As such, these persons are required to pay retail sales or use tax upon the purchase of all items used in performing the service, such as fertilizers, spray materials, and baling wire, which are not sold separate and apart from the service they perform.

(5) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(a) John Doe is a wheat farmer owning threshing equipment which is generally used only for threshing his own wheat. Occasionally a neighbor's threshing equipment may break down and John will use his own equipment to assist the neighbor in completing the neighbor's wheat harvest. While John receives payment for providing the threshing assistance, this activity is considered to be a casual and isolated sale. John does not hold himself out as being in the business of performing farming (threshing) for hire. John Doe is not considered to be engaging in taxable business activities. The amounts John Doe receives for

assisting in the harvest of his neighbors' wheat is not subject to tax.

(b) X Spraying applies fertilizer to orchards owned by Farmer A. The sales invoice provided to Farmer A by X Spraying reflects a "lump sum" amount with no segregation of charges for the fertilizer and the application. When reporting its tax liability, X Spraying would report the total charge under the service B&O tax classification. X Spraying must also remit retail sales or use tax upon the purchase of the fertilizer. The entire amount charged by X Spraying is for horticultural services, and X Spraying is considered the consumer of the fertilizer.

(c) Z Flying aerial sprays pesticides on crops owned by Farmer B. The sales invoice Z Flying provides to Farmer B segregates the charge for the pesticides and the charge for the application. When reporting its tax liability, Z Flying would report the charge for the application under the service B&O tax classification. The charge for the sale of the spray materials is subject to the wholesaling B&O tax, provided Z Flying obtains a resale certificate from Farmer B. (See WAC 458-20-122.) Z Flying's purchase of the pesticides is a purchase for resale and not subject to the retail sales tax.

**WSR 94-07-051**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**  
 [Filed March 10, 1994, 2:50 p.m.]

Date of Adoption: March 10, 1994.

Purpose: WAC 458-20-125 will be repealed. The subject matter of this rule will be combined and included as part of WAC 458-20-122.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 458-20-125.

Statutory Authority for Adoption: RCW 82.32.300.

Pursuant to notice filed as WSR 94-03-037 on January 10, 1994.

Effective Date of Rule: Thirty-one days after filing.

March 10, 1994

Russell W. Brubaker  
 Assistant Director

**REPEALER**

The following section of the Washington Administrative Code is hereby repealed:

|                |                                  |
|----------------|----------------------------------|
| WAC 458-20-125 | Miscellaneous sales for farm use |
|----------------|----------------------------------|

**WSR 94-07-054**  
**PERMANENT RULES**  
**DEPARTMENT OF TRANSPORTATION**

[Order 142—Filed March 11, 1994, 1:35 p.m., effective March 11, 1994]

Date of Adoption: March 11, 1994.

Purpose: To define the use (WAC 468-38-020) and govern the issuance (WAC 468-38-030) of temporary additional tonnage permits.

Citation of Existing Rules Affected by this Order:  
 Amending WAC 468-38-020 and 468-38-030.

Statutory Authority for Adoption: RCW 46.44.090.  
 Pursuant to notice filed as WSR 94-03-042 on January 11, 1994.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Due to the 1993 legislative changes, that these WACs complement, being effective January 1, 1994, the permanent rule should take effect on the date of filing.

Effective Date of Rule: Filing date [March 11, 1994].  
 March 11, 1994  
 E. R. Burch  
 for S. A. Moon  
 Deputy Secretary

**AMENDATORY SECTION** (Amending Order 50, Resolution No. 253, filed 10/24/85)

**WAC 468-38-020 Temporary additional tonnage permits.** A permit to carry weight in addition to that authorized by the licensed gross weight may be issued under some conditions:

(1) A single-unit truck or a truck combination must be licensed to 40,000 pounds or to 80,000 pounds respectively in order to qualify for ~~((a))~~ a temporary additional tonnage permit.

(2) The wheelbase of any group of axles must meet the requirements of the legal weight table in RCW 46.44.041. No single axle shall exceed 20,000 pounds; no pair of tandem axles shall exceed 34,000 pounds.

(3) The weight limits ~~((of 600 pounds per inch width of tire))~~ established in RCW 46.44.042 relating to tires may not be exceeded.

(4) The restrictions on highway loads required by emergency conditions pursuant to WAC 468-38-080 shall apply even though an operator has ~~((a))~~ a temporary additional tonnage permit.

**AMENDATORY SECTION** (Amending Order 68, filed 11/22/89, effective 12/23/89)

**WAC 468-38-030 Issuance of temporary additional tonnage permits.** (1) ~~((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))~~ Temporary additional tonnage 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, and two axle tractors to pull double trailers.

~~((3))~~ (2) Permits will not be issued to semi-trailers.

~~((4))~~ (3) The fees for temporary additional tonnage permits shall not be prorated ~~((under the following conditions and by the following method:~~

~~((a) 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.~~

~~((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.~~

(e) The percentage of mileage operated in Washington, which is the percentage as reported for vehicle license proration, shall be multiplied by the amount in (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 be determined by RCW 46.44.095.~~

(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 their respective jurisdiction in accordance with chapters 46.85 and 46.87 RCW.~~

(5) ~~Quarterly or monthly additional tonnage permits may be purchased only when the applicant has purchased licensed tonnage on a quarterly or monthly basis).~~

~~((6))~~ (4) Temporary additional tonnage permits may be purchased when the applicant has licensed tonnage in effect for the period for which he is applying. A trip permit may be used in lieu of licensed tonnage when the requirements of RCW 46.16.160 have been met.

~~((7) Additional tonnage purchased on a quarterly basis may be prorated if the prorate percentage for Washington state is at least sixty percent. Temporary additional tonnage may not be prorated.~~

~~(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.)~~

**WSR 94-07-055**

**PERMANENT RULES**

**DEPARTMENT OF TRANSPORTATION**

[Order 143—Filed March 11, 1994, 1:38 p.m., effective March 11, 1994]

Date of Adoption: March 11, 1994.

Purpose: To change administrative policy regarding exemptions for specific overlength vehicles into rule.

Citation of Existing Rules Affected by this Order: Amending WAC 468-38-075.

Statutory Authority for Adoption: RCW 46.44.090.

Pursuant to notice filed as WSR 94-03-043 on January 11, 1994.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The rule is currently adopted under emergency, and has been implemented.

Effective Date of Rule: Filing date [March 11, 1994],  
March 11, 1994

E. R. Burch  
for S. A. Moon  
Deputy Secretary

AMENDATORY SECTION (Amending Order 139, filed 10/8/93, effective 11/8/93)

~~WAC 468-38-075 Overlength exemptions. ((Single trailers and/or loads not exceeding fifty six feet in length, double trailers and/or loads not exceeding sixty eight feet in~~

~~length, nonreducible loads (including trailer) not exceeding sixty one feet in length, and vehicles with front overhangs not exceeding four feet beyond the three foot legal limit set in RCW 46.44.034 (see also bumper criteria in RCW 46.37.517), may move by special motor vehicle permit without regard to oversize load signs (WAC 468-38-190), weekend curfew or holiday restrictions (WAC 468-38-230), commuter traffic restrictions (WAC 468-38-235), or night-time movement restrictions (WAC 468-38-260).~~

~~A power unit having tandem drive axles pulling a single trailer and/or load not exceeding fifty six feet or a nonreducible load not exceeding sixty one feet is)) Vehicles may move by special motor vehicle permit without regard to oversize load signs (WAC 468-38-190), weekend curfew or holiday restrictions (WAC 468-38-230), commuter traffic restrictions (WAC 468-38-235), or night-time movement restrictions (WAC 468-38-260), when they meet the following overlength conditions:~~

~~Tractor/trailer combinations with:~~

~~-A single trailer not exceeding fifty-six feet (including load)~~

~~-Double trailers not exceeding sixty-eight feet (including load)~~

~~-Nonreducible loads (including trailer) not exceeding sixty-one feet~~

~~-Vehicles with front overhang not exceeding four feet beyond the three foot legal limit set in RCW 46.44.034 (see also bumper criteria set in RCW 46.37.517)~~

~~-Single unit fixed load vehicles not exceeding an overall length of forty-five feet including a four foot front overhang beyond the legal three foot limit and a rear overhang not to exceed fifteen feet measured from the center of the last axle.~~

~~The aforementioned vehicles, when in compliance with WAC 204-24-050 Use of tire chains or other traction devices, are also exempt from that portion of the winter road restrictions (WAC 468-38-390) prohibiting movement in areas where any of the following signs are displayed: "Traction tires advised," "approved traction tires recommended," "approved traction tires required," or "tire chains required." The signs, however, must be obeyed.~~

**WSR 94-07-064**

**PERMANENT RULES**

**OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES**

[Filed March 14, 1994, 11:20 a.m.]

Date of Adoption: March 14, 1994.

Purpose: State agencies and educational institutions need clear guidance on their authority and responsibilities for the implementation of the provisions in chapter 39.19 RCW.

Citation of Existing Rules Affected by this Order: Amending WAC 326-30-051 and 326-40-060.

Statutory Authority for Adoption: RCW 39.19.030(7).

Pursuant to notice filed as WSR 94-01-127 on December 20, 1993.

Effective Date of Rule: Thirty-one days after filing.  
March 14, 1994  
James A. Medina  
Director

PERMANENT

**AMENDATORY SECTION** (Amending WSR 92-20-124, filed 10/7/92, effective 11/7/92)

**WAC 326-30-051 Counting participation toward agency and educational institution goals.** (1) The office will count an agency's or educational institution's expenditures to certified businesses toward goal attainment only when the work performed by the business on a contract is within the scope of work included in the standard industrial classification (SIC) codes under which the business is listed in the directory of certified businesses published by, or in the records of, the office.

(2) Prime contractors and consultants.

(a) Where a certified business performs a commercially useful function in the work of the contract, the dollar value of expenditures to the business for such work will be counted toward the agency or educational institution's goal attainment according to the certification status of the business.

(b) Where a certified business is a partner in a joint venture, and the business performs a commercially useful function in the work of the contract, only the dollar value of expenditures to the certified business which is commensurate with its interest in the joint venture will be counted toward the agency or educational institution's goal attainment according to the certification status of the business.

(3) Subcontractors and subconsultants.

(a) Where a certified business performs a commercially useful function in the work of a subcontract, the dollar value of expenditures to the business for such work will be counted toward the agency or educational institution's goal attainment according to the certification status of the business.

(b) Where a certified business is a subcontractor on a heavy construction, highway, or street construction project, expenditures to the certified business shall not be counted toward goal attainment if the business subcontracts more than twenty-five percent of the total amount of its own subcontract to a noncertified business.

(4) Suppliers.

(a) Where a certified business is the manufacturer or a regular dealer of goods or materials required under a contract, one hundred percent of the dollar value of expenditures to the business for such materials or supplies will be counted toward the agency or educational institution's goal attainment according to the certification status of the business.

(b) Where a certified business is a broker or a packager of goods or materials required under a contract, ~~effective July 1, 1993, twenty one hundred~~ percent of the dollar value of expenditures to the business will be counted toward the agency or educational institution's goal attainment according to the certification status of the business.

(5) Where a certified business is a hauler, trucker, or delivery service, but is not also a regular dealer or the manufacturer of the goods or materials required on the job site, the dollar value of expenditures to the business for fees charged to deliver the goods or materials required will be counted toward the agency or educational institution's goal attainment according to the certification status of the business.

(6) Where a certified business provides bonds or insurance specifically required for the performance of a

contract, the dollar value of expenditures to the business for the fee or commission charged for providing the bonds or insurance will be counted toward the agency or educational institution's goal attainment according to the certification status of the business.

(7) Where a certified business is a travel agency, shipping or transportation broker, or other business performing similar functions, twenty percent of the dollar value of expenditures to the business to provide a bona fide service in the procurement of transportation will be counted toward the agency or educational institution's goal attainment according to the certification status of the business.

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

**AMENDATORY SECTION** (Amending WSR 92-20-124, filed 10/7/92, effective 11/7/92)

**WAC 326-40-060 Determining compliance and counting participation at time of award bid opening.** ~~(1) The participation of a certified business at any level of a contract or procurement may be counted when the work to be performed is a commercially useful function within the context of the contract or procurement. If, at the time of award, the business is projected to perform work classified in SIC codes different from those listed for the business in the records of the office, the business may be given the opportunity to update its listing, with the office's approval, prior to the agency or educational institution's reporting of expenditures made to the business.~~

~~(2) Prime contractors and consultants.~~

~~(a) Award to certified businesses. When a contract is awarded, which is to be performed solely by a certified business, one hundred percent of the total contract value can be counted toward the contract goal according to the certification status of the business.~~

~~(b) Award to certified prime contractors and consultants with noncertified subcontractor and subconsultant. When a contract is awarded to a certified prime contractor with a noncertified subcontractor, one hundred percent of the total contract value can be counted toward the contract goal according to the certification status of the prime contractor; provided, the certified prime contractor performs a commercially useful function in the work of the contract.~~

~~(c) Award to noncertified prime contractor or consultant with a certified subcontractor or subconsultant. When a part of the contract is performed by a certified subcontractor or subconsultant, the dollar value of only that percentage of the total contract performed by the certified business can be counted toward the contract goal according to the certification status of the firm; provided, the certified business performs a commercially useful function in the work of the contract.~~

~~(d) Award to a certified prime contractor or consultant with a certified subcontractor or subconsultant. When a contract is awarded to a certified prime contractor with a certified subcontractor, one hundred percent of the total contract value may be counted toward the contract goal according to the certification status of the certified prime contractor or consultant; provided, the certified prime~~

contractor or consultant performs a commercially useful function in the work of the contract.

(e) ~~Award to a joint venture. When a contract is awarded to a joint venture that is approved pursuant to WAC 326-40-100, the dollar value, on a percentage basis, of the portion of the work performed by the certified business may be counted toward the contract goal according to the certification status of the business; provided, the certified business performs a commercially useful function in the work of the contract.~~

(f) ~~Award to a minority woman. When a contract is awarded which is to be performed totally or in part by a certified minority woman, and the business performs a commercially useful function, the dollar value of the work performed by the business may be counted toward either contract goal, but not both.~~

(g) ~~Award to a combination business enterprise (CBE). When a contract is awarded which is to be performed totally or in part by a CBE, and the business performs a commercially useful function, one half of the dollar value may be counted toward the contract MBE goal and one half may be counted toward the contract WBE goal. When the contract contains only an MBE requirement or a WBE requirement, only one half of the dollar value of the CBE's total participation may be counted toward the single goal.~~

~~(3) Subcontractors and subconsultants.~~

~~(a) Where a subcontract is awarded to a certified business that performs a commercially useful function in the work of a contract, one hundred percent of the dollar value of the work performed by the certified business may be counted toward the contract goal according to the certification status of the business.~~

~~(b) Where a subcontract is awarded to a certified business on a heavy construction, highway, or street construction project, expenditures to the certified business shall not be counted toward the contract goal if the business subcontracts more than twenty-five percent of the total amount of its own subcontract to a noncertified business.~~

(1) When a contract is to be awarded to a certified business that performs a commercially useful function as the prime contractor/consultant/vendor, the total contract value may be counted toward the contract goal according to the certification status of the business as follows:

(a) Minority Business Enterprise (MBE): one hundred percent toward the MBE goal;

(b) Women's Business Enterprise (WBE): one hundred percent toward the WBE goal;

(c) Minority Woman Business Enterprise (MWBE): one hundred percent toward the MBE goal or the WBE goal, but not both;

(d) Combination Business Enterprise (CBE): fifty percent toward the MBE goal and fifty percent toward the WBE goal. This procedure is to be used when the contract contains an either/or goal or separate goal requirements. When the contract contains only an MBE requirement or a WBE requirement, only one-half of the dollar value of the CBE's total participation may be counted toward the single goal. A state agency or educational institution will receive credit for the remaining fifty percent toward its annual goal attainment.

(2) When a contract is to be awarded to a joint venture that is approved pursuant to WAC 326-40-100, the dollar

value of the portion of the work performed by the certified business may be counted, on a percentage basis, toward the contract goal as set forth in subparagraphs (1)(a-d) of this section; provided, the certified business performs a commercially useful function in the work of the contract.

(3) Subcontractors and subconsultants.

(a) When a certified business performs a commercially useful function as a subcontractor or subconsultant, the dollar value of the work performed by the certified business may be counted toward the contract goal as set forth in subparagraphs (1)(a-d) of this section.

(b) When a certified business is awarded a subcontract on a heavy construction, highway, or street construction project, expenditures to the certified business shall not be counted toward the contract goal if the business subcontracts more than twenty-five percent of the total amount of its own subcontract to a noncertified business.

(4) Suppliers.

(a) Where a certified business is the manufacturer or a regular dealer of materials or supplies required under a contract, one hundred percent of the dollar value of the materials or supplies to be provided may be counted toward the contract goal according to the certification status of the business.

(b) Where a certified business is a broker or a packager of materials or supplies required under a contract, effective July 1, 1993, twenty one hundred percent of the dollar value charged for a bona fide service the commercially useful function it performs in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract may be counted toward the contract goal according to the certification status of the business.

(5) Where a certified business is a hauler, trucker, or delivery service, but not also a regular dealer or the manufacturer of the materials or supplies required on the job site, only the dollar value of the fees charged to deliver the materials or supplies required may be counted toward the contract goal according to the certification status of the business.

(6) Where a certified business is a travel agency, shipping or transportation broker, or other business performing similar functions, twenty percent of the dollar value charged for providing a bona fide service in the procurement of transportation may be counted toward the contract goal according to the certification status of the business.

(7) Where a certified business provides bonds or insurance specifically required for the performance of a contract, the dollar value charged for providing the bonds or insurance may be counted toward the contract goal according to the certification status of the business.

**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.

**WSR 94-07-066**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**  
 [Filed March 14, 1994, 2:44 p.m.]

Date of Adoption: March 14, 1994.

Purpose: To implement statutes relative to the operation of property tax levies.

Citation of Existing Rules Affected by this Order: New sections WAC 458-19-005 Definitions, 458-19-010 Levy rate calculations, 458-19-015 Assessor to determine one hundred six percent levy limit—Exceptions, 458-19-020 One hundred six percent levy limit—Method of calculation, 458-19-025 One hundred six percent levy limit—Restoration of regular levy, 458-19-030 One hundred six percent levy limit—Consolidation of districts, 458-19-035 One hundred six percent levy limit—Annexation, 458-19-040 One hundred six percent levy limit—Newly formed taxing district, 458-19-045 One hundred six percent levy limit—Removal of limit (lid lift), 458-19-050 Port district levies, 458-19-055 One hundred six percent levy limit—Proration of earmarked funds, 458-19-060 Emergency medical service levy, 458-19-065 One hundred six percent levy limit—Protection of future levy capacity, 458-19-070 Procedure to adjust consolidated levy rate for taxing districts when limits exceeded, 458-19-075 Constitutional one percent levy limit calculation, and 458-19-080 City annexed by fire protection and/or library districts.

Statutory Authority for Adoption: RCW 84.55.060 and 84.08.070.

Pursuant to notice filed as WSR 93-18-087 on September 1, 1993.

Changes Other than Editing from Proposed to Adopted Version: WAC 458-19-005(15), inserted subparagraph (a) that defines the phrase "highest amount of regular property taxes that could have been lawfully levied" for purposes of calculating the one hundred six percent limit; WAC 458-19-035(2), inserted the parenthetical clarification immediately prior to the indented portion of the example. The clarification is that the term "new construction" as used in the example includes improvements to property and increases in the value of state assessed property; WAC 458-19-040, added the last clause: "or, if applicable, the limit described in WAC 458-19-025 regarding the restoration of a regular levy" in order to make it clear that all levies subsequent to the first levy of a newly formed taxing district are subject to the 106% limit except in a situation involving restoration of a regular levy, as explained in WAC 458-19-025; WAC 458-19-055(3), deleted the words "not to exceed" and inserted "at a rate of." This was to clarify that the mental health services levy is required to be levied at a rate of two and a half cents per thousand dollars of assessed value, in order to indicate that a rate less than that is not allowed; WAC 458-19-060(4), inserted the words: "it shall be reduced in accordance with the procedure specified in WAC 458-19-075" and deleted the remainder of the paragraph. The original language was inaccurate; WAC 458-19-075, renumbered the paragraphs and inserted the words "in subsection (1) of this section" into subsection (2) to clarify what number was being multiplied by what number. Changed the word "adjusted" to "reduced" in subsection (2) in order to ensure that there is to be a reduction in the rate, not merely an adjustment, and deleted

the words "in the manner described in WAC 458-19-070." Inserted subparagraphs (a) through (i) into subsection (2). These subparagraphs specify the procedure to be followed in reducing the levy rates in order to comply with the constitutional one percent levy limit; and WAC 458-19-080, added the word "regular" in the first sentence of subsection (1) to conform to the statute.

Effective Date of Rule: Thirty-one days after filing.  
 March 14, 1994  
 William N. Rice  
 Assistant Director  
 Property Tax Division

Reviser's note: The material contained in this filing will appear in the 94-08 issue of the Register as it was received after the applicable closing date for the issue for agency-typed material exceeding the volume limitations of WAC 1-21-040.

**WSR 94-07-078**  
**PERMANENT RULES**  
**DEPARTMENT OF ECOLOGY**  
 [Order 94-02—Filed March 16, 1994, 9:03 a.m.]

Date of Adoption: March 14, 1994.

Purpose: To repeal chapter 173-34 WAC, Exemptions from detailed statement requirements of State Environmental Policy Act; chapter 173-320 WAC, Beverage containers; and chapter 173-335 WAC, Vehicle tire recycling and removal grant reduction.

Citation of Existing Rules Affected by this Order: Repealing chapters 173-34, 173-320, and 173-335 WAC.

Pursuant to notice filed as WSR 94-03-071 on January 14, 1994.

Effective Date of Rule: Thirty-one days after filing.  
 March 14, 1994  
 Mary Riveland  
 Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

|                |                                      |
|----------------|--------------------------------------|
| WAC 173-34-010 | Purpose.                             |
| WAC 173-34-020 | Definitions.                         |
| WAC 173-34-030 | Exemptions.                          |
| WAC 173-34-040 | Exemptions—Nonexempt actions.        |
| WAC 173-34-050 | Exemptions—Limitation of exemptions. |

REPEALER

The following chapter of the Washington Administrative Code is repealed:

|                 |                         |
|-----------------|-------------------------|
| WAC 173-320-010 | Authority.              |
| WAC 173-320-020 | Declaration of purpose. |
| WAC 173-320-030 | Applicability.          |
| WAC 173-320-040 | Definitions.            |
| WAC 173-320-050 | Prohibition.            |
| WAC 173-320-060 | Return requirement.     |
| WAC 173-320-070 | Complaints.             |

WAC 173-320-080 Enforcement.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

- WAC 173-335-010 Purpose and authority.
- WAC 173-335-020 Definitions.
- WAC 173-335-030 Relation to other legislation and administrative rules.
- WAC 173-335-040 General.
- WAC 173-335-050 Administration.

**WSR 94-07-079  
PERMANENT RULES  
BOARD OF  
PILOTAGE COMMISSIONERS**

[Filed March 16, 1994, 10:42 a.m.]

Date of Adoption: March 10, 1994.

Purpose: To clarify a measurement standard by which to determine the required use of an oil tanker tug escort as described in a new rule, WAC 296-116-500 Tug escort requirements for oil tankers.

Statutory Authority for Adoption: RCW 88.16.190(2).

Pursuant to notice filed as WSR 94-04-119 on February 2, 1994.

Effective Date of Rule: Thirty-one days after filing.

March 15, 1994

Armand L. Tiberio  
Chair

**NEW SECTION**

**WAC 296-116-500 Tug escort requirements for oil tankers.** (1) RCW 88.16.190(2) requires the escort of a tug or tugs for all oil tankers 40,000 DWT or greater when not in ballast. For purposes of that provision only, deadweight tonnage shall be the maximum summer deadweight tonnage that was assigned to the vessel at the time of construction as reported in **Lloyd's Register of Ships**. Unless the vessel was structurally altered and remeasured to less than 40,000 DWT, this original deadweight tonnage shall be used for purposes of determining if the vessel requires the appropriate tug escort.

(2) It shall be a violation of this regulation to provide pilotage services to an oil tanker not in compliance with this rule when the pilot has actual knowledge of the noncompliance.

(3) Oil tankers found to be in violation of the provisions of this regulation shall be subject to the provisions of RCW 88.16.150.

(4) The deadweight tonnage provision of this rule is to be used solely for determining the required use of a tug escort.

**WSR 94-07-080  
PERMANENT RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**  
(Public Assistance)

[Order 3708—Filed March 16, 1994, 10:52 a.m., effective May 1, 1994]

Date of Adoption: March 16, 1994.

Purpose: Excludes households from monthly reporting when the households' only earned income is exempt.

Citation of Existing Rules Affected by this Order: Amending WAC 388-49-590 Monthly reporting.

Statutory Authority for Adoption: RCW 74.04.050.

Pursuant to notice filed as WSR 94-06-027 on February 23, 1994.

Effective Date of Rule: May 1, 1994.

March 16, 1994

Dewey Brock, Chief

Office of Vendor Services

**AMENDATORY SECTION** (Amending Order 3471, filed 10/28/92, effective 11/28/92)

**WAC 388-49-590 Monthly reporting.** (1) The department shall require the following households to return a completed monthly report by the fifth day of the process month describing the household circumstances during the budget month:

(a) A household with nonexempt earned income or with a recent work history except a:

(i) Migrant or seasonal farm worker household; or

(ii) Household in which all members are homeless ~~((individuals))~~ persons; or

(iii) Household with a recent work history in which all adult members are elderly or disabled.

(b) An AFDC household subject to monthly reporting.

(2) A household with a recent work history shall report for two months:

(a) Beginning the month following the month of opening at initial application; or

(b) After the last month of earnings during the certification period.

(3) The department shall require a household reporting monthly to verify the factors specified under WAC 388-49-110(5).

(4) The department shall notify a household if:

(a) Its monthly report is late;

(b) Its monthly report is incomplete; or

(c) Additional information is needed.

(5) If the household furnishes a completed report to the department by the end of the process month, the department shall:

(a) Accept the monthly report; and

(b) Continue benefits if the household remains eligible.

(6) The department shall:

(a) Terminate a household failing to return a completed report by the end of the process month; and

(b) Notify the household that it may return a completed monthly report by the last day of the payment month to receive reinstated benefits.

(7) The department shall not require a household that reports monthly to report changes before reporting on the monthly report.

PERMANENT

**WSR 94-07-084**  
**PERMANENT RULES**  
**GAMBLING COMMISSION**

[Order 250—Filed March 16, 1994, 11:38 a.m.]

Date of Adoption: March 11, 1994.

Purpose: Packet of rules have minor housekeeping changes to clarify wording, amend WAC and RCW references or amend rule in accordance with code reviser standards.

Citation of Existing Rules Affected by this Order: Amending WAC 230-02-161, 230-04-035, 230-04-075, 230-08-015, 230-12-010, 230-12-305, 230-20-064, 230-20-111, 230-20-220, 230-20-230, 230-20-400, 230-20-680, 230-25-160, 230-30-060, 230-30-072, 230-30-102, 230-30-103, and 230-40-055.

Statutory Authority for Adoption: For WAC 230-02-161, 230-04-035, and 230-04-075 is RCW 9.46.0209; for WAC 230-08-015, 230-12-305, 230-20-064, 230-20-111, 230-20-220, 230-20-230, 230-25-160, 230-30-060, 230-30-072, 230-30-102, 230-30-103, and 230-40-055 is RCW 9.46.070; for WAC 230-20-400 is RCW 9.46.070, 9.46.0315, and 9.46.0321; for WAC 230-20-680 is RCW 9.46.070 and 9.46.0331; and for WAC 230-12-010 is RCW 9.46.140.

Pursuant to notice filed as WSR 94-04-024 on January 25, 1994.

Effective Date of Rule: Thirty-one days after filing.  
 March 14, 1994  
 Shanna R. Lingel  
 Rules Coordinator

**AMENDATORY SECTION** (Amending Order 190, filed 4/18/89, effective 7/1/89)

**WAC 230-02-161 Bona fide nonprofit organization defined.** A bona fide nonprofit organization is a organization that meets all of the requirements of RCW 9.46.0209 and is organized and operated primarily to provide one or more of the following nonprofit services:

- (1) Educational;
- (2) Civic;
- (3) Patriotic;
- (4) Political;
- (5) Social;
- (6) Fraternal;
- (7) Athletic;
- (8) Agricultural;
- (9) Church and religious societies under chapter 24.12

RCW;

- (10) Fraternal societies under chapter 24.20 RCW;
- (11) Granges under chapter 24.28 RCW; and
- (12) Agricultural fairs under chapter 15.76 RCW or chapter 36.37 RCW.

Each nonprofit organization shall provide evidence of its nonprofit status by submitting documentation setting forth the progress it has made toward accomplishing its nonprofit purposes during its previous fiscal year. The fact that an organization is not exempt from payment of federal income taxes on income from its primary activities shall be prima facie evidence that the organization is not a nonprofit organization for purposes of conducting gambling activities.

**AMENDATORY SECTION** (Amending Order 190, filed 4/18/89, effective 7/1/89)

**WAC 230-04-035 Certification procedure—Charitable and nonprofit organizations—Classification of purpose.** (1) Each organization requesting a license to conduct gambling shall be classified as either a "charitable organization" or a "nonprofit organization." The classification will be based upon an organization's primary purpose as set forth below:

(a) If an organization is classified as a "charitable organization," its primary purpose shall be charitable as defined in WAC 230-02-160.

(b) If an organization is classified as a "nonprofit organization," it will be assigned one or more of the purposes set forth in WAC 230-02-161 as its primary purpose(s).

For the purposes of this classification, the term primary purpose shall mean the lawful purpose to which a majority of an organization's fiscal year income was spent or dedicated. If an organization did not use a majority of its income for any single purpose, the purpose to which the greatest percentage of its income was devoted shall be an organization's primary purpose.

(2) In determining an organization's primary purpose, the commission staff shall review the organization's declaration of purpose, reported achievements, and expenditures made during the preceding twelve months.

(3) An organization may challenge its assigned purpose, by submitting to the director additional evidence supporting its choice. The director shall then issue a written decision as to the organization's primary purpose. The director's decision may be reviewed by the commission upon written request.

**AMENDATORY SECTION** (Amending Order 136, filed 9/13/83)

**WAC 230-04-075 No license required for certain bingo, raffles, and amusement games.** Bona fide charitable or bona fide nonprofit organizations organized primarily for purposes other than the conduct of gambling activities, are hereby authorized to conduct the following gambling activities without obtaining a license to do so from the commission:

(1) Raffles when:

(a) Held in accordance with all other requirements of chapter 9.46 RCW, other applicable laws, and rules of the commission; and

(b) Gross revenues from all such raffles held by the organization during the calendar year do not exceed \$5000; and

(c) Tickets to such raffles are sold only to, and winners are determined only from among, the regular members of the organization conducting the raffle: *Provided*, That the term members for this purpose shall mean only those persons who have become members prior to the commencement of the raffle and whose qualification for membership was not dependent upon, or in any way related to, the purchase of a ticket, or tickets, for such raffles; and

(2) Bingo, raffles, and amusement games when:

(a) Such activities are held in accordance with all other requirements of chapter 9.46 RCW as now or hereafter

amended, other applicable laws, and rules of the commission; and

(b) Said activities are, alone or in any combination, conducted no more than twice each calendar year and over a period of no more than twelve consecutive days each time, notwithstanding the limitations of RCW ((9.46.020(2))) 9.46.0205 as now or hereafter amended: *Provided*, That a raffle conducted under this subsection may be conducted for a period longer than twelve days; and

(c) Only bona fide members of that organization, who are not paid for such services, participate in the management or operation of the activities; and

(d) Gross revenue to the organization from all the activities together does not exceed five thousand dollars during any calendar year; and

(e) All revenue therefrom, after deducting the cost of prizes and other expenses of the activity, is devoted solely to the purposes for which the organization qualifies as a bona fide charitable or nonprofit organization; and

(f) The organization gives notice at least five days in advance of the conduct of any of the activities to the local policy agency of the jurisdiction within which the activities are to be conducted of the organization's intent to conduct the activities, the location of the activities, and the date or dates they will be conducted; and

(g) The organization conducting the activities maintains records for a period of one year from the date of the event which accurately show at a minimum the gross revenue from each activity, details of the expenses of conducting the activities, and details of the uses to which the gross revenue therefrom is put.

(3) An organization may exceed the separate limits set forth in (1) and (2) above only if it first obtains a license to conduct the appropriate gambling activity from the commission, with the classification and fee to be computed, including but not limited to, all income from the activity or activities already conducted during that calendar year. The duration of the license issued shall be one year from the date of the first gross receipts received for the particular activity during the calendar year.

**AMENDATORY SECTION** (Amending Order 127, filed 3/2/83)

**WAC 230-08-015 Certain lower volume licensees may meet reduced recordkeeping requirements.** Notwithstanding the provisions of WAC 230-08-010, persons holding licenses issued under the classes and circumstances set out in WAC 230-04-065 and persons operating without a license under RCW ((9.46.030 (2) or (3))) 9.46.0315 and 9.46.0321 need only keep a set of permanent records of all of the activities of the licensee related to conducting the licensed activity which includes the following, by month:

(1) The gross receipts from the conduct of each licensed activity;

(2) The total amount of cash prizes actually paid out and the total of the cost to the licensee of all merchandise prizes actually paid out for each licensed activity;

(3) A summary of all expenses related to each of the activities licensed; and

(4) The net income received by the licensee from the licensed activity with a designation of the purposes for

which the net income was raised and the amount paid each recipient of any part of the net income.

These records shall be maintained by the licensee for a period of not less than three years from the end of the license year for which the record is kept unless released by the commission from this requirement as to any particular record. Persons operating under RCW ((9.46.030 (2) or (3))) 9.46.0315 and 9.46.0321 without a license shall maintain the above records for a period of one year.

**AMENDATORY SECTION** (Amending Order 194, filed 7/18/89, effective 8/18/89)

**WAC 230-12-010 Inspection of premises, records and devices.** All premises licensed, or any premises in any way connected physically or otherwise with a licensed business, including vehicles used in connection therewith, shall at all times be open to inspection by the commission or its authorized representatives.

At any time during which a licensed gambling activity is being operated upon a premises, the commission, and any authorized representative of the commission, may enter upon the premises without advance notice and:

(1) Make a count of all monies received during the operation of the licensed activity located on the premises, inspect all receipts ((for income issued by the licensee, and inspect all receipts)) for income, and for prizes which have been awarded by the licensee.

(2) Inspect any of the other records of the licensee, or of any member that directly participates in the management, operation or promotion of a licensed activity, or of any employee of the licensee, or of any operator of the licensed activity.

(3) Inspect, including the dismantling of, all pieces of equipment or parts thereof, or devices of any nature, which are being used to conduct the licensed activity.

(4) When the commission, or its authorized representative, finds cause to believe that there is a reasonable probability that the provisions of chapter 9.46 RCW, including any amendments thereto, or any of the rules passed by the commission, have been or are being violated by the licensee, or its employees or operators, remove to another location or locations for further inspection and investigation, any and all records and any and all equipment, parts thereof, and devices of any nature located upon the premises related to the operation of the licensed activity, or any other gambling activity: *Provided*, That records may be removed, for inspection purposes, from the licensee's premises or control in the case of an inadequate working environment.

A receipt shall be issued to the licensee or operator of the activity which shall list and describe each record and each piece of equipment, or part thereof, and device which has been removed from the premises.

Each such record, piece of equipment, part thereof, and device so removed shall be returned to the premises or to the address of the licensee within a reasonable period of time after its removal subsequent to notification of settlement of the case, in as good a condition as it was in when removed, unless the commission or the director determines that the record, equipment or devices so removed are necessary for an ongoing investigation of possible violations of statutes or rules of the commission by the licensee, by employees of the

licensee, or by operators of the licensed activity. Copies of retained records and reports will be provided to the licensee upon written request within ten working days after the receipt of the request, unless good cause is shown for an additional extension.

**AMENDATORY SECTION** (Amending WSR 91-07-021, filed 3/13/91, effective 4/13/91)

**WAC 230-12-305 Licensee required to submit updated documents or information.** In addition to any other requirements set forth in these rules, the persons licensed by the commission shall be required to submit any changes in the following documents or information on file with the commission:

- (1) Articles of incorporation or by laws, or any other documents which set out the organizational structure and purposes;
- (2) Internal Revenue Service tax exemption status (charitable/nonprofit organizations only); ~~((and))~~
- (3) All leases, rental, consignment, franchise, or other agreements relating to gambling activities or altering the commercial stimulant business, whether oral or written; and
- (4) All loans, from other than recognized financial institutions, which individually or collectively exceed a total of \$2,000.00 during any calendar year.

The new or updated documents and/or information shall be submitted to the commission by notation on the next quarterly activity report filed, and by attaching all details concerning each transaction: *Provided*, That licensees not required to submit quarterly activity reports shall submit the required information no later than 60 days following the transaction(s) date.

**AMENDATORY SECTION** (Amending Order 240, filed 6/17/93, effective 7/18/93)

**WAC 230-20-064 Maximum receipts, prizes, and expenses for bingo games—Net income required.** Bingo is to be conducted as a social pastime and for the raising of funds to support the purpose(s) of the organization only. Organizations licensed to conduct bingo games must comply with the following limitations:

- (1) Gross receipts from the sale of bingo cards shall not exceed the limits by class of license for the organization's license year as set out in WAC 230-04-201, Table 1., or as restricted by the commission under subsection (6) of this section.
- (2) To prevent the payment of prizes in such amounts that would significantly reduce net income, prize payouts, as percentages of gross receipts, shall not exceed the percentages listed in Table 1. by class of license, or as restricted by the commission under subsection (6) of this section.
- (3) To insure that licensees meet the intent of RCW 9.46.010 and to prevent the payment of excessive expenses, combined net income from bingo games, punchboards/pull tabs, and food, drink or other retail sales activities conducted in conjunction with bingo games, as a percentage of bingo games gross receipts shall not be less than the percentage listed in Table 1. by class of license for any annual license period, or as restricted by the commission under subsection (6) of this section: *Provided*, That local gambling taxes paid

or accrued will be allowed as a credit when computing net income for bingo and punchboards and pull tabs.

(4) The director may allow a licensee to temporarily exceed the limitations set out in subsection (2) or (3) of this section, or Table 1. of this section when unusual and/or uncontrollable conditions affect the licensee's ability to comply. Any licensee seeking relief from these requirements must petition the commission staff in writing. This petition must set forth the specific circumstances for which such relief is sought and include objective evidence regarding the scope of the impact on the bingo operation. The director may authorize exceptions under the following conditions:

(a) When a new class D or above bingo licensee or any game not under the jurisdiction of the commission and which operates two or more days per week begins bingo activities within the market area of an operating game. For purposes of this section, "market area" is defined as:

- (i) Primary market area - within the area encompassed by a measurement that starts at the premises of an operating class D or above bingo game and extends to a radius that is located five miles from such premises;
- (ii) Secondary market area - within the area encompassed by a measurement that starts at a radius that is located five miles from the premises of an operating class D or above bingo game and extends to a radius that is located ten miles from the premises;
- (iii) Rural market area - within the area starting at the premises of an operating class D or above bingo game and extending to the twenty-five mile radius from such premises when such premises is located in any county that the total population is less than one hundred thousand.

(b) When a class D or above game is forced to move its current operations outside their primary market area due to circumstances beyond the control of the organization. Examples of uncontrollable circumstances are:

- (i) Premises destroyed or condemned;
  - (ii) Lease expiration without an option to renew;
  - (iii) Increases to rent that would put the licensee in jeopardy of being in violation of net income requirements;
  - (iv) Permanent interruption of customer flow, such as: Closure of arterial exit ramps; loss of customer parking; cancellation of public transportation; etc.; or
  - (v) Other circumstances as approved by the director.
- (c) When an organization not previously licensed to conduct bingo at any class begins operations at the class D or above level;

(d) When a licensee is required to upgrade their license class in the last quarter of their annual license period; or

(e) When an organization incurs a temporary interruption of customer flow. A "temporary interruption of customer flow" is defined as an interruption that the licensee can not prevent but which will be corrected within a reasonable time period, such as street repairs, damage to premises, inclement weather, etc.

(5) Relief granted under subsection (4) of this section shall be limited to adjustment of the requirements in Table 1. as follows:

(a) Relief for subsection (4)(a) of this section - New game operating within the primary market area. When a new class D or above or any game not under the jurisdiction of the commission and which operates two or more days per

week begins operations within the primary market area of an operating class D or above bingo game and:

(i) The new game operates two or more occasions per week that are common to the currently operating game, the annual and calendar quarter prize payout limits shall be increased by two percentage points for the first twelve months of operation, and the annual minimum net income requirements shall be decreased by two percentage points for the first twelve months of operation of the new game; or

(ii) The new game operates one occasion or less per week that is common to the currently operating game, the annual and calendar quarter prize payouts limits shall be increased by one percentage point for the first twelve months of operation, and the annual minimum net income requirements shall be decreased by one percentage point for the first twelve months of operation of the new game.

(b) Relief for subsection (4)(a) of this section - New game operating within the secondary or rural market area. When a new class D or above or any game not under the jurisdiction of the commission and which operates two or more days per week begins operations within the secondary or rural market area of an operating class D or above bingo game and:

(i) The new game operates on two or more occasions common to the current game, then the annual and calendar quarter prize payout limits shall be increased by one percentage point for the first twelve months of operation, and the annual minimum net income requirements shall be decreased by one percentage point for the first twelve months of operation of the new game; or

(ii) The new game operates on one or less occasion common to the current game, then the annual and calendar quarter prize payout limits shall be increased by one-half percentage point for the first twelve months of operation, and the annual minimum net income requirements shall be decreased by one-half percentage point for the first twelve months of operation of the new game.

(c) Relief for subsection (4)(b) of this section - Organizations forced to move their game outside their primary market area shall be authorized an increase in the quarterly prize payout limit of one percentage point, and a decrease in the annual net income limit by one percentage point for the first twelve months of operation in the new location;

(d) Relief for subsection (4)(c) of this section - Organizations not previously licensed to conduct bingo at any level shall be authorized a two percentage point reduction in the net income requirement and a two percentage point increase in the maximum prize payout requirement of Table 1. for the first annual license period;

(e) Relief for subsection (4)(d) of this section - Organizations required to upgrade their license in the last quarter of their annual license period shall be measured for the entire annual license period based on the lower license class limits; and

(f) Relief for subsection (4)(e) of this section - Organizations that have temporary interruption of customer flow shall be measured for the affected period, plus one month, based on performance with the interruption period factored out.

(6) Enforcement actions. The commission may impose the following corrective requirements and/or penalties on any licensee who fails to meet requirements of this section:

(a) Any licensee that exceeds the maximum calendar quarter prize payout limit or reports net income that is more than two percentage points lower than the annual minimum net income requirements during any quarter and whose net income falls below the annual minimum requirements when measured license year-to-date shall:

(i) Take immediate steps to decrease prizes and/or expenses;

(ii) Report the violation to commission staff as soon as discovered, but in no case later than thirty days following the end of the quarter. This notification shall be separate and additional to the quarterly activity report;

(iii) Provide a written plan of actions to gain compliance to the commission no later than forty-five days following the end of the quarter. This plan shall be evaluated by commission staff and input provided to the licensee no later than thirty days after receipt;

(iv) Provide the commission additional reports determined by the staff as necessary to monitor progress toward compliance; and

(v) Upon request, a committee of the licensee's management, including the chief executive officer, executive director, or equivalent manager responsible for supervising the primary bingo manager, and the primary bingo manager shall meet with commission staff to discuss the action plan.

(b) Any licensee who fails to achieve the minimum net income requirement for their annual measurement period shall be limited in license class for the next annual license period to the license class equal to the level of net income actually achieved, not to exceed a license class that authorizes at least one-half of the maximum gross gambling receipts of the current license class. The annual measurement period used shall be the licensee's annual fiscal accounting year: *Provided*, That the reduction for the first violation shall be a maximum of two license classes. A licensee limited under this section will not be granted an increase in their authorized license class until it has demonstrated the ability to maintain net income requirements at or above the minimum level for the class of license sought. Achieving net income requirements at or above the minimum level for at least two quarters, one of which may be the last quarter in the previous license year, shall be prima facie evidence of such ability: *Provided Further*, That a licensee may petition the commissioners for a license to operate at a higher level. Any such petition would be heard at a regular public meeting of the commission under the requirements of WAC 230-50-850. Petitions for relief under this section must include: The impact the reduction would have on their programs; what portion of their programs are charitable as compared to nonprofit; and income available from other sources to fund programs. The commission may take testimony from other parties that may be affected by approval of the petition. Any approval granted under this section may be made contingent upon future compliance or other issues as determined by the commission.

(c) The commission deems the responsibility for maintaining prize payouts at or below the maximum annual limit to be that of the primary bingo manager. The organization's board of directors may relieve the primary bingo manager of this responsibility by informing the commission in writing. Unless relieved by the board of directors, the primary manager shall be responsible for all

penalties imposed under this section. If the board relieves the manager of responsibility for prizes, the commission shall consider the organization fully responsible for compliance with this section. In this case, prize payouts will be considered when reviewing violations of this section. The primary manager shall not be compensated in any manner during periods of license suspension imposed under this section. Any primary bingo manager who fails to achieve the annual limit for the class of license issued to the organization, as set out in Table 1. below, shall:

(i) First violation - Receive a written warning and be required to demonstrate in-depth knowledge of factors affecting prize payouts including, but not limited to, bingo game prize probabilities, expected payouts for each type of

game, factors included in the computation, and methods for analysis of games. The scope and depth of their bingo management knowledge shall be demonstrated by requiring the manager to prepare and submit their current game schedules, records used to analyze games, and the expected payout for each game. The manager will be required to meet with commission staff to discuss the evaluation and other aspects of their game;

(ii) Second violation - Three day suspension that includes at least one operating day;

(iii) Third violation - Ten day suspension that includes at least four operating days;

(iv) Fourth violation - Thirty-day suspension;

(v) Fifth violation - Revocation of manager's license for at least one year.

**Table 1.**

| Group | License Class | Annual Gross Receipts | Annual Prize Payout Limits | Calendar Quarter Prize Payout Limits | Annual Minimum Net Income Requirements - Bingo * | Annual Minimum Net Income Requirements - Bingo & Punchboards/Pull Tabs ** |
|-------|---------------|-----------------------|----------------------------|--------------------------------------|--------------------------------------------------|---------------------------------------------------------------------------|
| I     | A             | Up to \$ 10,000       | No Limits                  | No Limits                            | No Limits ***                                    | No Limits ***                                                             |
|       | B             | \$ 10,001- 50,000     | No Limits                  | No Limits                            | No Limits ***                                    | No Limits ***                                                             |
|       | C             | 50,001- 100,000       | No Limits                  | No Limits                            | No Limits ***                                    | No Limits ***                                                             |
|       | D             | 100,001- 300,000      | Max of 85.0%               | Max of 86.5%                         | At least 1.0%                                    | At least 2.0%                                                             |
|       | E             | 300,001- 500,000      | Max of 84.0%               | Max of 85.0%                         | At least 2.0%                                    | At least 3.0%                                                             |
| II    | F             | 500,001- 1,000,000    | Max of 83.0%               | Max of 84.0%                         | At least 3.5%                                    | At least 4.5%                                                             |
|       | G             | 1,000,001- 1,500,000  | Max of 80.0%               | Max of 81.0%                         | At least 5.0%                                    | At least 7.0%                                                             |
|       | H             | 1,500,001- 2,000,000  | Max of 78.0%               | Max of 79.0%                         | At least 7.0%                                    | At least 9.0%                                                             |
|       | I             | 2,000,001- 2,500,000  | Max of 76.0%               | Max of 77.0%                         | At least 9.0%                                    | At least 11.0%                                                            |
|       | J             | 2,500,001- 3,000,000  | Max of 74.0%               | Max of 75.0%                         | At least 11.0%                                   | At least 13.0%                                                            |
| III   | K             | 3,000,001- 3,500,000  | Max of 72.0%               | Max of 73.0%                         | At least 12.5%                                   | At least 15.0%                                                            |
|       | L             | 3,500,001- 4,000,000  | Max of 70.0%               | Max of 71.0%                         | At least 13.5%                                   | At least 16.0%                                                            |
|       | M             | Over 4,000,000        | Max of 70.0%               | Max of 71.0%                         | At least 14.5%                                   | At least 17.0%                                                            |

\* = Combined net income from bingo games and sales of food, drink, or other retail items, if applicable, as a percent of bingo gross receipts. Local gambling taxes are not considered an expense for computing net income.

\*\* = Combined net income from punchboards/pull tabs, bingo games and sales of food, drink, or other retail items, if applicable, as a percent of bingo gross receipts. Local gambling taxes are not considered an expense for computing net income.

\*\*\* = Combined net income must be equal to or greater than zero (0) if wages or rent is paid to operate the activity. Local gambling taxes are not considered an expense for computing net income.

**AMENDATORY SECTION** (Amending Order 242, filed 7/14/93, effective 8/14/93)

**WAC 230-20-111 Promotional activities—Performances as gifts—Advance approval required.** In order to preserve the integrity and image of the charitable and nonprofit bingo industry, promotional activities including performances to entertain bingo patrons shall be deemed a promotional gift and subject to the monetary restrictions of WAC 230-20-242. For the purpose of this rule, a performance includes any show, comedy act, skit, play, dance, or similar activities, whether live or recorded, and whether or not consideration is paid or not paid to the performers of such activities.

(1) An organization that plans to offer any performance before, during, or after any bingo session shall present a

written detailed outline of such and shall secure approval by the director of the commission prior to conducting the performance. The organization shall, in writing, request a review by the director at least sixty days in advance of the scheduled date of the performance.

(2) The director shall review the subject matter of the proposed performance and shall not approve any such performance which in the director's opinion is contrary to the public interest of preserving the integrity of charitable bingo.

(3) If the director denies a request to conduct a performance, the organization may request a review by the commission within thirty days of the decision. The decision of the commission shall be final.

**AMENDATORY SECTION** (Amending Order 115 and 116, filed 12/18/81 and 1/18/82)

**WAC 230-20-220 Operators shall not play.** No operator shall allow a person who receives any compensation, directly or indirectly, for the operation of, any bingo game conducted by the operator to play in a bingo game conducted by that operator.

No operator shall allow any person who, without payment, assists in the operation of any bingo game conducted by that operator to play in any bingo game conducted by that operator on the same bingo occasion. However, the second paragraph of this rule shall not apply to Class

A(~~(f)~~), B(~~(f)~~), and C bingo licensees, or to games operating under the authority of RCW (~~(9.46.030(3))~~) 9.46.0321.

**AMENDATORY SECTION** (Amending Order 53, filed 5/25/76)

**WAC 230-20-230 Free games for winners prohibited.** No free cards, or any opportunity to play in a bingo game, shall be awarded or given to a person as a prize for, or conditioned upon, winning a bingo game or games, except those bingo games conducted under the authority of a Class A or B license issued by the commission or games conducted without a license under RCW (~~(9.46.030(3))~~) 9.46.0321.

**AMENDATORY SECTION** (Amending Order 80, filed 12/28/77)

**WAC 230-20-400 Certain lower volume licensees exempted from certain rules.** Persons holding the licenses issued under the classes and circumstances set forth in WAC 230-04-065 or persons operating without a license under RCW (~~(9.46.030(3))~~) 9.46.0315 and 9.46.0321 need not comply with the following rules of the commission, except as noted:

(1) WAC 230-04-280 requiring notification to local law enforcement of their activity, but nonlicensees must comply with RCW (~~(9.46.030)~~) 9.46.0315 and 9.46.0321.

(2) WAC 230-08-080 requiring certain daily records: *Provided*, That all such persons in the alternative, must comply with WAC 230-08-015 (1), (2), and (3).

(3) WAC 230-08-010 concerning operator records: *Provided*, That all such persons must, in the alternative, comply with WAC 230-08-015 (1), (2), and (3).

(4) WAC 230-08-120 requiring quarterly reports: *Provided*, That holders of such classes of licenses must in the alternative, comply with WAC 230-08-015(4).

(5) With respect to volunteer operators only, i.e., those not compensated for their work by the licensee, WAC 230-20-220 prohibiting certain persons from playing in bingo games.

(6) WAC 230-20-120 concerning free food and beverages at bingo games.

(7) WAC 230-20-190 concerning bingo card prices.

(8) WAC 230-20-230 concerning free games for winners.

**AMENDATORY SECTION** (Amending WSR 93-01-013, filed 12/4/92, effective 1/4/93)

**WAC 230-20-680 Commercial amusement games—Operation restrictions.** (1) No person shall operate commercial amusement games in any location except under the following conditions:

(a) The operation of amusement games must be closely monitored and controlled to ensure all games are operated in accordance with all provisions of this WAC title;

(b) The players are protected from fraud and game manipulation; and

(c) All games and/or machines are maintained in proper condition to ensure the operation is as approved by WAC (~~(230-20-605)~~) 230-20-508.

(2) All locations where school-aged minors are allowed to play must be supervised by an adult during all hours of

operation. The adult supervisor will ensure that school-age minors are prohibited from entry and/or playing amusement games in locations authorized by WAC 230-04-138 (1)(g), (i), (j), or (k) during school hours and after 10:00 p.m. on any day: *Provided*, That school-aged minors are prohibited from entry into licensed amusement game(~~(s)~~) locations in regional shopping centers after the normal shopping area closing hours on Sunday through Thursday.

**AMENDATORY SECTION** (Amending WSR 93-12-082, filed 5/28/93, effective 7/1/93)

**WAC 230-25-160 Pull tabs at fund-raising events—Operational requirements—Limitations.** The following requirements shall be utilized in the sale of pull tabs at fund-raising events.

(1) All pull tab series for use at fund-raising events shall contain the inspection identification stamps and record entry labels and shall be purchased for specific use at fund-raising events.

(2) Pull tabs shall be removed from the packaging container and mixed before selling to the public. All pull tabs will be sold out of a noncoin operated dispensing device (clear container). Pull tab prices shall be equal to the price set by the manufacturer for each specific series. The maximum price for any pull tab shall not exceed fifty cents.

(3) Up to a maximum of three pull tab series may be out for play at one time. All pull tabs shall be sold from a booth or similar confined area which prohibits public access to the pull tabs.

(4) Each pull tab series shall constitute a separate table and have a separate number. Each series shall have a separate corresponding lock box, money paddle, chip rack for making change and payment of prizes. All currency, coin, or chips used to purchase pull tabs, shall immediately be placed in the corresponding lock box by the attendant(s) on duty. All change given back to players shall be in the form of chips or coin.

(5) All winning pull tabs shall be defaced when cashed in and deposited in the corresponding lock box. Winning pull tabs shall be paid in chips and coin only. *Provided*: Winning pull tabs may be redeemed for additional tabs from the same series only. When a winning pull tab of five dollars or more is cashed, the attendant shall conspicuously delete all references to that prize being available to players from the flare prior to awarding the prize. In addition, for prizes over twenty dollars, the attendant(s) will verify the winner's identity and record the date, and initial the winning pull tab. The winner shall be required to print their name and date of birth in ink on the winning pull tab or to an attached sheet of paper.

(6) When a series is removed from play, the series (including the flare), the corresponding lock box and chip rack shall be transported to the count room by a runner at which time the box shall be opened for tabulation. All (~~(moneys))~~ gross gambling receipts collected, prizes paid and tabs sold shall be tabulated and recorded on the pull tab accounting report furnished by the commission in accordance with the instructions attached to the accounting report.

(7) After completing the count, winning pull tabs shall be packaged separately or banded and placed with the unused portion of that particular series in the original

shipping container. The organization must retain the used series for a period of one year.

(8) At the completion of the fund-raising event, all series still out for play shall be transported to the count room in accordance with subsections (6) and (7) of this section. All unopened pull tab series shall be returned to the licensed distributor who furnished the series for a full refund. Pull ~~((tabs may))~~ tab series purchased for fund-raising events shall not be sold, or transferred ((to another licensee)).

**AMENDATORY SECTION** (Amending WSR 93-12-082, filed 5/28/93, effective 7/1/93)

**WAC 230-30-060 Punchboard restrictions.** No operator shall put out for play, and no manufacturer shall sell or furnish to any person, any punchboard:

(1) To which any key to any winning number, or symbol, exists other than a key which is furnished to the operator, which key designates the color codes for all chances on that board without regard to whether or not such chances are designated winners.

(2) Which has taped sides, corners, or edges.

(3) Wherein the winning punches or approximate location of any winning punches can be determined in advance of punching the punchboard in any manner or by any device, including, but not limited to, any patterns in manufacture, assembly, packaging or programming. Winning punches shall be randomly distributed and mixed among all other punches in the punchboard. The punchboard shall be manufactured or programmed with special care so as to eliminate any pattern as between punchboards, or portions of punchboards, from which the location or approximate location of the winning punches may be determined.

**AMENDATORY SECTION** (Amending Order 241, filed 6/17/93, effective 7/18/93)

**WAC 230-30-072 Punchboard and pull tab inventory and retention requirements.** Each punchboard and pull tab series purchased or otherwise obtained by an operator shall be controlled and accounted for in the following manner:

(1) Each operator shall closely monitor punchboard and pull tab series purchased to assure that all Washington state identification and inspection service stamp numbers are correctly entered in all records and each device purchased is recorded. The following control procedures apply:

(a) ~~((After the close of business on September 30, 1988, and before operating punchboards and pull tabs after that date, each operator shall take a physical inventory of all punchboards and pull tabs in play and awaiting play and record the following information separately for punchboards and pull tabs:~~

~~(i) Name of game; and~~

~~(ii) Washington state identification and inspection stamp number;~~

~~(b))~~ At the time a punchboard or pull tab series is delivered, each operator will assure that all purchase invoice data is correctly recorded by the distributor by comparing the actual Washington state identification and inspection services stamp number attached to each punchboard and pull tab series to the number recorded on the purchase invoice;

~~((e))~~ (b) All purchases of punchboards or pull tab series shall be recorded on a standard distributor's invoice, which will be used by the operator as a record to account for the punchboard or pull tab series between the time it is purchased and removed from play. Each invoice shall include space for the operator to either attach a records entry label or enter the Washington state identification and inspection services stamp number and the date the device was placed out for play: *Provided*, That in lieu of the distributor's invoice recording system, licensees may use a separate inventory record to account for purchases and uses of punchboards and pull tabs. Entries required to be made by the distributor on the purchase invoice shall be entered by the operator on the alternative inventory record at the time devices are received. The inventory record may be manually maintained or generated from a computer data base. If generated from a computer data base, all requirements relating to computer data base records and printouts, as set out in WAC 230-08-010 (6) and (7) shall be followed. Inventory records shall include space for the following entries for each punchboard or pull tab series purchased or otherwise obtained:

(i) Distributor's name;

(ii) Invoice number;

(iii) Date of purchase;

(iv) Name of the punchboard or pull tab series;

(v) Date placed into play;

(vi) The Washington state identification and inspection services stamp number entered by the distributor at the time of purchase; and

(vii) The Washington state identification and inspection services stamp number entered by the operator by attaching a records entry label at the time placed into play: *Provided*, That a computer generated facsimile of the number may be imprinted on the inventory record in lieu of a records entry label;

~~((d))~~ (c) At the time a punchboard or pull tab series is placed into play, each operator shall record in the allotted space on the distributor's invoice or the inventory record the following:

(i) Date placed into play; and

(ii) Washington state identification and inspection services stamp number by attaching a records entry label: *Provided*, That a computer generated facsimile of the number may be imprinted on the inventory record in lieu of a records entry label.

~~((e))~~ (d) If a device is returned to a distributor for any reason, including commission required recall, the operator shall record the date, invoice or credit memo number, and "returned" on the original purchase invoice or inventory log in the spaces allotted for "date-in-play" and "records entry label";

(2) Each punchboard or pull tab series which is removed from operation, together with the prize flare, all unplayed tabs, and all winning punches or tabs, shall be retained by the operator for at least four months following the last day of the month in which it was removed from play. The board, unplayed tabs, flare, and all winning punches or tabs shall remain available for inspection, on the licensed premises, by commission agents and/or local law enforcement and taxing agencies: *Provided*, That devices may be stored off premise if they are produced for inspection upon demand;

(3) Each punchboard or pull tab series which is not placed out for public play or returned to the distributor or manufacturer from whom it was originally purchased, must be retained on the licensed premises and made available for inspection by commission agents and/or local law enforcement and taxing agencies: *Provided*, That devices may be stored off premise if they are produced for inspection upon demand;

(4) Each punchboard or pull tab series which is deemed by the operator to be defective or unplayable, for any reason, shall not be returned to the distributor or manufacturer without approval from the commission. If it is found to be defective after it has been placed out for play, all other rules apply and it must be recorded as required by WAC 230-08-010: *Provided*, That the retention time required by subsection (2) above may be shortened by the commission upon inspection and written release by a commission agent.

**AMENDATORY SECTION** (Amending Order 228, filed 10/15/91, effective 11/15/91)

**WAC 230-30-102 Pull tab series assembly and packaging.** (1) Manufacturers of pull tabs shall manufacture, assemble, and package each pull tab series in one container and in such a manner that none of the winning pull tabs, nor the location or approximate location of any of the winning pull tabs can be determined, in advance of opening the pull tabs in any manner or by any device, including but not limited to any pattern in manufacture, assembly, packaging, markings, or by the use of a light.

(2) Winning pull tabs shall be distributed and mixed among all other pull tabs in a series so as to eliminate any pattern as between series, or portions of series, from which the location or approximate location of any of the winning tabs may be determined. The pull tab series must be assembled so that no placement of winners or losers exist that allows the possibility of prize manipulation or "pick out." Manufacturers shall not manufacture or offer for sale in Washington any pull tab series in which the winning pull tabs are not distributed and mixed among all other pull tabs in that series.

(3) Manufacturers will mix pull tabs prior to placing them in their final packing container. The mix shall insure that pull tabs are separated from the original collated row position and dispersed amongst all rows in the final packing container.

(4) Each series of pull tabs shall contain a packing slip placed inside the package containing the name of manufacturer, series number, date the series was packaged, and the name or identification of the person who packaged the series: *Provided*, That this information may be printed on the back of the flare or the outside of the package, box or container in which the pull tabs are packed.

(5) Manufacturers of pull tabs shall print on the outside of the die cut box, package or other container of pull tabs the following message "Washington State law requires that pull tabs NOT sold through a mechanical pull tab dispensing device must be removed from the packaging container and mixed before selling to the public. Failure to remove and mix pull tabs from a packaging container may result in a minimum five day suspension of a license for each series not mixed." *Provided*, ~~((That))~~ That the above information

may be printed on a crack and peel sticker and placed on the outside of the die cut box, package or other container of pull tabs. The above information may be printed on a colored packing slip and placed inside the package of pull tabs.

**AMENDATORY SECTION** (Amending Order 228, filed 10/15/91, effective 11/15/91)

**WAC 230-30-103 Standards for construction of pull tabs.** (1) All pull tabs manufactured for use in the state of Washington after January 1, 1992 shall utilize a secondary verification code to prohibit counterfeiting on tabs that award prizes greater than \$20.00. Such codes shall be approved by the director prior to use within the state. Punchboards are exempt from the secondary verification code requirements.

(2) Pull tabs shall be constructed so that it is impossible to determine the covered or concealed number, symbol, set of symbols, or game protection on the pull tab until it has been dispensed to and opened by the player, by any method or device, including but not limited to, the use of a marking, variance in size, variance in paper fiber, or light.

(3) All pull tabs, except banded and latex covered pull tabs, will be constructed using a two or three ply paper stock construction.

(4) The manufacturer shall conspicuously print on the face or cover sheet the series number and the name of the manufacturer or label or trademark identifying the manufacturer. On banded pull tabs, the series number and the name of the manufacturer or label or trademark identifying the manufacturer shall be printed so both are readily visible prior to opening the pull tab.

(5) The cover sheet shall be color coded when individual series numbers are repeated and may show the consumer how to open the pull tab to determine the symbols or numbers. The cover sheet will contain perforated and/or clean-cut openings centered over the symbols or numbers on the back of the face sheet in such a manner as to allow easy opening by the consumer after purchase of the pull tabs, while at the same time, not permitting pull tabs to be opened prematurely in normal handling. Perforation should exist on both horizontal lines of the opening with either perforated or clean-cut on the vertical or ~~((elliptical))~~ elliptical line where the tab must be grasped for opening after bending the edge of ticket down. On latex covered pull tabs, either the face or back of the pull tab shall be color coded when individual series numbers are repeated and may show the consumer how to remove the latex to determine the symbols or numbers. On banded pull tabs, the paper stock shall be color coded when individual series numbers are repeated.

(6) Pull tabs will be glued or sealed so that it is impossible to determine the covered or concealed numbers, symbol or set of symbols on the pull tab until it has been dispensed to and opened by the player.

(7) Thickness.

(a) Vendable pull tabs. Defined as pull tabs that are sold out of mechanical pull tab dispensing devices approved for such use in this state by the Washington state gambling commission.

(i) Single opening and double sided tabs. The overall bulk thickness of the pull tab shall be .045 inches plus or minus .003 inches.

(ii) Multiple opening tabs. The overall bulk thickness of the pull tab shall be .026 inches plus or minus .002 inches.

(b) Nonvendable pull tabs. Defined as pull tabs that cannot be sold out of mechanical pull tab dispensing devices approved for use in this state by the Washington state gambling commission. Nonvendable pull tabs may be dispensed from fishbowls, receptacles, packing boxes or spindles. Manufacturers may use any thickness, provided they comply with all other rules of the commission.

(c) All pull tabs within a single pull tab series shall be of the same thickness.

(8) Length and width.

(a) Vendable pull tabs((+))<sub>2</sub>

(i) Single opening and double sided tabs shall be 1 7/8 inches x 1 inch plus or minus 1/8 inch.

(ii) Multiple opening tabs shall be 3 1/2 inches by 1 7/8 inches plus or minus 1 inch.

(b) Nonvendable pull tabs - manufacturers may construct nonvendable pull tabs in any size provided the pull tab complies with all other rules of the commission.

(c) All pull tabs within a single pull tab series shall be uniform in length or width and not vary by more than 3/64 inch, provided that in no case shall winning pull tabs be identifiable by visible variation in dimension.

(9) All pull tabs will be constructed to insure that, when offered for sale to the public, the pull tab is virtually opaque and free of security defects wherein winning pull tabs cannot be determined prior to being opened through the use of high intensity lights or any other method.

(10) Each manufacturer shall establish his own game protection for each pull tab game or series of games. The game protection shall be a method of identifying winning pull tabs, after they have been purchased and opened, from nonwinning, altered or forged pull tabs. The manufacturer may use special numbers, colors, designs, ink or any combination to establish the game protection. Manufacturers will submit to the gambling commission a letter explaining the game protection and will keep the commission informed on any changes. Spindle-type pull tab series when played in the manner set out in WAC 230-30-070(8) are exempt from this requirement.

**AMENDATORY SECTION** (Amending WSR 93-12-082, filed 5/28/93, effective 7/1/93)

**WAC 230-40-055 Card tournaments for fee and prizes—Reporting requirements.** (1) A card tournament wherein a fee is charged to the participants and prizes are awarded to the winning players shall be licensed by the commission. Card room licensees with a Class A, B, or E license may conduct a card tournament for a fee without obtaining a card tournament license: *Provided*, That Class B licensees are limited to only those card games authorized under their licensing class. Card room licensees with a Class D or R license must first obtain a card tournament license before they can conduct a card tournament in which the players are charged a fee to enter. The licensee shall notify the commission ten days in advance of any card tournament where the single or multiple buy-in exceeds fifty dollars. A card tournament shall not exceed ten consecutive calendar days.

(2) The fee for a player to enter a card tournament for prizes shall not exceed fifty dollars, including all separate fees which might be paid by a player for various phases, events of the tournament, food and drink offerings, and promotional material. The fee to enter a tournament and a description of all goods and services to be provided as a part of the tournament must be fully disclosed to each entrant prior to their paying such fee. Such disclosure must be posted conspicuously on the premises at the time payment is received and remain posted until the tournament is complete. This same information must be included in all advertisements for said tournament. Operators may offer "free roll" or customer appreciation tournaments: *Provided*, That the pretournament play requirements do not exceed the fifty-dollar entry fee limitation. Entrants in such tournaments must initially be provided with the same number of chips or points and the same opportunity for re-buys. All prizes awarded for free roll or customer appreciation tournaments may be deducted as prizes for determining adjusted net gambling receipts for compliance with WAC 230-12-075.

(3) All fees paid to enter a tournament shall be reported as gross gambling receipts: *Provided*, That if an operator prepares and provides food and drink items to all tournament entrants on the licensed premises as a part of their entry fee, the fair market value of the food and drink provided, not to exceed twenty-five dollars or fifty percent of the entry fee, whichever ever is greater, shall be treated as sales of food and drink for on premise consumption and not included as gross gambling receipts. Such sales, must be properly supported by records: *Provided further*, That if an operator provides items promoting the tournament or licensed business, such as hats, t-shirts, etc., to all participants as a part of their entry fee, the actual cost of such items, supported by invoices and other such records, shall be deducted as prizes in determining adjusted net gambling receipts for compliance with WAC 230-12-075.

(4) In addition to the entry fee, a minimum buy-in of chips may be required. The total buy-in per player shall not exceed two hundred dollars per tournament and may be either a single or multiple buy-in during the course of the tournament. A record of the buy-ins for each participant will be maintained by the licensee in a format provided by the commission. All buy-ins of chips are not gross gambling receipts and shall be returned to the participants in the form of prizes. Prizes from buy-ins are not deductible for commercial stimulant purposes.

(5) The chips used in card tournaments shall have no monetary value and may be redeemed only for prizes established by the licensee. The licensee may award prizes in excess of those entry fees collected as authorized in subsection (2) of this section. The licensees actual cost for prizes awarded to the players may be deducted as prizes for determining adjusted net gambling receipts generated by the entry fees.

(6) The licensee shall adopt tournament rules to facilitate the operation of card tournaments: *Provided*, That all tournament rules for tournaments where the single or multiple buy-in exceeds fifty dollars must be submitted to the commission for approval. All tournament rules must be posted where all tournament participants can see and read the rules.

(7) The licensee shall maintain a record of all such fees collected and the number of participant for each tournament conducted. This information shall be entered in a format approved by the commission. The total gross gambling receipts for the tournament shall be entered on the card room daily control sheet for the time and date the tournament begins and the record of participants shall be attached and maintained with that daily control sheet.

(8) The licensee shall maintain a record of all prizes awarded to include the amount the licensed operator actually paid for each prize and the name and complete address of each winning participant: *Provided*, That the name and address of each participant receiving promotional items as set forth in subsection (3) of this section shall not be required on the prize record. The record shall be attached to the daily control sheet used on the date the majority of the prizes are awarded.

**WSR 94-07-086**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Order 93-18—Filed March 16, 1994, 3:36 p.m., effective September 1, 1994]

Date of Adoption: March 16, 1994.

Purpose: The Department of Labor and Industries is adopting new sections that address the issue of environmental tobacco smoke in office work environments. Initiation of this proposal was in response to recommendations from a governmental interagency task force formed in 1988 and supported by 1989 legislation, Indoor air quality in public buildings, chapter 70.162 RCW.

Chapter 296-62 WAC, General occupational health standards: Details of specific proposed amendments, WAC 296-62-12000, this state-initiated new section is adopted to address environmental tobacco smoke in office work environments; WAC 296-62-12003, this state-initiated new section is adopted to define the definitions pertaining to the regulation. The following definitions pertaining to the revised regulations have been retained. "CFM," "employer," "office work environment," and "smoking"; WAC 296-62-12005, this state-initiated new section sets the parameters for the controls for environmental tobacco smoke in the office work environment; WAC 296-62-12007, this state-initiated new section sets the effective date for WAC 296-62-12000 through 296-62-12009 as September 1, 1994; and WAC 296-62-12009, this state-initiated new section is a nonmandatory appendix that provides information on smoking cessation programs.

Statutory Authority for Adoption: Chapter 49.17 RCW.

Pursuant to notice filed as WSR 93-22-108 on November 3, 1993.

Changes Other than Editing from Proposed to Adopted Version: After a review of the testimony and comments received from the six public hearings held in December 1993, the director of the Department of Labor and Industries made the judgment that, with the exception of the environmental tobacco smoke in work environment issue, the mandatory indoor air quality regulations are not appropriate at this time. The state-initiated rule is adopted for environ-

mental tobacco smoke in office work environments. The remainder of the proposal will become voluntary guidelines. The department will seek to institute a pilot study to aid in future decisions on the need for, or content of, mandatory regulations on workplace indoor air quality.

As a result of written and oral comments received, the following sections are being withdrawn: WAC 296-62-12001, 296-62-12011, 296-62-12013, 296-62-12015, 296-62-12017, 296-62-12019, 296-62-12021, and 296-62-12023.

As a result of written and oral comments received, the following new sections are adopted with the following changes:

WAC 296-62-12000 Environmental tobacco smoke in office work environments. Scope and application, this new section contains the scope and application of the regulation. It applies to all indoor office work environments and requires employee exposure to environmental tobacco smoke to be controlled. This section title has been rewritten to reflect the new scope and application of the regulation. The proposed scope and application language relating to the following has been deleted: Requirements for evaluation and control of specific indoor air pollutant sources; reference to indoor air quality problems; documentation of heating, ventilation, and air conditioning (HVAC) system operation and maintenance criteria; criteria for remodeling of occupied office worksites; and regulations pertaining to building owners.

WAC 296-62-12003 Definitions, this new section contains the definitions pertaining to the regulation. Only the following definitions pertaining to the new regulation have been retained: "CFM," "employer," "office work environment," and "smoking." The following definitions have been deleted: "ASHRAE," "building owner," "department," "employee representative," "HVAC system," "HVAC zone," "PPM," and "remodeling."

WAC 296-62-12005 Controls for environmental tobacco smoke, this new section sets the parameters for the control of environmental tobacco smoke in the office work environment. The section on "controls" was previously contained in the proposed WAC 296-62-12009. It has been moved to WAC 296-62-12005 to compress the coding and to prevent the need to reserve WAC numbering. WAC 296-62-12005 was previously proposed as "HVAC system documentation." This proposed language has been deleted. The title has been reworded to more properly reflect the scope and application of the regulation and to focus only on environmental tobacco smoke in the office work environment. The verbiage pertaining to tobacco smoke in the office work environment has been reworded to more accurately reflect the new regulations. All other materials have been deleted.

WAC 296-62-12007 Effective date, the "effective date" verbiage has been moved from WAC 296-62-12015 to 296-62-12007 to compress the coding and to prevent the need to reserve WAC numbering. Previously WAC 296-62-12007 addressed "Operation and maintenance of HVAC systems." This material has been deleted. This new section sets the effective date for WAC 296-62-12000 through 296-62-12009 as September 1, 1994.

WAC 296-62-12009 Appendix: Smoking cessation program information—Nonmandatory, the previously proposed WAC 296-62-12009 addressed "Controls for specific air contaminant sources." It now contains the

nonmandatory appendix that was previously located under the proposed WAC 296-62-12023, which has been deleted.

Effective Date of Rule: September 1, 1994.

March 16, 1994  
Mark O. Brown  
Director

#### NEW SECTION

**WAC 296-62-12000 Environmental tobacco smoke in office work environments. Scope and application.** This regulation applies to all indoor office work environments and requires employee exposure to environmental tobacco smoke to be controlled.

#### NEW SECTION

**WAC 296-62-12003 Definitions.** (1) "CFM" means cubic feet per minute.

(2) "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 employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: *Provided*, That any persons, partnership, or business entity not having employees, and who is covered by the Industrial Insurance Act shall be considered both an employer and an employee.

(3) "Office work environment" means an indoor or enclosed occupied space where activities such as clerical, administration, or business are transacted. It includes associated spaces controlled by the employer that office workers utilize (e.g., cafeteria or meeting rooms). It does not include production or manufacturing process areas, but does include the office areas of manufacturing and production facilities. It includes only the office areas of other firms such as food and beverage establishments, agricultural operations, construction, commercial trade, services, etc.

(4) "Smoking" means igniting, inhaling, exhaling, or carrying a pipe, cigar, or cigarette of any kind which is burning.

#### NEW SECTION

**WAC 296-62-12005 Controls for environmental tobacco smoke.** (1) Employers shall prohibit smoking in their office's entirety, or restrict smoking indoors to designated enclosed smoking rooms that satisfy the minimum requirements below:

(a) Designated smoking rooms shall be clearly posted.

(b) Designated smoking rooms shall be prohibited in common areas such as places where nonsmoking employees are required to work or visit, restrooms, washrooms, hallways, and stairways.

(c) No employee shall be required to enter a designated smoking room while smoking is occurring. Cleaning and maintenance work in a designated smoking room shall be conducted when no smokers are present.

(d) Designated smoking rooms shall be ventilated at rates of at least 60 cfm per smoker (calculated on the basis

of the maximum number of smokers expected during the course of a normal working day), which can be supplied by transfer air from adjacent areas.

Note: This ventilation rate is recommended for occupancies of no more than seven people for every 100 square feet of net occupied space in the designated smoking room.

(e) Sufficient negative pressure shall be maintained in designated smoking rooms to prevent smoke migration to surrounding nonsmoking areas at all times.

(f) Designated smoking rooms shall operate with a separate mechanical exhaust system and be exhausted directly outside, without recirculation to nonsmoking areas.

(g) If the mechanical exhaust system for a designated smoking room is not operating properly, the employer shall prohibit the use of the room until repairs are completed.

Note: This regulation is not intended to affect structures provided for smokers such as gazebos or lean-tos external to a building that are intended to provide protection from inclement weather.

(2) The employer shall use engineering or administrative controls to minimize the infiltration of environmental tobacco smoke from sources outside the building, through air intakes, entryways, and other openings (e.g., by ensuring any outside smoking areas utilized by their employees are not in close proximity to entryways, air intakes, and other openings that may allow airflow directly into an office).

(3) This section does not preempt any federal, state, municipal, or other local authority's regulation of indoor smoking that is more protective than this section.

Note: WAC 296-62-12009, the appendix, contains smoking cessation program information sources.

#### NEW SECTION

**WAC 296-62-12007 Effective date.** The effective date of WAC 296-62-12000 through 296-62-12009 shall be September 1, 1994.

#### NEW SECTION

**WAC 296-62-12009 Appendix: Smoking cessation program information—Nonmandatory.** The following organizations\* provide smoking cessation information and program material:

(1) The National Cancer Institute operates a toll-free Cancer Information Service (CIS) with trained personnel to help you. Call 1-800-4-CANCER to reach the CIS office serving your area, or write: Office of Cancer Communications, National Cancer Institute, National Institutes of Health, Building 31, Room 10A24, Bethesda, Maryland 20892.

(2) American Cancer Society, 1599 Clifton Road NE, Atlanta, Georgia 30062, (404) 320-3333. The American Cancer Society (ACS) is a voluntary organization composed of 58 divisions and 3,100 local units. Through "The Great American Smokeout" in November, the annual Cancer Crusade in April, and numerous educational material, ACS helps people learn about the health hazards of smoking and become successful ex-smokers.

(3) American Heart Association, 7320 Greenville Avenue, Dallas, Texas 75231, (214) 750-5300. The American Heart Association (AHA) is a voluntary organization with 130,000 members (physicians, scientists, and laypersons) in 55 state and regional groups. AHA produces

a variety of publications and audiovisual materials about the effects of smoking on the heart. AHA also has developed a guidebook for incorporating a weight-control component into smoking cessation programs.

(4) American Lung Association, 1740 Broadway, New York, New York 10019, (212) 245-8000. A voluntary organization of 7,500 members (physicians, nurses and laypersons), the American Lung Association (ALA) conducts numerous public information programs about the health effect of smoking. ALA has 59 state and 85 local units. The organization actively supports legislation and information campaigns for nonsmokers' rights and provides help for smokers who want to quit, for example through "Freedom From Smoking," a self-help cessation program.

(5) Office on Smoking and Health, United States Department of Health and Human Services, 5600 Fishers Lane, Park Building, Room 110, Rockville, Maryland 20857. The Office of Smoking and Health (OSH) is the Department of Health and Human Services' lead agency in smoking control. OSH has sponsored distribution of publications on smoking-related topics, such as free flyers on relapse after initial quitting, helping a friend or family member quit smoking, the health hazards of smoking, and the effects of parental smoking on teenagers.

\* Consult your local telephone directory for listing of local chapters.

**WSR 94-07-092  
PERMANENT RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 94-14—Filed March 17, 1994, 2:45 p.m.]

Date of Adoption: March 15, 1994.

Purpose: Establish emerging commercial fisheries.

Citation of Existing Rules Affected by this Order:  
Amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 75.28.740, 75.30.220.

Pursuant to notice filed as WSR 94-03-098 on January 19, 1994.

Changes Other than Editing from Proposed to Adopted Version: WAC 220-52-051, change reference from chapter 220-140 WAC to chapter 220-88A WAC; WAC 220-88A-020, clarify a separate license for each permit; WAC 220-88A-030 and 220-88A-040, establish fish ticket receipt date; and WAC 220-88A-050, provide for alternate operator.

Effective Date of Rule: Thirty-one days after filing.

March 17, 1994

Judith Freeman

Deputy

for Robert Turner

Director

**AMENDATORY SECTION** (Amending WSR 93-15-051, filed 7/14/93, effective 8/14/93)

**WAC 220-52-051 Shrimp fishery—Puget Sound.** It is unlawful to fish for or possess shrimp taken for commercial purposes from Puget Sound except ~~(as provided for in this section:~~

~~(1) SHRIMP DISTRICTS: The following areas are defined as shrimp fishing districts:~~

~~(a) Shrimp District 1—(Protection Island, Discovery Bay) Waters south of a line from McCurdy Point on the Quimper Peninsula to the northern tip of Protection Island then to Rocky Point on the Miller Peninsula and all waters of Discovery Bay.~~

~~(b) Shrimp District 2—(Griffin Bay) Waters south of a line projected true east west through Turn Rock Light from San Juan Island to Lopez Island and north of a line projected true east from Cattle Point on San Juan Island to Lopez Island.~~

~~(c) Shrimp District 3—(Port Angeles) Waters inside Ediz Hook west of a line from the tip of Ediz Hook to the ITT Rayonier Dock.~~

~~(d) Shrimp District 4—(Sequim Bay) Waters of Sequim Bay south of a line projected true west from Travis Spit on the Miller Peninsula.~~

~~(e) Shrimp District 5—(Hood Canal) Waters south of the Hood Canal Floating Bridge.~~

~~(f) Shrimp District 6—(Carr Inlet) Waters of Carr Inlet north of a line projected from Penrose Point to Green Point.~~

~~(2) TRAWL GEAR:~~

~~(a) SEASONS—All waters of Puget Sound are open to trawl gear April 16 through October 15 except closed in:~~

~~(i) Shrimp Districts 1, 2, 3, 4, 5, and 6.~~

~~(ii) Waters closed to trawl fishing in WAC 220-48-015.~~

~~(b) GEAR RESTRICTIONS—Beam trawl gear only. Otter trawl gear may not be used.~~

~~(3) SHELLFISH POT GEAR:~~

~~(a) SEASONS—All waters of Puget Sound are open to shellfish pot gear April 16 through October 15 except:~~

~~(i) Open in Shrimp Districts 1, 2, and 3 from May 16 through September 15 except those waters of Shrimp District 1 within a line from the entrance to the Cape George Marina projected southwesterly to the easternmost tip of Diamond Point thence southeasterly to the westernmost tip of Beckett Point thence following the shore to the point of origin are closed to shrimp fishing.~~

~~(ii) Closed in Shrimp Districts 4, 5, and 6 unless opened by emergency regulation.~~

~~(b) GEAR RESTRICTIONS—~~

~~(i) In all areas, maximum 100 pots per fisher, except:~~

~~(A) Maximum 75 pots per fisher in Marine Fish-Shellfish Management and Catch Reporting Area 28B.~~

~~(B) Maximum 25 pots per fisher in Shrimp District 1.~~

~~(C) Maximum 50 pots per fisher in Shrimp Districts 2 and 5.~~

~~(b) Maximum 10 pots per fisher in Shrimp District 3.~~

~~(ii) In all shrimp districts:~~

~~(A) Buoys must be orange in color and consist of durable material that will remain floating on the surface with five pounds attached; bleach or antifreeze bottles or other containers may not be used as floats.~~

~~(B) The line attaching the pot to the buoy must be weighted sufficiently to prevent the line from floating on the surface.~~

~~(iii) In Shrimp Districts 2 and 5:~~

~~(A) The entire top, bottom, and sides of the pot, except entrance tunnels, must be constructed of mesh material having a minimum mesh of such size that a 7/8 inch square~~

~~peg can pass through without changing the shape of the opening.~~

~~(B) All entrance tunnels must open into the pot from the sides.~~

~~(C) The sum of the maximum widths of all entrance tunnels must not exceed one half of the perimeter of the bottom of the pot.~~

~~(e) Spot shrimp size restriction: It is unlawful to possess spot shrimp taken by shellfish pot gear that average more than 20 shrimp per pound as sampled by a minimum of two samples of at least one pound each of whole unbroken shrimp taken at random from throughout the individual load landed or in possession)) under the provisions of an experimental fishery permit issued with an emerging commercial fishery license. See Chapter 220-88A for the qualifications and season, area and gear restrictions.~~

#### NEW SECTION

**WAC 220-88A-010 Emerging commercial fishery—Puget Sound shrimp—Purpose.** The purpose of this chapter is to establish Puget Sound shrimp pot and Puget Sound shrimp trawl as emerging commercial fisheries, determine the qualification for obtaining experimental fishery permits to participate in these fisheries, and limit transferability of the permits.

#### NEW SECTION

**WAC 220-88A-020 Designation of Puget Sound shrimp pot and Puget Sound shrimp trawl as emerging commercial fisheries.** (1) The director designates the Puget Sound shrimp pot fishery as an emerging commercial fishery for which a vessel is required. Effective April 16, 1994, it is unlawful to fish for or retain shrimp taken for commercial purposes from Puget Sound using any type of shellfish pot gear unless the operator of the gear has an emerging commercial fishery license and a Puget Sound shrimp pot experimental fishery permit issued under the provisions of this chapter. Effective April 16, 1994, a shrimp pot fishery license or a shrimp pot—Hood Canal fishery license may not be used to fish for shrimp in Puget Sound.

(2) The director designates the Puget Sound shrimp trawl fishery as an emerging commercial fishery for which a vessel is required. Effective April 16, 1994, it is unlawful to fish for or retain shrimp taken for commercial purposes from Puget Sound using trawl gear unless the operator of the gear has an emerging commercial fishery license and a Puget Sound shrimp trawl experimental fishery permit issued under the provisions of this chapter. Effective April 16, 1994, a shrimp trawl—Puget Sound license may not be used to fish for shrimp in Puget Sound.

(3) A separate emerging commercial fishery license is required for each experimental fishery permit.

#### NEW SECTION

**WAC 220-88A-030 Emerging commercial fishery—Eligibility for Puget Sound shrimp pot experimental fishery permit.** (1) A single 1994 Puget Sound shrimp pot experimental fishery permit will be issued to an individual who has demonstrated historical and continuous participation in the Puget Sound shrimp pot fishery by:

(a) Being the owner of a vessel or vessels that held a shellfish pot (excluding crab) license (RCW 75.28.130(2)) during either 1991 or 1992, held this license during 1993, and:

(b) Can document, by means of valid fish receiving tickets, that the vessel or vessels landed at least 7,000 pounds, adjusted weight, of shrimp taken with shellfish pot gear from Puget Sound during the eligibility period of April 16, 1991 through October 15, 1993. For purposes of computing adjusted weight, spot prawns are totaled at two times the weight shown on the fish tickets and other pandalid shrimp are totaled at the weight shown on the fish tickets. No shrimp landed with any other gear, shrimp taken from waters other than Puget Sound, or shrimp taken during any other period of time satisfy this eligibility requirement. For purposes of this subsection and in addition to any other requirement, a valid fish receiving ticket is a fish receiving ticket that has been received by the Department on or before November 1, 1993.

(2) No emerging commercial fishery license holder may receive more than one Puget Sound shrimp pot experimental fishery permit. The pounds of shrimp landed from the vessel or vessels may be used to qualify only one experimental fishery permit.

(3) Puget Sound shrimp pot experimental fishery permits are valid only for the year issued and expire with the emerging commercial fishery license on December 31st of each year.

(4) Except as provided for in subsection (5), after December 31, 1994, a Puget Sound shrimp pot experimental fishery permit will only be issued to an individual who held an emerging commercial fishery license and Puget Sound shrimp pot experimental fishery permit the previous year, and who can establish by means of valid fish receiving tickets that a minimum of 2,000 adjusted pounds of shrimp taken with shellfish pot gear were landed from Puget Sound during the previous year. For purposes of this subsection and in addition to any other requirement, a valid fish receiving ticket is a fish receiving ticket that has been received by the Department on or before November 1st of the year in which the shrimp were caught. Application for a Puget Sound shrimp pot experimental fishery permit must be received at the department licensing office on or before April 1st of each year after 1994, or the license holder will be deemed to have withdrawn from the fishery and the provisions of subsection (5) of this section will apply.

(5) If, after December 31, 1994, the director determines that the number of Puget Sound shrimp pot fishers has dropped below twenty license holders, the director may admit additional fishers until there are twenty license holders. Individuals who were eligible in 1994 but did not obtain a Puget Sound shrimp pot experimental fishery permit, or individuals who have withdrawn from the fishery, are excluded from application for a future Puget Sound shrimp pot experimental fishery permit. Owners of vessels from which Puget Sound shrimp were landed with shellfish pot gear during the eligibility period, but who did not qualify for a 1994 Puget Sound shrimp pot experimental fishery permit, are eligible for application for a future Puget Sound shrimp pot experimental fishery permit, beginning with the owner of the vessel or vessels from which the highest non-qualifying catch was made and progressing to the lowest

non-qualifying catch. If the pool of fishers who landed shrimp during the qualifying period is exhausted, new fishers will be invited to apply and will be selected at random from the applicants.

#### NEW SECTION

**WAC 220-88A-040 Emerging commercial fishery—Eligibility for Puget Sound shrimp trawl experimental fishery permit.** (1) A single 1994 Puget Sound shrimp trawl experimental permit will be issued to an individual who has demonstrated historical and continuous participation in the Puget Sound shrimp trawl fishery by:

(a) Being the owner of a vessel or vessels that held a trawl (Puget Sound) license (RCW 75.28.140(1)) during either 1991 or 1992, held this license during 1993, and:

(b) Can document, by means of valid fish receiving tickets, that the vessel or vessels landed at least 2,800 pounds of shrimp taken from Puget Sound with trawl gear during the eligibility period April 16, 1991 through October 15, 1993. No shrimp landed with any other gear, shrimp taken from waters other than Puget Sound, or shrimp taken during any other period of time satisfy this eligibility requirement. For purposes of this subsection and in addition to any other requirement, a valid fish receiving ticket is a fish receiving ticket that has been received by the Department on or before November 1, 1993.

(2) No emerging commercial fishery license holder may receive more than one Puget Sound shrimp trawl experimental fishery permit. The pounds of shrimp landed from the vessel or vessels may be used to qualify only one experimental fishery permit.

(3) Puget Sound shrimp trawl experimental fishery permits are valid only for the year issued and expire with the emerging commercial fishery license on December 31st of each year.

(4) Except as provided for in subsection (5), after December 31, 1994, a Puget Sound shrimp trawl experimental fishery permit will only be issued to an individual who held an emerging commercial fishery license and Puget Sound shrimp trawl experimental fishery permit the previous year, and who can establish by means of valid shellfish receiving tickets that a minimum of 2,000 pounds of shrimp taken with shellfish trawl gear were landed from Puget Sound during the previous year. For purposes of this subsection and in addition to any other requirement, a valid fish receiving ticket is a fish receiving ticket that has been received by the Department on or before November 1st of the year in which the shrimp were caught. Application for a Puget Sound shrimp trawl experimental fishery permit must be received at the department licensing office on or before April 1st of each year after 1994, or the license holder will be deemed to have withdrawn from the fishery and the provisions of subsection (5) of this section will apply.

(5) If, after December 31, 1994, the director determines that the number of Puget Sound shrimp trawl fishers has dropped below ten license holders, the director may admit additional fishers until there are ten license holders. Individuals who were eligible in 1994 but did not obtain a Puget Sound shrimp trawl experimental fishery permit, or individuals who have withdrawn from the fishery, are excluded from

application for a future Puget Sound shrimp trawl experimental fishery permit. Owners of vessels from which Puget Sound shrimp were landed with trawl gear during the eligibility period, but who did not qualify for a 1994 Puget Sound shrimp trawl experimental fishery permit, are eligible for application for a future Puget Sound shrimp pot experimental fishery permit, beginning with the owner of the vessel or vessels from which the highest non-qualifying catch was made and progressing to the lowest non-qualifying catch. If the pool of fishers who landed shrimp during the qualifying period is exhausted, new fishers will be invited to apply and will be selected at random from the applicants.

#### NEW SECTION

**WAC 220-88A-050 Emerging commercial fishery—Puget Sound shrimp experimental fishery permits—Nontransferability—Primary operator participation requirement—Single alternate operator—Medical exception.** Puget Sound shrimp pot experimental fishery permits and Puget Sound shrimp trawl experimental fishery permits are nontransferable. The following conditions apply to issuance and use of these permits:

(1) A permit will only be issued to an individual who is a natural person, and this person shall be the primary operator. The primary operator is required to operate the gear more than one-half of the season and make at least one-half of the landings, as established by valid fish receiving tickets.

(2) Holders of Puget Sound shrimp pot experimental fishery permits and Puget Sound shrimp trawl experimental fishery permits may designate a single alternate operator per permit. The alternate operator may operate the gear up to but not equaling one-half of the fishing effort of the vessel per season, and may make up to but not equaling one-half of the landings, as established by valid fish receiving tickets, except that the director may allow operation of the gear and sale of the shrimp by an alternate operator in excess of one-half of the fishing effort in the case of a bona fide medical emergency for which the primary operator has presented a physician's statement which includes the medical condition and expected date of recovery of the primary operator. Notification of the medical emergency, presentation of the physician's statement, and obtaining a waiver from the Director must be accomplished prior to the end of the season for which the emerging commercial fishery license and experimental fishery permit holder is seeking exception from the seasonal requirement that the primary operator perform more than one half of the fishing effort.

#### NEW SECTION

**WAC 220-88A-060 Emerging commercial fishery—Puget Sound shrimp—Shrimp districts.** The following areas are defined as Puget Sound shrimp fishing districts:

(a) Shrimp District 1 - (Protection Island, Discovery Bay) Waters south of a line from McCurdy Point on the Quimper Peninsula to the northern tip of Protection Island then to Rocky Point on the Miller Peninsula and all waters of Discovery Bay.

(b) Shrimp District 2 - (Griffin Bay) Waters south of a line projected true east west through Turn Rock Light from San Juan Island to Lopez Island and north of a line projected

true east from Cattle Point on San Juan Island to Lopez Island.

(c) Shrimp District 3 - (Port Angeles) Waters inside Ediz Hook west of a line from the tip of Ediz Hook to the ITT Rayonier Dock.

(d) Shrimp District 4 - (Sequim Bay) Waters of Sequim Bay south of a line projected true west from Travis Spit on the Miller Peninsula.

(e) Shrimp District 5 - (Hood Canal) Water south of the Hood Canal Floating Bridge.

(f) Shrimp District 6 - (Carr Inlet) Waters of Carr Inlet north of a line projected from Penrose Point to Green Point.

#### NEW SECTION

**WAC 220-88A-070 Emerging commercial fishery—Puget Sound shrimp pot experimental fishery—Seasons and gear—Spot prawn restriction.** It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear except as provided for in this section:

(1) Seasons - All waters of Puget Sound are open to shellfish pot gear April 16 through October 15 except:

(a) Open in Shrimp Districts 1, 2, and 3 from May 16 through September 15 only, except those waters of Shrimp District 1 within a line from the entrance to the Cape George Marina projected southwesterly to the easternmost tip of Diamond Point thence southeasterly to the westernmost tip of Beckett Point thence following the shore to the point of origin are closed to shrimp fishing.

(b) Closed in Shrimp Districts 4, 5 and 6 unless opened by emergency regulation.

(2) Gear restrictions -

(a) In all areas, maximum 100 pots per fisher, except:

(i) Maximum 75 pots per fisher in Marine Fish-Shellfish Management and Catch Reporting Area 28B.

(ii) Maximum 25 pots per fisher in Shrimp District 1.

(iii) Maximum 50 pots per fisher in Shrimp Districts 2 and 5.

(iv) Maximum 10 pots per fisher in Shrimp District 3.

(b) In all shrimp districts:

(i) Buoys must be orange in color and consist of durable material that will remain floating on the surface with five pounds attached; bleach or antifreeze bottles or other containers may not be used as floats.

(ii) The line attaching the pot to the buoy must be weighted sufficiently to prevent the line from floating on the surface.

(c) In Shrimp Districts 2 and 5:

(i) The entire top, bottom and sides of the pot, except entrance tunnels, must be constructed of mesh material having a minimum mesh of such size that a 7/8 inch square peg can pass through without changing the shape of the opening.

(ii) All entrance tunnels must open into the pot from the sides.

(iii) The sum of the maximum widths of all entrance tunnels must not exceed one-half of the perimeter of the bottom of the pot.

(3) Spot shrimp size restriction: It is unlawful to possess spot shrimp taken by shellfish pot gear that average more than 20 shrimp per pound as sampled by a minimum of two samples of at least one pound each of whole unbro-

ken shrimp taken at random from throughout the individual load landed or in possession.

#### NEW SECTION

**WAC 220-88A-080 Emerging commercial fishery—Puget Sound shrimp trawl experimental fishery—Seasons and gear.** It is unlawful to fish for shrimp for commercial purposes in Puget Sound using trawl gear except as provided for in this section:

(1) Seasons - All waters of Puget Sound are open to trawl gear April 16 through October 15 except closed in:

(a) Shrimp Districts 1, 2, 3, 4, 5, and 6.

(b) Waters closed to trawl fishing in WAC 220-48-015.

(2) Gear restrictions - Beam trawl gear only. Otter trawl gear may not be used.

#### **WSR 94-07-102 PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION**

[Order 94-03—Filed March 18, 1994, 10:43 a.m.]

Date of Adoption: March 18, 1994.

Purpose: To set forth policies and procedures for the administrator internship program.

Statutory Authority for Adoption: RCW 28A.415.300. Pursuant to notice filed as WSR 94-04-025 on January 25, 1994.

Effective Date of Rule: Thirty-one days after filing.

March 18, 1994

Judith A. Billings  
Superintendent of  
Public Instruction

#### **Chapter 392-320 WAC SCHOOL PERSONNEL—ADMINISTRATOR INTERNSHIP PROGRAM**

#### NEW SECTION

**WAC 392-320-005 Authority.** The authority for this chapter is RCW 28A.415.250 which authorizes the superintendent of public instruction to develop rules and regulations for the establishment and administration of the administrator internship program.

#### NEW SECTION

**WAC 392-320-010 Purpose.** The purpose of this chapter is to set forth policies and procedures for the operation of the administrator internship program, including the conditions for the use of state moneys for such purpose by educational service districts and school districts of the state.

#### NEW SECTION

**WAC 392-320-015 Definition—Administrator intern.** As used in this chapter, the term "administrator intern" means a school employee selected for a principal or superintendent certification internship of at least forty-five school days, as defined in WAC 392-121-033, and who is enrolled

in a state board of education approved administrator preparation program, pursuant to chapter 180-78 WAC.

#### NEW SECTION

**WAC 392-320-020 Definition—Mentor administrator.** As used in this chapter, the term "mentor administrator" means a school district administrator in a like-role selected by a school district to provide supervision of an administrator intern.

#### NEW SECTION

**WAC 392-320-025 Definition—Replacement substitute teacher cost.** As used in this chapter, the term "replacement substitute teacher cost" shall mean an amount paid by a school district to employ a substitute to replace an administrator intern completing an administrator certification field experience. The maximum daily amount shall be the estimated state-wide average substitute teacher cost, to include salary and benefits, as determined by the superintendent of public instruction.

#### NEW SECTION

**WAC 392-320-030 Definition—Educational service district internship advisory board.** As used in this chapter, the term educational service district advisory board means a board or committee composed of representatives of the public, school district administrators, principals, teachers, and colleges having state board of education approved administrator programs. The advisory board shall advise in the establishment of the educational service district intern selection criteria and process. An existing educational service district in-service committee or task force may serve as the educational service district internship advisory board provided it includes the membership described herein.

#### NEW SECTION

**WAC 392-320-035 Incorporation by reference of state board of education rules.** The rules of the state board of education set forth in WAC 180-78-266 which consist of the administrator internship standards shall likewise govern the administrator internship program administered by the superintendent of public instruction.

#### NEW SECTION

**WAC 392-320-040 Administrator intern selection process.** The process for selecting administrator interns shall be as follows:

(1) Any school district employee eligible for this program may apply in writing to the school district superintendent, or his/her designee to be an administrator intern.

(2) Each school district shall determine which applicants meet its internship criteria, provided that applicants must be enrolled in and recommended by a state board of education program approved for principal or superintendent certification.

(3) The school district shall agree to provide each intern at least forty-five school days of released time, name a mentor administrator to supervise each intern, and to employ a substitute to replace the intern.

(4) The school district shall send the regional educational service district superintendent the following: School district criteria for intern selection, nominee name, position title, address, college/university in which the nominee is enrolled in, intern role (i.e., principal or superintendent), proposed internship site, minority and gender status, the actual, daily replacement substitute teacher cost, agreement to comply with state board of education internship standards requirement, agreement to comply with administrator internship program rules (chapter 392-320 WAC), mentor administrator name, title and position, and other information requested by the educational service district.

(5) The educational service district internship advisory board shall review the school district intern nominee applications for compliance with the educational service district internship criteria and make recommendations for approval to the educational service district superintendent. Provided: The interns should reflect the percentage of minorities of the public school student population in the educational service district region, and to the extent practicable, represent an equal number of males and females. If it is not possible to find qualified principal intern candidates reflecting the percentage of minorities of the public school student population of the educational service district, the educational service district shall select those qualified principal intern candidates who meet these criteria and leave the remaining principal intern positions unfilled. If it is not possible to find qualified superintendent candidates reflecting the percentage of minorities of public school student population of the educational service district, the educational service district shall select those qualified superintendent intern candidates who meet these criteria and may fill the remaining superintendent intern positions with qualified candidates without regard to minority or gender status.

(6) The educational service district superintendent shall notify the local district, the respective college or university, and the applicant of their selection status and forward a copy of the information cited in subsection (4) of this section for each selected intern to the superintendent of public instruction.

#### NEW SECTION

**WAC 392-320-045 Administrator internship allocation.** Internship funds shall be allocated as follows:

(1) The superintendent of public instruction shall allocate administrator internship funds after the state board of education adopts internship standards in accordance with WAC 392-320-035.

(2) The superintendent of public instruction shall allocate administrator internship funding to each educational service district based on the percentage of public school students enrolled in each educational service district.

(3) The superintendent of public instruction shall annually calculate the estimated state-wide average substitute teacher cost to include salary and benefits.

(4) Prior to allocating funding to a school district, the educational service district may retain sufficient moneys needed to implement the administrator internship program, including costs of the educational service district internship advisory board. The superintendent of public instruction shall determine the maximum dollar amount each educational

service district may retain. In accordance with superintendent of public instruction memorandum No. 1-92M, each educational service district shall retain up to nine percent of their allocation to carry out their internship program responsibilities.

(5) After selecting the interns, the educational service district shall allocate the administrator internship funding to the employing school district based on the actual replacement substitute teacher cost for forty-five days, provided that the allocation shall not exceed the estimated state-wide average substitute teacher cost, as determined by the superintendent of public instruction.

(6) Administrator internship allocations to each school district shall be used solely for replacement substitute teacher costs, as defined in WAC 392-320-025. Participating school districts shall receive allocations for a maximum of forty-five school days. Local districts shall not be reimbursed for other costs associated with implementing this program.

(7) Unexpended administrator intern funds shall revert to the state general fund.

NEW SECTION

**WAC 392-320-050 Annual report.** The superintendent of public instruction shall prepare an annual report on the administrator internship program based on the following information which shall be provided by each educational service district:

- (1) Educational service district criteria for selecting interns.
- (2) Data and information for each selected intern cited in WAC 392-320-040(4).
- (3) Fiscal report, including allocations to participating districts for replacement substitute teachers.
- (4) Composition of educational service district internship advisory board.
- (5) Recommendations, if any, for program revisions.
- (6) Other information deemed necessary by the superintendent of public instruction.

NEW SECTION

**WAC 392-320-055 Carryover prohibition.** State moneys allocated to educational service districts and districts for the administrator internship program shall be subject to the carryover prohibition of WAC 392-122-900.

NEW SECTION

**WAC 392-320-060 Maximum control factor—Proration.** State moneys distributed to educational service districts and districts for the administrator internship program shall be subject to the proration provision of WAC 392-122-905 if the current program appropriation to the superintendent of public instruction is adversely affected by action of the legislature after the commencement of the ensuing school year.

**WSR 94-07-103  
PERMANENT RULES  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Order 94-04—Filed March 18, 1994, 10:45 a.m.]

Date of Adoption: March 18, 1994.

Purpose: WAC 392-163-105 . . . to ensure compliance by the state of Washington with the financial assistance to local school districts' provisions, including those which apply to private schools and local institutions for neglected or delinquent children of Chapter 1 Regular of the Elementary and Secondary Education Act of 1965, as amended, and accompanying rules and regulations, particularly 34 CFR 200.

Statutory Authority for Adoption: RCW 28A.02.100.

Pursuant to notice filed as WSR 94-04-094 on February 1, 1994.

Effective Date of Rule: Thirty-one days after filing.

March 18, 1994  
Judith A. Billings  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending Order 92-09, filed 10/13/92, effective 11/13/92)

**WAC 392-163-400 Annual needs assessment—Program requirement.** Each school district receiving Chapter 1 moneys shall base its Chapter 1 Regular program on an annual assessment of educational needs which identifies all educationally deprived children in all eligible school attendance areas (including students who are considered homeless, served private schools, and local institutions for neglected or delinquent students). The assessment shall determine general instructional areas and grade levels on which the program will focus and will result in the selection of the greatest of need children. The needs assessment further shall determine the special academic needs of participating students with sufficient specificity to ensure concentration on those needs as well as the resources necessary to meet those special academic needs. A summary analysis of the needs assessment must include data which indicates the number of students below grade level in all grades in reading, math, and communication in all eligible Chapter 1 buildings. The needs assessment must establish the need for readiness or support services when such services are provided. The needs assessment must be funded by local moneys.

AMENDATORY SECTION (Amending Order 92-09, filed 10/13/92, effective 11/13/92)

**WAC 392-163-405 Allocation of resources to program areas and schools.** Each district shall allocate Chapter 1 resources among project areas and schools based on the local needs assessment as well as:

- (1) The number and needs of children selected for participation;
- (2) The degree of educational deprivation of these children; and
- (3) The services to be provided.

PERMANENT

In designing and planning services, districts and individual buildings shall consider a variety of options when selecting staff, instructional techniques, materials, and service models in order to best accommodate individual student needs.

For the sole purpose of allocating Chapter 1 resources among project areas and schools, a local district may continue to count for two additional years, children in those areas and schools who received Chapter 1 services in the preceding school year, but are no longer in greatest need of special assistance from the Chapter 1 program.

These requirements apply to Chapter 1-served public and private schools as well as to local institutions for neglected or delinquent students.

**AMENDATORY SECTION** (Amending Order 92-09, filed 10/13/92, effective 11/13/92)

**WAC 392-163-440 Program improvement.** In order to foster and encourage systematic, purposeful improvement for each project school and individual students, including served private schools, a local district shall:

(1) Establish measurable desired outcomes for each program component unique to its student population which includes the level of performance, the goal, the outcome indicator(s), measurement cycle, and indicators of substantial progress. The outcome must be based on objective data which measures Chapter 1 participants' success in the regular classroom as evidenced by their day-to-day performance, and must be based on criteria that all students are expected to master. Districts may develop desired outcomes for the total program either by building or across the district.

(2) Conduct an annual review of the effectiveness of its Chapter 1 project in improving student performance as measured by aggregate performance and the established desired outcomes; and make the results of the review available to teachers, parents of participating children, administrators, and other appropriate parties. Results will also be indicated in the district's annual end-of-year report. Districts which use a fall-to-fall testing cycle must provide results for program improvement purposes no later than January 15 following the testing dates. If extenuating circumstances exist which prohibits the district from meeting the January 15 deadline, the district shall notify the office of the superintendent of public instruction Chapter 1 staff of the situation and proposed time frame for completion.

(3) Develop a program improvement plan for each building that:

(a) Does not show substantial progress toward meeting the desired outcomes described in the local district's application; or

(b) Shows no improvement or a decline in aggregate performance of participating children for a twelve-month period. "No improvement" shall be indicated by a zero or below NCE gain using either the mean or the median score across the district. The local district is only required to determine the aggregate performance of a school in the instructional area that is the primary focus of the Chapter 1 local district program in that school.

Districts may "self-nominate" buildings that have met their established objectives, and may have access to resour-

ces provided for the purposes of improving programs if sufficient resources are available.

**AMENDATORY SECTION** (Amending Order 92-09, filed 10/13/92, effective 11/13/92)

**WAC 392-163-445 Program improvement plan.** For each building that shows no improvement according to WAC 392-163-440, a program improvement plan must be developed and implemented.

(1) Program improvement plans must be developed by individual school building staff, including, at a minimum: Regular education staff, Chapter 1 staff, building principal, Chapter 1 director, and parents of participating children.

(2) Plans must be shared with the local school board of directors and the superintendent of public instruction.

(3) Districts may apply for program improvement assistance funds to the superintendent of public instruction, for the purposes of developing and implementing their plan. The funds may be used as outlined in the Washington state program improvement plan.

(4) Buildings which have been identified from the use of a fall-to-fall testing cycle must begin planning and developing a program improvement plan no later than February 15 following the testing dates. Buildings which have been identified from the use of a spring-to-spring testing cycle shall begin planning and developing a program improvement plan no later than the beginning of the subsequent school year.

(5) Buildings (~~must~~) shall implement their plan, or parts of their plan, as soon as it is feasible, but no later than ((a year after the building has been identified)) the beginning of the following school year after the building has been identified for those districts using a fall-to-fall testing cycle, and no later than the second fall from the school year after the building has been identified for those districts using a spring-to-spring testing cycle.

**AMENDATORY SECTION** (Amending Order 92-09, filed 10/13/92, effective 11/13/92)

**WAC 392-163-530 Reallocation of Chapter 1 Regular moneys in excess of fifteen percent carryover.** Carryover in excess of fifteen percent will be reallocated by the superintendent of public instruction to school districts according to the process outlined in 34 C.F.R. Section 200.26. Except that, local school districts receiving a Chapter 1 allocation of fifty thousand dollars or less, including basic and concentration grants, shall be exempt from the reallocation of their funding in excess of fifteen percent carryover.

To implement reallocation of Chapter 1 Regular moneys the following requirements and procedures for school districts and the superintendent of public instruction are hereby established:

(1) No school district's annual application shall be approved by the superintendent of public instruction unless such application includes budgeted expenditures equal to at least eighty-five percent of the district's Chapter 1 Regular allocation.

(2) If the total amount budgeted is less than eighty-five percent of the current year's allocation, the superintendent of

public instruction shall notify the district of the additional amount it must budget to achieve the minimum budgetary requirement.

(3) Upon receipt of such notification, a school district shall submit a revised Chapter 1 budget to the superintendent of public instruction or shall submit, on forms provided by the superintendent of public instruction for that purpose, a request for waiver explaining why the district is planning to carry over more than fifteen percent of its Chapter 1 Regular allocation.

**AMENDATORY SECTION** (Amending Order 92-09, filed 10/13/92, effective 11/13/92)

**WAC 392-163-580 Maintenance of effort— Computations.** The ~~((following))~~ calculations as listed in the annual Chapter 1 Regular Basic Concepts Guide shall be used by the superintendent of public instruction to ensure the maintenance of effort for school districts receiving Chapter 1 Regular moneys. The data source for these calculations is the F-196. The same calculations shall be made for both the preceding and second preceding fiscal years~~((~~

~~(1) The total general fund expenditures shall be adjusted by the subtraction of the following program expenditures: The direct expenditures of Program 42— Vocational Technical Institute Projects, Program 47— Vocational Technical Institutes, Program 56— State Institutions, Program 83— Adult Education, Program 87— Community Services, Vocational Technical Institutes, Program 89— Other Community Services, and Activities 82 and 83 in Program 92— Debt Service, Object 9— Capital Outlay, and payments made to other school districts for nonhigh and handicapped pupils.~~

~~(2) From the resulting total in subsection (1) of this section, the total revenue in revenue account series 5000 and 6000 (except Accounts 5500, Federal Forest Funds, and 5300 P.L. 874— Impact Aid) shall be deducted.~~

~~(3) To the resulting total in subsection (2) of this section, the Object 9 expenditures for the following programs shall be added:~~

- ~~(a) 42 Vocational technical institutes projects;~~
- ~~(b) 47 Vocational technical institutes;~~
- ~~(c) 56 State institutions;~~
- ~~(d) 83 Adult education;~~
- ~~(e) 87 Community services, vocational technical institutes;~~
- ~~(f) 89 Other community services; and~~
- ~~(g) 51, 53, 57, 61, 62, 64, 67, 68, 76, and 78 Federal Programs).~~

~~((4))~~ The calculations ~~((in subsections (1), (2), and (3) of this section))~~ listed in Chapter 1 Regular Basic Concepts Guide shall be applied to both school years. The results of ~~((subsections (1) through (3) of this section))~~ this calculation shall then be compared and a district shall be considered to be in compliance if the total for the preceding year is at least ninety percent of the total for the second preceding year.

**WSR 94-07-104**

**PERMANENT RULES**

**DEPARTMENT OF TRANSPORTATION**

[Order 75—Filed March 18, 1994, 1:45 p.m.]

Date of Adoption: March 17, 1994.

Purpose: To revise the schedule of tolls for the Washington state ferry system, amending WAC 468-300-010, 468-300-020, and 468-300-040.

Statutory Authority for Adoption: RCW 47.56.030 and 47.60.326.

Pursuant to notice filed as WSR 94-04-077 on January 31, 1994.

Effective Date of Rule: Thirty-one days after filing.  
March 17, 1994

Alice B. Tawressey, Chair  
Transportation Commission

PERMANENT

AMENDATORY SECTION (Amending WSR 93-18-005, filed 8/19/93, effective 9/19/93)

WAC 468-300-010 Ferry passenger tolls.

((Effective 03:00 a.m. October 10, 1993

| ROUTES                                                               | Full Fare | Half Fare | Frequent User                        | Bicycle                |
|----------------------------------------------------------------------|-----------|-----------|--------------------------------------|------------------------|
|                                                                      |           |           | Ticket Book<br>20 Rides <sup>1</sup> | Surcharge <sup>2</sup> |
| <b>Via Passenger Only Ferry</b>                                      |           |           |                                      |                        |
| *Seattle-Vision                                                      |           |           |                                      |                        |
| *Seattle-Southworth                                                  | 3.30      | 1.65      | 19.80                                | N/C                    |
| *Seattle-Bremerton                                                   |           |           |                                      |                        |
| <b>Via Auto Ferry</b>                                                |           |           |                                      |                        |
| *Fauntleroy-Southworth                                               |           |           |                                      |                        |
| *Seattle-Bremerton                                                   |           |           |                                      |                        |
| *Seattle-Winslow                                                     | 3.30      | 1.65      | 19.80                                | 0.50                   |
| *Edmonds-Kingston                                                    |           |           |                                      |                        |
| Port Townsend-Keystone                                               | 1.65      | 0.85      | 19.80                                | 0.25                   |
| *Fauntleroy-Vashon                                                   |           |           |                                      |                        |
| *Southworth-Vashon                                                   | 2.15      | 1.10      | 12.90                                | 0.50                   |
| *Pt. Defiance-Tahlequah                                              |           |           |                                      |                        |
| *Mukilteo-Clinton                                                    |           |           |                                      |                        |
| *Anacortes to Lopez<br>-Shaw, Oreas or Friday Harbor                 | 4.65      | 2.35      | 27.90                                | 2.50                   |
| Anacortes to Sidney<br>-and Sidney to all destinations               | 6.05      | 3.05      | N/A                                  | 4.00                   |
| Between Lopez,<br>-Shaw, Oreas and Friday Harbor <sup>2</sup>        | N/C       | N/C       | N/C                                  | N/C                    |
| From Lopez, Shaw, Oreas and<br>-Friday Harbor to Sidney <sup>2</sup> | 2.25      | 1.25      | N/A                                  | 1.50                   |

@ These fares rounded to the nearest multiple of \$.25.

\* These routes operate as a one point toll collection system.

FREQUENT USER TICKETS— Shall be valid only for 90 days from date of purchase after which time the tickets shall not be accepted for passage.

BICYCLE SURCHARGE— Is an addition to the appropriate passenger fare.

INTER-ISLAND FARES— Passenger fares included in Anacortes tolls.

HALF FARE— Children under five years of age will be carried free when accompanied by parent or guardian. Children five through eleven years of age will be charged half fare. Children twelve years of age will be charged full fare.

SENIOR CITIZENS— Passengers and driver, age 65 and over, with proper identification establishing proof of age, may travel at half fare tolls on any route where passenger fares are collected.

NOTE: Half fare does not include vehicle.

DISABLED— Any individual who, by reason of illness, injury, congenital malfunction, or other incapacity or disability is unable without special facilities or special planning or design to utilize ferry system services, may travel at half fare tolls on any route upon presentation of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability at time of travel. In addition, those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free.

BUS PASSENGERS— Passengers traveling on public transit buses pay the applicable fare. Passengers traveling in private or commercial buses will be charged the half fare rate.

MEDICARE CARD HOLDERS— Any person holding a Medicare card duly issued to that person pursuant to Title II or Title XVIII of the Social Security Act may travel at half fare tolls on any route upon presentation of a WSF Disability Travel Permit or a Regional Reduced Fare Permit at time of travel.

NOTE: Half fare privilege does not include vehicle.

FERRY/TRANSIT PASS— A combination ferry transit monthly pass may be available for a particular route when determined by Washington state ferries and a local public transit agency to be a viable fare instrument. The WSF portion of the fare is based on 21 days of passenger travel at a 50% discount.

PROMOTIONAL TOLLS— A promotional rate may be established at the discretion of the secretary of transportation for a specific discount (not to exceed 50 percent of full fare) and effective only at designated times on designated routes (not to exceed 100 days per year on any one route).

SCHOOL GROUPS— Passengers traveling in authorized school groups for institution sponsored activities will be charged a flat rate of \$1 per walk on group or per vehicle of students and/or advisors and staff. Walk on groups and private vehicles require letter of authorization. Vehicles and drivers will be charged at fare applicable to vehicle size. The special school rate is \$2 on routes where one point toll systems are in effect.

PERMANENT

NOTE: The school group rate is not available on the Anacortes-Sidney B.C. route during the peak season.)

Effective 03:00 a.m. May 8, 1994

| ROUTES                                                                             | Full Fare | Half Fare | Frequent User<br>Ticket Book<br>20 Rides <sup>1</sup> | Bicycle<br>Surcharge <sup>2</sup> @ |
|------------------------------------------------------------------------------------|-----------|-----------|-------------------------------------------------------|-------------------------------------|
| <u>Via Passenger-Only Ferry</u>                                                    |           |           |                                                       |                                     |
| *Seattle-Vision                                                                    |           |           |                                                       |                                     |
| *Seattle-Southworth                                                                | 3.50      | 1.75      | 21.00                                                 | N/C                                 |
| *Seattle-Bremerton                                                                 |           |           |                                                       |                                     |
| <u>Via Auto Ferry</u>                                                              |           |           |                                                       |                                     |
| *Fauntleroy-Southworth                                                             |           |           |                                                       |                                     |
| *Seattle-Bremerton                                                                 |           |           |                                                       |                                     |
| *Seattle-Winslow                                                                   | 3.50      | 1.75      | 21.00                                                 | 0.50                                |
| *Edmonds-Kingston                                                                  |           |           |                                                       |                                     |
| <u>Port Townsend-Keystone</u>                                                      |           |           |                                                       |                                     |
|                                                                                    | 1.75      | 0.90      | 21.00                                                 | 0.25                                |
| <u>*Fauntleroy-Vashon</u>                                                          |           |           |                                                       |                                     |
| *Southworth-Vashon                                                                 | 2.30      | 1.15      | 13.70                                                 | 0.50                                |
| *Pt. Defiance-Tahlequah                                                            |           |           |                                                       |                                     |
| *Mukilteo-Clinton                                                                  |           |           |                                                       |                                     |
| <u>*Anacortes to Lopez<br/>Shaw, Orcas or Friday Harbor</u>                        |           |           |                                                       |                                     |
|                                                                                    | 4.95      | 2.50      | 29.60                                                 | 2.75                                |
| <u>Between Lopez,<br/>Shaw, Orcas and Friday Harbor<sup>4</sup></u>                |           |           |                                                       |                                     |
|                                                                                    | N/C       | N/C       | N/C                                                   | N/C                                 |
| <u>International Travel</u>                                                        |           |           |                                                       |                                     |
| <u>Anacortes to Sidney<br/>and Sidney to all destinations</u>                      |           |           |                                                       |                                     |
|                                                                                    | 6.50      | 3.25      | N/A                                                   | 4.25                                |
| <u>From Lopez, Shaw, Orcas and<br/>Friday Harbor to Sidney<sup>@</sup></u>         |           |           |                                                       |                                     |
|                                                                                    | 1.50      | 0.75      | N/A                                                   | 1.50                                |
| <u>Lopez, Shaw, Orcas and Friday<br/>Harbor to Sidney (round trip)<sup>3</sup></u> |           |           |                                                       |                                     |
|                                                                                    | 8.00      | 4.00      | N/A                                                   | 5.75                                |

@ These fares rounded to the nearest multiple of \$ .25.

\* These routes operate as a one-point toll collection system.

<sup>1</sup>FREQUENT USER TICKETS - Shall be valid only for 90-days from date of purchase after which time the tickets shall not be accepted for passage.

<sup>2</sup>BICYCLE SURCHARGE - Is an addition to the appropriate passenger fare.

<sup>3</sup>ROUND TRIP - Round trip tickets for international travel available for trips beginning or ending on one of the Islands served.

<sup>4</sup>INTER-ISLAND FARES - Passenger fares included in Anacortes tolls.

HALF FARE - Children under five years of age will be carried free when accompanied by parent or guardian. Children five through eleven years of age will be charged half-fare. Children twelve years of age will be charged full-fare.

SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected.

PERSONS OF DISABILITY - Any individual who, by reason of illness, injury, congenital malfunction, or other incapacity or disability is unable without special facilities or special planning or design to utilize ferry system services, upon presentation of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes a disability may travel at half-fare passenger tolls on any route. In addition, those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free.

BUS PASSENGERS - Passengers traveling on public transit buses pay the applicable fare. Passengers traveling in private or commercial buses will be charged the half-fare rate.

MEDICARE CARD HOLDERS - Any person holding a Medicare card duly issued to that person pursuant to Title II or Title XVIII of the Social Security Act may travel at half-fare passenger tolls on any route upon presentation of a WSF Disability Travel Permit or a Regional Reduced Fare Permit at time of travel.

FERRY/TRANSIT PASS - A combination ferry-transit monthly pass may be available for a particular route when determined by Washington state ferries and a local public transit agency to be a viable fare instrument. The WSF portion of the fare is based on 21 days of passenger travel at a 50% discount.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the secretary of transportation for a specific discount (not to exceed 50 percent of full fare) and effective only at designated times on designated routes (not to exceed 100 days per year on any one route).

PERMANENT

SCHOOL GROUPS - Passengers traveling in authorized school groups for institution-sponsored activities will be charged a flat rate of \$1 per walk-on group or per vehicle of students and/or advisors and staff. Walk-on groups and private vehicles require a letter of authorization. Vehicles and drivers will be charged the fare applicable to vehicle size. The special school rate is \$2 on routes where one-point toll systems are in effect.

**AMENDATORY SECTION** (Amending WSR 93-18-005, filed 8/19/93, effective 9/19/93)

**WAC 468-300-020 Vehicle under 20', motorcycle, and stowage ferry tolls.**

((Effective 03:00 a.m. October 10, 1993

| ROUTES                                                        | Vehicle                        |                                             |                                         |                                    |                                                                    |                                                                    |
|---------------------------------------------------------------|--------------------------------|---------------------------------------------|-----------------------------------------|------------------------------------|--------------------------------------------------------------------|--------------------------------------------------------------------|
|                                                               | Vehicle Under 20' Incl. Driver | Under 20' w/ Sr. Citizen or Disabled Driver | Vehicle Under 20' Over Height Surcharge | Frequent User Ticket book 20 Rides | Motorcycle/Stowage Incl. Driver Frequent User Ticket book 20 Rides | Motorcycle/Stowage Incl. Driver Frequent User Ticket book 20 Rides |
|                                                               | One Way                        | Driver                                      | Surcharge                               | 20 Rides                           | One Way                                                            | 20 Rides                                                           |
| Fauntleroy-Southworth<br>Seattle-Bromerton<br>Seattle-Winslow | 5.55                           | 4.75                                        | 3.35                                    | 88.80                              | 2.45                                                               | 39.20                                                              |
| Port Townsend-Keystone<br>Edmonds-Kingston                    |                                |                                             |                                         |                                    |                                                                    |                                                                    |
| *Fauntleroy-Vashon<br>*Southworth-Vashon                      | 7.50                           | 6.45                                        | 4.50                                    | 60.00                              | 3.20                                                               | 25.60                                                              |
| *Pt. Defiance-Tahlequah                                       |                                |                                             |                                         |                                    |                                                                    |                                                                    |
| Mukilteo-Clinton                                              | 3.75                           | 3.20                                        | 2.25                                    | 60.00                              | 1.60                                                               | 25.60                                                              |
|                                                               |                                |                                             |                                         | 10 Rides                           |                                                                    |                                                                    |
| *Anacortes to Lopez                                           | 11.60                          | 9.30                                        | 6.95                                    | 46.40                              | 6.05                                                               | 48.40                                                              |
| *Shaw, Oreas                                                  | 13.85                          | 11.55                                       | 8.30                                    | 55.40                              | 6.50                                                               | 52.00                                                              |
| *Friday Harbor                                                | 15.85                          | 13.55                                       | 9.50                                    | 63.40                              | 6.90                                                               | 55.20                                                              |
| Anacortes to Sidney<br>and Sidney to all<br>destinations      | 26.05                          | 23.05                                       | 15.65                                   | N/A                                | 10.05                                                              | N/A                                                                |
| Between Lopez,<br>Shaw, Oreas and Friday<br>Harbor@           | 6.50                           | 6.50                                        | 4.00                                    | 26.00                              | 1.75                                                               | N/A                                                                |
| From Lopez, Shaw, Oreas<br>and Friday Harbor<br>to Sidney@    | 13.25                          | 12.25                                       | 8.00                                    | N/A                                | 4.50                                                               | N/A                                                                |

@ These fares rounded to the nearest multiple of \$ .25.

\* These routes operate as a one point toll collection system.

**SIZE** All vehicles up to 20' in length and under 7'6" in height shall pay the vehicle under 20' toll. Vehicles up to 20' in length but over 7'6" in height shall pay a height surcharge of 60% of the vehicle full fare. Upon presentation of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, the height surcharge will be waived for vehicles equipped with wheel chair lift or other mechanism designed to accommodate the person with disability.

**FREQUENT USER TICKETS** Shall be valid only for 90 days from date of purchase after which time the ticket shall not be accepted for passage.

**INTER ISLAND FARES** Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter island travel (westbound at Lopez, Shaw, or Oreas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

**SENIOR CITIZEN OR DISABLED DRIVER** Half fare discount applies to driver portion of the vehicle fare and only when the driver is eligible.

**VANPOOLS** A commuter vanpool which carries five or more persons on a regular expense sharing basis for the purpose of travel to or from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$10 fee, a permit valid for one year valid only during the hours shown on the permit. These hours are selectable by the purchaser but shall designate two periods of use each day not to exceed two hours per period. The \$10.00 fee shall include the driver. Remaining passengers shall pay the applicable passenger fare. Except that the minimum total paid for all passengers in the van shall not be less than four times the applicable passenger fare.

**STOWAGE** Stowage carry on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk on passenger carrying on the item to be stowed.

**PEAK SEASON SURCHARGE** A 20% surcharge shall be applied effective the second Sunday in May through the second Sunday in October to all vehicles except those using frequent user tickets.

**PENALTY CHARGES** Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

**PROMOTIONAL TOLLS** - A promotional rate may be established at the discretion of the secretary of transportation for a specified discount (not to exceed 50 percent of full fare) and effective only at designated times on designated routes (not to exceed 100 days per year on any one route:))

Effective 03:00 a.m. May 8, 1994

| ROUTES                                                                      | Vehicle                              |                                                                      | Vehicle                                            |                                                    | Vehicle                                               | Motorcycle/Stowage <sup>5</sup> |                                                                       |
|-----------------------------------------------------------------------------|--------------------------------------|----------------------------------------------------------------------|----------------------------------------------------|----------------------------------------------------|-------------------------------------------------------|---------------------------------|-----------------------------------------------------------------------|
|                                                                             | Under 20'<br>Incl. Driver<br>One Way | Under 20'<br>w/ Sr.<br>Citizen or<br>Disabled<br>Driver <sup>4</sup> | Under 20'<br>Over Height<br>Surcharge <sup>1</sup> | Under 20'<br>Over Height<br>Surcharge <sup>1</sup> | Frequent User<br>Ticket book<br>20 Rides <sup>2</sup> | One Way                         | Incl. Driver<br>Frequent User<br>Ticket book<br>20 Rides <sup>2</sup> |
| Fauntleroy-Southworth<br>Seattle-Bremerton<br>Seattle-Winslow               | 5.90                                 | 5.05                                                                 | 3.55                                               |                                                    | 94.15                                                 | 2.60                            | 41.55                                                                 |
| Port Townsend-Keystone<br>Edmonds-Kingston                                  |                                      |                                                                      |                                                    |                                                    |                                                       |                                 |                                                                       |
| *Fauntleroy-Vashon<br>*Southworth-Vashon<br>*Pt. Defiance-Tahlequah         | 7.85                                 | 6.85                                                                 | 4.80                                               |                                                    | 63.60                                                 | 3.40                            | 27.15                                                                 |
| Mukilteo-Clinton                                                            | 4.00                                 | 3.40                                                                 | 2.40                                               |                                                    | 63.60                                                 | 1.70                            | 27.15                                                                 |
|                                                                             |                                      |                                                                      |                                                    |                                                    | 10 Rides                                              |                                 |                                                                       |
| *Anacortes to Lopez<br>*Shaw, Orcas<br>*Friday Harbor                       | 12.30<br>14.70<br>16.80              | 9.85<br>12.20<br>14.35                                               | 7.35<br>8.80<br>10.10                              |                                                    | 49.20<br>58.75<br>67.20                               | 6.40<br>6.90<br>7.30            | 51.30<br>55.15<br>58.55                                               |
| Between Lopez,<br>Shaw, Orcas and Friday<br>Harbor@ <sup>3</sup>            | 7.00                                 | 7.00                                                                 | 4.25                                               |                                                    | 27.50                                                 | 2.00                            | N/A                                                                   |
| <i>International Travel</i>                                                 |                                      |                                                                      |                                                    |                                                    |                                                       |                                 |                                                                       |
| Anacortes to Sidney<br>and Sidney to all<br>destinations                    | 27.90                                | 24.70                                                                | 16.75                                              |                                                    | N/A                                                   | 10.75                           | N/A                                                                   |
| From Lopez, Shaw, Orcas<br>and Friday Harbor<br>to Sidney@                  | 13.25                                | 12.50                                                                | 8.00                                               |                                                    | N/A                                                   | 3.75                            | N/A                                                                   |
| Lopez, Shaw, Orcas and Friday<br>Harbor to Sidney (round trip) <sup>6</sup> | 41.15                                | 37.20                                                                | 24.75                                              |                                                    | N/A                                                   | 14.50                           | N/A                                                                   |

@ These fares rounded to the nearest multiple of \$ .25.

\* These routes operate as a one-point toll collection system.

<sup>1</sup>SIZE - All vehicles up to 20' in length and under 7'6" shall pay the vehicle under 20' toll. Vehicles up to 20' but over 7'6" in height shall pay a height surcharge of 60% of the vehicle full fare. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, the height surcharge will be waived for vehicles equipped with wheel chair lift or other mechanism designed to accommodate the person with disability.

<sup>2</sup>FREQUENT USER TICKETS - Shall be valid only for 90 days from date of purchase after which time the ticket shall not be accepted for passage.

<sup>3</sup>INTER-ISLAND FARES - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

<sup>4</sup>SENIOR CITIZEN, DISABLED DRIVER OR DISABLED ATTENDANT DRIVER - Half fare discount applies to driver portion of the vehicle-driver fare and only when the driver is eligible. Those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSR Disability Travel Permit and such endorsement shall allow the attendant, when driving, to have the driver portion of the vehicle fare waived.

<sup>5</sup>MOTORCYCLES - The motorcycle including driver fare includes motorcycles pulling trailers and motorcycles with side cars.

<sup>6</sup>ROUND TRIP - Round trip tickets for international travel available for trips beginning or ending on one of the islands served.

VANPOOLS - A commuter vanpool which carries five or more persons on a regular and expense-sharing basis for the purpose of travel to and from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$10 fee, a permit valid for one year valid only during the hours shown on the permit. These hours are selectable by the purchaser but shall designate two periods of use each day not to exceed two hours per period. The \$10.00 fee shall include the driver. Remaining passengers shall pay the applicable passenger fare. Except that the minimum total paid for all passengers in the van shall not be less than four times the applicable passenger fare.

STOWAGE - Stowage carry-on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk-on passenger carrying on the item to be stowed.

PEAK SEASON SURCHARGE - A 20% surcharge shall be applied effective the second Sunday in May through the second Sunday in October to all vehicles except those using frequent user tickets.

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PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the secretary of transportation for a specified discount (not to exceed 50 percent of full fare) and effective only at designated times on designated routes (not to exceed 100 days per year on any one route).

**AMENDATORY SECTION** (Amending WSR 93-18-005, filed 8/19/93, effective 9/19/93)

**WAC 468-300-040 Oversize vehicle ferry tolls.**

((Effective 03:00 a.m. October 10, 1993

| ROUTES                                                                                                      | Oversize Vehicle Ferry Tolls <sup>1</sup> |                    |                    |                    |                    |                          |                   |
|-------------------------------------------------------------------------------------------------------------|-------------------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------------|-------------------|
|                                                                                                             | Overall Unit Length - Including Driver    |                    |                    |                    |                    |                          |                   |
|                                                                                                             | 20'<br>To<br>Under                        | 30'<br>To<br>Under | 40'<br>To<br>Under | 50'<br>To<br>Under | 60'<br>To<br>Under | 70'<br>To and<br>Include | 80'<br>To<br>Over |
| Fauntleroy-Southworth<br>Seattle-Bremerton<br>Seattle-Winslow<br>Port Townsend-Keystone<br>Edmonds-Kingston |                                           |                    |                    |                    |                    |                          | 0.55              |
| *Fauntleroy-Vashon<br>*Southworth-Vashon<br>*Pt. Defiance-Tahlequah                                         | 18.00                                     | 24.00              | 34.30              | 39.40              | 52.50              | 60.00                    | 0.75              |
| Mukilteo-Clinton                                                                                            | 9.00                                      | 12.00              | 16.40              | 19.70              | 26.25              | 30.00                    | 0.40              |
| *Anacortes to Lopez <sup>2</sup><br>*Shaw, Orcas<br>*Friday Harbor                                          | 33.25                                     | 44.30              | 60.60              | 72.70              | 96.95              | 110.80                   | 1.40              |
| Anacortes to Sidney<br>and Sidney to all destinations                                                       | 48.85                                     | 65.15              | 81.40              | 97.70              | 145.90             | 166.70                   | 2.10              |
| Between Lopez,<br>Shaw, Orcas and Friday Harbor <sup>2</sup> @                                              | 14.00                                     | 14.00              | 14.00              | 55.00              | 55.00              | 55.00                    | N/A               |
| From Lopez, Shaw, Orcas<br>and Friday Harbor to Sidney@                                                     | 24.75                                     | 33.00              | 41.50              | 49.75              | 74.25              | 84.75                    | 1.00              |

@ These fares rounded to the nearest multiple of \$.25.

\* These routes operate as a one point toll collection system.

<sup>1</sup>**OVERSIZE VEHICLES** - Includes all vehicles 20 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 20' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles which are 11 feet in width or wider pay double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses shall travel free upon display of an annual permit which may be purchased for \$10.

**PEAK SEASON SURCHARGE** - A 20% surcharge shall be applied effective the second Sunday in May through the second Sunday in October to all vehicles except those using frequent user tickets.

<sup>2</sup>**STOPOVERS** - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may purchase a single intermediate stopover ticket for \$2.50 when first purchasing the appropriate vehicle fare. The stopover is valid for a 24-hour period.

<sup>3</sup>**INTER-ISLAND** - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for interisland travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

**SENIOR CITIZEN DISCOUNTS** - Discounts of 50% for the driver of the above vehicles shall apply. Senior citizen discount is determined by subtracting full fare passenger rate and adding half fare passenger rate.

**PENALTY CHARGES** - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

**DISCOUNT FROM REGULAR TOLL**

Oversize vehicles making 12 or more, one way crossings per week (Sunday thru Saturday) will qualify for a 20% discount from the regular ferry tolls.

**EMERGENCY TRIPS DURING NONSERVICE HOURS** - While at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

**BULK NEWSPAPERS** - Per 100 lbs. \$2.20

PERMANENT

(Shipments exceeding 60,000 lbs. in any month shall be assessed \$1.10 per 100 lbs.)

Daily Newspapers, in bundles, and medical supplies, to be received and delivered without receipt and subject to owner's risk, will be transported between ferry terminals on regular scheduled sailings.

**EXPRESS SHIPMENTS**—A flat handling charge of \$25.00 per parcel is charged.

(Shipments exceeding 100 lbs. assessed \$8.30 for each 25 lbs. or fraction thereof.)

Express shipments will be handled on scheduled sailings when no other means of shipment is available to shipper. Shipments must be of a size and weight that can easily be handled by carrier's employees. Carrier reserves the right to refuse shipment of any item. Carrier assumes no liability for loss or damage to any shipment. Minimum rate for any shipment shall be the rate for 100 pounds.

San Juan inter island express shipments will be handled at \$5.00 per parcel.

**MEDICAL SUPPLIES**—A flat handling charge of \$5.00 per shipment is charged.

**DISCLAIMER**—Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.)

Effective 03:00 a.m. May 8, 1994

| ROUTES                                                                                                      | Oversize Vehicle Ferry Tolls <sup>1</sup> |                           |                           |                           |                           |                                 |                                |
|-------------------------------------------------------------------------------------------------------------|-------------------------------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------------|--------------------------------|
|                                                                                                             | Overall Unit Length - Including Driver    |                           |                           |                           |                           |                                 |                                |
|                                                                                                             | 20'<br>To<br>Under<br>30'                 | 30'<br>To<br>Under<br>40' | 40'<br>To<br>Under<br>50' | 50'<br>To<br>Under<br>60' | 60'<br>To<br>Under<br>70' | 70'<br>To and<br>Include<br>80' | Cost<br>Per Ft.<br>Over<br>80' |
| Fauntleroy-Southworth<br>Seattle-Bremerton<br>Seattle-Winslow<br>Port Townsend-Keystone<br>Edmonds-Kingston | 14.10                                     | 18.80                     | 25.75                     | 30.90                     | 41.20                     | 47.10                           | 0.60                           |
| *Fauntleroy-Vashon<br>*Southworth-Vashon<br>*Pt. Defiance-Tahlequah                                         | 19.10                                     | 25.45                     | 34.80                     | 41.80                     | 55.70                     | 63.60                           | 0.80                           |
| Mukilteo-Clinton                                                                                            | 9.55                                      | 12.70                     | 17.40                     | 20.90                     | 27.85                     | 31.80                           | 0.40                           |
| *Anacortes to Lopez <sup>2</sup><br>*Shaw, Orcas<br>*Friday Harbor                                          | 35.25                                     | 47.00                     | 64.25                     | 77.10                     | 102.80                    | 117.50                          | 1.50                           |
| Between Lopez,<br>Shaw, Orcas and Friday Harbor <sup>3</sup> @                                              | 14.75                                     | 14.75                     | 14.75                     | 58.25                     | 58.25                     | 58.25                           | N/A                            |
| <i>International Travel</i>                                                                                 |                                           |                           |                           |                           |                           |                                 |                                |
| Anacortes to Sidney<br>and Sidney to all destinations                                                       | 53.25                                     | 69.85                     | 87.25                     | 104.70                    | 156.40                    | 178.65                          | 2.25                           |
| From Lopez, Shaw, Orcas<br>and Friday Harbor to Sidney@                                                     | 17.00                                     | 22.75                     | 23.00                     | 27.50                     | 53.50                     | 61.25                           | 0.75                           |

@ These fares rounded to the nearest multiple of \$.25.

\* These routes operate as a one-point toll collection system.

<sup>1</sup>**OVERSIZE VEHICLES** - Includes all vehicles 20 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 20' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles which are 11 feet in width or wider pay double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses shall travel free upon display of an annual permit which may be purchased for \$10.

<sup>2</sup>**STOPOVERS** - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may purchase a single intermediate stopover ticket for \$2.50 when first purchasing the appropriate vehicle fare. The stopover is valid for a 24-hour period.

<sup>3</sup>**INTER-ISLAND** - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for interisland travel

(westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

<sup>4</sup>**ROUND TRIP** - Round trip tickets for international travel available for trips beginning or ending on one of the islands served.

**PEAK SEASON SURCHARGE** - A 20% surcharge shall be applied effective the second Sunday in May through the second Sunday in October to all vehicles except those using frequent user tickets.

**SENIOR CITIZEN DISCOUNTS** - Discounts of 50% for the driver of the above vehicles shall apply. Senior citizen discount is determined by subtracting full-fare passenger rate and adding half-fare passenger rate.

**PENALTY CHARGES** - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

**DISCOUNT FROM REGULAR TOLL**

Oversize vehicles making 12 or more, one-way crossings per week (Sunday thru Saturday) will qualify for a 20% discount from the regular ferry tolls.

**EMERGENCY TRIPS DURING NONSERVICE HOURS** - While at locations where crew is on duty charge shall be equal to the cost of

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fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

March 15, 1994  
Maureen Sandison  
Board Chair

**BULK NEWSPAPERS - Per 100 lbs. \$2.20**

(Shipments exceeding 60,000 lbs. in any month shall be assessed \$1.10 per 100 lbs.)

Daily Newspapers, in bundles, and medical supplies, to be received and delivered without receipt and subject to owner's risk, will be transported between ferry terminals on regular scheduled sailings.

**EXPRESS SHIPMENTS - A flat handling charge of \$25.00 per parcel is charged.**

(Shipments exceeding 100 lbs. assessed \$8.30 for each 25 lbs. or fraction thereof.)

Express shipments will be handled on scheduled sailings when no other means of shipment is available to shipper. Shipments must be of a size and weight that can easily be handled by carrier's employees. Carrier reserves the right to refuse shipment of any item. Carrier assumes no liability for loss or damage to any shipment. Minimum rate for any shipment shall be the rate for 100 pounds.

San Juan inter-island express shipments will be handled at \$5.00 per parcel.

**MEDICAL SUPPLIES - A flat handling charge of \$5.00 per shipment is charged.**

**DISCLAIMER - Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.**

**WSR 94-07-105  
PERMANENT RULES  
DEPARTMENT OF HEALTH**

(Board of Pharmacy)

[Filed March 18, 1994, 3:42 p.m., effective March 18, 1994]

Date of Adoption: March 15, 1994.

Purpose: To move LAAM (levo-alphaacetylmethadol) into Schedule II and place hydriodic acid into the precursor substance list and into the Schedule II immediate precursor list.

Citation of Existing Rules Affected by this Order: Amending WAC 246-887-100, 246-887-140, 246-887-150, and 246-889-020.

Statutory Authority for Adoption: RCW 18.65.005 and 18.64.005.

Pursuant to notice filed as WSR 94-04-111 on February 2, 1994.

Changes Other than Editing from Proposed to Adopted Version: Addition of "P" to WAC 246-889-020(3), list of precursor substances also regulated as Schedule II immediate precursors.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Utilization of LAAM for drug treatment programs has been approved by both the Food and Drug Administration and the Drug Enforcement Administration, however it cannot be utilized by clinics in Washington until it has been scheduled by the board. Therefore, it is essential that the drug become available in this state as soon as possible. Also, hydriodic acid is a chemical found in illegal methamphetamine labs and is purchased in Washington by persons from other states and sold to illegal labs in those states. This makes this chemical an immediate public health risk.

Effective Date of Rule: Upon filing [March 18, 1994].

**AMENDATORY SECTION** (Amending Order 239B, filed 1/28/92, effective 2/29/92)

**WAC 246-887-100 Schedule I.** The board finds that the following substances have high potential for abuse and have no accepted medical use in treatment in the United States or that they lack accepted safety for use in treatment under medical supervision. The board, therefore, places each of the following substances in Schedule I.

(a) The controlled substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name, are included in Schedule I.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- (2) Acetylmethadol;
- (3) Allylprodine;
- (4) Alphacetylmethadol; (except for levo-alphaacetylmethadol - also known as levo-alphaacetylmethadol, levomethadyl acetate or LAAM);
- (5) Alphameprodine;
- (6) Alphamethadol;
- (7) Alpha-methylfentanyl (N-[1-alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
- (8) Benzethidine;
- (9) Betacetylmethadol;
- (10) Betameprodine;
- (11) Betamethadol;
- (12) Betaprodine;
- (13) Clonitazene;
- (14) Dextromoramide;
- (15) Diampromide;
- (16) Diethylthiambutene;
- (17) Difenoxin;
- (18) Dimenoxadol;
- (19) Dimepheptanol;
- (20) Dimethylthiambutene;
- (21) Dioxaphetyl butyrate;
- (22) Dipipanone;
- (23) Ethylmethylthiambutene;
- (24) Etonitazene;
- (25) Etoxidine;
- (26) Furethidine;
- (27) Hydroxypethidine;
- (28) Ketobemidone;
- (29) Levomoramide;
- (30) Levophenacymorphan;
- (31) 3-Methylfentanyl (N-[3-Methyl-1-(2-phenylethyl)-4-piperidinyl]-N-phenylpropanamide);
- (32) Morpheridine;
- (33) MPPP (1-Methyl-4-phenyl-4-propionoxypiperidine);
- (34) Noracetylmethadol;

- (35) Norlevorphanol;
- (36) Normethadone;
- (37) Norpipanone;
- (38) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- (39) Phenadoxone;
- (40) Phenampromide;
- (41) Phenomorphan;
- (42) Phenoperidine;
- (43) Pirtramide;
- (44) Proheptazine;
- (45) Properidine;
- (46) Propiram;
- (47) Racemoramide;
- (48) Tilidine;
- (49) Trimeperidine.

(c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyrenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine (except hydrochloride salt);
- (11) Heroin;
- (12) Hydromorphinol;
- (13) Methyl-desorphine;
- (14) Methyl-dihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine;
- (23) Thebacon.

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of paragraph (d) of this section, only, the term "isomer" includes the optical, position, and geometric isomers):

- (1) 4-bromo-2,5-dimethoxy-amphetamine: Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA;
- (2) 2,5-dimethoxyamphetamine: Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA;

(3) 4-methoxyamphetamine: Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxy-amphetamine, PMA;

(4) 5-methoxy-3,4-methylenedioxy-amphetamine;

(5) 4-methyl-2,5-dimethoxy-amphetamine: Some trade and other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM"; and "STP";

(6) 3,4-methylenedioxy amphetamine;

(7) 3,4-methylenedioxymethamphetamine (MDMA);

(8) 3,4,5-trimethoxy amphetamine;

(9) Bufotenine: Some trade or other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;

(10) Diethyltryptamine: Some trade or other names: N,N-Diethyltryptamine; DET;

(11) Dimethyltryptamine: Some trade or other names: DMT;

(12) Ibogaine: Some trade or other names: 7-Ethyl-6,6 beta,7,8,9,10,12,13,-octahydro-2-methoxy-6,9methano-5H-pyndo (1',2':1,2) azepino (5,4-b) indole; Tabernanthe iboga;

(13) Lysergic acid diethylamide;

(14) Marihuana;

(15) Mescaline;

(16) Parahexyl-7374; some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo[b,d]pyran; synhexyl;

(17) Peyote, meaning all parts of the plant presently classified botanically as *Lophophora Williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or extracts; (interprets 21 USC § 812 (c), Schedule I (c)(12))

(18) N-ethyl-3-piperidyl benzilate;

(19) N-methyl-3-piperidyl benzilate;

(20) Psilocybin;

(21) Psilocyn;

(22) Tetrahydrocannabinols, synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, sp., and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(i) Delta 1 - cis - or transtetrahydrocannabinol, and their optical isomers, excluding tetrahydrocannabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States Food and Drug Administration;

(ii) Delta 6 - cis - or transtetrahydrocannabinol, and their optical isomers;

(iii) Delta 3,4 - cis - or transtetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(23) Ethylamine analog of phencyclidine: Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE;

(24) Pyrrolidine analog of phencyclidine: Some trade or other names: 1-(1-phenylcyclohexyl)pyrrolidine; PCPy; PHP;

(25) Thiophene analog of phencyclidine: Some trade or other names: 1-(1-[2-thenyl]-cyclohexyl)-piperidine; 2-thienylanalog of phencyclidine; TPCP; TCP;

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (i) Mecloqualone;
- (ii) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- (i) Fenethylamine;
- (ii) N-ethylamphetamine;
- (iii) 4-methylaminorex;
- (iv) N,N-dimethylamphetamine.

**Reviser's note:** The brackets and enclosed material in the text of 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 239B, filed 1/28/92, effective 2/29/92)

**WAC 246-887-140 Schedule II.** The board finds that the following substances have a high potential for abuse and have currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions and that the abuse of the following substances may lead to severe psychic or psychological dependence. The board, therefore, places each of the following substances in Schedule II.

(a) The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule II.

(b) Substances. (Vegetable origin or chemical synthesis.) Unless specifically excepted, any of the following substances, except those listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrophan, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:

- (i) Raw opium;
- (ii) Opium extracts;
- (iii) Opium fluid;
- (iv) Powdered opium;
- (v) Granulated opium;
- (vi) Tincture of opium;
- (vii) Codeine;
- (viii) Ethylmorphine;
- (ix) Etorphine hydrochloride;
- (x) Hydrocodone;
- (xi) Hydromorphone;
- (xii) Metopon;

- (xiii) Morphine;
- (xiv) Oxycodone;
- (xv) Oxymorphone; and
- (xvi) Thebaine.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (b)(1) of this section, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(5) Methylbenzoylcegonine (cocaine—its salts, optical isomers, and salts of optical isomers).

(6) Concentrate of poppy straw (The crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.)

(c) Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan and levopropoxyphene excepted:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk dextropropoxyphene (nondosage forms);
- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;

(11) Levo-alpha-acetylmethadol - also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM;

(12) Levomethorphan;

~~((12))~~ (13) Levorphanol;

~~((13))~~ (14) Metazocine;

~~((14))~~ (15) Methadone;

~~((15))~~ (16) Methadone—Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;

~~((16))~~ (17) Moramide—Intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;

~~((17))~~ (18) Pethidine (meperidine);

~~((18))~~ (19) Pethidine—Intermediate—A,4-cyano-1-methyl-4-phenylpiperidine;

~~((19))~~ (20) Pethidine—Intermediate—B,ethyl-4-phenylpiperidine-4-carboxylate;

~~((20))~~ (21) Pethidine—Intermediate—C,1-methyl-4-phenylpiperidine-4-carboxylic acid;

~~((21))~~ (22) Phenazocine;

~~((22))~~ (23) Piminodine;

~~((23))~~ (24) Racemethorphan;

~~((24))~~ (25) Racemorphan;

~~((25))~~ (26) Sufentanil.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following

substances having a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) Methamphetamine, its salts, optical isomers, and salts of optical isomers;
- (3) Phenmetrazine and its salts;
- (4) Methylphenidate.
- (e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Amobarbital;
- (2) Glutethimide;
- (3) Pentobarbital;
- (4) Phencyclidine;
- (5) Secobarbital.

(f) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

- (1) Immediate precursor to amphetamine and methamphetamine:
- (2) Phenylacetone: Some trade or other names phenyl-2-propanone, P2P, benzyl methyl ketone, methyl benzyl ketone.
- (3) Immediate precursors to phencyclidine (PCP):
  - (i) 1-phenylcyclohexylamine;
  - (ii) 1-piperidinocyclohexanecarbonitrile (PCC).
- (g) Hallucinogenic substances.
  - (1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product. (Some other names for dronabinol [6aR-trans]-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.)
  - (2) Nabilone. (Another name for nabilone: (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one.)

**Reviser's note:** The brackets and enclosed material in the text of 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 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-887-150 Schedule II immediate precursors.** (1) The board finds and designates the following substances as being the principal compound used or produced primarily for use and which are an immediate chemical intermediary used or likely to be used, in the manufacture of a Schedule II controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(2) Unless specifically excepted or listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances or their salts or isomers having potential for abuse associated with the preparation of controlled substances shall be a Schedule II controlled substance.

- (a) Anthranilic acid.
- (b) Ephedrine.
- (c) Hydriodic acid.
- (d) Methylamine.
- ~~((d))~~ (e) Phenylacetic acid.
- ~~((e))~~ (f) Pseudoephedrine.
- ~~((f))~~ (g) Methephedrine.
- ~~((g))~~ (h) Lead acetate.
- ~~((h))~~ (i) Methyl formamide.

*Provided:* That any drug or compound containing Ephedrine, or any of its salts or isomers, or Pseudoephedrine, or any of its salts or isomers that are prepared for dispensing or over-the-counter distribution and are in compliance with the Federal Food, Drug and Cosmetic Act and applicable regulations are not controlled substances for the purpose of this section: *And Provided Further,* That any cosmetic containing lead acetate that is distributed in compliance with the Federal Food, Drug and Cosmetic Act and applicable regulations are not controlled substances.

**AMENDATORY SECTION** (Amending Order 277B, filed 5/28/92, effective 6/28/92)

**WAC 246-889-020 Precursor substance defined.** (1) For the purpose of this chapter a precursor substance is any of the following substances or their salts or isomers:

- (a) Anthranilic acid;
- (b) Barbituric acid;
- (c) Chlorephedrine;
- (d) Diethyl malonate;
- (e) D-lysergic acid;
- (f) Ephedrine;
- (g) Ergotamine tartrate;
- (h) Ethylamine;
- (i) Ethyl malonate;
- (j) Ethylephedrine;
- (k) Hydriodic acid.
- ~~(l)~~ (l) Lead acetate;
- ~~((l))~~ (m) Malonic acid;
- ~~((m))~~ (n) Methylamine;
- ~~((n))~~ (o) Methylformamide;
- ~~((o))~~ (p) Methylephedrine;
- ~~((p))~~ (q) Methylpseudoephedrine;
- ~~((q))~~ (r) N-acetylanthranilic acid;
- ~~((r))~~ (s) Norpseudoephedrine;
- ~~((s))~~ (t) Phenylacetic acid;
- ~~((t))~~ (u) Phenylpropanolamine;
- ~~((u))~~ (v) Piperidine;
- ~~((v))~~ (w) Pseudoephedrine; and
- ~~((w))~~ (x) Pyrrolidine.

*Provided;* that this definition shall not include any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine or any cosmetic if that drug or cosmetic can be lawfully sold, transferred, or furnished over-the-counter without a prescription or by a prescription under chapter 69.04 or 69.41 RCW.

(2) The board finds that the reference to methylformamide in RCW 69.43.010, was intended to refer to methylformamide and corrects that reference by deleting "methylformamide" and adding "methylformamide." This change is based upon the finding that this revision conforms to the tests set forth in RCW 69.43.010(2).

(3) Registrants should be aware that precursor substances in subsection (1)(a), (f), (k), (~~((m), (n), (s), and (v))~~) (l), (n), (o), (p), (t), and (w) of this section are also regulated as schedule II immediate precursors pursuant to WAC 246-887-150 and all applicable rules and laws governing the distribution of schedule II controlled substances must also be complied with.

### WSR 94-07-115

#### PERMANENT RULES

#### EMPLOYMENT SECURITY DEPARTMENT

[Filed March 21, 1994, 3:46 p.m., effective May 2, 1994]

Date of Adoption: March 21, 1994.

Purpose: To add a new chapter to Title 192 WAC providing rules for the administration of amendments to chapter 50.06 RCW, Temporary total disability.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Pursuant to notice filed as WSR 93-24-119 on December 1, 1993.

Changes Other than Editing from Proposed to Adopted Version: For compliance purposes, amended WAC 192-34-010(3) to include industrial insurance programs established under laws of the federal government.

Effective Date of Rule: May 2, 1994.

March 17, 1994

K. Wendy Holden

Deputy Commissioner

### Chapter 192-34

#### Temporary Total Disability

#### NEW SECTION

**WAC 192-34-010 Definitions.** The following words and phrases as used in this chapter shall have the meanings set forth in this section unless the context otherwise requires:

(1) "Effective date of temporary total disability", for the purpose of establishing a base year, shall be Sunday of the week in which the individual:

(a) Became eligible for industrial insurance or crime victims compensation payments; or

(b) Became totally physically disabled due to a nonwork-related injury or illness.

(2) "Illness" means a condition marked by pronounced deviation from the normal healthy state, characterized by sickness, disease or disorder. The presence of alcohol abuse, drug abuse, antisocial behavior, or criminal history alone, or the commitment of an individual to a treatment program, is insufficient by itself to justify a finding of "illness" within the meaning of this chapter.

(3) "Industrial insurance" includes any program established by a public or private agency under the industrial insurance laws of this state, any other state, or the federal government to provide compensation to individuals who suffer an industrial disability that is total but of temporary duration.

(4) "Injury" means a trauma to the integrity or function of a tissue or organ and the physical conditions resulting therefrom.

(5) "Physician" means any person licensed to practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic medicine; podiatry.

(6) "Re-entry date", as it relates to a temporary total disability resulting from a nonwork-related injury or illness, shall be the date on which a physician releases the individual to return to work.

(7) "Temporary total disability" means an injury or illness, lasting thirteen or more consecutive calendar weeks, during which an individual is unable to follow continuously a substantially gainful occupation without seriously risking his or her health, as determined by a physician.

#### NEW SECTION

**WAC 192-34-015 Exclusions.** The special provisions of Chapter 50.06 RCW will not be available to individuals when:

(1) The injury or illness results to an individual from the deliberate intention of the individual to produce such injury or illness;

(2) The injury or illness is incurred while the individual is engaged in the attempt to commit, or the commission of, a criminal act. A "criminal act" shall include any unlawful action punishable as a felony or gross misdemeanor of which the individual has been convicted or has admitted committing to a competent authority; or

(3) The injury or illness is incurred as a result of the individual driving under the influence of intoxicating liquor or drugs or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs.

#### NEW SECTION

**WAC 192-34-020 Failure to apply in a timely manner.** In the event a claimant fails to apply for initial determination within the time period prescribed by RCW 50.06.030 (1) and (2), a late filing shall be accepted for good cause shown.

#### NEW SECTION

**WAC 192-34-025 Additional injuries.** Two or more separate injuries or illnesses, resulting in two or more separate periods of temporary total disability, may not be combined or joined. A unique base year and benefit year shall be established for each injury or illness pursuant to chapter 50.06 RCW.

### WSR 94-07-122

#### PERMANENT RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Public Assistance)

[Order 3711—Filed March 22, 1994, 4:51 p.m.]

Date of Adoption: March 22, 1994.

Purpose: Removes the need for prior authorization of vision care services. Restricts adult clients to one eye examination for procurement of eyeglasses every two years.

Citation of Existing Rules Affected by this Order:  
Amending WAC 388-86-030 Eyeglasses and examinations.  
Statutory Authority for Adoption: RCW 74.08.090.  
Pursuant to notice filed as WSR 94-07-021 on March 8, 1994.

Changes Other than Editing from Proposed to Adopted Version: Removed the word "medical" from subsection (3). Subsection (6) now reads ". . . a change in refractive error in sphere, cylinder, or spherical equivalent of a plus or minus of one diopter and which result in an improvement of visual acuity."

Effective Date of Rule: Thirty-one days after filing.  
March 22, 1994  
Dewey Brock, Chief  
Office of Vendor Services

AMENDATORY SECTION (Amending Order 2559, filed 11/18/87)

WAC 388-86-030 Eyeglasses and examinations. (1) ~~The ((department)) medical assistance administration (MAA) shall ((provide)) reimburse a provider for medically necessary eye ((examinations to eligible recipients when medically necessary. Eyeglasses and fitting services shall be provided when a refractive error of sufficient magnitude exists to require corrective lenses.~~

~~(2) The department shall provide only one examination, fitting fee, refraction and one pair of glasses per eligible recipient during a twelve-month period, except (a) for eye services provided under the EPSDT program, or (b) in extenuating circumstances when medically necessary.~~

~~(3) Prior authorization is required for medical eye care procedures and for special eyeglass services including but not limited to, contact lenses, low vision aids, executive bifocals and trifocals, artificial eyes and two pair of glasses in lieu of bifocal or trifocal lenses))~~ care services for a client:

(a) Twenty-one years of age or over, one each of the services listed under subsection (2) of this section, in a twenty-four-month period; or

(b) Twenty years of age or under, one each of the services listed under subsection (2) of this section, in a twelve-month period.

(2) The MAA's eye care services shall include:

(a) Eye examinations;

(b) Refractions;

(c) Fitting fees; and

(d) Eyeglass lenses and/or frames.

(3) The time period limitation does not apply when the:  
(a) Eye examination is medically necessary for diagnosing and/or treating a medical condition; or

(b) Client described under subsection (5) of this section requires replacement glasses due to loss or breakage.

(4) MAA shall limit the choice of frames ((is limited)) and lenses to frames and lenses listed under contract in the current ((division of medical assistance)) MAA numbered memoranda and/or MAA provider's billing instructions on that subject. ((Frames are not provided for cosmetic effect or psychological support.))

(5) ((The department shall not provide sunglasses, photochromic or varalux type lenses and orthoptics therapy))

MAA shall only reimburse for replacement of broken or lost eyeglasses for a:

(a) Client of the division of developmental disabilities;

(b) Child twenty years of age or under; or

(c) Client residing in an institution.

(6) MAA shall reimburse for replacement of lenses for a change in refractive error in sphere, cylinder, or spherical equivalent of a plus or minus of one diopter and which result in an improvement of visual acuity. The change in prescription shall not apply to providing separate pairs of eyeglasses for distance and reading or for two pairs of eyeglasses in place of multifocals.

(7) MAA shall not reimburse a provider for eyeglasses when the client's prescription is over two years old.

(8) MAA shall reimburse for:

(a) Specialized lenses only for conditions as listed in MAA provider's billing instructions; and

(b) Contact lenses:

(i) Only when medically justified; and

(ii) As allowed in a twelve-month period with the conditions specified in MAA provider's billing instructions.

(9) The provider shall document and maintain in the client's record medical justification of the eye care services.

(10) Except for services as defined in WAC 388-86-027, the department shall not permit group screening for eyeglasses.

(11) The department shall reimburse for eye care services provided to clients eligible under the:

(a) Categorically needy, children's health, general assistance unemployable and ADATSA programs; or

(b) Medically needy program; or

(c) Medically indigent program only as treatment for emergent services as specified in MAA provider's billing instructions.

(12) Orthoptics and visual training therapy are not covered. See WAC 388-86-200.

**WSR 94-07-130**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Public Assistance)

[Order 3716—Filed March 23, 1994, 8:28 a.m.]

Date of Adoption: March 23, 1994.

Purpose: Clarifies when to consider the resources of the community spouse available to an institutionalized spouse. Clarifies technical language.

Citation of Existing Rules Affected by this Order:  
Amending WAC 388-95-337 Availability of resources.

Statutory Authority for Adoption: RCW 74.08.090.

Pursuant to notice filed as WSR 94-05-025 on February 7, 1994.

Effective Date of Rule: Thirty-one days after filing.

March 23, 1994  
Dewey Brock, Chief  
Office of Vendor Services

AMENDATORY SECTION (Amending Order 3523, filed 3/10/93, effective 4/10/93)

**WAC 388-95-337 Availability of resources.** (1) Resources are defined under WAC 388-92-005 for ~~((the))~~ a SSI-related client and under WAC 388-22-030 for an AFDC-related client.

(2) The methodology and standards for determining and evaluating resources are under WAC 388-95-340, 388-95-380, and 388-95-390. Transfer of resources are evaluated under WAC 388-95-395.

(3) The department shall determine ownership of resources following Washington state community property principles~~(:~~

~~((a))~~ for a person:

~~((i))~~ (a) Whose most recent period of institutionalization began on or before ~~((October 1, 1989))~~ September 30, 1989; and

~~((ii))~~ ~~(Remaining)~~ (b) Who remains continuously institutionalized.

~~((b))~~ (4) For purposes of Medicaid eligibility, the department shall ~~((presume a))~~ consider resources are:

~~((i))~~ (a) Community resources ~~((if))~~ when jointly held in the:

~~((i))~~ Names of both the ~~((husband and wife,))~~ institutionalized and community spouse; or ~~((in the))~~.

~~((ii))~~ Name of the ~~((client))~~ institutionalized spouse only~~((:))~~.

~~((iii))~~ (b) The separate property of the ~~((nonapplicant))~~ community spouse ~~((if))~~ when:

~~((A))~~ (i) Held in the separate name of the ~~((nonapplicant))~~ community spouse; or

~~((B))~~ (ii) Transferred between spouses as described under WAC 388-92-043(6).

~~((c))~~ (5) The department shall:

(a) Divide, by two, the total value of the community resources the ~~((husband and wife))~~ spouses own; and

(b) Assign one-half of the total value of the community resources to each spouse.

~~((4))~~ (6) The department shall not consider a person continuously institutionalized if, for thirty consecutive days, the person:

(a) Is absent from an institution; or

(b) Does not receive home-based or community-based waived services.

~~((5))~~ (7) For the purpose of determining Medicaid eligibility of a person, whose most recent continuous period of institutionalization starts on or after October 1, 1989, the department shall:

(a) Exclude resources ~~((in WAC 388-95-380 with the exception of subsection (3) under WAC 388-95-380. One automobile per couple is totally excluded without regard to use))~~ as described under WAC 388-92-045;

(b) Consider available to the community spouse, resources in the name of either the community spouse or the institutionalized spouse, except resources exceeding the greater of:

(i) Seventy-two thousand ~~((seven))~~ six hundred ~~((forty))~~ sixty dollars effective ~~((January 1, 1993))~~ January 1, 1994;

(ii) An amount established by a fair hearing under chapter 388-08 WAC ~~((if))~~ when the community spouse's

resource allowance is inadequate to provide a minimum monthly maintenance needs allowance; or

(iii) An amount ordered transferred to the community spouse by the court.

(c) Ensure resources available to the community spouse are in the name of the community spouse or transferred to the community spouse or to another person for sole benefit of the community spouse:

(i) Before the first regularly scheduled eligibility review; or

(ii) As soon as practicable thereafter, taking into account such time as may be necessary to obtain a court order for the support of the community spouse; and

(d) Consider resources greater than such resources in subsection ~~((5))~~ (7)(b) of this section available to the institutional spouse.

~~((6))~~ (8) The department shall consider resources of the community spouse:

(a) Unavailable to the institutionalized spouse ~~((during a continuous period of institutionalization; or))~~;

(i) The month after the institutionalized spouse is determined eligible for institutional benefits; and

(ii) While the institutionalized spouse remains in a continuous period of institutionalization.

(b) Available to the institutionalized spouse when the:

(i) Institutionalized spouse acquires resources ~~((in excess of))~~ which, when added to resources held by the institutionalized spouse, exceed the one-person resources maximum, if the most recent period of institutionalization began on or after ~~((September 30, 1989))~~ October 1, 1989; or

(ii) Spouse has a break of thirty days or more in a period of institutionalization.

**WSR 94-07-131**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Public Assistance)

[Order 3717—Filed March 23, 1994, 8:29 a.m.]

Date of Adoption: March 23, 1994.

Purpose: Correct typographical errors. Subsection (5) corrected to read October 1, 1993, not October 31, 1993. Corrected punctuation mark in subsection (11).

Citation of Existing Rules Affected by this Order: Amending WAC 388-92-041 Trusts.

Statutory Authority for Adoption: RCW 74.08.090.

Pursuant to notice filed as WSR 94-05-028 on February 7, 1994.

Changes Other than Editing from Proposed to Adopted Version: Subsection (12) indentation identifications have been changed. Under subsection (12), subitem (ii) previously struck through as deleted is now saved under subdivision (a)(ii). Part of subdivision (b) is also saved under subsection (12) now. Indented formats reidentified.

Effective Date of Rule: Thirty-one days after filing.

March 23, 1994

Dewey Brock, Chief  
Office of Vendor Services

AMENDATORY SECTION (Amending Order 3665, filed 11/10/93, effective 12/11/93)

**WAC 388-92-041 Trusts.** (1) For the purposes of this section, the department shall ensure a trust ~~((shall include))~~ includes any legal instrument similar to a trust.

(2) The department shall ensure this section does not apply to any trust or initial trust decree established:

(a) On or before April 6, 1986; and

(b) Solely for the benefit of a ~~((mentally retarded))~~ client who lives in an intermediate care facility for the mentally retarded (ICFMR).

(3) For trusts established on or before August 10, 1993, the department shall:

(a) Determine if the trust is established by the client, client's spouse, or the legal guardian for ~~((an incompetent))~~ a client under which:

(i) The client may be the beneficiary of all or part of the payments from the trust;

(ii) The distribution of such payments is determined by one or more of the trustees; and

(iii) The trustees are permitted to use discretion with respect to the distribution of payments to the client.

(b) Consider available to the client the greatest amount of payments permitted to be distributed under the terms of the trust when the conditions defined under subsection (3)(a) of this section exist;

(c) Apply subsection (3)(b) of this section whether or not:

(i) The trust:

(A) Is irrevocable; or

(B) Is established for purposes other than to establish eligibility for medical assistance.

(ii) The trustees actually use the discretion permitted by the trust.

(d) For an irrevocable trust not meeting the description under subsection (3)(a) of this section, consider:

(i) The trust as an unavailable resource when the client establishes the trust for a beneficiary other than the client or the client's spouse;

(ii) As an available resource the amount of the trust's assets:

(A) The client may access; or

(B) The trustee of the trust distributes as actual payments to the client.

(iii) ~~((See))~~ Referencing WAC 388-95-395 for regulations concerning the transfer of assets.

(e) For a revocable trust, consider:

(i) The full amount of the trust as an available resource of the client when the trust is established by:

(A) The client;

(B) The client's spouse and the client lives with the spouse; or

(C) A person other than the client or the client's spouse only to the extent the client has access to the assets of the trust.

~~((D) Client withdrawal of funds from such trust shall not be considered as income.))~~

(ii) Only the amounts paid to the client from the trust as an available resource when the trust is established by:

(A) The client's spouse and the client does not live with the spouse; or

(B) A person other than the client or the client's spouse and payments are distributed by a trustee of the trust.

(f) Not consider client withdrawal of funds from a trust as described under subsection (3)(e) of this section as income.

(g) Waive the requirements of subsection (3) of this section if undue hardship exists. Undue hardship includes but is not limited to situations in which:

(i) The trustee refused to disburse the funds from the trust and the client has filed and is actively pursuing litigation to require the trustee to disburse said funds; or

(ii) The client would be forced to go without life sustaining services because trust funds are not made available to pay for the services.

(4) For trusts established on or after August 11, 1993, the department shall follow subsection (3) of this section to determine eligibility for medical services received on or before September 30, 1993.

(5) For trusts established on or after August 11, 1993, the department shall follow subsections (6) through (14) of this section to determine eligibility for medical services received on or after ~~((October 31, 1993))~~ October 1, 1993.

(6) The department shall consider a trust established by the client when:

(a) All or part of the assets, as defined under WAC 388-95-395, of the trust were from the client; and

(b) The trust was established, other than by will, by:

(i) The client or the client's spouse;

(ii) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(iii) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(7) The department shall consider available to the client only the assets contributed to the trust by the client when part of the trust assets were contributed by any other person.

(8) The department shall not consider:

(a) The purposes for which a trust is established;

(b) Whether the trustees have or exercise any discretion under the terms of the trust;

(c) Restrictions on when or whether distributions may be made from the trust; or

(d) Restrictions on the use of distributions from the trust.

(9) For a revocable trust established as described under subsection (6) of this section, the department shall consider:

(a) The full amount of a revocable trust as an available resource of the client;

(b) Payments from the trust to or for the benefit of the client as income of the client; and

(c) Any payments from the trust other than payments described under subsection (9)(b) of this section as a transfer of client assets.

(10) For an irrevocable trust established as described under subsection (6) of this section, the department shall consider:

(a) As an available resource to the client, the portions of a trust or the income from the trust from which payment can be made to or for the benefit of the client. When payment is made from such irrevocable trust, the department shall consider such payments as:

(i) Income to the client when payment is to or for the client's benefit; or

(ii) The transfer of an asset when payment is made to any person for any purpose other than for the client's benefit.

(b) As a transfer of assets, a trust from which a payment cannot be made to or for the client's benefit. For such trust, the department shall find:

(i) The transfer of assets is effective the date:

(A) Of the establishment of the trust; or

(B) On which payment to the client is precluded, if later.

(ii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(11) For a revocable or irrevocable trust established by persons or with funds other than as described under subsection (6) of this section, the department shall consider such trust under subsection (3)(e) of this section.

(12) The department shall not follow subsections (6) through (11) of this section for a trust containing:

~~(a))~~ the assets of a person;

(a) Sixty-four years of age ~~(and)~~ or younger who is disabled as defined by SSI ~~(criterion)~~ criteria and the trust:

(i) Is established for the benefit of such person;

~~(ii) is established)~~ by such person's parent, grandparent, legal guardian, or a court; and

~~((iii))~~ (ii) Stipulates that the state will receive all amounts remaining in trust upon the death of the client up to the amount of Medicaid expended on behalf of such client.

~~(b) ((The assets of a person sixty-four years))~~ Regardless of age ~~(and younger)~~, who is disabled as defined by SSI criteria and the trust:

(i) Is managed by a nonprofit association ~~((and the nonprofit association))~~ which:

(A) Maintains separate accounts for each trust beneficiary; and

(B) May ~~((only))~~ pool such separate accounts only for investment and fund management ~~((of fund))~~ purposes.

(ii) Stipulates ~~((that))~~ the state will receive all amounts remaining in the client's trust account upon the death of the client up to the amount of Medicaid expended on the client's behalf.

(13) The department shall waive the application of this section if the client establishes undue hardship exists. Undue hardship includes, but is not limited to, situations where the client would be forced to go without life sustaining services.

(14) See WAC 388-95-395 for trusts the department determines a transfer of assets under this section.

### WSR 94-07-132

#### PERMANENT RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

#### (Public Assistance)

[Order 3715—Filed March 23, 1994, 8:30 a.m.]

Date of Adoption: March 23, 1994.

Purpose: Clarifies for the field that the effective date of eligibility for an SSI client may be different from the application date for SSI, i.e., a protected filing date. Adds

effective date of eligibility for the QMB, SLMB, and QDWI programs.

Citation of Existing Rules Affected by this Order: Amending WAC 388-84-115 Effective date of eligibility.

Statutory Authority for Adoption: RCW 74.08.090.

Pursuant to notice filed as WSR 94-05-026 on February 7, 1994.

Changes Other than Editing from Proposed to Adopted Version: Subsection (6) changed from ". . . first day of the month the beneficiary applies for SSI." to ". . . first day of the month in which SSI eligibility was effective."

Effective Date of Rule: Thirty-one days after filing.

March 23, 1994

Dewey Brock, Chief

Office of Vendor Services

AMENDATORY SECTION (Amending Order 3602, filed 7/28/93, effective 8/28/93)

WAC 388-84-115 Effective date of eligibility. (1) The effective date of eligibility for medical assistance shall not be ~~((no))~~ earlier than the third month before the month of application provided the:

(a) ~~((The))~~ Medical services the client received were covered; ~~((and))~~

(b) ~~((The))~~ Client would have been eligible had the client applied; and

(c) ~~((The))~~ Client meets all categorically needy eligibility factors.

(2) The effective date of eligibility for categorically needy medical assistance shall be the first day of the month when the client is eligible at any time during that month.

(3) The effective date of eligibility for the qualified Medicare beneficiary (QMB) program shall be the first day of the month after the department determines the client is eligible for the QMB program.

(4) The effective date of eligibility for the qualified disabled working individual (QDWI) program shall be the later of the:

(a) First day of the month in which the client is enrolled in Part A; or

(b) Retroactive period described under subsection (1) of this section.

(5) The effective date of eligibility for the special low-income Medicare beneficiary (SLMB) program shall be the later of the:

(a) First day of the month in which the client is enrolled in Part B; or

(b) Retroactive period described under subsection (1) of this section.

(6) The effective date of eligibility for medical assistance for an SSI beneficiary shall be the first day of the month ~~((the beneficiary applies for))~~ in which SSI eligibility was effective.

~~((4))~~ (7) See WAC 388-99-055 for effective date of eligibility for the medically needy program.

~~((5))~~ (8) See WAC 388-100-020 for effective date of eligibility for the medically indigent program.

**WSR 94-07-133**  
**PERMANENT RULES**  
**DEPARTMENT OF AGRICULTURE**  
 [Order 5033—Filed March 23, 1994, 9:06 a.m.]

Date of Adoption: March 23, 1994.

Purpose: To exempt watercore as a quality factor in the Fuji variety of apples.

Citation of Existing Rules Affected by this Order: Amending chapter 16-403 WAC.

Statutory Authority for Adoption: Chapter 15.17 RCW. Pursuant to notice filed as WSR 94-05-050 on February 10, 1994.

Effective Date of Rule: Thirty-one days after filing.  
 March 23, 1994  
 James M. Jesernig  
 Director

AMENDATORY SECTION (Amending Order 1374, filed 7/26/74, effective 9/1/74)

**WAC 16-403-145 Red, partial red or blushed varieties—Washington extra fancy.** ((+)) Washington extra fancy consists of apples of one variety which are mature but not overripe, carefully hand picked, clean, fairly well formed; free from decay, internal browning, internal breakdown, scald, scab, bitter pit, Jonathan spot, freezing injury, visible watercore, and broken skins and bruises except those which are slight and incident to proper handling and packing. The apples are also free from injury caused by smooth net-like russeting, sunburn or spray-burn, limb rubs, hail, drought spots, scars, disease, insects, or other means; and free from damage by smooth solid, slightly rough or rough russeting, or stem or calyx cracks, and free from damage by invisible watercore after January 31st of the year following the year of production: Provided, That invisible watercore shall not be a quality factor of Fuji variety at any time of the year. Each apple of this grade has the amount of color specified in WAC 16-403-155 for the variety.

AMENDATORY SECTION (Amending Order 1374, filed 7/26/74, effective 9/1/74)

**WAC 16-403-150 Red, partial red or blushed varieties—Washington fancy.** ((+)) Washington fancy consists of apples of one variety which are mature but not overripe, carefully hand picked, clean, fairly well formed; free from decay, internal browning, internal breakdown, bitter pit, Jonathan spot, scald, freezing injury, visible watercore, and broken skins and bruises, except those which are incident to proper handling and packing. The apples are also free from damage caused by russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, disease, insects, invisible watercore after January 31st of the year following the year of production, or damage by other means: Provided, That invisible watercore shall not be a quality factor of Fuji variety at any time of the year. Each apple of this grade has the amount of color specified in WAC 16-403-155 for the variety.

AMENDATORY SECTION (Amending Order 1374, filed 7/26/74, effective 9/1/74)

**WAC 16-403-290 Damage by invisible watercore.** (See chart below.)

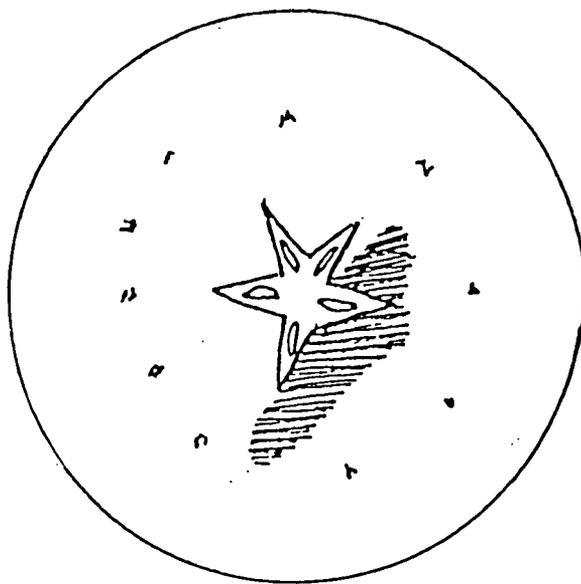
**DAMAGE BY INVISIBLE WATERCORE**

affects:

Wash. extra fancy and Wash. fancy grades, except Fuji variety, after February 1 of year following production and affecting U.S. condition standards for export anytime.

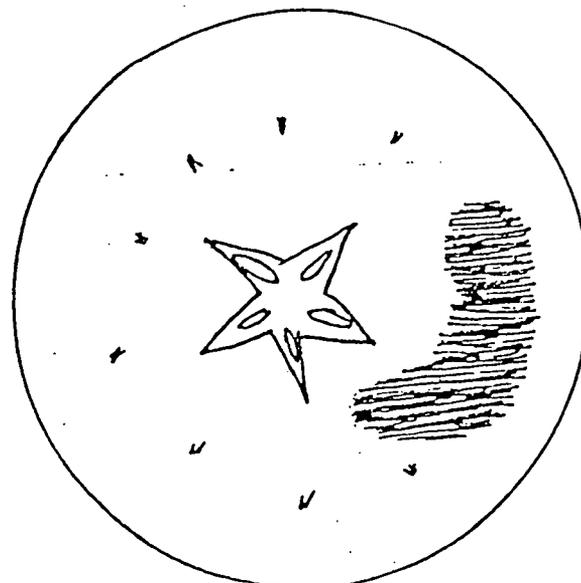
**THIS**

1. existing around core and extending to watercore in vascular bundles



**OR THIS**

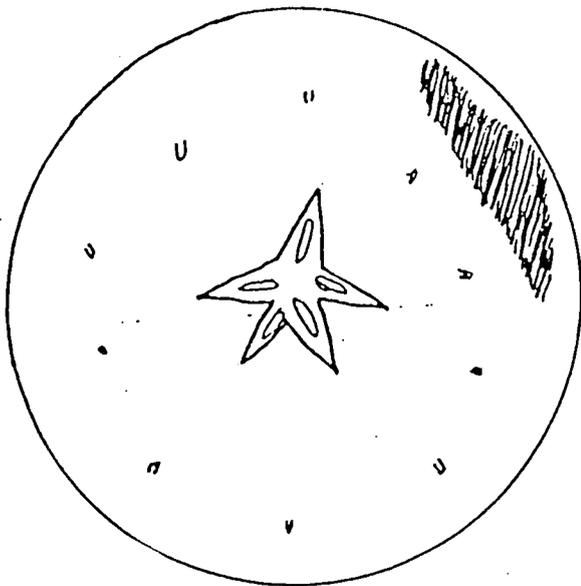
2. surrounding vascular bundles when affected areas around three or more bundles meet or coalesce



**OR THIS**

PERMANENT

- 3. *more than slight degree outside circular area formed by vascular bundles*



**WSR 94-07-141  
PERMANENT RULES  
PUBLIC DISCLOSURE COMMISSION**

[Filed March 23, 1994, 11:04 a.m.]

Date of Adoption: March 22, 1994.

Purpose: Adopt and amend rules pertaining to Initiative 134, WAC 390-16-238, 390-16-245, 390-17-300, and 390-17-315.

Citation of Existing Rules Affected by this Order: Amending WAC 390-17-300 and 390-17-315.

Statutory Authority for Adoption: RCW 42.17.390.

Pursuant to notice filed as WSR 94-05-097 on February 16, 1994.

Effective Date of Rule: Thirty-one days after filing.

March 23, 1994  
Melissa Warheit  
Executive Director

**NEW SECTION**

**WAC 390-16-238 Personal use of contributions—Standard.** Except as specifically allowed by RCW 42.17, any expenditure of a candidate's campaign funds that is not directly related to the candidate's election campaign is a prohibited personal use of campaign funds under RCW 42.17.125.

**NEW SECTION**

**WAC 390-16-245 Pledges.** (1) A pledge shall not be made or redeemed within twenty-one days of an election specified in RCW 42.17.105(8) if the amount of the pledge or redemption exceeds the limits provided in RCW 42.17.105(8).

(2) If a pledge is made in an election campaign subject to the contribution limits provided in RCW 42.17.640:

(a) a pledge made with respect to the primary election shall not be made or redeemed after the date of the primary; and

(b) a pledge made with respect to the general election shall not be made or redeemed after the final day of the applicable election cycle.

(3) During the time limit specified in RCW 42.17.710, a state official or a person employed by or acting on behalf of a state official shall not solicit or accept a pledge or the redemption of a pledge for any purpose specified in RCW 42.17.710.

**AMENDATORY SECTION** (Amending WSR 93-16-064, filed 7/30/93)

**WAC 390-17-300 Contribution designation for primary and general election.** (1) Pursuant to RCW 42.17.640(1), if a contribution is designated in writing by the contributor for a specific election, the contribution will be attributed to the contributor's limit for that designated election.

(2) An undesignated contribution made prior to the date of a primary election ~~((?))~~ shall be attributed to the contributor's limit for the primary election. Undesignated contributions made after the date of the primary ~~((must))~~ shall be attributed to the contributor's limit for the general election.

(3) Any portion of an undesignated contribution made prior to the date of the primary which exceeds the contributor's primary election contribution limit shall be attributed to the contributor's limit for the general election.

(4) Contributions for the primary election shall be accounted for separately from those for the general election, such that campaign records reflect one aggregate contribution total for each contributor giving in the primary election as well as one aggregate contribution total for each contributor giving in the general election.

(5) General election contributions shall not be spent for the primary election if to do so would cause the contributor of the general election contribution to exceed that contributor's contribution limit for the primary election.

(6) If a candidate loses in the primary election, or otherwise is not a candidate in the general election, all ((funds held in the campaign accounts, whether contributions attributed for the primary or general election.)) contributions attributed to the primary election remaining after repayment of outstanding campaign obligations shall be considered surplus funds, disposal of which is governed by RCW 42.17.095. If a candidate loses in the primary election, or otherwise is not a candidate in the general election, all contributions attributed to the general election shall be returned to the contributors of the funds in an amount equal to the contributor's general election aggregate total. If a portion of a contributor's general election contribution was spent on the primary election consistent with subsection (5) of this section, the amount returned to the contributor may be reduced by the amount of the contribution spent on the primary election.

AMENDATORY SECTION (Amending WSR 93-16-064, filed 7/30/93)

**WAC 390-17-315 Political committees—**  
**Qualifications to contribute.** In order to make contributions as permitted by RCW 42.17.640(10), a political committee (~~(must)~~) shall, within 180 days prior to making the contribution, have received contributions of \$10 or more from at least ten individuals registered to vote in Washington state at the time they contributed to the political committee. ~~((These ten individuals must be identified by name and address on the next report or statement the political committee files with the commission.))~~ Upon written request of the commission or other person seeking this information, the political committee shall provide within 14 days a list of these ten individuals, identified by name, address, amount of contribution and date contribution was received.

**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 94-07-001  
EMERGENCY RULES  
PUBLIC DISCLOSURE COMMISSION**

[Filed March 2, 1994, 1:12 p.m.]

Date of Adoption: February 22, 1994.

Purpose: Adopt new rules regarding annual report of major contributors and persons making independent expenditures and identification of affiliated entities.

Statutory Authority for Adoption: RCW 42.17.390.

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: To implement Initiative 134.

Effective Date of Rule: Immediately.

March 2, 1994  
Melissa Warheit  
Executive Director

**NEW SECTION**

**WAC 390-16-071 Annual report of major contributors and persons making independent expenditures.** Any person, other than an individual (1) who made contributions to federal, state and local candidates, political committees registered in Washington state, and statewide and local ballot issue committees totaling more than \$10,000 in the aggregate during the preceding calendar year, or (2) who made independent expenditures regarding federal, state and local candidates and statewide and local ballot issues totaling more than \$500 in the aggregate during the preceding calendar year, shall file with the commission the report required pursuant to RCW 42.17.180. This report shall not be required of a candidate's authorized committee or a political committee provided the information has been properly reported pursuant to RCW 42.17.080 and .090.

**NEW SECTION**

**WAC 390-16-309 Identification of affiliated entities.**

(1) Two or more entities are treated as a single person and share one contribution limit under RCW 42.17.640 if one of the entities is:

- (a) A corporation and the other is a subsidiary, branch or division of the corporation;
- (b) A national or international labor union, or state body of such national or international labor union, and the other is a local union or other subordinate organization of such national or international labor union or state body;
- (c) A trade association or state body of such trade association and the other is a branch or local unit of such trade association;
- (d) A national or state collective bargaining organization and the other is a branch or local unit of such national or state collective bargaining organization;
- (e) A national or international federation of labor unions, or a state federation of labor unions, and the other is a local body of such federation;

(f) A membership organization and the other is a local unit or branch of such membership organization;

(g) Any entity referenced in (a) through (f) above and a political committee established, financed, maintained or controlled by that entity.

(2) For purposes of RCW 42.17.640, two entities shall not be treated as a single entity solely because one of the entities is a dues paying member of the other entity.

(3) In addition to paragraph (1) above, two or more entities shall be treated as one entity and share a contribution limit under RCW 42.17.640 if one of the entities is established, financed, maintained or controlled by the other, as evidenced by any one of the following factors:

(a) Whether one entity owns a controlling interest in the voting stock or securities of another entity; or

(b) Whether one entity has authority or the ability to direct or participate, other than through a vote as a member, in the governance of another entity through provisions of constitution, bylaws, contract or other formal or informal procedure or has authority or the ability to hire, appoint, demote or otherwise control, other than through a vote as a member, the officers or other decision making employees or members of another entity; or

(c) Whether (i) one entity has a common or overlapping membership with another which indicates either a formal or ongoing relationship between the two organizations or the creation of a successor entity and (ii) the entity has an active or significant role in the formation of the other entity and (iii) the entities have similar patterns of contributions or contributors which indicate a formal or ongoing relationship between the entities; or

(d) Whether one entity provides, causes or arranges, funds, services or goods in a significant amount or on an ongoing basis, through direct or indirect means to the other entity, for less than full consideration. Full consideration includes the payment of membership dues.

**WSR 94-07-003**

**EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 94-09—Filed March 3, 1994, 9:43 a.m.]

Date of Adoption: March 3, 1994.

Purpose: Personal use rules.

Citation of Existing Rules Affected by this Order:  
Amending WAC 220-56-360.

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: Test results show that adequate clams are available for harvest in Razor Clam Area 3. Washington State Department of Health has not certified as safe for human consumption razor clams from Razor Clam Areas 1, 2 and that portion of razor clam area that is

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north of the Moclips River. Digging clams determined to be unsafe for human consumption would result in wastage.

Effective Date of Rule: Immediately.

March 3, 1994  
 Larry J. Stern  
 for Robert Turner  
 Director

**NEW SECTION**

**WAC 220-56-36000H Razor clams.** Notwithstanding the provisions of WAC 220-56-360, effective immediately it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, 3 except as provided in this section:

- (1) Effective 12:01 a.m. March 3 through March 7, 1994, razor clam digging is allowed in that portion of Razor Clam Area 3 that is south of the Moclips River.
- (2) It is unlawful to dig for razor clams in anytime in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.
- (3) Razor Clam Areas 1, 2 and that portion of Razor Clam Area 3 that is north of the Moclips River will remain closed to digging or possession of razor clams until further notice.

**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 94-07-009  
 EMERGENCY RULES  
 DEPARTMENT OF  
 FISH AND WILDLIFE**

[Order 94-10—Filed March 3, 1994, 4:02 p.m., effective March 3, 1994, 6:00 p.m.]

Date of Adoption: March 3, 1994.  
 Purpose: Commercial fishing regulations.  
 Citation of Existing Rules Affected by this Order:  
 Repealing WAC 220-33-01000V.  
 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: Harvestable numbers of spring chinook salmon are available in the Columbia River. This rule is consistent with the actions of the March 3, 1994, meeting of the Columbia River Compact.

Effective Date of Rule: March 3, 1994, 6:00 p.m.  
 March 3, 1994  
 Judith Freeman  
 Deputy  
 for Robert Turner  
 Director

**NEW SECTION**

**WAC 220-33-01000W Columbia River salmon seasons below Bonneville.** Notwithstanding the provisions of WAC 220-33-010, 220-33-020, and 220-33-030, it is unlawful for a person to take or possess salmon, shad or sturgeon taken for commercial purposes from Columbia River SMCRA 1A, 1B, 1C, and that portion of SCMRA 1D downstream from Kelley Point at the mouth of the Willamette River, except as provided in the following subsections.

**FISHING PERIODS**

- (1) 6:00 p.m. March 3 to 6:00 p.m. March 4, 1994.  
 noon March 6 to 6:00 p.m. March 9, 1994.

**GEAR**

- (2) It is unlawful to fish for salmon, shad and sturgeon with gill net gear that:
  - (a) exceeds 1,500 feet in length along the corkline;
  - (b) is constructed of monofilament webbing;
  - (c) has webbing with a mesh size of less than 8 inches or more than 9-1/4 inches; or
  - (d) has lead or weight on the leadline that exceeds two pounds in any one fathom, measurement to be taken along the corkline of the net.

(3)(a) It is unlawful to gaff a sturgeon.

(b) White sturgeon less than 48 inches or greater than 66 inches may not be retained for commercial purposes and shall be returned immediately to the water. The length of a sturgeon is the shortest distance between the tip of the nose and the extreme tip of the tail measured while the fish is lying on its side on a flat surface with its tail in a normal position.

(c) Sturgeon must be delivered to wholesale dealers and fish buyers undressed (in the round).

(d) It is unlawful for a wholesale dealer or fish buyer to possess a sturgeon from which only the head and tail have been removed if the remaining carcass is less than 28 inches in length. A carcass length of less than 28 inches is prima facie evidence that the total length of the whole sturgeon was less than 48 inches.

**SANCTUARIES**

(4) During the season provided for in subsection 1 of this section, the following sanctuaries, as defined in WAC 220-33-005, are closed to fishing:

- (a) Grays Bay
- (b) Elokomin-A
- (c) Kalama-A
- (d) Lewis-A
- (e) Cowlitz
- (f) Gnat Creek
- (g) Big Creek

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

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. March 3, 1994:

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WAC 220-33-01000V Columbia River salmon  
seasons below Bonneville.  
(94-08)

**WSR 94-07-042**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Public Assistance)

[Order 3713—Filed March 10, 1994, 9:54 a.m., effective March 11,  
1994, 12:01 a.m.]

Purpose: Brings support enforcement division (SED) into compliance with the United States District Court's injunction dated February 4, 1994. Treats the Washington state child support schedule minimum monthly order amount as a presumption. WAC 388-11-205 clarifies that the presiding officer can deviate from the minimum support order of \$25 per month per child upon proper showing by the parties.

Citation of Existing Rules Affected by this Order: Amending WAC 388-11-205 Assessing support.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: N.R. vs. Soliz, U.S. District Court Docket #C93-5338B.

Pursuant to RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: 45 CFR 302.56 requires that state support guidelines to be rebuttable presumptions. The court found that the minimum order requirement is not rebuttable. Presiding officers and review judges in SED hearings can deviate from the minimum order amount.

Effective Date of Rule: March 11, 1994, 12:01 a.m.

March 10, 1994

Dewey Brock, Chief  
Office of Vendor Services

**AMENDATORY SECTION** (Amending Order 3344, filed 3/24/92, effective 4/24/92)

**WAC 388-11-205 Assessing support.** (1) In any adjudicative proceeding, agreed settlement or consent order involving the administrative establishment of a support obligation, the responsible parent and any residential parent shall complete worksheets approved by the administrator for the courts under RCW 26.19.050. The ~~((office of))~~ support enforcement division (SED) may complete a worksheet on behalf of a residential parent receiving public assistance, or residing in another state.

(2) ~~((OSE))~~ SED and the presiding or review officer shall determine the basic support obligation according to the Washington state child support schedule, chapter 26.19 RCW.

(3) ~~((OSE))~~ SED and the presiding or review officer may impute income based on the standards for ~~((imputing))~~ imputing income stated at chapter 26.19 RCW. A recipient's eligibility for and receipt of AFDC ~~((or FIP))~~ benefits shall raise a rebuttable presumption that the recipient is:

(a) Complying with all assistance program eligibility requirements including job search requirements; and ~~((is))~~

(b) Not voluntarily under-employed or unemployed.

(4) ~~((OSE))~~ SED and the presiding or review officer shall adjust a responsible parent's share of the basic support obligation to reflect circumstances in the parent's household and the household of any residential parent. ~~((OSE))~~ SED and the presiding or review officer:

(a) May ~~((at their discretion, and in compliance with RCW 26.19.075,))~~ deviate from the amount of child support calculated using the standard calculation ~~((A deviation))~~ when the amount is unjust or inappropriate in the particular case; and

(b) Shall not enter an order or agreed settlement deviating from the standard ~~((may not be made))~~ calculation without specific reasons for ~~((these deviations))~~ the deviation set forth in the order and supported by the evidence.

(5) If requested, ~~((OSE))~~ SED and the presiding or review officer shall:

(a) Assess responsibility for known health care, day care, and special child-rearing expenses under the Washington state child support schedule;

(b) Apportion responsibility for unknown and or future health care, day care, and special child-rearing expenses between the parents in the same proportion as the basic support obligation; and

(c) Assess responsibility for birth costs under WAC 388-11-220.

(6) A responsible parent's total support obligation shall consist of:

(a) The amount determined according to the Washington state child support schedule, including the effect of any deviations from the basic child support obligation;

(b) Amounts the responsible parent is obligated to pay for health insurance; and

(c) Amounts the responsible parent is obligated to pay for day care and special child-rearing expenses.

(7) A responsible parent shall pay:

(a) Health insurance premiums directly to the responsible parent's insurance provider ~~((The responsible parent shall pay))~~;

(b) All other amounts, including amounts currently paid to third parties for special child-rearing expenses, to the Washington state support registry.

(8) A responsible parent's total administrative current support obligation shall not exceed forty-five percent of the responsible parent's net income unless the presiding officer finds good cause for exceeding the forty-five percent limitation. Good cause includes but is not limited to:

(a) The responsible parent has substantial wealth;

(b) A child on whose behalf support is sought has special medical or educational needs;

(c) Large families;

(d) Psychological need; or

(e) Children with daycare expenses.

(9) ~~((When))~~ The parties' combined monthly net income of ~~((the parties is))~~ less than six hundred dollars ~~((OSE))~~ shall raise a rebuttable presumption that the support obligation should be not less than twenty-five dollars per month per child. SED, the presiding officer or the review judge ~~((shall enter a support order of not less than twenty-five dollars per month per child))~~ may deviate from the presump-

tive amount in compliance with RCW 26.19.075, and subsection (4) of this section.

(10) Neither the presiding officer nor ~~((OSE))~~ SED shall set a current support obligation that reduces the responsible parent's income below the needs standard for one person adopted under RCW 74.04.770, except:

(a) ~~((For the minimum required support order of))~~ That SED, the presiding officer, and the review judge shall not enter or agree to an order for less than twenty-five dollars per month per child, unless there are grounds for a deviation from that amount; or

(b) If the presiding officer finds reasons for deviation under chapter 26.19 RCW.

(11) ~~((In cases where))~~ When the department is assessing a child support debt for a dependent child placed in foster care or living with a ~~non-needy~~ nonneedy relative, ~~((OSE))~~ SED, the presiding officer or the review judge shall calculate the support obligation using the child support schedule as follows:

(a) Combine the net income of both parents in the "father" column on the worksheet and not attribute income in the "mother" column when the responsible parents reside together;

(b) Calculate each parent's support obligation independently and attribute no income to the other parent when the responsible parents do not reside together; and

(c) Assess support only for the child named in the notice.

(12) ~~((OSE))~~ SED, presiding officers, and department review judges shall:

(a) Apply any legislative changes to the Washington state child support schedule prospectively only from the effective date of the legislation unless the legislative change is specifically retroactive in effect ~~((—OSE, presiding officers, and department review judges shall))~~;

(b) Assess support debts for past periods of time according to the Washington state child support schedule in effect at the time the support debt accrued ~~((—except that))~~; and

(c) Assess child support debts accrued before July 1, 1988 ~~((—shall be assessed))~~ according to the Washington state child support schedule that became effective July 1, 1988.

**WSR 94-07-052**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 94-11—Filed March 10, 1994, 3:36 p.m.]

Date of Adoption: March 9, 1994.

Purpose: Personal use rules.

Citation of Existing Rules Affected by this Order:  
Amending WAC 220-12-020, 220-56-350, and 220-56-380.  
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: Classification of all native clams reduces confusion and standardizes recreational harvest. Closures to clam and oyster beaches reflect current stock assessments and are temporary until the 1994-1995 sport regulations are adopted to be effective May 1, 1994.

Effective Date of Rule: Immediately.

March 9, 1994  
Larry J. Stern  
for Robert Turner  
Director

NEW SECTION

**WAC 220-12-0200B Shellfish classification.** Effective immediately until further notice, the following species are classified as shellfish under RCW 75.08.080 and are subject to the provisions of this title:

All native marine clams

NEW SECTION

**WAC 220-56-35000X Clams other than razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice it is unlawful to harvest or possess clams, cockles, borers and mussels taken for personal use from the following tidelands except during the times shown:

(1) Dabob Bay - All state-owned tidelands in Dabob Bay north of a line from Cape Harmony to Lindsays Beach are closed until further notice except those tidelands between a row of tires at Camp Discovery and a second row of tires 2,000 feet to the south and except the state tidelands beginning approximately 3/4 mile north of Camp Harmony and extending 1,200 feet to the north are open until further notice.

(2) Duckabush - All state-owned tidelands on the west shore of Hood Canal from Quatsap Point to the south end of the Duckabush flats are closed until further notice.

(3) Kitsap Memorial State Park - Closed through March 31.

(4) Kopachuck State Park - Closed April 16 until further notice.

(5) Liberty Bay - All Department tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed until further notice.

(6) North Bay - All Department tidelands in North Bay (Case Inlet) north of a line from Rocky Point to the north end of Reach Island thence due west to the mainland are closed until further notice except Department oyster reserves on the east side of North Bay north of the power transmission lines at the north end of the inlet remain open until further notice.

(7) South Indian Island County Park - Closed through March 31.

(8) Quilcene Bay - All Department tidelands north of a line from the Quilcene Boat Haven to Fisherman's Point are closed until further notice.

(9) Rendsland Creek - Open until further notice.

(10) Saltwater State Park - Closed through March 31.

(11) Triton Cove State Park - Closed through March 31.

(12) West Dewatto Bay - Closed until further notice.

NEW SECTION

**WAC 220-56-38000R Oysters—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-380, effective immediately until further notice it is unlawful to harvest or possess oysters taken for personal use from the following tidelands except during the times shown:

(1) Dabob Bay - All state-owned tidelands in Dabob Bay north of a line from Cape Harmony to Lindsays Beach are closed until further notice except those tidelands between a row of tires at Camp Discovery and a second row of tires 2,000 feet to the south and except the state tidelands beginning approximately 3/4 mile north of Camp Harmony and extending 1,200 feet to the north are open until further notice.

(2) Duckabush - All Department-owned tidelands on the west shore of Hood Canal from Quatsap Point to the south end of the Duckabush flats are closed until further notice.

(3) Eagle Creek - Open until further notice.

(4) Liberty Bay - All Department tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed until further notice.

(5) North Bay - All Department tidelands in North Bay (Case Inlet) north of a line from Rocky Point to the north end of Reach Island thence due west to the mainland are closed until further notice except Department oyster reserves on the east side of North Bay north of the power transmission lines at the north end of the inlet remain open until further notice.

(6) Potlatch Beach East - Open until further notice.

(7) Quilcene Bay - All Department tidelands north of a line from the Quilcene Boat Haven to Fisherman's Point are closed until further notice.

(8) Scenic Beach State Park - Open until further notice.

(9) West Dewatto Bay - Closed through March 31.

**WSR 94-07-053**  
**EMERGENCY RULES**  
**FOREST PRACTICES BOARD**

[Filed March 11, 1994, 10:17 a.m.]

Date of Adoption: March 11, 1994.

Purpose: To modify forest practices rules, in order to protect public resources while maintaining a viable timber industry.

Citation of Existing Rules Affected by this Order: Amending WAC 222-16-010 and 222-16-080.

Statutory Authority for Adoption: RCW 76.09.040 and chapter 34.05 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: The department meets the requirements of WAC 222-16-080(4) by submitting to the board a proposed list of critical wildlife habitats (state) for the marbled murrelet. This species is being protected during

the permanent rule adoption process being initiated November 12, 1993.

Effective Date of Rule: Immediately.

March 10, 1994

Jennifer M. Belcher

Commissioner of Public Lands

Occupied Stand Option

AMENDATORY SECTION (Amending WSR 93-12-001, filed 5/19/93, effective 6/19/93)

**WAC 222-16-010 General definitions.\*** Unless otherwise required by context, as used in these regulations:

"Act" means the Forest Practices Act, chapter 76.09 RCW.

"Affected Indian tribe" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"Appeals board" means the forest practices appeals board established in the act.

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"Board" means the forest practices board established by the act.

"Bog" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as sphagnum moss, labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce and may be associated with open water.

"Borrow pit" shall mean an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is

necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: *Provided*, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

**"Constructed wetlands"** means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

**"Contamination"** means the introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

**"Conversion option harvest plan"** means a voluntary plan developed by the landowner and approved by the local government entity indicating the limits of harvest areas, road locations, and open space.

**"Conversion to a use other than commercial timber operation"** shall mean a bona fide conversion to an active use which is incompatible with timber growing.

**"Critical habitat (federal)"** means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior under Sections 3(5)(A) and 4(a)(3) of the Federal Endangered Species Act.

**"Critical nesting season"** means: for marbled murrelets - April 1 to August 15th.

**"Critical wildlife habitat (state)"** means those habitats designated by the board in accordance with WAC 222-16-080.

**"Cultural resources"** means archaeological and historic sites and artifacts and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

**"Cumulative effects"** means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

**"Daily peak activity period"** means: for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

**"Debris"** means woody vegetative residue less than 3 cubic feet in size resulting from forest practice activities which would reasonably be expected to cause significant damage to a public resource.

**"Department"** means the department of natural resources.

**"Eastern Washington"** means the lands of the state lying east of an administrative line which approximates the change from the Western Washington timber types to the Eastern Washington timber types described as follows:

Beginning at the International Border and Okanogan National Forest boundary at the N1/4 corner Section 6, T. 40N, R. 24E., W.M., south and west along the Pasayten

Wilderness boundary to the west line of Section 30, T. 37N, R. 19E.,

Thence south on range line between R. 18E. and R. 19E., to the Lake Chelan-Sawtooth Wilderness at Section 31, T. 35N, R. 19E.,

Thence south and east along the eastern wilderness boundary of Lake Chelan-Sawtooth Wilderness to the west line of Section 18, T. 31N, R. 19E. on the north shore of Lake Chelan,

Thence south on the range line between R. 18E. and R. 19E. to the SE corner of T. 28N, R. 18E.,

Thence west on the township line between T. 27N, and T. 28N to the NW corner of T. 27N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the Alpine Lakes Wilderness at Section 31, T. 26N, R. 17E.,

Thence south along the eastern wilderness boundary to the west line of Section 6, T. 22N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the SE corner of T. 22N, R. 16E.,

Thence west along township line between T. 21N, and T. 22N to the NW corner of T. 21N, R. 15E.,

Thence south along range line between R. 14E. and R. 15E. to SW corner of T. 20N, R. 15E.,

Thence east along township line between T. 19N, and T. 20N to the SW corner of T. 20N, R. 16E.,

Thence south along range line between R. 15E. and R. 16E. to the SW corner of T. 18N, R. 16E.,

Thence west along township line between T. 17N, and T. 18N to the SE corner of T. 18N, R. 14E.,

Thence south along range line between T. 14E. and R. 15E. to the SW corner of T. 14N, R. 15E.,

Thence south and west along Wenatchee National Forest Boundary to the NW corner of T. 12N, R. 14E.,

Thence south along range line between R. 13E. and R. 14E. to SE corner of T. 10N, R. 13E.,

Thence west along township line between T. 9N, and T. 10N to the NW corner of T. 9N, R. 12E.,

Thence south along range line between R. 11E. and R. 12E. to SE corner of T. 8N, R. 11E.,

Thence west along township line between T. 7N, and T. 8N to the Gifford Pinchot National Forest Boundary,

Thence south along Forest Boundary to SE corner of Section 33, T. 7N, R. 11E.,

Thence west along township line between T. 6N, and T. 7N to SE corner of T. 7N, R. 9E.,

Thence south along Skamania-Klickitat County line to Oregon-Washington state line.

**"End hauling"** means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

**"Erodible soils"** means those soils exposed or displaced by a forest practice operation, that would be readily moved by water.

**"Even-aged harvest methods"** means the following harvest methods:

Clearcuts;

Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-30-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"**Fen**" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

"**Fertilizers**" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"**Fill**" means the placement of earth material or aggregate for road or landing construction or other similar activities. Fill does not include the growing or harvesting of timber including, but not limited to, slash burning, site preparation, reforestation, precommercial thinning, intermediate or final harvesting, salvage of trees, brush control, or fertilization.

"**Flood level - 50 year.**" For purposes of field interpretation of these regulations, the 50-year flood level shall be considered to refer to a vertical elevation measured from the ordinary high-water mark which is 1.25 times the vertical distance between the average stream bed and the ordinary high-water mark, and in horizontal extent shall not exceed 2 times the channel width measured on either side from the ordinary high-water mark, unless a different area is specified by the department based on identifiable topographic or vegetative features or based on an engineering computation of flood magnitude that has a 2 percent chance of occurring in any given year. The 50-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

"**Forest land**" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.

"**Forest land owner**" shall mean any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling

the holder to sell or otherwise dispose of any or all of the timber on such land in any manner: *Provided*, That any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest land owner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

"**Forest practice**" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

Road and trail construction;

Harvesting, final and intermediate;

Precommercial thinning;

Reforestation;

Fertilization;

Prevention and suppression of diseases and insects;

Salvage of trees; and

Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"**Forest trees**" excludes trees cultivated by agricultural methods in growing cycles shorter than ten years: *Provided*, That Christmas trees are forest trees and: *Provided further*, That this exclusion applies only to trees planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees.

"**Green recruitment trees**" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"**Herbicide**" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

"**Historic site**" includes:

Sites, areas and structures or other evidence of human activities illustrative of the origins, evolution and development of the nation, state or locality; or

Places associated with a personality important in history; or

Places where significant historical events are known to have occurred even though no physical evidence of the event remains.

"**Identified watershed processes**" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

Mass wasting;

Surface and road erosion;

Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);

Large organic debris;

Shading; and

Stream bank and bed stability.

"**Insecticide**" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

**"Interdisciplinary team"** (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practice activity.

**"Islands"** means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

**"Limits of construction"** means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

**"Load bearing portion"** means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

**"Local government entity"** means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

**"Low impact harvest"** means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

**"Merchantable stand of timber"** means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

**"Notice to comply"** means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

**"Occupied marbled murrelet site"** means a stand of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occurs:

(1) Stands where a nest is located; or

(2) Stands where downy chicks or eggs or egg shells are found; or

(3) Stands where marbled murrelets are detected flying below, through, into or out of the forest canopy within or adjacent to a stand; or

(4) Birds calling from a stationary location within the stand; or

(5) Birds circling above the canopy.

The department shall rely upon the department of wildlife for the determination of location of these occupied marbled murrelet sites.

**"Operator"** shall mean any person engaging in forest practices except an employee with wages as his/her sole compensation.

**"Ordinary high-water mark"** means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: *Provided*, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water

mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

**"Other forest chemicals"** means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

**"Park"** means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

**"Partial cutting"** means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

**"Pesticide"** means any insecticide, herbicide, fungicide, or rodenticide but does not include nontoxic repellents or other forest chemicals.

**"Plantable area"** is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights-of-way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

**"Power equipment"** means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

**"Public resources"** means water, fish, and wildlife and in addition shall mean capital improvements of the state or its political subdivisions.

**"Rehabilitation"** means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

**"Relief culvert"** means a structure to relieve surface runoff from roadside ditches to prevent excessive buildup in water volume and velocity.

**"Resource characteristics"** means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

**"Riparian management zone"** means a specified area alongside Type 1, 2 and 3 Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

**"Rodenticide"** means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate

rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"**Salvage**" means the removal of snags, down logs, windthrow, or dead and dying material.

"**Scarification**" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"**Shorelines of the state**" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"**Side casting**" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"**Site preparation**" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"**Skid trail**" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"**Slash**" means pieces of woody material containing more than 3 cubic feet resulting from forest practice activities.

"**Spoil**" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"**Suitable marbled murrelet habitat**" means:

(1) Timber stands with all of the following characteristics:

(a) Within 40 miles of marine waters;

(b) Containing at least 8 trees per acre equal to or greater than 32 inches dbh;

(c) At least 40% of the trees equal to or greater than 32 inches are Douglas-fir, western hemlock, western redcedar or sitka spruce; and

(d) Containing at least 2 nesting platforms per acre. Nesting platforms shall include any horizontal limb, tree structure, or deformity equal to or greater than 7 inches in diameter and 50 feet or more in height above the ground; or

(2) Any stand identified as an occupied marbled murrelet site documented by the Department of Wildlife.

"**Stop work order**" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

"**Threatened or endangered species**" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior, and all species of wildlife designated as "threatened" or "endangered" by the Washington wildlife commission.

"**Timber**" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

"**Water bar**" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"**Watershed administrative unit (WAU)**" means an area shown on the map specified in WAC 222-22-020(1).

"**Watershed analysis**" means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-

22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

"**Weed**" is any plant which tends to overgrow or choke out more desirable vegetation.

"**Western Washington**" means the lands of the state lying west of the administrative line described in the definition of Eastern Washington.

"**Wetland**" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

"**Wetland functions**" include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

"**Wetland management zone**" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"**Wildlife**" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"**Wildlife reserve trees**" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused

by root rot or fire. These trees are unstable and pose a high hazard to workers.

"Windthrow" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

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

**AMENDATORY SECTION** (Amending WSR 93-12-001, filed 5/19/93, effective 6/19/93)

**WAC 222-16-080 Critical wildlife habitats (state) and critical habitat (federal) of threatened and endangered species.** (1) Critical wildlife habitats (state) of threatened or endangered species and specific forest practices designated as Class IV-Special are as follows:

(a) Bald eagle - harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of a known active nest site, documented by the department of wildlife, between the dates of January 1 and August 15 or 0.25 mile at other times of the year; and within 0.25 mile of a communal roosting site. Communal roosting sites shall not include refuse or garbage dumping sites.

(b) Gray wolf - harvesting, road construction, or site preparation within 1 mile of a known active den site, documented by the department of wildlife, between the dates of March 15 and July 30 or 0.25 mile from the den site at other times of the year.

(c) Grizzly bear - harvesting, road construction, aerial application of pesticides, or site preparation within 1 mile of a known active den site, documented by the department of wildlife, between the dates of October 1 and May 30 or 0.25 mile at other times of the year.

(d) Mountain caribou - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active breeding area, documented by the department of wildlife.

(e) Oregon silverspot butterfly - harvesting, road construction, aerial or ground application of pesticides, or site preparation within 0.25 mile of an individual occurrence, documented by the department of wildlife.

(f) Peregrine falcon - harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of a known active nest site, documented by the department of wildlife, between the dates of March 1 and July 30; or harvesting, road construction, or aerial application of pesticides within 0.25 mile of the nest site at other times of the year.

(g) Sandhill crane - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active nesting area, documented by the department of wildlife.

(h) Northern spotted owl - harvesting, road construction, or aerial application of pesticides on the 500 acres of suitable nesting, breeding, and foraging habitat surrounding the activity center of known Status 1, 2, or 3 spotted owls, documented by the department of wildlife.

(1) Critical wildlife habitats (state) of threatened and endangered species and specific forest practices designated as Class IV-Special are as follows:

(i) Marbled murrelet

(i) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within an occupied marbled murrelet site;

(ii) Operation of heavy equipment, during the critical nesting season, within an occupied marbled murrelet site.

(iii) Use of aircraft below 1,300 feet above ground level, during the critical nesting season, over an occupied marbled murrelet site or the required managed buffer zone adjacent to that site.

(iv) Harvesting within a 300 foot wide managed buffer zone adjacent to an occupied marbled murrelet site that results in less than a residual stem stand density of 75 trees per acre greater than 6 inches dbh; provided that 25 of which shall be greater than 12 inches dbh including 5 trees greater than 20 inches dbh, where they exist. The primary consideration for the design of managed buffer zone widths and leave tree retention patterns shall be to mediate edge effects. The width of the buffer zone may be reduced in some areas to a minimum of 200 feet and extended to maximum of 400 feet as long as an average of 300 feet is maintained.

(v) Blasting and slash burning, during the critical nesting season, within 0.25 mile of an occupied marbled murrelet site.

(vi) Harvesting, road construction, operation of heavy equipment, timber hauling, or use of aircraft below 1300 feet above ground level, during the daily peak activity periods within the critical nesting season, within 0.25 mile of an occupied marbled murrelet site.

(vii) Marbled Murrelet critical wildlife habitat (state) shall not include habitat where a current marbled murrelet survey has been conducted and no use of the suitable marbled murrelet habitat by a bird has been detected. Surveys shall be conducted utilizing a survey protocol which is acceptable to the department of wildlife.

(viii) Site status determination and completion of marbled murrelet surveys shall not be a landowner responsibility.

(ix) This rule is intended to be interim and shall be changed as necessary, such as upon completion of a state or federal recovery plan for the marbled murrelet or significant new information.

(2) A site specific special wildlife management plan, including a bald eagle site management plan under WAC 232-12-292, developed by the landowner is preferred and shall replace the critical wildlife habitats (state) listed in subsection (1) of this section when such a plan has been established in cooperation with, and approved by, the department of wildlife.

This rule is intended to be interim and will expire on February 9, 1994. Prior to the above expiration date the forest practices board will reconsider the protection of spotted owls based on consideration of advancing science and increased data analysis, as well as the board's landscape planning for wildlife and would be influenced by the completion of the northern spotted owl recovery plan, rule making under the Federal Endangered Species Act, or other federal action, or other state actions.

The department shall rely upon the department of wildlife for the determination of status based on the following definitions:

Status 1 Pair or reproductive - the presence or response of two birds of the opposite sex where past or current reproductive activities have been documented.

Status 2 Two birds, pair status unknown - the presence or response of 2 birds of the opposite sex where pair status cannot be determined and where at least 1 member must meet the resident single requirements.

Status 3 Resident territorial single - the presence or response of a single owl within the same general area on 3 or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or multiple responses over several years (i.e., 2 responses in year one and 1 response in year two, for the same general area).

(i) Western pond turtle - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known individual occurrence, documented by the department of wildlife

(2) A site specific special wildlife management plan, including a bald eagle site management plan under WAC 232-12-292, developed by the landowner shall replace the critical wildlife habitats (state) listed in subsection (1) of this section when such a plan has been established in cooperation with, and approved by, the department of wildlife.

(3) The following critical habitats (federal) designated by the United States Secretary of the Interior, or specific forest practices within those habitats, have been determined to not have the potential for a substantial impact on the environment:

None listed.

(4) For the purpose of identifying forest practices which have the potential for a substantial impact on the environment with regard to threatened or endangered species newly listed by the Washington wildlife commission and/or the United States Secretary of the Interior, the department shall after consultation with the department of wildlife, prepare and submit to the board a proposed list of critical wildlife habitats (state) of threatened or endangered species. This list shall be submitted to the board within 15 days of the listing of the species. The department shall, at a minimum, consider potential impacts of forest practices on habitats essential to meeting the life requisites for each species listed as threatened or endangered. Those critical wildlife habitats (state) adopted by the board shall be added to the list in subsection (1) of this section. See WAC 222-16-050 (1)(b)(i).

(5) For the purpose of identifying any areas and/or forest practices within critical habitats (federal) designated by the United States Secretary of the Interior which do not have the potential for a substantial impact on the environment, the department shall, after consultation with the department of wildlife, submit to the board a proposed list of any forest practices and/or areas proposed for exclusion from Class IV - special forest practices. The department shall submit the list to the board within 120 days of the date the United States Secretary of the Interior publishes a final rule designating critical habitat (federal) in the Federal Register. Those critical habitats excluded by the board from Class IV - Special shall be added to the list in subsection (3) of this section. See WAC 222-16-050 (1)(b)(ii).

(6)(a) Except for bald eagles under subsection (1)(b) of this section, the critical wildlife habitats (state) of threatened and endangered species and specific forest practices designated in subsection (1) of this section are intended to be interim. These interim designations shall expire for a given species on the earliest of:

(i) The effective date of a regulatory system for wildlife protection referred to in (b) of this subsection or of substantive rules on the species.

(ii) The delisting of a threatened or endangered species by the Washington wildlife commission.

(b) The board shall examine current wildlife protection and department authority to protect wildlife and develop and recommend by May 1993 a regulatory system, including baseline rules for wildlife protection. To the extent possible, this system shall:

(i) Use the best science and management advice available;

(ii) Use a landscape approach to wildlife protection;

(iii) Be designed to avoid the potential for substantial impact to the environment;

(iv) Protect known populations of threatened and endangered species of wildlife from negative effects of forest practices consistent with RCW 76.09.010; and

(v) Consider and be consistent with recovery plans adopted by the department of wildlife pursuant to RCW 77.12.020(6) or habitat conservation plans or 16 U.S.C. 1533(d) rule changes of the Endangered Species Act.

(7) Regardless of any other provision in this section, the following are not critical wildlife habitats (state) or critical habitats (federal) for the particular species:

(a) Forest practices on lands covered by a conservation plan and permit for a particular species approved by the U.S. Fish and Wildlife Service pursuant to 16 U.S.C. 1539 (a)(2) consistent with that plan and permit; or

(b) Forest practices covered by a rule adopted by the U.S. Fish and Wildlife Service for the conservation of a particular threatened species pursuant to 16 U.S.C. 1533(d).

**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 94-07-059**  
**EMERGENCY RULES**  
**HYDRAULICS APPEALS BOARD**  
[Filed March 11, 1994, 4:35 p.m.]

Date of Adoption: March 8, 1994.

Purpose: To adopt rules of procedure. Former rule adopted chapter 1-08 WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 259-04-060.

Statutory Authority for Adoption: RCW 75.20.140.

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: Chapter 1-08 WAC was repealed. Replacement rules of procedure are needed for practice before the Hydraulics Appeals Board.

Effective Date of Rule: Immediately.

March 8, 1994  
Heolia Adelsman  
Program Manager

AMENDATORY SECTION (Amending Order 1, filed 3/2/89)

WAC 259-04-060 Procedures applicable. ((The board and all parties shall be guided by the uniform procedural rules established in chapter 1-08 WAC which are expressly adopted in their entirety by this reference.)) Insofar as applicable and not in conflict with these rules, the procedural rules established in chapter 371-08 WAC shall apply.

**WSR 94-07-060**  
**EMERGENCY RULES**  
**SHORELINES HEARINGS BOARD**  
[Filed March 11, 1994, 4:40 p.m.]

Date of Adoption: March 8, 1994.

Purpose: To improve the orderly process of calendaring, motions and orders so as to reduce the time from the filing of an appeal to its disposition. Also, to update mailing address.

Citation of Existing Rules Affected by this Order: Repealing WAC 461-08-165; and amending WAC 461-08-160.

Statutory Authority for Adoption: RCW 90.58.175.

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: Increasing numbers of appeals have combined with rules devised in times of fewer appeals to result in delay. These rules are necessary to expeditiously and fairly decide appeals at their existing volume.

Effective Date of Rule: Immediately.

March 8, 1994  
Robert V. Jensen  
Chairman

NEW SECTION

**WAC 461-08-001 Board administration and address of the board.** The administrative business of the board, except rule making, is performed by the environmental hearings office. To the extent necessary for rule making, the appeals board holds regular meetings at 10:00 a.m. on the second Tuesday of each month at the address set forth below.

(2) The board is organized within the Environmental Hearings Office, 4224 - 6th Avenue SE, Building No. 2 Rowesix, Lacey, Washington. The mailing address is:

Shorelines Hearings Board  
PO Box 40903  
Olympia, WA 98504-0903

(3) The telephone number of the board is (206) 459-6327. The telefacsimile number is (206) 438-7699.

NEW SECTION

**WAC 461-08-047 Appearance and practice before the board—Parties not represented by legal counsel—Waiver of rules to prevent manifest injustice.** The presiding officer may waive any of these rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel where necessary to avoid manifest injustice.

NEW SECTION

**WAC 461-08-144 Procedures—Motions.** (1) An application to the board for an order shall be by motion which, unless made during a hearing, shall be in writing, state with particularity the grounds therefor and set forth the relief sought. Dispositive motions will be filed and briefed in accordance with CR 56 unless a scheduling letter or order varies that procedure. Each written motion shall have appended to it the order which the motion seeks. The moving party shall affirmatively seek the stipulation of all parties and present a stipulated order wherever possible. If the motion is contested, the moving party shall note the motion for hearing on a date deemed by the clerk to be available for that purpose. The motion, order and note for hearing shall then be filed and served. Where the clerk specifies that the hearing shall be telephonic, the moving party shall originate the telephonic hearing conference call.

(2) Unless oral argument is requested, a motion will be decided on the written record.

NEW SECTION

**WAC 461-08-156 Hearing—Primary and secondary setting.** (1) Each case shall be assigned a primary hearing date. A case has first priority for hearing on that date.

(2) Each case may be assigned a secondary hearing date. That date will precede the primary hearing date. A case has second priority for hearing on the secondary date, and will proceed to hearing only if the primary case does not proceed. The parties to a primary case shall inform the clerk of the board as soon as any settlement occurs. The parties to a secondary case may contact the clerk of the board to learn whether or not the primary case will proceed. The parties to a secondary case may also contact directly the parties to a primary case to learn whether or not the primary case will proceed.

AMENDATORY SECTION (Amending Order 82-1, Resolution No. 82-1, filed 9/9/81)

**WAC 461-08-160 Hearings—Continuances(, hearing postponements) and dismissals.** (((1) Continuances:  
(a) Pursuant to agreements at prehearing conference. If agreement is reached at a prehearing conference, continu-

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~~ances shall be granted in accordance with such agreement and no written application therefor shall be required.~~

~~(b) Requests prior to hearing. If, prior to the hearing date, a party is not able to fully present evidence at the scheduled hearing, such party shall file a written request for continuance with the board setting forth the reasons therefor as soon as such reasons are known and deliver copies to all other parties.~~

~~(c) Requests at time of hearing. If reasons requiring a continuance of a hearing are not known in time to permit compliance with subsection (b) of this section, application therefor may be made orally at the hearing.~~

~~(d) When granted. Applications for a continuance made pursuant to subsections (b) or (c) above shall only be granted upon a proper showing of good cause to prevent manifest injustice. In order to show "good cause," the party applying for a continuance because of the unavailability of a witness or witnesses shall show that due diligence was exercised in attempting to obtain the presence of such witnesses at the time set for hearing and the reasons for their unavailability, and shall identify the witnesses and explain, in substance, what the testimony of such witnesses would prove. In all cases in which a request for continuance is granted, subsequent hearings shall be scheduled.~~

~~(2) Hearing postponements. A postponement of a hearing may be requested by any party after receipt of the notice of hearing. Provided, That written objections are filed within ten days of the receipt of such notice. Copies of such request shall be served on all other parties. If the request is granted, all parties shall be notified of the postponement. Requests for postponement not filed within the ten day period shall be granted only in exceptional cases to prevent manifest injustice.~~

~~In all cases where a request for postponement is granted, subsequent hearings shall be scheduled in accordance with WAC 461-08-165.~~

~~(3) Dismissal. If the appealing party fails to appear at the scheduled hearing and fails to obtain a continuance or postponement as provided in this section, the request for review shall be dismissed except to prevent manifest injustice or unless such party can show good cause for such failure. Such showing shall be made in writing and filed with the board, and copies shall be delivered to all other parties, not later than ten days after the date of mailing of the order of dismissal.) (1) Continuance of a hearing is within the discretion of the board, whether contested or uncontested by the parties. The board may continue a hearing on its own motion.~~

(2) The continuance of a hearing shall be sought by written motion. Each such motion shall have appended to it the continuance order which the motion seeks. The moving party shall: Contact the clerk of the board to determine available dates; affirmatively seek the stipulation of all parties; and set forth the continued date in the order. If the continuance is contested, the moving party shall set forth in the order the continued date being requested and shall note the motion for telephonic hearing on a date deemed by the clerk to be available for that purpose. The motion, order and note for telephonic hearing shall then be filed and served. The moving party shall originate the telephonic hearing conference call.

## NEW SECTION

**WAC 461-08-167 Dismissal or default.** (1) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties a default or other dispositive order which shall include a statement of the grounds for the order. Within seven days after service of a default or dismissal order for failure to attend or participate, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon.

(2) An appellant may request to withdraw an appeal. Requests before appellant rests are mandatory and afterwards are permissive.

## NEW SECTION

**WAC 461-08-237 Disposition of contested cases—Preparation of findings, conclusions and orders.** Upon request of the board or presiding officer, findings, conclusions and orders shall be prepared by counsel. The same shall be based upon the oral or memorandum opinion. The board or presiding officer may adopt said findings, conclusions and orders in part or in whole or may prepare their own findings, conclusions and orders.

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 461-08-165 Hearings—Conditions for setting subsequent hearings.

**WSR 94-07-061  
EMERGENCY RULES  
POLLUTION CONTROL  
HEARINGS BOARD**

[Filed March 11, 1994, 4:42 p.m.]

Date of Adoption: March 8, 1994.

Purpose: To improve the orderly process of calendaring, motions and orders so as to reduce the time from the filing of an appeal to its disposition. Also, to update mailing address.

Citation of Existing Rules Affected by this Order: Amending WAC 371-08-010, 371-08-147, 371-08-162, and 371-08-165.

Statutory Authority for Adoption: RCW 43.21B.170.

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: Increasing numbers of appeals have combined with rules devised in times of fewer appeals to result in delay. These rules are necessary to expeditiously and fairly decide appeals at their existing volume.

Effective Date of Rule: Immediately.

March 8, 1994  
Robert V. Jensen  
Chairman

AMENDATORY SECTION (Amending WSR 91-03-028, filed 1/8/91, effective 2/8/91)

**WAC 371-08-010 Board administration—Office and address of the board.** (1) The administrative business of the board, except rule making, is performed by the Environmental Hearings Office (~~(, which holds regular meetings at 10:00 a.m. on the second Tuesday of each month, pursuant to WAC 198-12-030, at the address set forth below and at such other times and places as the chairperson shall designate)~~) To the extent necessary for rule making, the board holds regular meetings at 10:00 a.m. on the second Tuesday of each month at the address set forth below.

(2) The board is housed at the office of the Environmental Hearings Office, 4224 6th Avenue S.E., Building 2 Rowsix, Lacey, Washington. The principal hearing room used by the board is located at the same address, although many hearings are held near the site of the dispute at issue.

(3) The mailing address of the board is:

Pollution Control Hearings Board  
(~~(Mailstop: PY 24)~~)  
PO Box 40903  
Olympia, WA 98504-0903

(4) The telephone number of the board is (206) 459-6327. The telefacsimile number is (206) 438-7699.

#### NEW SECTION

**WAC 371-08-061 Appearance and practice before the board—Parties not represented by legal counsel—Waiver of rules to prevent manifest injustice.** The presiding officer may waive any of these rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel where necessary to avoid manifest injustice.

AMENDATORY SECTION (Amending WSR 91-03-028, filed 1/8/91, effective 2/8/91)

**WAC 371-08-147 ((Prehearing)) Procedures—Motions.** (1) An application to the board for an order shall be by motion which, unless made during a hearing, shall be in writing, state with particularity the grounds therefor and set forth the relief sought. (~~(Written motions may be included in the notice of appeal or filed and served separately.)~~) Dispositive motions will be filed and briefed in accordance with CR 56 unless a scheduling letter or order varies that procedure. Each written motion shall have appended to it the order which the motion seeks. The moving party shall affirmatively seek the stipulation of all parties and present a stipulated order wherever possible. If the motion in contested, the moving party shall note the motion for hearing on a date deemed by the clerk to be available for that purpose. The motion, order and note for hearing shall then be filed and served. Where the clerk specifies that the hearing shall be telephonic, the moving party shall originate the telephonic hearing conference call.

(2) (~~(When a motion is filed, the matter will be scheduled separately. In all cases, the defending party shall have an opportunity to respond.~~

~~(3)) Unless oral argument is requested, a motion will be decided on the written record.~~

AMENDATORY SECTION (Amending WSR 91-03-028, filed 1/8/91, effective 2/8/91)

**WAC 371-08-162 Hearings—((Default)) Primary and secondary setting.** (~~((1) If a party fails to attend or participate in a hearing or other stage of an appeal, the presiding officer may serve on all parties an order of default or other dispositive order, which shall include a statement of the grounds for the order.~~

~~(2) Within ten days after receipt of an order under subsection (1) of this section, the party against whom it was entered may file and serve a written motion requesting that the order be vacated and stating the grounds relied upon.)~~

(1) Each case shall be assigned a primary hearing date. A case has first priority for hearing on that date.

(2) Each case may be assigned a secondary hearing date. That date will precede the primary hearing date. A case has second priority for hearing on the secondary date, and will proceed to hearing only if the primary case does not proceed. The parties to a primary case shall inform the clerk of the board as soon as any settlement occurs. The parties to a secondary case may contact the clerk of the board to learn whether or not the primary case will proceed. The parties to a secondary case may also contact directly the parties to a primary case to learn whether or not the primary case will proceed.

AMENDATORY SECTION (Amending WSR 91-03-028, filed 1/8/91, effective 2/8/91)

**WAC 371-08-165 Hearings—Continuances, dismissal.** (1) Continuance of a hearing is within the discretion of the board, whether contested or uncontested by the parties. The board may continue a hearing on its own motion.

~~(2) ((Normally, motions for continuance should be filed more than three months before the scheduled hearing date, so that any time cleared on the calendar can be productively used for other appeals.~~

(3) Prior to moving for a continuance, a person should confer and seek agreement on the matter with the other parties.) The continuance of a hearing shall be sought by written motion. Each such motion shall have appended to it the continuance order which the motion seeks. The moving party shall: Contact the clerk of the board to determine available dates; affirmatively seek the stipulation of all parties; and set forth the continued date in the order. If the continuance is contested, the moving party shall set forth in the order the continued date being requested and shall note the motion for telephonic hearing on a date deemed by the clerk to be available for that purpose. The motion, order and note for telephonic hearing shall then be filed and served. The moving party shall originate the telephonic hearing conference call.

NEW SECTION

**WAC 371-08-167 Dismissal or default.** (1) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties a default or dismissal order which shall include a statement of the grounds for the order. Within seven days after service of a default or dismissal order for failure to attend or participate, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon.

(2) An appellant may request to withdraw an appeal. Requests before appellant rests are mandatory and afterwards are permissive.

NEW SECTION

**WAC 371-08-197 Disposition of adjudicative proceedings—Preparation of findings, conclusions and orders.** Upon request of the board or presiding officer, findings, conclusions and orders shall be prepared by counsel. The same shall be based upon the oral or memorandum opinion. The board or presiding officer may adopt said findings, conclusions and orders in part or in whole or may prepare their own findings, conclusions and orders.

**WSR 94-07-062  
EMERGENCY RULES  
FOREST PRACTICES  
APPEALS BOARD**

[Filed March 11, 1994, 4:44 p.m.]

Date of Adoption: March 8, 1994.

Purpose: To improve the orderly process of calendaring, motions and orders so as to reduce the time from the filing of an appeal to its disposition. Also, to update mailing address.

Citation of Existing Rules Affected by this Order: Amending WAC 223-08-010 and 223-08-165.

Statutory Authority for Adoption: RCW 76.09.230(5).

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: Increasing numbers of appeals have combined with rules devised in times of fewer appeals to result in delay. These rules are necessary to expeditiously and fairly decide appeals at their existing volume.

Effective Date of Rule: Immediately.

March 8, 1994  
Norman L. Winn  
Chairman

AMENDATORY SECTION (Amending WSR 90-23-093, filed 11/21/90, effective 12/22/90)

**WAC 223-08-010 Board administration and address of the board.** (1) The administrative business of the appeals board, except rule making, is performed by the environmental hearings office (~~(, which holds regular meetings on the third Tuesday of each month, pursuant to WAC 198-12-030, at the address set forth below and at such other times and places as necessary)~~) To the extent necessary for rule making, the appeals board holds regular meetings at 10:00 a.m. on the second Tuesday of each month at the address set forth below.

(2) The appeals board is organized within the Environmental Hearings Office, 4224 - 6th Avenue S.E., Building No. 2 Rowesix, Lacey, Washington. The mailing address is:

Forest Practices Appeals Board  
(~~(Mailstop: PY-21)~~)  
PO Box 40903  
Olympia, Washington 98504-0903

(3) The telephone number of the board is (206) 459-6327. The telefacsimile number is (206) 438-7699.

NEW SECTION

**WAC 223-08-072 Appearance and practice—Parties not represented by legal counsel—Waiver of rules to prevent manifest injustice.** The presiding officer may waive any of these rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel where necessary to avoid manifest injustice.

NEW SECTION

**WAC 223-08-148 Procedures—Motions.** (1) An application to the board for an order shall be by motion which, unless made during a hearing, shall be in writing, state with particularity the grounds therefor and set forth the relief sought. Dispositive motions will be filed and briefed in accordance with CR 56 unless a scheduling letter or order varies that procedure. Each written motion shall have appended to it the order which the motion seeks. The moving party shall affirmatively seek the stipulation of all parties and present a stipulated order wherever possible. If the motion is contested, the moving party shall note the motion for hearing on a date deemed by the clerk to be available for that purpose. The motion, order and note for hearing shall then be filed and served. Where the clerk specifies that the hearing shall be telephonic, the moving party shall originate the telephonic hearing conference call.

(2) Unless oral argument is requested, a motion will be decided on the written record.

NEW SECTION

**WAC 223-08-162 Hearing—Primary and secondary setting.** (1) Each case shall be assigned a primary hearing date. A case has first priority for hearing on that date.

(2) Each case may be assigned a secondary hearing date. That date will precede the primary hearing date. A case has second priority for hearing on the secondary date, and will proceed to hearing only if the primary case does not proceed. The parties to a primary case shall inform the clerk

of the board as soon as any settlement occurs. The parties to a secondary case may contact the clerk of the board to learn whether or not the primary case will proceed. The parties to a secondary case may also contact directly the parties to a primary case to learn whether or not the primary case will proceed.

AMENDATORY SECTION (Amending WSR 90-23-093, filed 11/21/90, effective 12/22/90)

**WAC 223-08-165 Hearing—Continuance**~~((, and dismissal/default))~~. (1) **Continuance.**

Continuance of a hearing is within the discretion of the appeals board whether contested or uncontested by the parties. The appeals board may continue a hearing upon its own motion.

(2) ~~((Dismissal, default.~~

~~(a) The appealing party may request to voluntarily withdraw an appeal orally at any conference or hearing and at any other time by filing a written request with the appeals board and serving a copy simultaneously upon all persons entitled to service of the notice commencing the proceeding. Requests before the appealing party rests after his opening case shall be granted. Requests after the appealing party rests after his opening case may be granted or denied at the discretion of the appeals board.~~

~~(b) Whenever an appealing party fails to appear at a scheduled hearing without voluntarily withdrawing or obtaining a continuance, the appeal shall be dismissed except to prevent manifest injustice. The appealing party may request that the appeals board vacate such order of dismissal by filing a writing under oath with the appeals board, within ten days of the date of such order, showing good cause for failure to appear. Upon a finding that good cause has been shown, the appeals board shall vacate the dismissal and set a subsequent hearing.~~

~~(c) Whenever a respondent fails to appear at a scheduled hearing without obtaining a continuance, the appeals board shall enter, upon presentation of a prima facie case, a default order granting the relief requested by the appealing party except where manifest injustice would result. The respondent may request that the appeals board vacate such default order by filing with the appeals board, within ten days of the date of such order, a writing under oath showing good cause for failure to appear and a meritorious position in the case. Upon a finding that good cause and a meritorious argument have been shown, the appeals board shall vacate the default order and set a subsequent hearing.)~~ The continuance of a hearing shall be sought by written motion. Each such motion shall have appended to it the continuance order which the motion seeks. The moving party shall: Contact the clerk of the board to determine available dates; affirmatively seek the stipulation of all parties; and set forth the continued date in the order. If the continuance is contested, the moving party shall set forth in the order the continued date being requested and shall note the motion for telephonic hearing on a date deemed by the clerk to be available for that purpose. The motion, order and note for telephonic hearing shall then be filed and served. The moving party shall originate the telephonic hearing conference call.

### NEW SECTION

**WAC 223-08-171 Hearing—Dismissal or default.** (1) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties a default or other dispositive order which shall include a statement of the grounds for the order. Within seven days after service of a default or dismissal order for failure to attend or participate, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon.

(2) An appellant may request to withdraw an appeal. Requests before appellant rests are mandatory and afterwards are permissive.

### NEW SECTION

**WAC 223-08-252 Decision—Preparation of findings, conclusions and orders.** Upon request of the board or presiding officer, findings, conclusions and orders shall be prepared by counsel. The same shall be based upon the oral or memorandum opinion. The board or presiding officer may adopt said findings, conclusions and orders in part or in whole or may prepare their own findings, conclusions and orders.

**WSR 94-07-063  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 94-13—Filed March 14, 1994, 9:23 a.m.]

Date of Adoption: March 14, 1994.

Purpose: Commercial regulations.

Citation of Existing Rules Affected by this Order: Amending WAC 220-49-063 and 220-49-064.

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 changes were included in the package of proposed permanent regulation changes which was distributed to the public on February 8, 1994. We have held two public hearings on the proposals and received no adverse comment on these auction and transferability proposals. However, insufficient time exists to enact permanent regulation changes prior to the 1994 auction.

Effective Date of Rule: Immediately.

March 14, 1994  
Judith Freeman  
Deputy  
for Robert Turner  
Director

NEW SECTION

**WAC 220-49-06300A Spawn on kelp licenses—**

**Application.** Notwithstanding the provisions of WAC 220-49-063, effective immediately until further notice:

- (1) The spawn on kelp auction will be conducted by sealed bid only.
- (2) The successful bidder will be eligible for a free spawn on kelp license which will remain valid contingent upon performance under the terms of the spawn on kelp contract.

NEW SECTION

**WAC 220-49-06400A Spawn on kelp contract conditions.** Notwithstanding the provisions of WAC 220-49-064, effective immediately until further notice:

- (1) All references in to a "permittee" shall apply to a spawn on kelp licensee.
- (2) Spawn on kelp licenses are nontransferable except in cases of hardship, defined as death or disablement of the licensee or loss of the licensee's designated vessel through no fault of the licensee.
- (3) Spawn on kelp licenses may only be transferred to a person holding a valid herring license.

**WSR 94-07-076  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 94-12—Filed March 15, 1994, 4:56 p.m.]

Date of Adoption: March 14, 1994.

Purpose: Personal use rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-350 and 220-56-380.

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: Available harvest must be taken before seasonal health closures.

Effective Date of Rule: Immediately.

March 14, 1994  
Judith Freeman  
Deputy  
for Robert Turner  
Director

NEW SECTION

**WAC 220-56-38000S Oysters—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-380, effective immediately until further notice it is unlawful to harvest or possess oysters taken for personal use from the following tidelands except during the times shown:

- (1) Dabob Bay - All state-owned tidelands in Dabob Bay north of a line from Cape Harmony to Lindsays Beach

are closed until further notice except those tidelands between a row of tires at Camp Discovery and a second row of tires 2,000 feet to the south and except the state tidelands beginning approximately 3/4 mile north of Camp Harmony and extending 1,200 feet to the north are open until further notice.

(2) Duckabush - All Department-owned tidelands on the west shore of Hood Canal from Quatsap Point to the south end of the Duckabush flats are closed until further notice.

(3) Eagle Creek - Open until further notice.

(4) Illahee State Park - Open through April 30.

(5) Kitsap Memorial State Park - Open April 1 until further notice.

(6) Liberty Bay - All Department tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed until further notice.

(7) North Bay - All Department tidelands in North Bay (Case Inlet) north of a line from Rocky Point to the north end of Reach Island thence due west to the mainland are closed until further notice except Department oyster reserves on the east side of North Bay north of the power transmission lines at the north end of the inlet remain open until further notice.

(8) Potlatch State Park - Open April 1 until further notice.

(9) Potlatch Beach East - Open until further notice.

(10) Rendsland Creek - Open April 1 until further notice.

(11) Quilcene Bay - All Department tidelands north of a line from the Quilcene Boat Haven to Fisherman's Point are closed until further notice.

(12) Scenic Beach State Park - Open until further notice.

(13) Triton Cove State Park - Open April 1 until further notice.

(14) West Dewatto Bay - Closed through March 31.

Notwithstanding the provisions of this section, it is lawful for Coast Seafoods employees to take oysters from the areas listed herein under the terms of a contract between Coast Seafoods and the Department.

REPEALER

The following sections of the Administrative Code have been repealed:

- |                   |                                                         |
|-------------------|---------------------------------------------------------|
| WAC 220-56-35000X | Clams other than razor clams—Areas and seasons. (94-11) |
| WAC 220-56-38000R | Oysters—Areas and seasons. (94-11)                      |

NEW SECTION

**WAC 220-56-35000Y Clams other than razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice it is unlawful to harvest or possess clams, cockles, borers and mussels taken for personal use from the following tidelands except during the times shown:

- (1) Brown Point - Open April 1 until further notice.

EMERGENCY

(2) Dabob Bay - All state-owned tidelands in Dabob Bay north of a line from Cape Harmony to Lindsays Beach are closed until further notice except those tidelands between a row of tires at Camp Discovery and a second row of tires 2,000 feet to the south and except the state tidelands beginning approximately 3/4 mile north of Camp Harmony and extending 1,200 feet to the north are open until further notice.

(3) Duckabush - All state-owned tidelands on the west shore of Hood Canal from Quatsap Point to the south end of the Duckabush flats are closed until further notice.

(4) Fort Flagler State Park - Open April 1 until further notice.

(5) Hope Island (South Sound) - Open April 1 until further notice.

(6) Illahee State Park - Open April 1 until further notice.

(7) Kitsap Memorial State Park - Closed through March 31.

(8) Kopachuck State Park - Closed April 16 until further notice.

(9) Liberty Bay - All Department tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed until further notice.

(10) North Bay - All Department tidelands in North Bay (Case Inlet) north of a line from Rocky Point to the north end of Reach Island thence due west to the mainland are closed until further notice except Department oyster reserves on the east side of North Bay north of the power transmission lines at the north end of the inlet remain open until further notice.

(11) Oak Bay County Park (formerly Oak Bay, West) - Open until further notice.

(12) Point Whitney - Department tidelands at Point Whitney, excluding Point Whitney Lagoon open April 1 until further notice.

(13) Point White - Open until further notice.

(14) South Indian Island County Park - Closed through March 31.

(15) Quilcene Bay - All Department tidelands north of a line from the Quilcene Boat Haven to Fisherman's Point are closed until further notice.

(16) Rendsland Creek - Open until further notice.

(17) Saltwater State Park - Closed through March 31.

(18) Shine Tidelands State Park - Open until further notice.

(19) South Indian Island State Park (formerly Oak Bay, East) - Open April 1 until further notice.

(20) Spencer Spit State Park - Open April 1 until further notice.

(21) Triton Cove State Park - Closed through March 31.

(22) West Dewatto Bay - Closed until further notice.

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

**WSR 94-07-077**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 94-15—Filed March 15, 1994, 4:57 p.m.]

Date of Adoption: March 15, 1994.

Purpose: Commercial fishing regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-49-06300A and 220-49-06400A; and amending WAC 220-49-063 and 220-49-064.

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 changes were included in the package of proposed permanent regulation changes which was distributed to the public hearings on February 8, 1994. We have held two public hearings on these auction and transferability proposals. However, insufficient time exists to enact permanent regulation changes prior to the 1994 auction.

Effective Date of Rule: Immediately.

March 15, 1994  
Judith Freeman  
Deputy  
for Robert Turner  
Director

NEW SECTION

**WAC 220-49-06300B Spawn on kelp licenses—Application.** Notwithstanding the provisions of WAC 220-49-063, effective immediately until further notice:

(1) The spawn on kelp auction will be conducted by sealed bid only.

(2) The successful bidder will be eligible for a spawn on kelp license at no additional cost above the bid amount which will remain valid contingent upon performance under the terms of the spawn on kelp contract.

NEW SECTION

**WAC 220-49-06400B Spawn of kelp contract conditions.** Notwithstanding the provisions of WAC 220-49-064, effective immediately until further notice all references into a "permittee" shall apply to a spawn on kelp licensee. Spawn on kelp licenses are nontransferable.

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-49-06300A      Spawn on kelp licenses—  
Application. (94-13)

WAC 220-49-06400A Spawn on kelp contract conditions. (94-13)

**WSR 94-07-091**  
**EMERGENCY RULES**  
**CENTRAL WASHINGTON UNIVERSITY**

[Filed March 17, 1994, 2:32 p.m.]

Date of Adoption: March 14, 1994.

Purpose: WAC 106-116-011, to make editorial changes and specify that parking permits are required in designated parking lots; WAC 106-116-040, to change campus safety to campus police; WAC 106-116-042, to make editorial changes including changing campus safety to campus police; WAC 106-116-103, to change procedure for registration of additional or replacement vehicles; WAC 106-116-10401, to make editorial changes; WAC 106-116-201, to make editorial changes and redefine parking areas; WAC 106-116-202, to make editorial changes; WAC 106-116-203, to make editorial changes regarding parking prohibitions; WAC 106-116-204, to make editorial changes; WAC 106-116-205, to make editorial changes; WAC 106-116-207, to make editorial changes and clarification of service drive use; WAC 106-116-212, to make editorial change; WAC 106-116-213, to make editorial changes; WAC 106-116-301, to make editorial change; WAC 106-116-303, to make editorial changes; WAC 106-116-304, to make editorial changes and to change name of handicapped student services office to ADA affairs and student assistance; WAC 106-116-305, to make editorial changes, specify requirements for load/unload permits, and remove special permit availability; WAC 106-116-306, to make editorial changes and clearly define how and where per-day permit may be purchased; WAC 106-116-307, to make editorial changes; WAC 106-116-308, to make editorial changes; WAC 106-116-310 to make editorial changes; WAC 106-116-311, to make editorial changes; WAC 106-116-403, to delete no-cost visitor permit availability; WAC 106-116-410, to make editorial changes; WAC 106-116-501, to make editorial change; WAC 106-116-513, to make editorial change; WAC 106-116-514, to make editorial changes; WAC 106-116-515, to make editorial changes including adjustment of sexist language; WAC 106-116-521, to make editorial changes; WAC 106-116-601, to make editorial changes; WAC 106-116-603, to make editorial changes; WAC 106-116-701, to make editorial changes; WAC 106-116-702, to make editorial changes; WAC 106-116-853, to make editorial changes; and WAC 106-116-901, to make editorial changes.

Citation of Existing Rules Affected by this Order: Amending WAC 106-116-011 Preamble, 106-116-040 Authority of campus police officers, 106-116-042 Infractions, 106-116-103 Additional or replacement vehicles, 106-116-10401 Animal traffic, 106-116-201 Permitted parking areas, 106-116-202 No parking areas, 106-116-203 Specific parking prohibitions, 106-116-204 Commuter students, 106-116-205 Apartment residents, 106-116-207 Faculty-staff parking, 106-116-208 Fire lanes and service drives, 106-116-212 Liability, 106-116-213 Parking of trailers, campers, and similar purpose vehicles on campus, 106-116-301 Purchasing parking permits, 106-116-303 Display of permits, 106-116-

304 Disability parking permit, 106-116-305 Daily parking permits, 106-116-306 Temporary parking permits, 106-116-307 Parking fees, 106-116-308 Replacement of parking permit, 106-116-310 Contractor parking permits, 106-116-311 Parking fee refunds, 106-116-403 Visitor parking permits, 106-116-410 Continuous parking, 106-116-501 Basic speed limit, 106-116-513 Procedure—Infractions and service thereof, 106-116-514 Election to forfeit or contest, 106-116-515 Procedure—Complaint and information, 106-116-521 Monetary penalties, 106-116-601 Traffic regulation signs, markings, barricades, etc., 106-116-603 Monetary penalty schedule, 106-116-701 Impounding procedures, 106-116-702 Inoperative vehicles, 106-116-853 Definitions, and 106-116-901 Bicycle parking and traffic regulations.

Statutory Authority for Adoption: RCW 28B.10.528, 28B.10.560 and 28B.35.120.

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: Changes to parking regulations must be in force and available to the campus community immediately to avoid confusion and enable public safety and police services personnel to preserve the public safety.

Effective Date of Rule: Immediately.

March 14, 1994

Ivory V. Nelson  
 President

AMENDATORY SECTION (Amending Order 37, filed 1/13/78)

**WAC 106-116-011 Preamble.** Drivers (~~(of vehicles)~~) on the property of Central Washington University are responsible for their vehicle's safe and lawful operation. A CWU parking permit or daily permit is required in designated parking lots. Individuals operating or parking vehicles on university-owned property must do so in compliance with these regulations, and ordinances and laws of the city of Ellensburg, county of Kittitas, and state of Washington.

AMENDATORY SECTION (Amending Order 47, filed 11/3/81)

**WAC 106-116-040 Authority of campus (~~(safety)~~) police officers.** Campus (~~(safety)~~) police officers, duly appointed and sworn pursuant to RCW 28B.10.555 are peace officers of the state and have police powers as are vested in sheriffs and peace officers generally under the laws of Washington state.

AMENDATORY SECTION (Amending Order 53, filed 6/9/83, effective 7/24/83)

**WAC 106-116-042 Infractions.** (1) The entire campus, including parking and traffic areas, is patrolled by the (~~(campus)~~) public safety and police services department with authority to issue infractions for on-campus violations. This authority is further shown in WAC 106-116-040 of this policy.

(2) The ~~((campus))~~ public safety and police services department and its duly sworn officers have authority to issue infractions for violations of Washington Administrative Codes and ordinances and laws of the city of Ellensburg, county of Kittitas, and state of Washington, ~~((which))~~ when violations occur on university-owned property.

AMENDATORY SECTION (Amending Order 53, filed 6/9/83, effective 7/24/83)

**WAC 106-116-103 Additional or replacement vehicles.** ~~((When a new or different motor vehicle is acquired, it shall be necessary to obtain a new permit for that vehicle. When such a change of vehicles has been accomplished, the old permit will be surrendered to the campus safety department and a new permit with the same expiration date assigned will be issued at no charge by the cashier's office.))~~ If you have a current CWU parking permit and obtain an additional or different motor vehicle, you must register that vehicle with the auxiliary services parking office, Barge Hall.

AMENDATORY SECTION (Amending Order 45, filed 8/14/80)

**WAC 106-116-10401 Animal traffic.** It shall be unlawful for any person to drive, lead, walk, or ride any cattle, horse, or beast of burden upon any of the lawns, beds, sidewalks, malls, service drives, or parking lots of Central Washington University except as authorized by permit by the chief of ~~((campus))~~ public safety and police services for parades and university-sponsored activities.

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-201 Permitted parking areas.** ~~((+))~~ University-owned parking areas are marked with signs reading, "Parking by university permit only." Vehicles parked without valid parking permits will be ticketed from 7:30 a.m. to 4:30 p.m. Monday through Friday, except:

~~((2))~~ (1) No parking permitted daily in J-8, Q-14, ~~((and))~~ S-10 and O-5 lots from 4:00 a.m. to 6:00 a.m. except as posted in designated areas of those lots ~~((as posted)).~~

~~((3))~~ (2) Enforcement shall be in effect twenty-four hours a day in ~~((the following parking areas:~~

(a) ~~Buttons Apartments;~~

(b) ~~Limited time zones;~~

(c) ~~I-15 and N-19 lot;~~

~~(d) Handicapped))~~ "limited time zones" and "disabled persons areas."

AMENDATORY SECTION (Amending Order 47, filed 11/3/81)

**WAC 106-116-202 No parking areas.** Parking is permitted only in areas designated and marked for parking in accordance with all signs posted in the designated parking area.

For example, prohibited areas include fire hydrants, fire lanes, yellow curb zones, crosswalks, driveways, service drives, or any area not expressly permitted by sign or these regulations. Vehicles are not permitted to be parked on any undeveloped university property without the approval of the

chief of the ~~((campus))~~ public safety ~~((department))~~ and police services. This section will be enforced twenty-four hours a day.

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-203 Specific parking prohibitions.** (1) Parking in areas and places normally used for moving traffic is a specific violation of these regulations.

(2) Parking in such a position with relation to other parked cars or marked parking spaces as to impede, restrict, or prevent free ingress or egress by other automobiles violates these regulations.

(3) Parking in areas marked for a special permit or clearly designated by signing for special use not available to the general public or regular permit holders is prohibited. Examples: Parking in a space marked "~~((handicapped))~~ disability permit~~((s))~~ only," or "health center permit only," or "psychology permit only."

(4) Parking and/or driving on sidewalks is prohibited.

(5) Parking or driving on lawns or flower beds is prohibited.

AMENDATORY SECTION (Amending Order 46, filed 3/23/81)

**WAC 106-116-204 Commuter students.** Students who commute and park in university-owned parking areas must purchase and display a valid parking permit. They may not park in staff and faculty parking zones ~~((or areas, nor in student reserved lots or zones)).~~

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-205 Apartment residents.** (1) Residents of Brooklane Village, Roy P. Wahle ~~((University))~~ Complex, Student Village Apartments, and Getz Short Apartments ~~((and Buttons Apartments))~~ do not need parking permits to park in the parking area adjacent to their respective apartments but must register their vehicles with the housing office.

(2) Apartment residents may purchase a commuter parking permit.

(3) Residents of Student Village may park in lots T-22, U-22, V-22, and X-22 without a permit.

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-207 Faculty-staff parking.** Faculty and staff parking ~~((areas))~~ zones are posted with signs reading, "faculty and staff parking only." Student parking is not permitted in any designated faculty and staff parking ~~((area))~~ zone Monday through Friday from 7:30 a.m. to 4:30 p.m.

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-208 Fire lanes and service drives.** Parking is not allowed at any time in the service drives or fire lanes of ~~((all))~~ any campus building~~((s))~~. Fire lanes and

service drives may be used by service and emergency vehicles(~~(-Load/unload permits are required for unloading personal items)).~~ After the required load/unload permit has been obtained, vendor and student-owned vehicles may use the service drives to load or unload items. These permits are available at the public safety and police services department.

AMENDATORY SECTION (Amending Order 59, filed 11/7/86)

**WAC 106-116-212 Liability.** Neither the university nor its employees shall be liable for damages to or theft from a vehicle while parked in university-owned parking lots.

AMENDATORY SECTION (Amending Order 53, filed 6/9/83, effective 7/24/83)

**WAC 106-116-213 Parking of trailers, campers, and similar purpose vehicles on campus.** It shall be unlawful for any individual, firm, or corporation to park any type of vehicle on the grounds of Central Washington University for the purpose of using such vehicle as a living unit.

Any exception must be approved, in writing; by the chief of (~~(campus))~~ public safety(~~(-in writing))~~ and police services.

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-301 Purchasing parking permits.** Parking permits may be purchased from the cashier's office, (~~(Mitchell))~~ Barge Hall.

AMENDATORY SECTION (Amending Order 59, filed 11/7/86)

**WAC 106-116-303 Display of permits.** (1) Parking permits shall be (~~(displayed))~~ conspicuously (~~(by hanging over)~~ hung from the inside (~~(rear view))~~ rearview mirror.

(2) Special permits must be displayed in the manner described at time of issuance.

(3) Motorcycle parking permits are to be placed in a conspicuous location on the front fork, handlebar, or fender of the motorcycle.

AMENDATORY SECTION (Amending Order 47, filed 11/3/81)

**WAC 106-116-304 Disability parking permit.** Any university employee, student, or visitor who can show physical disability may apply to the (~~(handicapped student services))~~ ADA affairs and student assistance office for a (~~(handicapped))~~ disability parking permit. Certification by a physician may be required. Disability permits issued by the state of Washington in all forms and disability permits issued by other state agencies or institutions shall be honored. Additionally, a CWU parking permit or daily permit is necessary in parking lots normally requiring permits.

AMENDATORY SECTION (Amending Order 59, filed 11/7/86)

**WAC 106-116-305 (~~(Special))~~ Daily parking permits.** (~~(Special))~~ (1) Daily parking permits are available from the (~~(campus safety department or))~~ automatic ticket dispensers. These permits must be displayed in clear view on the dash of the vehicle, (~~(numbered side up))~~ as instructed on the permit, readable from outside the vehicle.

(~~(1) A special permit is available when permitted vehicle is inoperative and replacement vehicle is being used.~~

(2) ~~Permits are available for loading or unloading. The time limit is thirty minutes.~~

(3) ~~Vendor permits are available for vendors conducting business on campus.)~~ (2) Thirty-minute "load/unload permits" are available for loading and unloading. Load/unload permits are available to vendors conducting business on campus, service vehicles, and student vehicles. Load/unload permits are available at the public safety and police services department.

(3) No permits are available for inoperative or disabled vehicles. Public safety and police services should be contacted if your vehicle becomes disabled in a university-owned parking lot.

AMENDATORY SECTION (Amending Order 47, filed 11/3/81)

**WAC 106-116-306 Temporary parking permits.** Temporary parking permits are valid only in areas not falling within prohibitions of WAC 106-116-202 and 106-116-203 and may be:

(1) Purchased on a (~~(daily))~~ per-day basis from coin-operated dispensers in lots where available.

(2) Purchased on a per-week basis from the cashier's office in (~~(Mitchell))~~ Barge Hall(~~(-on a weekly basis)).~~

(3) Obtained (~~(through the scheduling center in the Samuelson Union Building or at the conference center, Courson Hall, for attendees of conferences, workshops, and meetings scheduled through those offices.~~

(4) Valid only in areas not falling within prohibitions of WAC 106-116-202 and 106-116-203), for attendees of conferences, workshops and meetings, at Courson Conference Center or through the auxiliary services parking office, Barge Hall.

AMENDATORY SECTION (Amending Order 37, filed 1/13/78)

**WAC 106-116-307 Parking fees.** Parking fees for university-owned parking lots will be charged through the sale of permits according to a schedule of charges maintained in the cashier's office (~~(in Mitchell)),~~ Barge Hall. Governmental vehicles are fee exempt.

AMENDATORY SECTION (Amending Order 45, filed 8/14/80)

**WAC 106-116-308 Replacement of parking permit.** (~~(1) Parking permits will be issued at no cost for a newly acquired vehicle if that vehicle replaces one which had a permit.~~

(2) Remains of the original parking permit must be presented to the campus safety department.

~~(3) Lost or stolen parking permits will be replaced without cost upon presentation of satisfactory proof of loss.)~~  
Lost or stolen parking permits must be reported to the public safety and police services department. Upon verification, the permit will be replaced at no cost.

AMENDATORY SECTION (Amending Order 53, filed 6/9/83, effective 7/24/83)

**WAC 106-116-310 Contractor parking permits.** All contractors responsible for construction projects on the campus or for repair and maintenance contracts and those who make continuous deliveries of supplies must contact the ~~((campus))~~ public safety and police services department, prior to starting work, to obtain permits for the parking of those vehicles necessary to carry on the work.

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-311 Parking fee refunds.** (1) Application for parking permit fee refunds are to be made at the auxiliary services parking office, Barge Hall. The parking permit must be surrendered upon application for a refund.

(2) A full parking fee refund is obtainable only within the first seven calendar days of any academic quarter in which the permit is issued.

(3) Refunds are permitted only under the following conditions:

- (a) Student teaching, or other off-campus program;
- (b) Withdrawal from the university;
- (c) Termination of employment.
- (4) Refunds will not be made for daily permits.

AMENDATORY SECTION (Amending Order 53, filed 6/9/83, effective 7/24/83)

**WAC 106-116-403 Visitor parking permits.** Visitors may obtain parking permits from the automatic permit dispensers.

~~((Visitors on official business may obtain a courtesy permit from the campus safety office, located 1/2 block west of D Street on 11th Avenue.))~~

AMENDATORY SECTION (Amending Order 59, filed 11/7/86)

**WAC 106-116-410 Continuous parking.** Vehicles ~~((which have received))~~ receiving an infraction notice for violating parking and traffic regulations and which have not been moved ~~((for))~~ within twenty-four hours ~~((since))~~ following the issuance of the original infraction notice ~~((was issued))~~, shall be in violation of this section.

AMENDATORY SECTION (Amending Order CWU AO 67, filed 10/31/91, effective 12/1/91)

**WAC 106-116-501 Basic speed limit.** The speed limit on the university-owned streets shall be as posted, except:

- (1) The speed limit in the parking areas is 15 m.p.h.
- (2) No person shall operate a motor vehicle on the campus at a speed greater than is reasonable and prudent for existing conditions.

(3) The speed limit on malls and service drives is 10 m.p.h.

AMENDATORY SECTION (Amending Order 59, filed 11/7/86)

**WAC 106-116-513 Procedure—Infractions and service thereof.** Upon probable cause to believe that a violation of these regulations has occurred, an appropriate notice of infraction may be issued setting forth the date, the approximate time, the locality, and the nature of the violation. Such notice may be served by delivering or attaching a copy thereof to the alleged violator, or by placing a copy thereof in some prominent place within or upon the vehicle. Service by mail shall be accomplished by placing a copy of the notice in the mail addressed to the alleged violator at the address shown on the records of the office of the registrar or the personnel ~~((and benefits))~~ services office for that person or any other last known address of that person.

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-514 Election to forfeit or contest.** The notice of infraction issued pursuant to WAC 106-116-513 of these regulations shall inform the alleged violator that he/she may elect either to forfeit the monetary penalty to the infraction(s) charged or to contest the matter(s).

(1) If the alleged violator chooses to forfeit the penalty, he/she may do so by paying the appropriate amount to the cashier's office, Barge Hall. Payment will be in cash, check, certified check, or by money order. Such payment may also be made by mail. Such forfeiture shall constitute a waiver of a right to a hearing.

(2) If the alleged violator chooses to contest, he/she may do so by contacting the auxiliary services parking office, Barge Hall, ~~((CWU))~~ where parking infraction appeal forms are available upon request. The completed form stating the reasons for challenging the validity of the assessed obligation must be filed in the auxiliary services parking office within fifteen days of the date of the infraction notice. The appeal must be reviewed by the university parking appeal board, consisting of three student members, one faculty member, one staff member, the chief of ~~((campus))~~ public safety and police services (ex officio) and the director of student activities (ex officio). The parking appeal board will render a decision in good faith.

(3) A person charged with a parking infraction who deems himself or herself aggrieved by the final decision of the university parking appeal board may, within ten days after written notice of the final decision, appeal by filing a written notice thereof with the ~~((campus))~~ public safety ~~((office))~~ and police services department or the auxiliary services parking office. Documents relating to the appeal shall immediately be forwarded to the lower Kittitas County district court which shall have jurisdiction over such offense and such appeal shall be heard de novo.

AMENDATORY SECTION (Amending Order 47, filed 11/3/81)

**WAC 106-116-515 Procedure—Complaint and information.** (1) An infraction notice served in accordance with the provisions of WAC 106-116-513 of these regulations shall constitute the complaint or information against the person to whom delivered or mailed. The person to whom the vehicle permit was issued shall be held liable, or if no permit has been issued, the owner of the vehicle shall be held liable.

(2) The complaint or information may be amended at any time, either in writing (delivered or mailed to the alleged violator) or upon motion at trial in his or her presence, to include new charges of violations of these regulations.

AMENDATORY SECTION (Amending Order 46, filed 3/23/81)

**WAC 106-116-521 Monetary penalties.** (1) The monetary penalties to be assessed for violations of these regulations shall be those detailed in WAC 106-116-603.

(2) The chief of ((campus)) public safety and police services will cause:

(a) These regulations or a reasonable condensation thereof to be prominently displayed in the ((campus)) public safety and police services department.

(b) The amount of the monetary penalty to be written on the parking-violation notices served on alleged violators.

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-601 Traffic regulation signs, markings, barricades, etc.** (1) The ((campus)) public safety ((office)) and police services department and the auxiliary services office are authorized to erect signs, barricades, and other structures and to paint marks and other directions upon the streets and roadways for the regulation of traffic and parking upon state lands devoted mainly to the educational or research activities of Central Washington University. Such signs, barricades, structures, markings, and directions shall be so made and placed as to, in the opinion of the chief of ((campus)) public safety and police services and the director of auxiliary services, best effectuate the objectives stated in WAC 106-116-020 of these regulations.

(2) No sign, barricade, structure, marking, or direction for the purpose of regulating traffic or parking shall be moved, defaced, or in any way changed by any person without authorization from the chief of ((campus)) public safety and police services.

AMENDATORY SECTION (Amending WSR 90-01-006, filed 12/7/89, effective 1/7/90)

**WAC 106-116-603 Monetary penalty schedule.**

| Offense                                               | Penalty |
|-------------------------------------------------------|---------|
| (1) Improper display of permit . . . . .              | \$ 5.00 |
| (2) Parking faculty-staff area . . . . .              | 12.00   |
| (3) Parking yellow stripe or curb . . . . .           | 7.00    |
| (4) Parking outside designated parking area . . . . . | 7.00    |
| (5) Obstructing traffic . . . . .                     | 25.00   |

|                                                                                                              |                     |
|--------------------------------------------------------------------------------------------------------------|---------------------|
| (6) Parking at improper angle or using more than one stall, or backing into parking stall . . . . .          | 7.00                |
| (7) Violation of the bicycle parking rules in WAC 106-116-901 . . . . .                                      | 7.00                |
| (8) Reserved parking area . . . . .                                                                          | 12.00               |
| (9) No parking area . . . . .                                                                                | 10.00               |
| (10) Overtime parking . . . . .                                                                              | 7.00                |
| (11) Using counterfeit, falsely made, or altered permit . . . . .                                            | 100.00              |
| (12) Illegal use of permit . . . . .                                                                         | ((25.00))<br>100.00 |
| (13) No current permit . . . . .                                                                             | 7.00                |
| (14) Parking service drive . . . . .                                                                         | 12.00               |
| (15) Parking/driving sidewalks, malls . . . . .                                                              | 15.00               |
| (16) Parking/driving lawns . . . . .                                                                         | 20.00               |
| (17) Parking fire lane . . . . .                                                                             | 25.00               |
| (18) Parking fire hydrant . . . . .                                                                          | 25.00               |
| (19) Driving, walking, leading, etc., certain animals on campus without permit (WAC 106-116-10401) . . . . . | 12.00               |
| (20) Other violations of the objectives of the CWU parking and traffic regulations . . . . .                 | 7.00 to 12.00       |
| (21) Parking in a space marked "((handicapped)) disabled person permit(s) only" . . . . .                    | 30.00               |
| (22) Continuous parking . . . . .                                                                            | 20.00               |

The first \$5.00 to \$7.00 infraction notice between September 1 and August 31 each year shall be considered a written warning and no monetary penalty will be imposed if brought to the ((campus)) public safety ((police-office)) and police services department within seven calendar days from the date of the infraction. Parking-warning transactions will be ((handled)) processed by that ((office)) department between the hours of 7:00 a.m. and 4:00 p.m., Monday through Friday.

Failure to respond within fifteen days will result in the issuance of an overdue notice and an administrative charge of \$2.00 will be added. If payment has not been received within ten days after issuance of the overdue notice, the original monetary penalty will be doubled except that, in accordance with RCW 46.63.110(3), the penalty for failure to respond shall not exceed ((twenty-five dollars)) \$25.00 for any single infraction. Further failure to respond may result in one or more of the following sanctions:

- (a) Withholding of transcripts;
- (b) Deduction from payroll checks; and/or
- (c) Withholding of parking permits.

AMENDATORY SECTION (Amending Order 45, filed 8/14/80)

**WAC 106-116-701 Impounding procedures.** (1) Any vehicle parked upon the Central Washington University campus lands in violation of these regulations, including the motor vehicle and other traffic laws of the state of Washington and the traffic code of the city of Ellensburg, may be impounded and taken to such place for storage as the chief of ((campus)) public safety and police services selects.

(2) The expense of such impounding and storage shall be charged to the owner or operator of the vehicle and paid prior to the release of the vehicle.

(3) CWU and its employees shall not be liable for loss or damage of any kind resulting from such immobilization, impounding and storage.

AMENDATORY SECTION (Amending Order 19, filed 8/22/74)

**WAC 106-116-702 Inoperative vehicles.** Disabled or inoperative vehicles shall be removed from the campus within ~~((72))~~ seventy-two hours ~~((3))~~ three days. Vehicles which have been parked in excess of ~~((72))~~ seventy-two hours ~~((3))~~ three days and which appear to be inoperative or unmovable may be impounded and stored at the expense of the owner and/or operator.

AMENDATORY SECTION (Amending Order 63, filed 5/18/88)

**WAC 106-116-853 Definitions.** As used in WAC 106-116-850 through 106-116-859 "skateboard" means a device made of wood, plastic, metal, or components thereof, with wheels, ridden, as down ~~((and))~~ an incline, usually in a standing position. It may or may not be motorized.

AMENDATORY SECTION (Amending Order CWU AO 67, filed 10/31/91, effective 12/1/91)

**WAC 106-116-901 Bicycle parking and traffic regulations.** (1) The primary aim of the bicycle control program is safety, and this aim will be achieved by keeping bicycles out of buildings, away from building exits, and parking them off paths and sidewalks. Bicycles must never be parked in stairwells, hallways, or any place which will be a safety hazard or hinder exit from buildings.

(2) Bicycles must be parked in racks. At times, rack space may not be available and parking near the racks is permitted provided the parked bicycles do not interfere with pedestrian traffic.

(3) The following specific regulations must be observed while operating bicycles on campus:

(a) Do not ride bicycles inside buildings at any time.

(b) Do not lean or park bicycles near or against windows.

(c) Pedestrians have the right of way on all malls and sidewalk areas of the university. At all times and places of congested pedestrian traffic, the bicycle rider must go slowly and yield to pedestrians. A violation of this provision shall constitute a moving violation and shall be referred directly to the court of the judge of the Lower Kittitas County district court.

(d) Bicyclists must observe the 10 m.p.h. speed limits on malls and service drives.

(e) Bicyclists must ride in designated lanes where they exist.

(4) Impoundment policy:

(a) Bicycles parked on paths, sidewalks, in buildings, or near building exits may be impounded, except in areas adjacent to residence halls, or as otherwise permitted and designated by the director of housing as bike storage rooms. Bicycles left over 72 hours may be impounded.

(b) Impounded bicycles will be stored in a location determined by the chief of ~~((campus))~~ public safety and police services. Bicycles will be released at specific times and upon presentation of proof of ownership. Owners of impounded bicycles, if identifiable, will be notified immediately upon impoundment and must reclaim the bicycle within seven days.

(c) Abandoned, lost, or found bicycles that have been impounded shall be subject to sale in accordance with the laws of the state of Washington.

**WSR 94-07-002**  
**NOTICE OF PUBLIC MEETINGS**  
**MARINE EMPLOYEES' COMMISSION**

[Memorandum—March 1, 1994]

The May 1994 Marine Employees' Commission meeting will be held at 1:30 p.m. on Wednesday, May 18, 1994, in the North Conference Room, Pier 52, Colman Dock, Seattle, Washington. Please note that this date reflects a change in the previously published 1994 Marine Employees' Commission meeting schedule.

Any questions regarding the meeting may be directed to: Janis Lien, Evergreen Plaza Building, P.O. Box 40902, Olympia, WA 98504-0902, (206) 586-6354.

**WSR 94-07-004**  
**ATTORNEY GENERAL OPINION**  
**Cite as: AGO 1994 No. 2**

[February 16, 1994]

OFFICE OF MARINE SAFETY—OIL TANKERS—FEES—Authority of the Office of Marine Safety to acquire and operate a tugboat as part of an emergency response system, and to fund the program by assessing a fee

1. RCW 88.46.130 authorizes the Office of Marine Safety to establish an emergency response system to prevent oil spills in the Strait of Juan de Fuca. This includes the authority to acquire and operate a tugboat as part of the response system.
2. RCW 82.23B.020(2) imposes an oil spill administration tax. This tax is to be used, in part, to fund the costs of administration of chapter 88.46 RCW, which includes the Office of Marine Safety emergency response system. Nowhere has the Legislature delegated to the Office the authority to impose a fee and, since the Legislature has provided a funding source for the Office, the authority to impose a fee cannot be reasonably implied from other authority delegated to the office.

Requested by:

Barbara Herman, Administrator  
 Office of Marine Safety  
 711 State Avenue NE, MS 42407  
 Olympia, WA 98504-2407

**WSR 94-07-005**  
**RULES COORDINATOR**  
**BIG BEND**  
**COMMUNITY COLLEGE**  
 [Filed March 3, 1994, 9:48 a.m.]

In accordance with RCW 34.05.310(3) Ken Turner is appointed as the rules coordinator for Big Bend Community College. This change is effective March 16, 1994. Mr. Turner is replacing Mr. Sorenson who is retiring March 15, 1994.

The office and mailing address for the rules coordinator is: Vice-President for Administrative Services, Big Bend

Community College, 7662 Chanute Street, Moses Lake, WA 98837.

Gregory G. Fitch, Ph.D.  
 President

**WSR 94-07-006**  
**NOTICE OF PUBLIC MEETINGS**  
**BELLINGHAM TECHNICAL COLLEGE**

[Memorandum—March 3, 1994]

The regularly scheduled meeting of the board of trustees of Bellingham Technical College will be held on Thursday, March 17, 1994, 9-11 a.m., in the Bellingham Technical College Building G Conference Center A.

**WSR 94-07-014**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF AGRICULTURE**

(Red Raspberry Commission)

[Memorandum—March 1, 1994]

The Washington Red Raspberry Commission's 1994 meeting schedule has changed. The meeting originally scheduled for March 23 in Spokane, will now be held April 20 in Bellingham. The November 3 meeting is now scheduled to be held in Spokane.

**WSR 94-07-015**  
**NOTICE OF PUBLIC MEETINGS**  
**EASTERN WASHINGTON UNIVERSITY**

[Memorandum—March 7, 1994]

BOARD OF TRUSTEES

SPECIAL MEETING

March 7, 1994, 8:00 a.m.

Spokane Center, Second Floor Mall

Eastern Washington University strives to satisfy all requests for special access needs for persons with disabilities. Requests for such accommodation are welcome and may be made by calling president's office, 359-2371.

**WSR 94-07-016**  
**NOTICE OF PUBLIC MEETINGS**  
**SKAGIT VALLEY COLLEGE**

[Memorandum—March 7, 1994]

SPECIAL MEETING

BOARD OF TRUSTEES

COMMUNITY COLLEGE DISTRICT NO. 4

Skagit Valley College

2405 College Way

Mount Vernon, WA 98273

March 10, 1994, 10:00 a.m.

Cascade Room, Campus Center

There will be a special meeting of the board of trustees on Thursday, March 10, 1994, 10:00 a.m., in the Cascade Room of the Campus Center Building. This meeting is mainly for

a planning discussion. An executive session will be held if necessary. No formal board action will be taken.

Skagit Valley College will schedule meetings in locations that are free of mobility barriers, and interpreters for deaf individuals and brailled or taped information for blind individuals can be provided when adequate notice is given to the president's office at the college.

**WSR 94-07-017**  
**NOTICE OF PUBLIC MEETINGS**  
**HARDWOODS COMMISSION**  
[Memorandum—March 4, 1994]

There will be a meeting of the Washington State Hardwoods Commission on March 17, 1994, at 8:30 a.m. until completed at the Business Assistance Center, Olympia, Washington.

**WSR 94-07-028**  
**LOTTERY COMMISSION**  
[Filed March 8, 1994, 4:32 p.m.]

As required by WAC 315-04-180 (1)(c), announcement is hereby made that the lottery's instant ticket accounting system (ITAS) became fully operational on March 2, 1994. The effective date of those amendments and repealers which were filed with the Office of the Code Reviser as WSR 94-03-020 shall be March 2, 1994.

The rule-making order filed as WSR 94-03-020 stated that its effective date would be "concurrent with the full operation of the lottery's instant ticket accounting system, but not to be earlier than February 9, 1994." As stated, that date is March 2, 1994.

Evelyn P. Yenson  
Director

**WSR 94-07-032**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF AGRICULTURE**  
(Barley Commission)  
[Memorandum—March 7, 1994]

Our annual meeting date has been changed from June 9, 1994, to June 29-30, 1994. According to RCW 42.30.075 we are required to notify you of any meeting schedule changes at least twenty days prior to the rescheduled meeting date.

**WSR 94-07-034**  
**PROPOSED RULES**  
**COLUMBIA RIVER**  
**GORGE COMMISSION**  
[Filed March 9, 1994, 10:49 a.m.]

**Reviser's note:** The following material has not been adopted under the Administrative Procedure Act, chapter 34.05 RCW, but has been filed in the office of the code reviser and is published in the Register exactly as filed.

In the matter of adopting administrative rules relating to appeals from decisions under county ordinances.

**Hearing and Adoption of Rules:** The Columbia River Gorge Commission proposes to adopt rules relating to appeals from decisions under county ordinances, 350-60, at its regularly scheduled meeting on April 26, 1994, at 10:00 a.m., Waucoma Center Auditorium, 902 Wasco Avenue, Hood River, Oregon.

The chair of the commission will preside over and conduct the hearing.

**Adoption:** Rule 350-60, the commission is the proponent of these proposed rules.

No prior notice given.

**Summary of Rules:** The rules set forth the process in which an effected party may appeal to the Columbia River Gorge Commission a decision made by a county governing body implementing the Columbia River Gorge National Scenic Area Management Plan through county land use ordinances.

**Statement of Need:** The National Scenic Area Act contemplates the gorge commission shall act in an appellate role once land use ordinances have been adopted by counties in the gorge or, when the gorge commission has adopted such ordinances to implement the act; and the public needs a detailed process for appeals to the Columbia River Gorge Commission.

**Statutory Authority:** Authority to adopt the rules as proposed derives from the Scenic Area Act (16 U.S.C. § 544 et. seq. and the Columbia River Compact, Article I, Section a (4)(g), at ORS 196.150 and RCW 43.97.015. The proposed rule is necessary as a result of federal law, 16 U.S.C. § 544 et. seq. as well as state law.

**Documents Relied Upon:** The proposed rule is based on the Columbia River Gorge National Scenic Area Management Plan and the National Scenic Area Act (16 U.S.C. § 544 et. seq.). Copies of these documents are available at the Columbia River Gorge Commission office.

**Statement of Anticipated Effects:** The proposed rule provides an appeal process from decisions made by a county governing body in implementing the Management Plan for the Columbia River Gorge National Scenic Area Act through land use ordinances as required by the National Scenic Area Act.

**Fiscal Impact Statement:** The proposed rule will not have an adverse fiscal impact on the public or local government. The rule provides a process for appeals from decisions of a county governing body which will ensure an efficient review process consistent with the act.

**Availability of Rule:** The proposed rule is available on request from Jan Brending, Rules Coordinator, Columbia River Gorge Commission, 288 East Jewett Boulevard, P.O. Box 730, White Salmon, WA 98672, (509) 493-3323.

**Public Comment:** Interested persons may comment orally or in writing at the hearing. Written comment received at the commission's office by April 20, 1994, will also be considered. Comment may be made to Jan Brending, Rules Coordinator, Columbia River Gorge Commission, 288 East Jewett Boulevard, P.O. Box 730, White Salmon, WA 98672, (509) 493-3323.

MISCELLANEOUS

**COLUMBIA RIVER GORGE COMMISSION  
PROPOSED RULE  
Chapter 350  
Division 60  
Appeals From County Ordinances**

**350-60-000. Purpose.**

The purpose of this division is to define the process and standards used by the Columbia River Gorge Commission in hearing appeals from decisions relating to the implementation of the Columbia River Gorge National Scenic Area Act ("National Scenic Act" or "Act"). The rule applies to appeals from decisions under a county ordinance consistent with the Act.

**350-60-010. Authority.**

The National Scenic Act authorizes appeals to the Gorge Commission by a person or entity adversely affected by a final action or order of a county.

**350-60-020. Scope.**

Scope of Rules: All proceedings commenced by Notice of Intent to Appeal and Petition shall be governed by these rules.

Appeals commenced by a Notice of Appeal filed under the Final Interim Guidelines shall continue to be governed by Commission Rule 350-20 as adopted December 1, 1987, and the Final Interim Guidelines.

**350-60-030. Application.**

These rules are intended to promote the efficient review of land use decisions in accordance with the National Scenic Act while affording all interested persons reasonable notice and opportunity to intervene, reasonable time to prepare and submit their cases, and a full and fair hearing. The rules shall be interpreted to carry out these objectives and to promote justice.

**350-60-040. Definitions.**

In these rules, unless the context or subject matter requires otherwise:

- (1) "Applicant" means the person who requested that the governing body take an action which resulted in a land use decision.
- (2) "Commission" means the Columbia River Gorge Commission or any member thereof.
- (3) "Counties" means Multnomah, Hood River and Wasco Counties, Oregon; and Clark, Skamania and Klickitat Counties, Washington.
- (4) "Days" means calendar days.
- (5) "File" means to deliver to Commission offices by personal delivery or by mail, not by fax. To be considered filed, a document must be received at Commission offices by 5:00 p.m.
- (6) "Final decision": A decision is final when it is reduced to writing and bears the necessary signatures of the governing body decisionmaker(s).

(7) "Governing body" means a county governing body.

(8) "Land use decision" means a final decision by the governing body of a county in the National Scenic Area based on the National Scenic Act.

(9) "Notice" means the Notice of Intent to Appeal and Petition and refers to the document which must be filed with the Commission in order to begin a review proceeding.

(10) "Party" means the petitioner, the applicant if different from the petitioner, the governing body, and any person who intervenes.

(11) "Transmit" means to send with the United States Postal Service by first class mail or to deliver in person.

**350-60-050. Notice of Intent to Appeal and Petition.**

(1) Filing: The Notice of Intent to Appeal and Petition shall be filed with the Commission on or before the 30th day after the date the decision sought to be reviewed becomes final. A Notice filed thereafter shall not be deemed timely filed and the appeal shall be dismissed.

(2) Service of Notice of Intent to Appeal and Petition: The Notice of Intent to Appeal and Petition shall be filed with the Commission and served on the governing body, the governing body's legal counsel, and all persons identified in the Notice as required by subsection (3)(f) of this rule on or before the date the Notice of Intent to Appeal and Petition is required to be filed.

(3) Contents of Notice of Intent to Appeal and Petition: The Notice of Intent to Appeal and Petition shall be substantially in the form set forth in Exhibit 1 and shall contain:

(a) A caption which sets forth the name(s) of the person(s) filing the Notice, identifying the person(s) as petitioner(s), and the name of the governing body, identifying the governing body as respondent;

(b) Below the caption the heading "Notice of Intent to Appeal and Petition";

(c) The full title of the decision to be reviewed as it appears on the final decision;

(d) The date the decision to be reviewed became final;

(e) A concise description of the decision to be reviewed;

(f) The name, address and telephone number of each of the following:

(A) The Petitioner. If the petitioner is not represented by an attorney, the petitioner's name, address and telephone number shall be included. If an attorney represents the petitioner, the attorney's name, address and telephone number shall be substituted for that of the petitioner. If two or more petitioners are unrepresented by an attorney, one petitioner shall be designated as the lead petitioner.

(B) The governing body and the governing body's legal counsel;

(C) The applicant, if any (and if other than the petitioner). If an applicant was represented by an attorney before the governing body, the applicant's address and telephone number may be omitted and the name, address and telephone number of the applicant's attorney shall be included;

(D) Any other person to whom written notice of the land use decision was mailed as shown on the governing body's records. The telephone number may be omitted for any such person.

(g) A statement advising all persons, other than the governing body, that in order to participate in the review

proceeding a person must file a motion to intervene pursuant to 350-60-140.

(h) Proof of service upon all persons required to be named in the Notice. See Exhibit 1.

(4) Filing Fee and Deposit for Costs: A filing fee and deposit for costs may be charged by the Columbia River Gorge Commission.

### **350-60-060. Record.**

(1) Contents of Record: The record shall include the following:

(a) The final decision including findings of fact and conclusions of law;

(b) All transcripts, testimony and all exhibits, maps, documents or other written materials included as part of the record during the course of the governing body's proceeding;

(c) Minutes of the meetings conducted by the governing body as required by law. A verbatim transcript of audiotape recordings shall not be required, but if a transcript has been prepared, it shall be included.

(2) Transmittal of Record: The governing body shall within 30 days after service of the Notice on the governing body, transmit to the Commission the original or a certified copy, and two copies of the record of the proceeding under review. The governing body may, however, retain any large maps or documents which are difficult to duplicate, until the date of oral argument.

(3) Service of Record: Contemporaneously with transmittal, the governing body shall serve a copy of the record, exclusive of large maps and other documents which are difficult to duplicate, on the petitioner or the lead petitioner, if one is designated, and all other parties.

(4) Specifications of Record:

(a) The record shall:

(A) Be filed in a suitable folder; the cover shall bear the title of the case as it appears in the Notice, and the Commission's numerical designation for the case, and shall indicate the numerical designation given the land use decision by the governing body;

(B) Begin with a table of contents, listing each item contained therein, and the page of the record where the item begins (see Exhibit 2), and listing each large map or document retained by the governing body under subsection (2) of this rule;

(C) Be securely fastened;

(D) Have pages numbered consecutively, with the page number at the bottom right-hand corner of each page;

(E) Be arranged in inverse chronological order, with the most recent item on top.

(b) A record which does not conform to the preceding requirements shall not be accepted by the Commission.

### **350-60-070. Objections to the Record.**

(1) Before filing an objection to the record, a party shall attempt to resolve the matter with the governing body's legal counsel. If the governing body amends the record in response to an objection, the date the amendment is received by the Commission shall be considered the date the record is received for the purpose of computing time limits as required by these rules.

(2) An objection to the record shall be filed with the Commission within 10 days following service of the record on the person filing the objection. Objections may be made on the following grounds:

(a) The record does not include all materials included as part of the record during the proceedings before the governing body. The omitted item(s) shall be specified, as well as the basis for the claim that the item(s) are part of the record.

(b) The record contains material not included as part of the record during the proceedings before the governing body. The item(s) not included as part of the record during the proceedings before the governing body shall be specified, as well as the basis for the claim that the item(s) are not part of the record.

(c) The minutes do not accurately reflect the proceedings, or the transcripts of the meetings or hearings are incomplete.

(3) An objection on grounds that the minutes or transcripts are incomplete or inaccurate shall demonstrate with particularity how the minutes or transcripts are defective and shall explain with particularity why the defect is material. Upon such demonstration, the Commission shall require the governing body to produce additional evidence to prove the accuracy of the contested minutes or transcripts. If the evidence regarding contested minutes is in an audiotape recording, a transcript of the relevant portion shall be submitted.

(4) The Commission may conduct a telephone conference with the parties to consider any objections to the record.

(5) If an objection to the record is filed, the time limits for all further procedures under these rules shall be suspended. When the objection is resolved, the Commission shall issue a letter or order declaring the record settled and setting forth the schedule for subsequent events. Unless otherwise provided by the Commission, the date of the Commission's letter or order shall be deemed the date of receipt of the record for purposes of computing subsequent time limits.

### **350-60-080. Request for Review.**

(1) Filing and Service of Request: The Request for Review shall be filed with the Commission within 30 days after the date the record is received by the Commission. The Request shall also be served on the governing body and any party who has filed a motion to intervene. Failure to file a Request for Review within the time required by this section shall result in dismissal of the appeal.

(2) Specifications of Request: The Request for Review shall

(a) Begin with a table of contents;

(b) Not exceed 50 pages, exclusive of appendices, unless permission for a longer Request is given by the Commission. If a Request for Review exceeding the 50 page limit is filed without permission, the Commission shall notify the author, and a revised brief satisfying the 50 pages limit shall be filed within three (3) days of notification by the Commission.

(c) Have a blue cover page, stating the full title of the proceeding, and the names, addresses and telephone numbers of all parties unrepresented by attorney. If a party is represented by an attorney, the name, address and telephone

number of the attorney shall be substituted for the party. If there is more than one petitioner, the cover page shall specify the petitioner(s) filing the Request. An intervenor shall be designated as either petitioner or respondent.

(d) Be typewritten, in pica type, and double spaced;

(e) Be signed on the last page by the author.

(3) Contents of Request: The Request for Review shall

(a) State the facts that establish petitioner's standing;

(b) Present a clear and concise statement of the case, in the following order, with separate section headings:

(A) The nature of the land use decision and the relief sought by petitioner;

(B) A summary of the arguments appearing under the assignments of error in the body of the Request;

(C) A summary of the material facts. The summary shall be in narrative form with citations to the pages of the record where the facts alleged can be found.

(c) State why the challenged decision is a land use decision subject to the Commission's jurisdiction;

(d) Set forth each assignment of error under a separate heading. Where several assignments of error present essentially the same legal questions, the argument in support of those assignments of error shall be combined;

(e) Contain a copy of the challenged decision, including any adopted findings of fact and conclusions of law;

(f) Contain a copy of any management plan provisions, comprehensive plan provision, ordinance or other provision of local law cited in the Request, unless the provision is quoted verbatim in the Request.

### **350-60-090. Special Request Review Process.**

(1) Where the petitioner contends the land use decision eliminates all economic or beneficial use of the property, the petitioner must meet the requirements for request for review in Rule 350-60-080 and the requirements for Special Request for Review as follows:

(a) Set out the pertinent portions of the ordinance that apply;

(b) Describe how the ordinance impacts the use of the property;

(c) Attach copies of any documents (maps, deeds, easements, etc.) that are relevant; and

(d) Explain why the requested use must be allowed to provide economic or beneficial use of the property.

(2) All other parties shall have the opportunity to specifically respond to the petitioner's request under this section in their briefs and the development review officer designated by the Executive Director shall also respond..

(3) The Commission, in its "Final Opinion and Order", shall

(a) Address the subject of economic or beneficial use in its findings of fact and conclusions.

(b) Specify the factual and/or legal principles relied on in support of the decision.

(c) Where appropriate, propose options for use for the property owner, or other options available to the petitioner consistent with the ordinance.

(d) Where the Commission finds that enforcement of the land use ordinance will deprive the landowner of all economic or beneficial use of the property, the Commission shall remand the matter to the county for the county to allow

a use as provided for by the order of the Commission. The economic or beneficial use allowed shall be the use that on balance best protects the affected resources. This section applies:

(A) if the Forest Service or the federal government does not provide just compensation for a Special Management Area designation it made; or

(B) for a General Management Area designation made by the Gorge Commission.

**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.

### **350-60-100. Respondent's Brief.**

(1) Filing and Service of Brief: Respondent's brief shall be filed within 50 days after the date the record is received by the Commission. A copy of the respondent's brief shall be served on the petitioner or lead petitioner and all intervenors.

(2) Specifications of Brief: Respondent's brief shall conform to the specifications of the Request for Review, except that the brief shall have a red cover. If there is more than one respondent, the cover page shall specify which respondent is filing the brief.

(3) Contents of Brief:

(a) The respondent's brief shall follow the form prescribed for the Request for Review. The respondent shall specifically accept the petitioner's statement of the case or shall cite any alleged omissions or inaccuracies therein, and may state additional relevant facts or other matters. The statement shall be in narrative form with citations to the pages of the record where support for the facts alleged can be found.

(b) Respondent shall accept or challenge petitioner's statement of the Commission's jurisdiction and petitioner's statement of standing. The basis for any challenge shall be stated. If respondent contends that the facts alleged by petitioner in support of standing are not true, respondent shall specify which allegations are contested.

### **350-60-110. Reply Brief.**

A reply brief may not be filed.

### **350-60-120. Oral Argument.**

(1) The hearing before the Commission shall be on the record submitted by the county, as long as the county has based its decision upon a record made at an adjudicative hearing open to participation by persons adversely affected or aggrieved.

(2) If the county did not base its decision upon a record made in an adjudicated hearing open to participation by persons adversely affected or aggrieved, then anyone adversely affected or aggrieved may participate in a hearing before the Commission.

(3) Only parties who have submitted briefs shall be allowed to present oral argument to the Commission.

(4) If a party waives the right to present oral argument, the Commission shall consider the case based on that party's

brief and the brief and oral arguments presented by other parties. The parties may, with consent of the Commission, stipulate to submit a case to the Commission on briefs without oral argument.

(5) The Commission shall inform the parties of the time and place of oral argument. Unless the Commission otherwise orders, petitioner(s) shall be allowed 30 minutes for oral argument, which may be divided between the initial presentation and rebuttal. Multiple petitioners shall share the thirty minutes for argument. The respondent(s) shall be allowed 30 minutes to respond. The Commission shall tape record all arguments, but any party may also arrange at its own expense to record the argument in the same or other manner.

### **350-60-130. Procedural Orders.**

The chair of the Commission or presiding officer designated by the chair shall issue procedural orders on behalf of the Commission relating to case setting, requests for intervention, preliminary motions, and other procedural matters.

### **350-60-140. Appearance of Fairness; Ex Parte Contacts**

(1) Members of the Commission shall comply with the appearance of fairness in appeals and proceedings under these rules.

(2) Members of the Commission shall not have ex parte contact with applicants or interested parties seeking land use permit, or opponents to the permit, while the application or appeal thereto is pending under a land use ordinance for the Scenic Area.

(3) Members of the Commission shall place on the record of the appeal or proceedings under these rules any ex parte contact set forth in subsection (2). The Chair or presiding officer shall notify all parties to the appeal or proceeding. The Chair or presiding officer shall consider the position of the parties and, after review of the matter, make a recommendation to the Commission to ensure the appearance of fairness is maintained. The member of the Commission who was the subject of the ex parte contact may voluntarily step down from hearing the matter. The Commission may, in the alternative, request the member of the Commission step down from hearing the matter.

### **350-60-150. Evidentiary Hearings.**

(1) Grounds for Hearing: The Commission may, upon written motion, conduct an evidentiary hearing in the case of disputed allegations in the parties' briefs concerning standing, ex parte contacts or other procedural irregularities not shown in the record and which, if proved, would warrant reversal or remand of the decision. An evidentiary hearing may also be held upon motion or at the direction of the Commission to consider disputes regarding the content of the record or requests for stays.

(2) Motions for Hearings: A motion for an evidentiary hearing shall be filed with the Commission and served on all parties 60 days in advance of oral argument. The motion shall contain a statement explaining with particularity what

facts the moving party will present at the hearing and how those facts will affect the outcome of the review proceeding. Whenever possible such facts shall be presented by affidavit with the motion.

(3) Conduct of hearing:

(a) Insofar as the Commission finds it practical, the hearing shall be conducted in the following order:

(A) The moving party shall present its evidence including that of any witnesses;

(B) The other party(ies) shall have the opportunity to present evidence disputing that of the moving party;

(C) The moving party shall present rebuttal evidence;

(b) Any witness is subject to cross examination by opposing parties;

(c) Any member of the Commission may question any witness;

(d) The burden of presenting evidence in support of a fact or proposition rests on the proponent of the fact or proposition;

(e) The Commission may continue a hearing, and may set time limits for any hearing;

(f) Exhibits shall be marked to identify the party offering the exhibits. The exhibits shall be preserved by the Commission as part of the record.

(4) Evidentiary Rules:

(a) Evidence of a type commonly relied upon reasonably prudent person in conduct of their serious affairs shall be admissible.

(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) All evidence not objected to, shall be received by the Commission, subject to the Commission's power to exclude irrelevant, immaterial or unduly repetitious matter.

(d) Evidence objected to may be received by the Commission. Rulings on the admissibility of such evidence, if not made at the hearing, shall be made at or before the time a final order is issued.

(5) Prehearing Conference: The Commission, on its own motion or at the request of any party, may call a prehearing conference to consider:

(a) Simplification of the issues;

(b) The possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;

(c) Limitation of the number of witnesses;

(d) The form and substance of any prehearing order;

(e) Such other matters as may aid in the disposition of the appeal.

(6) Proposed Prehearing Order: The Commission with or without a prehearing conference, may require that the parties prepare and sign a proposed prehearing order to be filed with the Commission on or before a date specified by the Commission. The order shall contain:

(a) A statement of contentions of law of each party;

(b) A concise statement of all contentions of fact to be proved by each party;

(c) A statement of all agreed facts;

(d) A list of witnesses and a summary of their testimony;

(e) A list of exhibits and a statement of the contents of each;

(f) Such other matters as the Commission may require in order to expedite the hearing and appeal.

(7) **Effect on Time Limits:** The filing of a motion for evidentiary hearing shall suspend the time limits for all other events in the review proceedings, including the issuance of the Commission's final order. If the Commission grants an evidentiary hearing, the time limits for other events shall remain suspended until the close of the hearing. Unless the parties agree otherwise, the Commission shall schedule any evidentiary hearing after the order granting the motion for evidentiary hearing is issued. If the Commission denies a motion for an evidentiary hearing, the time for all other events will begin to run on the date the Commission issues its order denying the motion, or on such other date as is specified in that order.

(8) **Depositions:** On petition of any party at least 14 days before an evidentiary hearing, the Commission may order testimony of any witness to be taken by deposition in the same manner prescribed for depositions in civil actions. Depositions may also be taken by the use of audio or audio visual recordings. The petition for deposition shall set forth:

- (a) The name and address of the witness whose testimony is desired;
- (b) A showing of relevance and materiality of the testimony;
- (c) A request for an order that the testimony of the witness be taken.

(9) **Subpoenas:** If the Commission orders an evidentiary hearing, the Commission shall issue subpoenas to any party to the appeal upon written request and upon a showing that the witness or the documents to be subpoenaed will provide relevant evidence. Subpoenas may also be issued under the signature of the attorney of record of a party. Witnesses appearing pursuant to subpoena, other than parties or employees of the Commission, shall be tendered fees and mileage as prescribed by law for witnesses in civil actions. The party requesting the subpoena shall be responsible for service of the subpoena and tendering the witness and mileage fees to the witness.

#### **350-60-160. Intervention.**

(1) **Standing to Intervene:** The applicant and any person who appeared before the county may intervene in a review proceeding before the Commission. Status as an intervenor shall be recognized when a motion to intervene is filed.

(2) If the county review process is not open to persons adversely affected or aggrieved, any person adversely affected or aggrieved may intervene in a review proceeding before the Commission.

(3) **Motion to Intervene:** In the interests of promoting timely resolution of appeals, a motion to intervene shall be filed as soon as is practicable after the Notice of Intent to Appeal and Petition is filed pursuant to 350-60-050. The motion to intervene (exhibit 3) shall:

- (a) State whether the party is intervening on the side of the petitioner or the respondent;
- (b) State the facts which show the party is entitled to intervene, supporting the statement with affidavits, citations to the record or other proof;
- (c) Be served upon the Commission and all parties.
- (4) **Intervenor's Brief:**
  - (a) If intervention is sought as a petitioner, the brief shall be filed within the time limit for filing the Request for

Review, and shall satisfy the requirements for a Request for Review in 350-60-080.

(b) If intervention is sought as a respondent, the brief shall be filed within the time for filing a respondent's brief and shall satisfy the requirements for a respondent's brief in 350-60-100.

(5) Objections to a motion to intervene shall be filed within 7 days of the motion.

#### **350-60-170. Amicus Participation.**

(1) A person or organization may appear as amicus only by permission of the Commission on written motion. The motion shall set forth the specific interest of the movant and state reasons why a review of relevant issues would be significantly aided by participation of the amicus. A copy of the motion shall be served on all parties to the proceeding.

(2) Appearance as amicus shall be by brief only, unless the Commission specifically requests oral argument. An amicus brief shall be subject to the same rules as those governing briefs of parties to the appeal and shall be filed within the time required for filing respondent's brief. An amicus brief shall be submitted at the time the respondent's brief is due unless a later date is authorized by the Commission. No filing fee is required. An amicus brief shall have a green cover.

#### **350-60-180. Consolidation.**

The Commission, at the request of any party or on its own motion, may consolidate two or more proceedings, provided the proceedings seek review of the same or closely related land use decision(s).

#### **350-60-190. Extensions of Time.**

(1) In no event shall the time limit for the filing of the Notice of Intent to Appeal and Petition be extended.

(2) In no event shall the time limit for the filing of the Request for Review be extended without the written consent of all parties.

(3) All other time limits may be extended upon written consent of all parties, the Commission's motion or motion of a party.

(4) A motion for extension of time shall state the reasons for granting the extension and must be filed with the Commission within the time required for performance of the act for which an extension of time is requested.

(5) Any agreement by the parties for an extension of time shall automatically extend the time for issuance of the Commission's final order by an amount of time equal to the extension agreed to by the parties.

(6) In the event the Commission extends the deadline for issuance of its final order without consent of the parties, it shall enter the specific findings to explain such action.

#### **350-60-200. Stays.**

(1) A motion for a stay of a land use decision shall include:

- (a) A statement setting forth movant's right to standing to appeal the decision;

(b) A statement explaining why the challenged decision is subject to the Commission's jurisdiction;

(c) A statement of facts and reasons for issuing a stay, demonstrating a claim of error in the decision and specifying how the movant will suffer irreparable harm if a stay is not granted;

(d) A suggested expedited briefing schedule;

(e) A copy of the decision under review and copies of all ordinances, resolutions, plans or other documents necessary to show the standards applicable to the decision under review.

(2) A copy of a motion for stay shall be served on the governing body and the applicant for the land use decision, if any, on the same day the motion is filed with the Commission.

(3) Unless otherwise ordered by the Commission, a response to a motion for a stay of a land use decision shall be filed within 10 days after the motion is filed and shall set forth all matters in opposition to the motion and any facts showing any adverse effect, including an estimate of any monetary damages that will accrue if a stay is granted.

(4) The Commission shall base its decision on the stay, including the right to a stay, or conditions of any stay order, upon evidence presented. Evidence may be attached to the motion in the form of affidavits, documents or other materials, or presented at an evidentiary hearing which may be convened at the discretion of the Commission and follow the process in 350-60-130.

### **350-60-210. Final Order of Commission.**

(1) An Order of the Commission is final when the cover page of the order containing the caption of the appeal:

(a) States "Final Opinion and Order";

(b) Contains findings of fact and conclusions of law or incorporates them from the record below.

(c) Addresses the Special Request for Review Process under Rule 350-60-090, where applicable.

(d) Indicates whether the decision being reviewed is dismissed, affirmed, reversed or remanded;

(e) Contains the date of the final order; and

(f) Is date stamped by the Commission.

(2) The order shall be mailed to all parties.

(3) When an order of the Commission becomes final it shall be made available to interested members of the public. The Commission may charge a reasonable fee for copies of its final orders or other orders furnished to members of the public.

(4) Notwithstanding subsections (1)(a) and (b) of this section, an order granting a motion to dismiss an appeal is a final order.

### **350-60-220. Reversal or Remand of Land Use Decisions.**

(1) The Commission shall reverse or remand a land use decision for further proceedings when:

(a) The governing body exceeded its jurisdiction;

(b) The decision is unconstitutional;

(c) The decision violates a provision of applicable law and is prohibited as a matter of law; or

(d) The decision was clearly erroneous or arbitrary and capricious.

(e) The findings are insufficient to support the decision;

(f) The decision is not supported by substantial evidence in the whole record;

(g) The decision is flawed by procedural errors that prejudice the substantial rights of the petitioner(s);

(h) The decision improperly construes the applicable law; or

(i) A remand is required pursuant to 360-60-090 (2)(d).

### **350-60-230. Reconsideration.**

(1) Reconsideration is only permitted as follows:

(a) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested and serving it on the Gorge Commission and all parties to the appeal.

(A) No petition for reconsideration may stay the effectiveness of an order.

(B) If a petition for reconsideration is timely filed, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within thirty days from the date the petition is filed, the agency does not either:

(i) Dispose of the petition; or

(ii) serve the parties with a written notice specifying the date by which it will act on the petition.

(b) Any party to the appeal may file a response within ten days of service of the petition.

(c) The following factors must be present for reconsideration:

(A) An error has been made in the decision; and,

(B) New information is now available concerning the error which through due diligence could not have been acquired earlier.

(d) Unless the petition for reconsideration is deemed denied under subsection (a) above, the petition shall be disposed of by the Commissioners who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further consideration without oral argument. Granting the petition for reconsideration shall require approval of two-thirds of the Commissioners who made the original decision. Once granted, subsequent dissolution or modification of the original decision/order requires a majority of the Commissioners who made the original decision.

(e) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (b) of this section is not subject to judicial review.

EXHIBIT I  
(350-60-050)

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

Jane Clark, )
Petitioner, )
vs. ) CRGC No.
Tahoma County, )
Respondent. )

EXHIBIT 2
(350-60-060)

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OF RECORD

ITEM PAGE
1. Certified cover sheet for County record of PC file Nos. 7517 PA: Application of QFC Inc. for a permit for a subdivision . . . . . 1
2. Record of County action on appeal of QFC Inc. from Hearings Officer's decision denying QFC Inc. proposal . . . . . 2
3. Record of County action on proposed findings to grant appeal of QFC Inc. and approved QFC proposal . . . . . 3
4. Letter from a County to QFC Inc. transmitting a form letter mailed to parties of interest concerning the QFC Inc. application and transmitting a copy of a notice published in the Oregonian on Sunday, June 7 and Wednesday, June 11, 1986 . . . 4
5. Notice of final decision on QFC Inc. appeal and notice published in the Oregonian on Sunday, June 7, 1986 and Wednesday, June 11, 1986 . . . . . 5
6. Form letter from County to interested parties, dated June 6, 1986, transmitting a copy of permit No. 158347, and a list of persons to whom form letter was mailed. . . . . 6
7. Letter from County to Oregon Department of Transportation dated June 5, 1986, transmitting a copy of Permit No. 158573 . . . . . 13
8. Letter from County to QFC Inc., dated June 5, 1986, transmitting a copy of Permit No. 158573 . . . . . 14
9. Letter from County to QFC Inc. dated June 5, 1986, transmitting a copy of Permit No. 158573 . . . . . 15
10. Permit No. 158573, adopted on June 4, 1986 . . . 16

EXHIBIT 3
(350-60-160)

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

Jane Clark, )
Petitioner, )
vs. ) CRGC No.
Tahoma County, )
Respondent. )

MOTION TO INTERVENE

I.

John Smith moves to intervene on the side of (a) Petitioner or (b) Respondent [INDICATE WHICH] in the above-captioned appeal. Mr. Smith's (or his attorney's) address and phone number are as follows: [INDICATE ADDRESS AND PHONE NUMBER].

II.

The facts establishing movant's right to intervene are as follows: [SET FORTH STATEMENT OF FACTS].

NOTICE OF INTENT TO APPEAL AND PETITION

I.

Notice is hereby given that petitioner intends to appeal that land use decision of respondent entitled [INDICATE TITLE OF LAND USE DECISION], which became final on [INDICATE DATE] and which involves [SET FORTH A BRIEF STATEMENT OF THE NATURE OF THE DECISION]

II.

Petitioner, Jane Clark, is represented by: [INDICATE NAME, ADDRESS AND TELEPHONE NUMBER OF ATTORNEY].
Respondent, Tahoma County, has as its mailing address and telephone number: [INDICATE MAILING ADDRESS AND TELEPHONE NUMBER] and has, as its legal counsel: [INDICATE NAME, ADDRESS AND TELEPHONE NUMBER].

III.

Applicant, John Developer, was represented in the proceeding below by: [INDICATE NAME, ADDRESS AND TELEPHONE NUMBER OF ATTORNEY].
Other persons mailed written notice of the land use decision by Tahoma County, as indicated by its records in this matter, include: [INDICATE NAMES, ADDRESSES AND TELEPHONE NUMBER OF ALL PERSONS WHOM THE GOVERNING BODY'S RECORDS INDICATE WERE MAILED WRITTEN NOTICE OF THE LAND USE DECISION. THE TELEPHONE NUMBERS OF SUCH PERSONS MAY BE OMITTED].

NOTICE:
Anyone designated in paragraph III of this Notice who desires to participate as a party in this case before the Columbia River Gorge Commission must file with the Commission a Motion to Intervene in this proceeding as required by CR 350-60-140.

\_\_\_\_\_  
Petitioner (each petitioner must sign)

or

\_\_\_\_\_  
Attorney for Petitioner(s)

CERTIFICATE OF SERVICE

I hereby certify that on [INDICATE DATE], I served a true and correct copy of this Notice of Intent to Appeal and Petition on all persons listed in paragraphs II and III of this Notice pursuant to CR 350-60-050(2) by (a) first class mail or (b) personal delivery. [INDICATE WHICH]

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

MISCELLANEOUS

III. [OPTIONAL]

In support of this motion, John Smith relies on the attached affidavit, Memorandum of Law or both.

|      |                                                              |
|------|--------------------------------------------------------------|
| Date | John Smith<br>or<br>Barbara Neil, Attorney for<br>John Smith |
|------|--------------------------------------------------------------|

[Add Certificates of Filing and Service on separate page. See forms in Exhibits 4 and 5.]

EXHIBIT 4

CERTIFICATE OF FILING  
[For Document Other Than  
Notice of Intent to Appeal]

I hereby certify that on [INDICATE DATE], I filed the original of this [IDENTIFY DOCUMENT], together with [INDICATE NUMBER OF COPIES] copies, with the Columbia River Gorge Commission, 288 E. Jewett Blvd., P.O. Box 730, White Salmon, WA 98672, by (a) first class mail or (b) personal delivery [INDICATE WHICH].

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

EXHIBIT 5

CERTIFICATE OF SERVICE  
[For Document Other Than  
Notice of Intent to Appeal]

I hereby certify that on [INDICATE DATE], I served a true and correct copy of this [IDENTIFY DOCUMENT] by (a) first class mail or (b) personal delivery [INDICATE WHICH] on the following persons: [LIST NAME AND ADDRESS OF EACH PARTY OR THE PARTY'S ATTORNEY].

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

Reviser's note: The brackets and enclosed material in the text of 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 94-07-039**  
**NOTICE OF PUBLIC MEETINGS**  
**OFFICE OF**  
**MARINE SAFETY**

[Memorandum—March 9, 1994]

The following are the meetings scheduled for the Regional Marine Safety Committees:

Southern Puget Sound Regional Marine  
Safety Committee  
Thursday, April 7, 1994  
8:00 a.m.  
World Trade Center, Port of Tacoma

3600 Port of Tacoma Road  
Tacoma, WA

Grays Harbor/Pacific Coast Regional Marine  
Safety Committee  
Tuesday, April 19, 1994  
11:30 a.m.  
Port of Grays Harbor  
Port Commission Room  
111 Wooding Street  
Aberdeen, WA

Oregon/Washington Oil Spill and Marine  
Safety Committee  
Wednesday, April 27, 1994  
10:00 a.m.  
Two World Trade Center  
Mezzanine Level Classroom  
26 S.W. Salmon Street  
Portland, OR

Northern Puget Sound Regional Marine  
Safety Committee  
Tuesday, May 10, 1994  
For time and location contact  
Geri Nelson, (206) 664-9128

For more information about these meetings, please contact  
Jeff Fishel at (206) 664-9124.

**WSR 94-07-046**  
**NOTICE OF PUBLIC MEETINGS**  
**OLYMPIC COLLEGE**  
[Memorandum—March 8, 1994]

The board of trustees has changed the date of the regular board meeting that was scheduled to be held on March 22, 1994, 7:30 p.m. in the Board Room at Olympic College, District No. 3, Bremerton, Washington to March 29, 1994, 7:30 p.m.

**WSR 94-07-056**  
**NOTICE OF PUBLIC MEETINGS**  
**EDMONDS COMMUNITY COLLEGE**  
[Memorandum—March 11, 1994]

Board of Trustees Meeting  
March 17, 1994  
Sno-King Room 103  
(12:00 - 5:20)

Next meeting of the board of trustees on April 21, 1994, at 4:30 p.m.

The facilities for this meeting are free of mobility barriers and interpreters for deaf individuals and braille or taped information for blind individuals will be provided upon request when adequate notice is given.

MISCELLANEOUS

WSR 94-07-057
NOTICE OF PUBLIC MEETINGS
LEGAL FOUNDATION
OF WASHINGTON
[Memorandum—March 10, 1994]

The following are meeting dates scheduled for 1994 by the board of trustees of the Legal Foundation of Washington for publication by the code reviser as required by the Washington Supreme Court from November 18 to November 5, 1994. The location of the meeting has also changed from the Logan Building to Two Union Square.

- Board Meeting Seattle Sheraton Hotel
Friday, January 28, 1994 1400 Sixth Avenue
8 a.m. Seattle, WA
Planning Meeting Heller, Ehrman, White
Friday and Saturday and McAuliffe
February 25 and 26 701 Fifth Avenue
Friday 8:30 a.m. - 4 p.m. Suite 6100
Saturday 8:30 a.m. - 12 noon Seattle, WA
Board Meeting Olympia, Washington
Thursday, May 19 at 10 a.m.
Board Meeting Logan Building
Thursday, September 8 3rd Floor Conference
8 a.m. - 3 p.m. Room
500 Union Street
Seattle, WA
Board/Grants Meeting Bogle and Gates
Saturday, November 5 Two Union Square
8 a.m. - 5 p.m. 601 Union Street
51st Floor
Seattle, WA

WSR 94-07-058
RULES OF COURT
STATE SUPREME COURT
[March 10, 1994]

IN THE MATTER OF THE
ADOPTION OF THE AMENDMENTS
TO NEW JISCR 18, CrR 2.1
AND CrRLJ 2.1

ORDER
NO. 25700-A-

The Judicial Information System Committee (JIS) having recommended the adoption of the proposed amendments to New JISCR 18, CrR 2.1 and CrRLJ 2.1, and the Court having determined that the proposed amendments will aid in the prompt and orderly administration of justice and further determined that an emergency exists which necessitates an early adoption:

Now, therefore, it is hereby
ORDERED:

- (a) That the amendments as attached hereto are adopted.
(b) That pursuant to the emergency provisions of GR 9(i), the amendments will be published expeditiously in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 10th day of March, 1994.

James A. Andersen, C.J.

Robert F. Utter

Charles Z. Smith

Robert F. Brachtenbach

Guy, J.

J. M. Dolliver

Charles A. Johnson

Durham, J.

Barbara A. Madsen

JISCR 18
[New Rule]

ADDING RECORDS TO THE JUDICIAL INFORMATION SYSTEM

In all courts adding records to the Judicial Information System, for all persons on whom a case is filed on juvenile or adult criminal offenses, or infractions, a record will be created in the person data base according to rules and procedures adopted by the Judicial Information System Committee.

CrR 2.1

THE INDICTMENT AND THE INFORMATION

(a) Use of Indictment or Information. The initial pleading by the State shall be an indictment or an information in all criminal proceedings filed by the prosecuting attorney.

(b) (1) Nature and Contents. The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney. Allegations made in one count may be incorporated by reference in another count. It may be alleged that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice.

(2) Contents. The indictment or the information shall contain or have attached to it the following information when filed with the court:

(i) the name, address, date of birth, and sex of the defendant;

(ii) all known personal identification numbers for the defendant, including the Washington driver's operating license (DOL) number, the state criminal identification (SID) number, the state criminal process control number (PCN), the JUVIS control number, and the Washington Department of Corrections (DOC) number.

(e) (b) Surplusage. The court on motion of the defendant may strike surplusage from the indictment or information.

(d) (c) Bill of Particulars. The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within 10 days after arraignment or at such later time as the court may permit.

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(e) **(d) Amendment.** The court may permit any information or bill of particulars to be amended at any time before verdict or finding if substantial rights of the defendant are not prejudiced.

(f) **(e) Defendant's Criminal History.** Upon the filing of an indictment or information charging a felony, the prosecuting attorney shall request a copy of the defendant's criminal history, as defined in RCW 9.94A.030, from the Washington State Patrol Identification and Criminal History Section.

CRIMINAL RULE FOR COURTS OF LIMITED JURISDICTION (CrRLJ) 2.1

COMPLAINT—CITATION AND NOTICE

(a) **Complaint**

(1) *Initiation.* Except as otherwise provided in this rule, all criminal proceedings shall be initiated by a complaint.

(2) *Nature and Contents.* The complaint shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting authority. Allegations made in one count may be incorporated by reference in another count. It may be alleged that the means by which the defendant committed the offense are unknown or that he or she committed it by one or more specified means. The complaint shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the complaint or for reversal of a conviction if the error or omission did not mislead the defendant to his or her prejudice.

(3) *Contents.* The complaint shall contain or have attached to it the following information when filed with the court;

(i) the name, address, date of birth, and sex of the defendant;

(ii) all known personal identification numbers for the defendant, including the Washington driver's license (DOL) number, the state criminal identification (SID) number, the state criminal process control number (PCN), the JUVIS control number, and the Washington Department of Corrections (DOC) number;

(b) **Citation and Notice To Appear.**

(1) *Issuance.* Whenever a person is arrested or could have been arrested pursuant to statute for a violation of law which is punishable as a misdemeanor or gross misdemeanor the arresting officer, or any other authorized peace officer, may serve upon the person a citation and notice to appear in court.

(2) *Release Factors.* In determining whether to release the person or to hold him or her in custody, the peace officer shall consider the following factors:

(i) whether the person has identified himself or herself satisfactorily;

(ii) whether detention appears reasonably necessary to prevent imminent bodily harm to himself, herself, or another, or injury to property, or breach of the peace;

(iii) whether the person has ties to the community reasonably sufficient to assure his or her appearance or whether there is substantial likelihood that he or she will refuse to respond to the citation and notice; and

(iv) whether the person previously has failed to appear in response to a citation and notice issued pursuant to this rule or to other lawful process.

(3) *Contents.* The citation and notice to appear shall include or have attached to it:

(i) the name of the court and a space for the courts docket, case or file number;

(ii) the persons name, address, date of birth, and sex the name, address, date of birth, and sex of the defendant; and all known personal identification numbers for the defendant, including the Washington driver's license (DOL) number, the state criminal identification (SID) number, the state criminal process control number (PCN), the JUVIS control number, and the Washington Department of Corrections (DOC) number;

(iii) the date, time, place, numerical code section, description of the offense charged, the date on which the citation was issued, and the name of the citing officer;

(iv) the time and place the person is to appear in court, which may not exceed 20 days after the date of the citation and notice, but which need not be a time certain;

(v) a space for the person to sign a promise to appear.

(4) *Release.* To secure his or her release, the person must give his or her written promise to appear in court as required by the citation and notice served.

(5) *Certificate.* The citation and notice shall contain a form of certificate by the citing official that he or she certifies, under penalties of perjury, as provided by RCW 9A.72.085, and any law amendatory thereto, that he or she has probable cause to believe the person committed the offense charged contrary to law. The certificate need not be made before a magistrate or any other person.

(6) *Initiation.* When signed by the citing officer and filed with a court of competent jurisdiction, the citation and notice shall be deemed a lawful complaint for the purpose of initiating prosecution of the offense charged therein.

**Reviser's note:** The brackets and enclosed material in the text of 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:** 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.

WSR 94-07-065

DEPARTMENT OF CORRECTIONS

[Filed March 14, 1994, 2:40 p.m.]

**Reviser's note:** The following material has *not* been adopted under the Administrative Procedure Act, chapter 34.05 RCW, but has been filed in the office of the code reviser and is published in the Register exactly as filed.

The following Department of Corrections rules, WAC 137-56-010, 137-56-015, 137-56-030, 137-56-040, 137-56-050, 137-56-060, 137-56-070, 137-56-080, 137-56-090, 137-56-095, 137-56-100, 137-56-110, 137-56-120, 137-56-140, 137-56-150, 137-56-160, 137-56-170, 137-56-175, 137-56-180, 137-56-200, 137-56-210, 137-56-220, 137-56-230, 137-56-240, and 137-56-250 are submitted for publication in the

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Register and the Washington Administrative Code. WAC 137-56-190 is submitted for repeal. Pertinent information is as follows:

Amended rules, WAC 137-56-010 through 137-56-250, were adopted on March 8, 1994.

The effective date of these amended rules and repeal of WAC 137-56-190 is May 1, 1994.

I certify pursuant to RCW 34.05.030(c) that WAC 137-56-010 through 137-56-250 are exempt from the Administrative Procedure Act.

The purpose is to establish guidelines for departmental policies and rules governing the work training release program.

Chase Riveland  
Secretary

AMENDATORY SECTION (Amending Order 86-02, filed 2/21/86)

**WAC 137-56-010 Definitions.** (1) "Secretary" is the secretary of the department of corrections or his/her designee.

(2) "Director" is the director, division of community services, department of corrections.

(3) "Assistant director" is the assistant director, division of community ~~(services)~~ corrections, department of corrections or his/her designee and is the staff member assigned by the director to administer and supervise the work/training release programs in a specific geographic area.

~~(4) ("Community corrections regional administrator" is the staff member assigned by the assistant director to administer and supervise the work/training release programs in a specific geographic area.~~

~~(5))~~ (5) "Department" is the department of corrections.

~~((6))~~ (6) "Work/training release facility supervisor" is a staff member assigned by the community corrections regional administrator to administer and supervise a specific work/training release facility and includes his/her designee.

~~((7))~~ (7) "Work/training release ~~(counselor)~~ community corrections officer" is a staff member assigned by the work/training release facility supervisor to supervise and counsel a caseload of work/training release ~~(inmate or)~~ residents at a specific work/training release facility.

~~((8))~~ (8) "Contract staff" is the staff member(s) of an agency under contract to the department of corrections to provide housing and ~~(supervision)~~ monitoring for work/training release ~~(inmate or)~~ residents.

~~((9))~~ (9) "Work/training release coordinator" is a staff member assigned by the superintendent of an adult correctional institution to act as liaison between the institution and work/training release facility personnel.

~~((10))~~ (10) "Work/training release ~~(inmate or)~~ resident" is ~~(an inmate of a major adult correctional institution)~~ any offender committed to or transferred to the department's custody pursuant to a valid criminal conviction who has been approved by the department for placement in a designated work/training release facility (under a work/training release plan, or an offender recommended for placement by the courts or the board of prison terms and paroles in a work/training release facility).

~~((11))~~ (11) "Sponsor-escort" is a responsible citizen assigned to escort and ~~(supervise an inmate or)~~ monitor a

resident during official and social activities outside of the work/training release facility.

~~((12))~~ (12) "Work/training release facility" is an ~~(institution or other)~~ establishment approved for housing and ~~(supervision)~~ monitoring of work/training release ~~(inmate or)~~ residents during the ~~(inmate's or)~~ resident's stay in a work/training release program.

~~((13))~~ (13) "One working day" is a nine-hour day, 8:00 a.m. to 5:00 p.m. excluding weekends and holidays.

AMENDATORY SECTION (Amending Order 86-04, filed 3/3/86)

**WAC 137-56-015 Disposition of earnings.** Reasonable payment as determined by the department of board and room charges will be deducted from the work/training release ~~(inmate or)~~ residents' earnings. For purposes of this section, earnings shall constitute all income and money received or possessed by the work/training release ~~(inmate or)~~ resident while under a work release plan. Nothing in this section shall prohibit the department's authority to obtain reimbursement for moneys advanced to a work/training release ~~(inmate or)~~ resident by the department.

AMENDATORY SECTION (Amending Order 82-06, filed 4/5/82)

**WAC 137-56-030 Reasons for which given.** Work/training release may be authorized for one or more of the following:

(1) To take full-time or part-time employment or to make application to or be interviewed by a prospective employer;

(2) To take vocational training, including attendance at an accredited college.

(3) To make ~~(application to or be interviewed by prospective employers or to enroll in an academic or vocational training program (known as temporary work/training release))~~ use of transitional services.

(4) As a sanction for violating release conditions.

AMENDATORY SECTION (Amending Order 82-06, filed 4/5/82)

**WAC 137-56-040 Application—Who may apply.** (1) An inmate may apply for work/training release provided that:

(a) He or she has a minimum security status;

(b) His or her minimum term has been fixed by the ~~(board of prison terms and paroles)~~ indeterminate sentence review board;

(c) He or she ~~(has less than two years to serve on the minimum term including anticipated good time credits)~~ is within the last one hundred eighty days of their confinement (SRA offenders only).

(2) Persons convicted of rape in the first degree shall not be eligible for work/training release at any time during the first three years of confinement.

(3) Persons convicted of murder first degree are not eligible for work/training release, without the written approval of the secretary.

AMENDATORY SECTION (Amending Order 82-06, filed 4/5/82)

**WAC 137-56-050 Application—Consideration.** (1) The inmate shall submit his or her application for work/training release to his or her counselor on forms prescribed by the department.

(2) The classification committee shall make its recommendations to the superintendent, giving written documentation of the information which the committee relied on and giving reasons for the recommendation.

(3) ~~(Work/training release applications shall be evaluated without regard for color, national origin, or creed.~~

(4) Probationers/parolees/SRA offenders may be referred by the superior court or ~~(board of prison terms and paroles)~~ indeterminate sentence review board.

AMENDATORY SECTION (Amending Order 82-06, filed 4/5/82)

**WAC 137-56-060 Application—Decision.** (1) If the superintendent approves the work/training release application, he or she shall forward copies of the application and plan to the work/training release facility to which the inmate requests transfer ~~(; and to the assistant director, community resident programs).~~

(2) If the superintendent disapproves the work/training release application, he or she shall return the application to the counselor, stating his or her reasons for denial and set a date when the inmate may reapply.

AMENDATORY SECTION (Amending Order 82-06, filed 4/5/82)

**WAC 137-56-070 Plan—Investigation.** (1) Upon receipt of ~~(an approved work/training release application and plan from the superintendent)~~ a community release plan, the work/training release facility supervisor or his or her designee shall ~~(complete an investigation)~~ screen the information.

(2) The work/training release ~~(investigation)~~ screening process will ~~(verify the plan as it pertains to employment, financial resources, training, community reaction,)~~ be based on established criteria and any ~~(other)~~ additional factors which may affect the ~~(inmate's or)~~ resident's ability to successfully complete a work/training release program.

(3) The ~~(work/training release plan investigation)~~ screening decision will be forwarded by the work/training release facility supervisor to the ~~(assistant director, community residential programs, or his or her designee, with a recommendation for or against approval of the plan)~~ referral source indicating the action taken.

AMENDATORY SECTION (Amending Order 82-06, filed 4/5/82)

**WAC 137-56-080 Plan—Approval or denial.** (1) The ~~(assistant)~~ division director, ~~(community residential programs,)~~ or his or her designee has the authority to approve or disapprove a plan.

(2) ~~(Upon approval of a plan, the on-site representative, classification unit in headquarters, shall issue a transfer order.~~

(3) If approved, the ~~(inmate or)~~ resident shall sign and agree under oath, to the standard rules of work/training release. (See WAC 137-56-100.)

~~((4))~~ (3) If the plan is disapproved, the ~~(assistant)~~ director, ~~(community residential programs,)~~ or his or her designee shall state the reasons for denial in writing with a copy to the superintendent and inmate and will set a date when the inmate can reapply.

AMENDATORY SECTION (Amending Order 82-06, filed 4/5/82)

**WAC 137-56-090 Plan—Restrictions.** (1) ~~(An inmate or)~~ A resident ~~(will not)~~ may be permitted to travel outside the state for the purpose of employment, training, or treatment with prior written permission of the facility supervisor and agreement to waive extradition.

(2) The work or training site shall be within reasonable commuting distance (in most circumstances not more than fifty miles) of the work/training release facility or institution in which the ~~(inmate or)~~ resident is confined.

(3) If the ~~(inmate or)~~ resident has been placed in a work/training release facility for the purpose of developing a plan ~~((temporary work/training release))~~ and the plan is not secured within ~~(ten working days)~~ a reasonable period of time as determined by the department from the date of issuance of transfer orders, the ~~(inmate or)~~ resident may be returned to the institution without prejudice.

(4) ~~(The)~~ A purpose of work/training release is to provide a ~~(short adjustment)~~ transition period ~~(in a work/training release facility)~~ prior to ~~(parole)~~ release. Before a work/training release plan is approved, the staff will have a reasonable expectation that the ~~(inmate or)~~ resident will be ~~(paroled)~~ released in a period of time which will normally not exceed six months. If a ~~(parole)~~ release date is not fixed within six months of placement in a work/training release plan, the assistant director, ~~(community residential programs,)~~ or his or her designee will review the case on an individual basis and may return the ~~(inmate or)~~ resident to the institution if it appears that the ~~(inmate or)~~ resident will be on work/training release for an extended period of time.

AMENDATORY SECTION (Amending Order 86-02, filed 2/21/86)

**WAC 137-56-095 Notification.** (1) Each work/training release ~~(inmate or)~~ resident shall be advised in writing of:

- (a) His/her rights and responsibilities;
- (b) Acts prohibited in the work release facility; and
- (c) Disciplinary action which may be taken in the event of a serious infraction or violation of local rules.

(2) Each ~~(inmate)~~ resident, upon entering the work release facility, shall be given a copy of the rules in this chapter and of all local rules of the work/training release facility to which he/she is assigned.

(3) All amendments or additions to this chapter and all amendments or additions to local disciplinary rules, policies, and procedures shall be posted at a specifically designated place or places in each work/training release facility in advance of their effective date if possible and for at least thirty days after their effective date. Work/training release ~~(inmates or)~~ residents shall be responsible for informing

themselves of such postings. Complete and up-to-date copies of these rules and all local rules shall be available at each work/training release facility for ~~((inmate))~~ examination.

(4) The work/training release facility supervisor shall ensure that each work/training release ~~((inmate-or))~~ resident has the opportunity to understand rules which relate to his/her conduct. If the ~~((inmate))~~ resident is unable to read or understand English, the rules shall be read to him/her promptly in his/her accustomed language.

**AMENDATORY SECTION** (Amending Order 86-02, filed 2/21/86)

**WAC 137-56-100 Standard rules.** In consideration of being granted work/training release, the ~~((inmate-or))~~ resident must agree to observe and abide by the following rules:

(1) Continue in the approved work or training release plan until it is officially changed. Any modification of the plan must be authorized in writing by the work/training release facility supervisor or designee.

(2) Comply with local work/training release facility rules, and any special restrictions imposed in writing by the work/training release facility supervisor or designee. The ~~((inmate-or))~~ resident may appeal in writing to the ~~((community corrections regional administrator,))~~ area assistant director or designee if the ~~((inmate-or))~~ resident considers any of the restrictions to be unwarranted or arbitrary.

(3) Comply with such other restrictions and/or conditions as may be imposed in the original work/training release plan by the ~~((community corrections regional administrator))~~ facility supervisor or his or her designee.

(4) Remain confined to the work/training release ~~((facility))~~ premises at all times other than the time necessary to implement the plan or when authorized under WAC 137-56-140. Any work/training release ~~((inmate-or))~~ resident approved for placement under a work/training release plan who willfully fails to report to his or her designated assignment or return to the designated place of confinement at the time specified ~~((shall))~~ may be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a felony and sentenced in accordance with state law.

(5) Have employment or other resources in order to maintain himself or herself financially.

(6) Not consume, ingest, inject, or possess nonprescription narcotic or "dangerous" drugs or controlled substances or alcoholic beverages.

(7) Agree to disburse all earnings in accordance with the approved work/training release plan and report all income to the work/training facility supervisor or his or her designee. All income from any source shall be immediately placed in the resident's ~~((trust fund))~~ inmate banking account by the facility supervisor or his/her designee. A receipt will be issued ~~((by the facility supervisor))~~.

(8) Comply with all federal, state, and local laws and regulations.

(9) ~~((Inmates-or))~~ Residents placed on work/training release are ordinarily approved with the understanding that they will be ~~((paroled))~~ released in a reasonable time, normally within six months. If it is not possible to ~~((parole))~~

release the ~~((inmate-or))~~ resident within a reasonable period of time, he or she may be returned to the institution.

**AMENDATORY SECTION** (Amending Order 86-02, filed 2/21/86)

**WAC 137-56-110 Serious infractions.** Any of the following acts or omissions of the work/training release ~~((inmate-or))~~ resident described and codified in the form below shall constitute a serious infraction. ~~((Disciplinary action may be taken against the work/training release inmate or resident in accordance with this chapter in the event of a serious infraction.))~~

| Infraction Code | Act/Omission                                                                                                                                     |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| 800             | - Creating a risk to the orderly operation of the facility or the health and safety of its residents, staff, or visitors.                        |
| 801             | - Assaulting any person which results in the hospitalization of the person assaulted.                                                            |
| 802             | - Assaulting any person.                                                                                                                         |
| 803             | - Extortion, blackmail, demanding or receiving money or anything of value in return for protection against others, or under threat of informing. |
| 804             | - Engaging in sexual acts with others within the facility <u>boundaries</u> .                                                                    |
| 805             | - Fighting with any person, provided, however, that self-defense may be a defense to a serious infraction for fighting.                          |
| 806             | - Threatening another with bodily harm or with any offense against his/her person.                                                               |
| 810             | - Intentionally failing to seek or maintain employment or training or to maintain oneself financially.                                           |
| 811             | - Entering into an unauthorized contract.                                                                                                        |
| 812             | - Failing to report or turn in all earnings or income.                                                                                           |
| 813             | - Modifying a work release plan by the releasee without authorization.                                                                           |
| 814             | - Violating a special condition of work release plan.                                                                                            |
| 815             | - Failing to comply with all federal, state, and local laws, or court orders.                                                                    |
| 816             | - Tampering with or blocking any locking device.                                                                                                 |
| 817             | - Possessing or introducing into the facility an explosive or any ammunition or components of explosives or ammunitions.                         |
| 818             | - Possessing or introducing into the facility any unauthorized tool.                                                                             |
| 819             | - Possessing or introducing into the facility any gun, firearm, weapon, sharpened instrument, knife, or components thereof.                      |
| 821             | - Holding a person hostage or restraining a person against his/her will.                                                                         |
| 825             | - Violating conditions of furlough.                                                                                                              |
| 830             | - Escaping/absconding <del>((from the facility))</del> with voluntary return within twenty-four hours.                                           |
| 831             | - Failing to return to the facility from an authorized sign out.                                                                                 |
| 832             | - <del>((Escaping/absconding))</del> <u>Escape</u> from the facility.                                                                            |
| 833             | - Using physical force in the act of escape.                                                                                                     |
| 834             | - <del>((Escaping/absconding from the facility))</del> <u>Escape</u> and apprehension out-of-state.                                              |
| 843             | - Possessing, introducing, or using alcohol.                                                                                                     |

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- 844 - Possessing, introducing, or using marijuana or related paraphernalia.
- 845 - Possessing, introducing, transferring, or using any narcotics, controlled substance, or related paraphernalia unless authorized by the supervisor pursuant to a valid prescription or order issued in the course of professional treatment by a licensed medical practitioner.
- 846 - Refusing to submit to a urinalysis, breathalyzer, or other (~~standard~~) sobriety test.
- 851 - Lying to a hearing committee.
- 852 - Lying to a staff member which causes an innocent person to be penalized, disciplined, or proceeded against.
- 853 - Intentionally or recklessly setting a fire.
- 854 - Intentionally or recklessly destroying or damaging state property, or the property of another person.
- 855 - Stealing (theft) or knowingly possessing stolen property.
- 856 - Refusing to submit to a body search when lawfully ordered to do so by staff.
- 857 - Refusing and/or failing to work or attend regularly scheduled assignments.
- 858 - Intentionally interfering with a staff member in the performance of his/her duties.
- 859 - Gambling.
- 860 - Possessing money or other negotiable instruments (~~of five dollars or more~~) without prior authorization.
- 861 - Performing or participating in a marriage ceremony in the facility or on the facility grounds, except when such marriage was approved by the supervisor.
- 870 - Rioting.
- 871 - Inciting others to riot.
- 872 - Engaging in or inciting prohibited group demonstration.
- 873 - Intentionally interfering with the taking of count.
- 874 - Counterfeiting, forging, falsification, or unauthorized reproduction of any document, article of identification, money, security, or official paper.
- 875 - Making intoxicants, narcotics, or other controlled substances.
- 876 - Giving or offering any official staff member or volunteer a bribe or anything of value for (~~the~~) favor or unauthorized service.
- 877 - Committing four or more general infractions within a (~~six month~~) ninety-day period all of which arise out of separate incidents and have been reported in writing.
- 878 - Intentionally failing to comply with an administrative or post-hearing sanction.
- 900 - Attempting to commit or aiding another person to commit a serious infraction as enumerated in this section. Such action shall be considered the same as commission of the offense itself.
- 901 - Operating a motor vehicle without permission.

AMENDATORY SECTION (Amending Order 82-06, filed 4/5/82)

**WAC 137-56-120 Provisions of supervision.** In meeting its responsibilities for the care of (~~inmates or~~) residents, a work/training release facility shall provide:

(1) A staff on twenty-four hour duty and an office within the facility so that the staff can monitor the activities of the (~~inmates or~~) residents;

(2) A check-in and check-out system to (~~insure~~) ensure that the stated whereabouts of the (~~inmate or~~) resident is known at all times, including checks on the (~~inmate or~~) resident at school (~~and~~), work, furlough, sponsored outing, pass, etc.;

(3) Bed checks or head counts to account for the (~~inmate's or~~) resident's whereabouts; a minimum of three (~~bed checks~~) counts per shift shall be required (~~between 12:00 midnight and 8:00 a.m.~~);

(4) Provide adequately for the (~~inmate or~~) resident with respect to sleeping quarters, bathroom facilities, and accommodations for cooking, dining, lounging and leisure time activities;

(5) Comply with state and local fire codes and applicable building, safety, and sanitation codes.

AMENDATORY SECTION (Amending Order 82-06, filed 4/5/82)

**WAC 137-56-140 Limits of confinement.** A work/training release (~~inmate or~~) resident shall be confined to the facility at all times except:

(1) When interviewing prospective employers or arranging for registration at a training facility;

(2) When working at paid employment or attending a training facility in a vocational or academic program;

(3) If enrolled in an on-campus training program and housed in an on-campus facility, when participating in customary and official on-campus activities or mandatory field trips;

(4) When authorized a point-to-point pass not to exceed two hours, excluding travel, for the purpose of transacting personal (~~essential~~) business including a treatment regimen, between the hours of 8:00 a.m. and 10:00 p.m. and/or outside that time frame with written permission of the facility supervisor or designee;

(5) When authorized to participate in social and recreational activities in company with a sponsor-escort between 8:00 a.m. and (~~12:00~~) midnight;

(6) When on furlough;

(7) When on authorized medical appointments or court appearances;

(8) When ordered to perform community service.

AMENDATORY SECTION (Amending Order 82-06, filed 4/5/82)

**WAC 137-56-150 Sponsor-escort.** (1) A sponsor-escort shall be a responsible citizen who shall accompany and (~~retain custody of~~) monitor a work/training release (~~inmate or~~) resident during a social or recreational activity. The sponsor-escort must be approved by the work/training release facility supervisor or designee; and the sponsor and

~~((the inmate or))~~ resident must sign an agreement with the department which describes his or her responsibilities.

(2) Persons who are on active/inactive felony probation or parole or under an active SRA sentence, shall not be approved as sponsor-escorts. Persons who have a past felony conviction and who have earned a discharge may be approved as sponsor-escorts on an individual basis by the assistant director, ~~((community resident programs,))~~ or his or her designee.

(3) Sponsor-escorts must complete a sponsor orientation ~~((class))~~ provided by the work/training release facility before eligibility under this section.

AMENDATORY SECTION (Amending Order 86-02, filed 2/21/86)

**WAC 137-56-160 Termination of plan.** (1) At any time after approval has been granted to any work/training release ~~((inmate or))~~ resident to participate in the work/training release program, such approval may be revoked, and if the work/training release ~~((inmate or))~~ resident has been released from a state correctional institution on a work release plan, he/she may be returned to a state correctional institution, or the plan may be modified, in the sole discretion of the secretary.

(2) Without limiting the authority of the secretary under subsection (1) of this section, a work/training release plan may be terminated or disciplinary action taken by the ~~((facility review))~~ classification/disciplinary committee pursuant to this chapter:

(a) If requested in writing by the work/training release ~~((inmate or))~~ resident;

(b) If the work/training release facility refuses to accept or continue to serve the work/training release ~~((inmate or))~~ resident in accordance with its contract with the department;

(c) If the plan is discontinued or modified so that it no longer meets agency standards or if the work/training release ~~((inmate or))~~ resident becomes unable to comply with the terms of the plan;

(d) If the work/training release ~~((inmate or))~~ resident lacks aptitude for the assignment or is improperly placed; or

(e) If the work/training release ~~((inmate or))~~ resident has been unable to adjust or adapt to the conditions of the work/training release facility; or

(f) If the work/training release ~~((inmate or))~~ resident has demonstrated through his or her behavior an unwillingness to respond to counseling by staff; or

(g) If the work/training release ~~((inmate's or))~~ resident's situation and circumstances have significantly changed; or

(h) If the work/training release ~~((inmate or))~~ resident has failed to comply with federal or state laws or local ordinances; or

(i) If the work/training release ~~((inmate or))~~ resident has failed to comply with standard work/training release rules as enumerated in WAC 137-56-100; or

(j) If the work/training release ~~((inmate or))~~ resident has failed to comply with such other written facility rules as are promulgated by the facility supervisor; or

(k) If the work/training release ~~((inmate or))~~ resident has failed to comply with such other specific restrictions or behavior expectations which have previously been called to the attention of the work/training release ~~((inmate or))~~

resident by the work/training release facility supervisor and are documented in writing; or

(1) If the work/training release ~~((inmate or))~~ resident has committed a serious infraction as enumerated in WAC 137-56-110.

AMENDATORY SECTION (Amending Order 86-02, filed 2/21/86)

**WAC 137-56-170 Service of notice of proposed disciplinary action.** (1) If disciplinary action is proposed, the work/training release facility supervisor or community corrections officer may suspend the work/training release plan and place the ~~((inmate or))~~ resident in custody pending a disciplinary hearing.

(2) The work/training release facility supervisor or designee shall advise the ~~((inmate or))~~ resident in writing of the factual allegations which provide the basis for the proposed disciplinary action within one working day after the suspension of the work/training release plan.

(3) The factual allegations may be amended and/or new allegations added at any time prior to the disciplinary hearing, provided that the work/training ~~((inmate or))~~ release resident shall have notice of such new and/or amended allegations at least twenty-four hours prior to the disciplinary hearing unless such notice shall be waived in writing by the resident.

NEW SECTION

**WAC 137-56-175 Facility disciplinary hearing committee.** (1) The disciplinary hearing committee shall consist of at least two members, including the work/training release facility supervisor, or his/her designee, and a member of the contractor's staff, if the facility is under contract with the department. No resident may be a member of this committee. The facility supervisor or designee shall serve as chairperson and shall have the authority to make the final decision. The facility supervisor or his or her designee shall inform the resident, in writing, of the disciplinary hearing committee's decision within three working days.

(2) At institutions, prerelease facilities, and noncontract work/release facilities, a single hearing officer or the classification committee may serve as the disciplinary hearing committee for work/training release residents housed at those facilities. If the hearing is conducted by a single hearing officer, the hearing must be taped and the tape kept for a minimum of one hundred twenty days after the date of the appeal decision or court action, whichever is later.

(3) No person making an allegation involved in the incident, or called as a witness, shall be a member of the disciplinary hearing committee. Persons called as witnesses must be approved by the disciplinary hearing committee chairperson and must have information or facts which are relative to the allegations being considered. In the event that an individual is disqualified, or disqualifies himself or herself, under this rule or for any other reason, a replacement may be designated by the facility supervisor.

AMENDATORY SECTION (Amending Order 86-02, filed 2/21/86)

**WAC 137-56-180 Disciplinary hearing.** (1) A work/training ~~((inmate-or))~~ release resident served with allegations providing the basis for a proposed disciplinary action shall be notified in writing that a hearing has been set before a ~~((review))~~ disciplinary hearing committee/hearing officer. An allegation involving the commission by the ~~((inmate-or))~~ resident of a serious infraction may be amended at anytime by the department, provided that twenty-four hours notice be given to the ~~((inmate))~~ resident or the resident agrees in writing to waive notice to respond to the ~~((new))~~ allegations. The hearing will be set within five working days of the suspension of the work/training release plan, unless a longer time is approved by the area assistant director ~~((community residential programs;))~~ or his or her designee. The written notice of hearing shall be given to the ~~((inmate-or))~~ resident at least twenty-four hours before the hearing unless notice is waived, in writing, and advise the ((inmate-or)) resident of his or her rights, including the following:

(a) The ~~((inmate-or))~~ resident shall be present at all stages of the hearing, except during deliberation in appropriate circumstances.

(b) The ~~((inmate-or))~~ resident shall present his or her own case to the ~~((review))~~ disciplinary hearing committee/hearing officer. If there is a language or communications barrier, the ~~((review))~~ disciplinary hearing committee ((chairman)) chairperson/hearing officer shall appoint an advisor.

(c) The ~~((inmate-or))~~ resident may have an attorney present at his/her expense, only when a felony has been alleged. Such representation is limited to advising the ~~((inmate-or))~~ resident of his or her rights to remain silent, and does not include the right to act as an advocate throughout the hearing.

(d) The ~~((inmate-or))~~ resident may testify during the hearing or remain silent, and his or her silence will not be held against him or her.

(e) The work/training release ~~((inmate-or))~~ resident may, in preparation for the hearing, ask the ~~((review))~~ disciplinary hearing committee chairperson/hearing officer that certain department or contract staff members, other work/training release ~~((inmates-or))~~ residents, and other persons be present as witnesses at the hearing. The ~~((review))~~ disciplinary hearing committee/hearing officer shall grant such request if it is determined by the ~~((review))~~ disciplinary hearing committee chairperson/hearing officer that to do so would not be unduly hazardous to the work/training release facility's safety or correctional goals: *Provided, however*, Limitations may be made by the ~~((review))~~ disciplinary hearing committee if the information to be presented by the witnesses is deemed to be irrelevant, duplicative, or unnecessary to the adequate presentation of the work/training release ~~((inmate-or))~~ resident's case.

(2) Attendance at the hearing shall be limited to parties directly concerned. The ~~((review))~~ disciplinary hearing committee ((chairman)) chairperson/hearing officer may exclude unauthorized persons.

(3) The ~~((review))~~ disciplinary hearing committee/hearing officer shall make an evaluation of the ~~((inmate's or resident's progress, attitudes, need for program modifica-~~

~~tions, work/training alternatives, or institution programming;))~~ residents and ~~((shall))~~ may make a recommendation to the ~~((board of prison terms and paroles))~~ indeterminate sentence review board regarding good time credits and readiness for parole.

AMENDATORY SECTION (Amending Order 86-02, filed 2/21/86)

**WAC 137-56-200 Disciplinary hearing—Waiver.** (1) At any time after having been served with an allegation providing the basis for a proposed disciplinary action, the ~~((inmate-or))~~ resident may choose to waive his or her right to a hearing by signing an admission of the allegation and request that the hearing be dispensed with entirely or limited only to questions of disposition. Also, the resident may waive, in writing, the twenty-four hour notice.

(2) The ~~((inmate-or))~~ resident may admit in writing to part of the allegations and thereby limit the scope of the hearing.

(3) In those cases where the allegation involves misbehavior or other culpability on the part of the ~~((inmate-or))~~ resident, he or she shall be advised in writing that in admitting the violation and waiving the hearing, a report will be submitted ~~((to the board of prison terms and paroles))~~ which may result in the loss of work/training release status, good time credits and/or the extension of the minimum term.

AMENDATORY SECTION (Amending Order 86-02, filed 2/21/86)

**WAC 137-56-210 Disciplinary hearing—Rules of evidence.** (1) All relevant and material evidence is admissible which, in the ~~((majority))~~ opinion of the ~~((review))~~ disciplinary hearing committee chairperson, is the best evidence reasonably obtainable having due regard for its necessity, availability, and trustworthiness.

(2) All evidence material to the issues raised in the hearing shall be offered into evidence. All evidence forming the basis for the department's decision in a matter shall be offered into evidence.

(3) The work/training release ~~((inmate-or))~~ resident shall be allowed to call witnesses approved by the ~~((review))~~ disciplinary hearing committee chairperson pursuant to WAC 137-56-180 (1)(e) and to present documentary evidence in his/her defense at the hearing when permitting the work/training release ~~((inmate-or))~~ resident to do so will not be unduly hazardous to the work/training release facility's safety or correctional goals unless the testimony to be presented by the witness and/or the information desired to be presented is deemed by the ~~((review))~~ disciplinary hearing committee chairperson to be irrelevant, immaterial, unnecessarily duplicative of other information and/or testimony before the ~~((review))~~ disciplinary hearing committee, or otherwise found to be unnecessary to the adequate presentation of the work/training release ~~((inmate-or))~~ resident's case. The testimony of all witnesses from outside the work/training release facility shall be considered in writing. In the event the ~~((review))~~ disciplinary hearing committee chairperson determines that the presence of a witness is appropriate, the ~~((review))~~ disciplinary hearing committee should call the witness, or in its discretion, may continue the hearing if the witness is unavailable, but will become available within a

reasonable period of time: *Provided, however,* That if the witness is unavailable, the ~~((review))~~ disciplinary hearing committee may, in its discretion, consider the written testimony previously submitted.

(4) The work/training release ~~((inmate-or))~~ resident may question witnesses against him/her at the discretion of the ~~((review))~~ disciplinary hearing committee chairperson. If the ~~((review))~~ disciplinary hearing committee chairperson determines that a work/training release ~~((inmate-or))~~ resident witness would be subject to risk or harm if his/her identity were disclosed, testimony of the said witness may be introduced by the testimony of a department or contract staff member to whom the information was provided by and/or the affidavit of the witness. If the department or contract staff member to whom the work/training release ~~((inmate-or))~~ resident witness provided information is, for good cause, unavailable, the written statement of the department or contract staff member may be used. The ~~((review))~~ disciplinary hearing committee shall, out of the presence of all work/training release ~~((inmates-or))~~ residents, inquire as to the identity of any anonymous work/training release ~~((inmate-or))~~ resident, and as to how the testifying department or contract staff member received such information. The refusal of the department or contract staff member presenting the testimony of the unidentified work/training release ~~((inmate-or))~~ resident witness to identify the witness shall make the testimony inadmissible unless the refusal to identify the witness is approved by the ~~((community-corrections-regional-administrator))~~ area assistant director based on his/her determination of good cause for nondisclosure and that the informant is reliable. The ~~((review))~~ disciplinary hearing committee must make an independent determination as to the reliability of the informant and the credibility of the information offered, except that the ~~((review))~~ disciplinary hearing committee may accept an assurance of credibility from the ~~((community-corrections-regional-administrator))~~ assistant director who approves the nondisclosure of the identity of the work/training release ~~((inmate-or))~~ resident. The ~~((inmate))~~ resident should be advised on the record, or subsequently provided with, a statement of good cause as to why the ~~((inmate))~~ resident was not allowed to call a witness or why the identity of ~~((an-inmate))~~ a resident witness was not disclosed.

(5) Documentary evidence, including written statements submitted by interested parties on behalf of the ~~((inmate-or))~~ resident, may be received. Such evidence may include copies of documents, excerpts from documents and incorporation of written material by reference, including depositions.

(6) The ~~((chairman))~~ chairperson of the ~~((review))~~ disciplinary hearing committee may exclude relevant evidence if the probative value is outweighed by the danger of unfair prejudice, confusion of the issues, misleading the committee or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(7) The ~~((review))~~ disciplinary hearing committee should determine if the ~~((inmate))~~ resident is competent to understand the charges and proceedings or needs an interpreter to participate therein. If the ~~((inmate))~~ resident is not competent or needs an interpreter, the ~~((review))~~ disciplinary hearing committee should postpone the hearing to secure a report on the competency of the ~~((inmate))~~ resident, provide

an interpreter, or take such other action as will assure the fairness and orderliness of the hearings.

AMENDATORY SECTION (Amending Order 86-02, filed 2/21/86)

**WAC 137-56-220 Disciplinary hearing—Findings and conclusions.** (1) At the conclusion of the hearing, the ~~((review))~~ disciplinary hearing committee will make a finding of fact within one working day as to whether or not the allegations made against the ~~((inmate-or))~~ resident have been proven by a preponderance of the evidence presented at the hearing.

(2) If the ~~((review))~~ disciplinary hearing committee determines that the allegations have not been proven by a preponderance of the evidence presented at the hearing, the ~~((inmate-or))~~ resident shall be restored ~~((to))~~ continued on work/training release status.

(3) If the ~~((review))~~ disciplinary hearing committee determines that one or more of the allegations have been proven by a preponderance of the evidence presented at the hearing, the ~~((review))~~ disciplinary hearing committee will proceed to a disposition.

AMENDATORY SECTION (Amending Order 86-02, filed 2/21/86)

**WAC 137-56-230 Disciplinary hearing—Disposition.** (1) The ~~((review))~~ disciplinary hearing committee will consider the ~~((inmate's-or))~~ resident's total background, adjustment on work/training release, attitude, recommendations of interested parties, and any other information relative to the ~~((inmate's-or))~~ resident's ability to continue in the program. The ~~((review))~~ disciplinary hearing committee shall make a determination as to whether or not the ~~((inmate-or))~~ resident has earned good time credits ~~((towards-parole))~~ toward release, and whether the matter should be referred to the ~~((board-of-prison-terms-and-paroles))~~ indeterminate sentence review board or the court for possible increase in the inmate's or resident's minimum term.

(2) The ~~((inmate-or))~~ resident shall be present at all stages of the hearing, except for deliberation and even during deliberation when appropriate, and shall have the opportunity to make argument in his or her own behalf.

AMENDATORY SECTION (Amending Order 86-02, filed 2/21/86)

**WAC 137-56-240 Disciplinary hearing—Decision.**

- (1) The ~~((review))~~ disciplinary hearing committee may:
- Restore the work/training release ~~((inmate-or))~~ resident to his or her work/training release status under the same or modified conditions as the original plan; or
  - Restrict the ~~((inmate-or))~~ resident to the work/training release facility for up to thirty days; or
  - Require restitution be made by the work/training release ~~((inmate-or))~~ resident; or
  - Require extra duty to be performed by the ~~((inmate-or))~~ resident; or
  - Revoke approval of an approved sponsor; or
  - Deny good conduct time; or
  - Require additional time in ~~((Phase-II))~~ prerelease; or

(h) ~~((Revoke))~~ Terminate the work/training release plan and return the work/training release ~~((inmate or))~~ resident to an institution/jail, or ~~((Phase II))~~ facility; or

(i) ~~((Return))~~ Refer the offender to the court or the ~~((board of prison terms and paroles))~~ indefinite sentence review board for final disposition.

(2) Nothing in this section shall preclude subsequent reclassification of the work/training release ~~((inmate or))~~ resident or placement into administrative segregation.

(3) The facility supervisor or designee shall notify the ~~((inmate or))~~ resident orally within one working day and confirm the decision in writing within ~~((three))~~ five working days. The written decision shall specify the evidence upon which the ~~((review))~~ disciplinary hearing committee relied and shall include a description of the circumstances surrounding the allegation(s) upon which the termination of the work/training release is based, the reasons for the decision, a discussion of the ~~((inmate's or))~~ resident's personal culpability in the actions which have led to the termination, and an evaluation of the ~~((inmate's or))~~ resident's progress, attitudes, need for further programs including work training alternatives and readiness for ~~((parole))~~ release.

AMENDATORY SECTION (Amending Order 86-02, filed 2/21/86)

**WAC 137-56-250 Disciplinary hearing—Appeal.**

The ~~((inmate or))~~ resident may appeal the decision of the facility ~~((review))~~ disciplinary hearing committee to the ~~((community corrections regional administrator))~~ assistant director, or his or her designee. Appeal requests must be in writing, must be specific and based on objection to the procedures used or the information available to the committee in making its decision. Appeals must be submitted within five working days of the committee's oral decision. The ~~((community corrections regional administrator))~~ assistant director, or his or her designee, upon receipt of an appeal, will review the findings and decision of the ~~((review))~~ disciplinary hearing committee and either:

(1) Affirm, or affirm and modify to a lesser sanction the decision of the facility ~~((review))~~ disciplinary hearing committee; or

(2) Reverse the decision of the facility ~~((review))~~ disciplinary hearing committee; or

(3) Remand the decision for additional findings or rehearing.

~~((The reviewer's decision will be made promptly, normally not to exceed five working days, and given to the inmate or resident and committee chairman in writing.))~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 137-56-190 Facility review committee.

**WSR 94-07-068  
NOTICE OF PUBLIC MEETINGS  
PUBLIC SOUND AIR  
POLLUTION CONTROL AGENCY**  
[Memorandum—March 14, 1994]

PUGET SOUND AIR POLLUTION CONTROL AGENCY  
BOARD OF DIRECTORS  
REGULAR MONTHLY MEETINGS

MEETINGS DATES FOR 1994

| REGULAR MONTHLY MEETINGS | STUDY SESSIONS    |
|--------------------------|-------------------|
| April 14, 1994           | April 28, 1994    |
| May 12, 1994             | June 23, 1994     |
| June 9, 1994             | August 25, 1994   |
| July 14, 1994            | October 27, 1994  |
| August 11, 1994          | December 22, 1994 |
| September 8, 1994        |                   |
| October 13, 1994         |                   |
| November 10, 1994        |                   |
| December 8, 1994         |                   |

Notice is hereby given that the board of directors of the Puget Sound Air Pollution Control Agency will hold regular monthly meetings. The regular monthly meetings will be held at 9:00 a.m. at the Puget Sound Air Pollution Control Agency, 110 Union Street, Suite 500, Seattle, WA. Study sessions will be held at 9:30 a.m.

Board of director meetings and study sessions are open and public. Interested persons are invited to attend. More information can be obtained by calling (206) 343-8800, extensions 4080 or 4079.

**WSR 94-07-069  
NOTICE OF PUBLIC MEETINGS  
INTERAGENCY COMMITTEE  
FOR OUTDOOR RECREATION**  
[Memorandum—March 14, 1994]

Regular Meeting  
March 24-25, 1994  
The Natural Resources Building, Room 172  
1111 Washington Street S.E.  
Olympia, WA

Note: March 24, 1994, session will commence as noted; all other times are approximate. If you need special accommodations to participate in this meeting, please call us by March 16, 1994, at (206) 902-3000 or TDD (206) 902-1996.

A 3-4 hour tour of IAC projects in the Olympia/Thurston County area will follow the meeting.

Next Meeting: July 28-29, 1994, Best Western Snoqualmie Pass Inn.

MISCELLANEOUS

**WSR 94-07-070**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF AGRICULTURE**  
 (Asparagus Commission)  
 [Memorandum—March 10, 1994]

The April 19 meeting of the Washington Asparagus Commission has been changed to April 26. The time and location remain the same, 1:00 p.m. at American Fine Foods, 516 West Rose, Walla Walla, WA.

**WSR 94-07-071**  
**NOTICE OF PUBLIC MEETINGS**  
**COUNCIL ON**  
**VOCATIONAL-TECHNICAL EDUCATION**  
 [Memorandum—March 14, 1994]

Monday - March 21, 1994  
 Salon F  
 Wyndham Garden Hotel  
 18118 Pacific Highway South  
 Seattle, WA  
 (206) 244-6666  
 (9:00 a.m. - 2:30 p.m.)

The meeting site is barrier free. People needing special accommodations should contact the council office at (206) 753-3715.

**WSR 94-07-093**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF AGRICULTURE**  
 (Beef Commission)  
 [Memorandum—March 16, 1994]

The previously scheduled Washington State Beef Commission budget meeting scheduled for April 7, 1994, has been changed to May 5. The meeting will be held in Seattle as scheduled.

**WSR 94-07-094**  
**NOTICE OF PUBLIC MEETINGS**  
**HEALTH SERVICES COMMISSION**  
 [Memorandum—March 14, 1994]

The Washington Health Services Commission will hold its public meeting from 1:00 p.m. to 5:00 p.m. on March 17, in the auditorium of the Chelan County Public Utility District at 327 North Wenatchee Avenue as originally notified.

However, the public hearing portion of the meeting which is scheduled from 6:30 p.m. to 9:30 p.m. has been moved to the WestCoast Wenatchee Center Hotel, in the North Ballroom, at 201 North Wenatchee Avenue.

**WSR 94-07-099**  
**NOTICE OF PUBLIC MEETINGS**  
**GAMBLING COMMISSION**  
 [March 18, 1994]

The Gambling Commission will be holding the regular meetings for the remainder of the year at the following locations:

- April 15, 1994 Embassy Suite Hotel  
20610 44th Avenue West  
Lynnwood, WA 98036
  - May 13, 1994 Cypress Inn  
Highway 167 @ 84th Avenue exit  
Kent, Washington 98032
  - June 10, 1994 Whitman Inn/Nendels  
107 North Second Street  
Walla Walla, WA 99362
  - July 15, 1994 Silverdale on the Bay  
3037 Bucklin Hill Road  
Silverdale, WA 98310
  - August 12, 1994 Campbell's Lodge  
P.O. Box 278  
Chelan, WA 98816
  - September 9, 1994 Lakeway Inn/Best Western  
714 Lakeway Drive  
Bellingham, WA 98226
  - October 14, 1994 Icicle Inn/Best Western  
505 State Highway 2  
Leavenworth, WA 98826
  - November 18, 1994 Spokane Ridpath  
West 515 Sprague  
Spokane, WA 98201
  - December 1994 No meeting.
- We will notify you of any changes occurring of meeting dates or locations.

**WSR 94-07-100**  
**RULES COORDINATOR**  
**GAMBLING COMMISSION**  
 [Filed March 18, 1994, 9:46 a.m.]

In accordance with RCW 34.05.310, I wish to notify you that the rules coordinator for the Washington State Gambling Commission is:

Shanna R. Lingel  
 Special Agent  
 Washington State Gambling Commission  
 P.O. Box 42400  
 649 Woodland Square Loop S.E.  
 Olympia, WA 98504-2400  
 (206) 438-7654 ext 305  
 scan 585-7654 ext 305

In Shanna's absence please contact Sharon M. Tolton, Assistant Director, Special Operations Division.

Frank L. Miller  
 Director

MISCELLANEOUS

**WSR 94-07-101**  
**NOTICE OF PUBLIC MEETINGS**  
**SEATTLE COMMUNITY COLLEGES**

[Memorandum—March 11, 1994]

The Seattle Community College District board of trustees will hold a special board of trustees meeting, Tuesday, March 15, 1994, beginning at 6:30 p.m. The meeting will be held at the Seattle Community College District, Siegal Education and Service Center, in the Tillikum Conference Room, 1500 Harvard Avenue, Seattle, WA 98122.

**WSR 94-07-106**  
**DEPARTMENT OF ECOLOGY**

[Filed March 18, 1994, 4:05 p.m.]

PUBLIC NOTICE OF DRAFT GENERAL PERMIT FOR PROCESS WATER AND STORM WATER DISCHARGES ASSOCIATED WITH SAND AND GRAVEL OPERATIONS, ROCK QUARRIES, AND SIMILAR MINING FACILITIES, INCLUDING STOCKPILES OF MINED MATERIALS, CONCRETE BATCH OPERATIONS AND ASPHALT BATCH OPERATIONS

INTRODUCTION:

The Department of Ecology (the department) has worked with private industry, state government, and the Environmental Protection Agency to develop a general permit program for the gravel mining and quarrying industry. The department intends to require permit coverage for certain facilities that discharge storm water, process water, or mine dewatering water to surface water or ground water. Facilities covered by the general permit include sand and gravel mines, rock quarries, stockpiles of materials under specified conditions, concrete batch plants, and asphalt batch plants using wet scrubbers for air emissions control. The permit is referred to as the sand and gravel general permit. Facilities are categorized as active sites or inactive sites, which depends on the extent of site reclamation and types of industrial activity at the facility. Categorization as an active site or inactive site determines which effluent limitations apply, the level of required monitoring, the type of pollution prevention plan, and which best management practices (BMPs) are required by the permit.

The goal of this general permit is to protect ground water, surface water, and the quality of sediment in waters of the state by limiting the discharge of pollutants in wastewater and storm water from mines and quarries, asphalt batch plants, and concrete batch plants. The pollutants that are limited in this general permit result from the processing of mined material, storm water runoff, and from ancillary operations. This general permit limits the discharge of pollutants to surface waters under the authority of the Federal Water Pollution Control Act (U.S.C.S. 1251) and limits the discharge of pollutants to surface and ground water under the authority of the State Water Pollution Control Act, chapter 90.48 RCW. Methods of compliance with this permit include chemical or physical treatment of the wastewater and implementation of best management practices (BMPs).

MAJOR ELEMENTS OF THE PERMIT:

Miscellaneous

**Storm Water Pollution Prevention Plan.** The permit requires active sites to prepare a written plan and implement the BMPs necessary to control industrial pollutants found at the facility that could contaminate storm water runoff. Preparation of the plan and implementation of the BMPs is to be accomplished during a schedule of compliance stated in the permit, not to exceed 18 months from the date of coverage under the permit.

**Storm Water Pollution Prevention Plan for Erosion and Sediment Control.** The permit requires active sites and inactive sites to prepare a written plan and implement the BMPs necessary to control storm water runoff contaminated with sediment originating from disturbed areas at the facility. Preparation of the plan and implementation of the BMPs are to be accomplished during a schedule of compliance stated in the permit, not to exceed 18 months from the date of coverage under the permit.

**Monitoring Plan.** The permit requires active sites to develop and implement a monitoring plan for compliance monitoring with effluent limits set for discharges of process water, storm water, and mine dewatering water. Inactive sites are not required to prepare a plan or conduct monitoring. The extent of monitoring depends on the type of industrial activity and whether discharges are to surface water, ground water, or it is recycled. The plan must be prepared and implemented within three months from the date of coverage under the permit.

**Settling Pond Liner Plan.** The permit requires preparation of a plan to line any settling pond that receives wastewater discharges from an asphalt batch plant with a wet scrubber or from a concrete batch plant. The pond must be lined three years after the effective date of the permit. The permit provides an alternative to pond lining that allows the facility to prepare an individual or group engineering report to evaluate treatment methods and cost scenarios for this class of dischargers.

GEOGRAPHIC AREA COVERED UNDER THIS GENERAL PERMIT:

The geographical area covered by this general permit shall be the entire state of Washington.

TYPES OF FACILITIES OR DISCHARGERS REQUIRED TO APPLY FOR COVERAGE:

Process water, storm water, and mine dewatering water associated with certain types of mining operations, concrete and asphalt production, and ancillary facilities are the focus of this general permit. These operations or facilities may require coverage under this general permit for discharges to surface water or discharges to ground water. Specific operations designated by standard industrial classification (SIC) codes eligible for coverage in this general permit are:

- 1411 Dimension Stone
- 1422 Crushed and Broken Limestone
- 1423 Crushed and Broken Granite
- 1429 Crushed and Broken Stone, Not Elsewhere Classified
- 1442 Construction Sand and Gravel
- 1446 Industrial Sand
- 1455 Kaolin and Ball Clay

MISCELLANEOUS

|      |                                                                  |
|------|------------------------------------------------------------------|
| 1459 | Clay, Ceramic, and Refractory Minerals, Not Otherwise Classified |
| 1499 | Miscellaneous Nonmetallic Minerals, Except Fuels                 |
| 2951 | Asphalt Paving Mixtures and Blocks                               |
| 3273 | Ready-Mixed Concrete                                             |

The types of facilities included are sand and gravel mines, rock quarries, clay mines, silica mines, diatomite mines, olivine mines, dolomite mines, asphalt batch plants using water for wet scrubbers for air pollution control, and concrete batch plants. Some facilities may require coverage for storm water only.

The criteria for coverage are explained in more detail in the permit. All facilities identified by the SIC codes listed above and which meet the criteria in the permit must apply for and be covered by the general permit, even if the only discharge is storm water. Facilities not eligible for coverage under the general permit must apply for an individual permit.

#### HOW TO OBTAIN COVERAGE UNDER THIS GENERAL PERMIT:

Coverage under this permit may be obtained by submitting a completed notice of intent (NOI) for this general permit to the department. For existing facilities, the NOI shall be submitted no later than ninety days after the issuance date of this general permit. For new facilities, the NOI shall be submitted upon compliance with the State Environmental Policy Act (SEPA).

#### SMALL BUSINESS ECONOMIC IMPACT STATEMENT AND PERMIT SUMMARY:

A small business economic impact statement (SBEIS) was prepared in accordance with the Regulatory Fairness Act (chapter 19.85 RCW) and the state waste discharge general permit program (chapter 173-226 WAC) to compare the permit compliance costs of small and large businesses to determine whether the permit disproportionately impacts small business. A small business is defined as a profit-seeking enterprise, which is independently owned and operated from all other businesses, and which has fifty or fewer employees. Nearly all facilities covered under this permit have fewer than fifty employees.

The economic analysis used the ratio of the annualized cost of complying with the general permit to the business' sales as the measure of the permit's impact. If the compliance-cost-to-sales ratio is higher for small business than for large business, then small businesses are disproportionately impacted and mitigation is necessary.

The SBEIS only examined the impact of the general permit on the following two industries:

- Construction sand and gravel (SIC 1442).
- Ready-mixed concrete (SIC 3273).

These two industries contain the overwhelming majority of the potential permit holders. Compliance costs for other industries are similar to those for these industries.

Compliance cost estimates were made for five basic types of facilities:

- Small, inactive sand and gravel pit.
- Small, active sand and gravel pit.
- Large, active sand and gravel pit.

- Small, active sand and gravel pit and concrete ready-mix operation.
- Large, active sand and gravel pit and concrete ready-mix operation.

Annualized compliance costs for both large and small facilities were calculated under each of the above scenarios. The annualized cost of compliance is in the range of \$1326 to \$23,245. The general permit has a proportionately greater impact on small businesses than on large businesses. Disproportionate impacts on small businesses must be reduced if it is legal and feasible. Mitigation measures incorporated into the permit, including compliance schedules, decreased permit requirements for inactive sites, and alternatives for meeting settling pond liner requirements, are reflected in the SBEIS costs. However, since the majority of the general permit conditions are based on either federal or state regulations, they cannot be legally mitigated nor their associated costs significantly reduced.

A complete SBEIS will be available at hearings in May, or by contacting the appropriate Department of Ecology regional office listed in this announcement.

#### FEES:

Under the Model Toxics Control Act, now codified as RCW 90.48.465, the department is required to recover the cost of the water quality permit program. The department has adopted a regulation (chapter 173-224 WAC) establishing annual permit fees for all industrial and municipal/domestic wastewater discharge permit holders. General and individual permits are subject to this fee commencing on their effective date. Annual fees will range from \$265 to \$4200 for facilities covered under this general permit.

#### PUBLIC HEARINGS AND OTHER INFORMATION:

Six workshops/public hearings on the draft sand and gravel general permit shall be held on the following dates and locations. All workshops will start at 7:00 p.m. All hearings will follow at 8:00 p.m.

**SPOKANE - MONDAY MAY 9, 1994**  
Spokane County Health District  
1101 West College Avenue  
Auditorium, Room 140  
Spokane, WA

**YAKIMA - WEDNESDAY MAY 11, 1994**  
Yakima County Courthouse  
Room 231/232  
128 North 3rd Street  
Yakima, WA

**AUBURN - THURSDAY MAY 12, 1994**  
Auburn City Council Chambers  
25 West Main Street  
Auburn, WA

**VANCOUVER - MONDAY MAY 16, 1994**  
Clark County Public Utility District  
Community Hearing Room  
1200 Fort Vancouver Way  
Vancouver, WA

**OLYMPIA/LACEY - TUESDAY MAY 17, 1994**  
Attorney General's Meeting Room

4224 6th Avenue S.E.  
Building 1 - RoweSix  
Lacey, WA

MT. VERNON - THURSDAY MAY 19, 1994  
County Commissioner's Administration Building  
Hearing Room C  
700 South 2nd  
Corner of 2nd and Kincaid  
Mt. Vernon, WA

Persons needing special accommodation should contact Steven Huber prior to the workshops at: Washington State Department of Ecology, Central Regional Office, 106 South 6th Avenue, Yakima, WA 98902-3387, phone (509) 575-2680.

Comments on the general permit may be given at the public hearings. Interested persons are also invited to submit written comments regarding the proposed general permit. All written comments must be received on or before May 26, 1994, to be considered in the final determination of the general permit. Written comments should be sent to:

Washington State Department of Ecology  
Central Regional Office  
106 South 6th Avenue  
Yakima, WA 98902-3387  
Attn: Steven Huber  
Water Quality Permit Coordinator

All comments received on or before May 26, 1994, will be considered before a final permit determination is made. A responsiveness summary will be prepared and available for public review. If the final determination on the general permit remains substantially unchanged from that published in the public notice, a copy of the final determination shall be forwarded to all persons who submitted written comment or gave public testimony regarding the permit. However, if the final determination is substantially changed, public notice shall again be given.

Copies of the proposed general permit, fact sheet, notice of intent to apply for coverage (NOI), small business economic impact statement (SBEIS), SBEIS summary, and other related documents are available upon request and are also available for inspection and copying between the hours of 8:00 a.m. and 4:30 p.m., weekdays at the Department of Ecology regional offices. To obtain a copy or to arrange to view copies at the regional office, call or write:

Washington State Department of Ecology  
Central Regional Office  
106 South 6th Avenue  
Yakima, WA 98902-3378  
Attn: Steven Huber, Permit Coordinator  
(509) 575-2680

Washington State Department of Ecology  
Eastern Regional Office  
North 4601 Monroe, Suite 100  
Spokane, WA 99205-1295  
Attn: Mike Huffman, Permit Coordinator  
(509) 456-2926

Washington State Department of Ecology  
Northwest Regional Office

Mail Stop NB-81  
3190 160th Avenue Southeast  
Bellevue, WA 98008-5452  
Attn: Carla Skog, Permit Coordinator  
(206) 649-7000  
Washington State Department of Ecology  
Southwest Regional Office  
Abbot Raphael Hall, Saint Martin's Campus, Lacey  
P.O. Box 47775  
Olympia, WA 98504-7775  
Attn: Holly Francis, Permit Coordinator  
(206) 407-6280

TENTATIVE DETERMINATION TO ISSUE:

The department has tentatively determined to issue this sand and gravel general permit. Proposed date of issuance is July 8, 1994.

The proposed terms, limitations, and conditions contained herein are tentative and may be subject to change, as a result of comments received on or before May 26, 1994. All facilities accepted under this general permit will not be relieved of any responsibility or liability at any time during the life of the permit for: Violating or exceeding state water quality standards; or violating any other local, state, or federal regulation or standard as may pertain to the individual facility.

**Ecology is an equal opportunity and affirmative action employer.**

**WSR 94-07-113**  
**NOTICE OF PUBLIC MEETINGS**  
**TRANSPORTATION COMMISSION**  
[Memorandum—March 17, 1994]

The April 1994 Washington State Transportation Commission meetings will be held at 10:00 a.m. on Wednesday, April 20, and 9:00 a.m. on Thursday, April 21, 1994, in the Leeward Room of the Seattle Hilton Hotel, 6th and University, Seattle, Washington. There will be committee meetings at 8:30 a.m., Wednesday, April 20, in the Taku and Chinook Rooms, Seattle Hilton Hotel, 6th and University, Seattle, Washington.

The May 1994 Washington State Transportation Commission meetings will be held at 1:00 p.m. on Tuesday, May 24, and 9:00 a.m. on Wednesday, May 25, 1994, in the Transportation Commission Room (1D2), Transportation Building, Olympia, Washington. There will be committee meetings at 9:00 a.m., Tuesday, May 24, in the Transportation Building, Rooms 1D2 and 3F21, Olympia, Washington.

**WSR 94-07-118**  
**NOTICE OF PUBLIC MEETINGS**  
**HUMAN RIGHTS COMMISSION**  
[Memorandum—March 22, 1994]

The Washington State Human Rights Commission will hold its April regular commission meeting in Seattle, Washington on April 27 and 28, 1994. The meeting on April 27 will be

held at the Seattle Central Community College, Broadway Performance Hall, President's Board Room BA-306, 1701 Broadway, Seattle. This session will begin at 4:00 p.m. with a brief agency business agenda. An executive session will be called to discuss legal and personnel matters if necessary. The remainder of this evening session will include agency planning and goal setting for the upcoming year. The planning session will be reconvened on April 28, at 8:30 a.m. at the Sheraton Seattle Hotel and Towers, Room 424, 1400 Sixth Avenue (Sixth and Pike), Seattle.



**Table of WAC Sections Affected**

**KEY TO TABLE**

This table covers the current calendar year through this issue of the Register and should be used to locate rules amended, adopted, or repealed subsequent to the publication date of the latest WAC or Supplement.

**Symbols:**

- AMD = Amendment of existing section
- A/R = Amending and recodifying a section
- DECOD = Decodification of an existing section
- NEW = New section not previously codified
- OBJEC = Notice of objection by Joint Administrative Rules Review Committee
- PREP = Preproposal comments
- RE-AD = Readoption of existing section
- RECOD = Recodification of previously codified section
- REP = Repeal of existing section
- RESCIND = Rescind previous emergency rule
- REVIEW = Review of previously adopted rule

**Suffixes:**

- P = Proposed action
- C = Continuance of previous proposal
- E = Emergency action
- S = Supplemental notice
- W = Withdrawal of proposed action
- No suffix means permanent action

**WAC #** shows the section number under which an agency rule is or will be codified in the Washington Administrative Code.

**WSR #** shows the issue of the Washington State Register where the document may be found; the last three digits identify the document within the issue.

| WAC #      |       | WSR #     | WAC #        |       | WSR #     | WAC #      |       | WSR #     |
|------------|-------|-----------|--------------|-------|-----------|------------|-------|-----------|
| 4-25-185   | REP   | 94-02-070 | 16-223-020   | REP   | 94-03-023 | 16-678-001 | REP   | 94-03-022 |
| 4-25-186   | REP   | 94-02-070 | 16-223-030   | REP   | 94-03-023 | 16-678-010 | REP   | 94-03-022 |
| 4-25-187   | REP   | 94-02-070 | 16-223-040   | REP   | 94-03-023 | 16-680-001 | REP   | 94-03-021 |
| 4-25-188   | REP   | 94-02-070 | 16-223-050   | REP   | 94-03-023 | 16-680-010 | REP   | 94-03-021 |
| 4-25-280   | REP   | 94-02-070 | 16-223-060   | REP   | 94-03-023 | 16-680-015 | REP   | 94-03-021 |
| 4-25-300   | REP   | 94-02-070 | 16-223-070   | REP   | 94-03-023 | 44-06-010  | AMD-P | 94-06-050 |
| 4-25-320   | REP   | 94-02-070 | 16-324-640   | REP-P | 94-01-110 | 44-06-020  | AMD-P | 94-06-050 |
| 4-25-521   | NEW   | 94-02-068 | 16-400-210   | AMD-E | 94-04-091 | 44-06-030  | AMD-P | 94-06-050 |
| 4-25-522   | NEW   | 94-02-068 | 16-403-145   | AMD-P | 94-05-050 | 44-06-040  | AMD-P | 94-06-050 |
| 4-25-810   | NEW   | 94-02-072 | 16-403-145   | AMD   | 94-07-133 | 44-06-050  | AMD-P | 94-06-050 |
| 4-25-811   | NEW   | 94-02-072 | 16-403-150   | AMD-P | 94-05-050 | 44-06-060  | AMD-P | 94-06-050 |
| 4-25-812   | NEW   | 94-02-072 | 16-403-150   | AMD   | 94-07-133 | 44-06-070  | AMD-P | 94-06-050 |
| 4-25-813   | NEW   | 94-02-072 | 16-403-290   | AMD-P | 94-05-050 | 44-06-080  | AMD-P | 94-06-050 |
| 4-25-820   | NEW   | 94-02-071 | 16-403-290   | AMD   | 94-07-133 | 44-06-085  | NEW-P | 94-06-050 |
| 4-25-920   | NEW   | 94-02-069 | 16-415-010   | REP   | 94-03-026 | 44-06-090  | AMD-P | 94-06-050 |
| 16-38-001  | REP   | 94-05-009 | 16-415-020   | REP   | 94-03-026 | 44-06-110  | AMD-P | 94-06-050 |
| 16-38-010  | REP   | 94-05-009 | 16-415-030   | REP   | 94-03-026 | 44-06-120  | AMD-P | 94-06-050 |
| 16-38-020  | REP   | 94-05-009 | 16-415-040   | REP   | 94-03-026 | 44-06-130  | AMD-P | 94-06-050 |
| 16-86-015  | AMD   | 94-05-008 | 16-432-010   | REP   | 94-03-025 | 44-06-140  | AMD-P | 94-06-050 |
| 16-103-001 | AMD   | 94-05-040 | 16-432-020   | REP   | 94-03-025 | 44-06-150  | NEW-P | 94-06-050 |
| 16-108-010 | AMD-P | 94-05-074 | 16-432-030   | REP   | 94-03-025 | 44-06-160  | NEW-P | 94-06-050 |
| 16-108-010 | AMD-W | 94-07-038 | 16-432-040   | REP   | 94-03-025 | 50-60-010  | NEW   | 94-03-009 |
| 16-200-805 | AMD-P | 94-05-060 | 16-432-050   | REP   | 94-03-025 | 50-60-020  | NEW   | 94-03-009 |
| 16-212-020 | AMD-P | 94-06-058 | 16-432-060   | REP   | 94-03-025 | 50-60-030  | NEW   | 94-03-009 |
| 16-212-030 | AMD-P | 94-06-058 | 16-432-070   | REP   | 94-03-025 | 50-60-040  | NEW   | 94-03-009 |
| 16-212-060 | AMD-P | 94-06-058 | 16-432-080   | REP   | 94-03-025 | 50-60-050  | NEW   | 94-03-009 |
| 16-212-070 | AMD-P | 94-06-058 | 16-432-090   | REP   | 94-03-025 | 50-60-060  | NEW   | 94-03-009 |
| 16-212-080 | AMD-P | 94-06-058 | 16-432-100   | REP   | 94-03-025 | 50-60-070  | NEW   | 94-03-009 |
| 16-212-082 | AMD-P | 94-06-058 | 16-432-110   | REP   | 94-03-025 | 50-60-080  | NEW   | 94-03-009 |
| 16-219-015 | AMD-P | 94-05-092 | 16-432-120   | REP   | 94-03-025 | 50-60-090  | NEW   | 94-03-009 |
| 16-219-017 | NEW-P | 94-05-092 | 16-432-130   | REP   | 94-03-025 | 50-60-100  | NEW   | 94-03-009 |
| 16-219-018 | NEW-P | 94-05-092 | 16-470-92005 | NEW-C | 94-06-003 | 50-60-110  | NEW   | 94-03-009 |
| 16-219-020 | AMD-P | 94-05-092 | 16-470-92005 | NEW-W | 94-06-051 | 50-60-120  | NEW   | 94-03-009 |
| 16-219-022 | NEW-P | 94-05-092 | 16-470-92010 | NEW-C | 94-06-003 | 50-60-130  | NEW   | 94-03-009 |
| 16-219-025 | AMD-P | 94-05-092 | 16-470-92010 | NEW-W | 94-06-051 | 50-60-140  | NEW   | 94-03-009 |
| 16-219-027 | NEW-P | 94-05-092 | 16-470-92015 | NEW-C | 94-06-003 | 50-60-150  | NEW   | 94-03-009 |
| 16-219-029 | NEW-P | 94-05-092 | 16-470-92015 | NEW-W | 94-06-051 | 50-60-160  | NEW   | 94-03-009 |
| 16-219-030 | REP-P | 94-05-092 | 16-470-92020 | NEW-C | 94-06-003 | 50-60-170  | NEW   | 94-03-009 |
| 16-219-031 | NEW-P | 94-05-092 | 16-470-92020 | NEW-W | 94-06-051 | 50-60-180  | NEW   | 94-03-009 |
| 16-219-100 | NEW-P | 94-05-061 | 16-470-92025 | NEW-C | 94-06-003 | 51-04-015  | AMD   | 94-05-058 |
| 16-219-105 | NEW-P | 94-05-061 | 16-470-92025 | NEW-W | 94-06-051 | 51-04-018  | AMD   | 94-05-058 |
| 16-221-001 | REP   | 94-03-024 | 16-470-92030 | NEW-C | 94-06-003 | 51-04-020  | AMD   | 94-05-058 |
| 16-221-010 | REP   | 94-03-024 | 16-470-92030 | NEW-W | 94-06-051 | 51-04-025  | AMD   | 94-05-058 |
| 16-221-020 | REP   | 94-03-024 | 16-470-92035 | NEW-C | 94-06-003 | 51-04-030  | AMD-W | 94-05-102 |
| 16-221-030 | REP   | 94-03-024 | 16-470-92035 | NEW-W | 94-06-051 | 51-04-060  | AMD   | 94-05-058 |
| 16-221-040 | REP   | 94-03-024 | 16-470-92040 | NEW-C | 94-06-003 | 51-11-0201 | AMD   | 94-05-059 |
| 16-223-001 | REP   | 94-03-023 | 16-470-92040 | NEW-W | 94-06-051 | 51-11-0402 | AMD   | 94-05-059 |
| 16-223-002 | REP   | 94-03-023 | 16-482-016   | AMD-P | 94-01-111 | 51-11-0502 | AMD-E | 94-05-007 |
| 16-223-004 | REP   | 94-03-023 | 16-514-020   | AMD-P | 94-05-073 | 51-11-0502 | AMD   | 94-05-059 |
| 16-223-005 | REP   | 94-03-023 | 16-580-040   | AMD-P | 94-05-066 | 51-11-0525 | AMD   | 94-05-059 |
| 16-223-010 | REP   | 94-03-023 | 16-602-025   | NEW   | 94-05-049 | 51-11-0527 | AMD   | 94-05-059 |



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| 132J-116-110 | AMD   | 94-04-052 | 137-56-200  | AMD   | 94-07-065 | 173-34-020  | REP-P | 94-03-071 |
| 132J-116-120 | AMD   | 94-04-052 | 137-56-210  | AMD   | 94-07-065 | 173-34-020  | REP   | 94-07-078 |
| 132J-116-130 | AMD   | 94-04-052 | 137-56-220  | AMD   | 94-07-065 | 173-34-030  | REP-P | 94-03-071 |
| 132J-116-140 | AMD   | 94-04-052 | 137-56-230  | AMD   | 94-07-065 | 173-34-030  | REP   | 94-07-078 |
| 132J-116-150 | AMD   | 94-04-052 | 137-56-240  | AMD   | 94-07-065 | 173-34-040  | REP-P | 94-03-071 |
| 132J-116-160 | AMD   | 94-04-052 | 137-56-250  | AMD   | 94-07-065 | 173-34-040  | REP   | 94-07-078 |
| 132J-116-170 | AMD   | 94-04-052 | 162-12-100  | AMD-W | 94-04-087 | 173-34-050  | REP-P | 94-03-071 |
| 132J-116-180 | AMD   | 94-04-052 | 162-12-110  | REP-W | 94-04-087 | 173-34-050  | REP   | 94-07-078 |
| 132J-116-190 | AMD   | 94-04-052 | 162-12-120  | AMD-W | 94-04-087 | 173-58-010  | AMD-P | 94-05-037 |
| 132J-116-200 | REP   | 94-04-052 | 162-12-130  | AMD-W | 94-04-087 | 173-58-020  | AMD-P | 94-05-037 |
| 132J-116-210 | AMD   | 94-04-052 | 162-12-135  | AMD-W | 94-04-087 | 173-58-090  | AMD-P | 94-05-037 |
| 132J-116-220 | AMD   | 94-04-052 | 162-12-140  | AMD-W | 94-04-087 | 173-60-010  | AMD-P | 94-05-037 |
| 132J-116-240 | AMD   | 94-04-052 | 162-12-150  | AMD-W | 94-04-087 | 173-60-020  | AMD-P | 94-05-037 |
| 132J-128-010 | REP   | 94-04-053 | 162-12-160  | AMD-W | 94-04-087 | 173-60-050  | AMD-P | 94-05-037 |
| 132J-128-020 | REP   | 94-04-053 | 162-12-170  | AMD-W | 94-04-087 | 173-60-070  | AMD-P | 94-05-037 |
| 132J-128-030 | REP   | 94-04-053 | 162-12-180  | AMD-W | 94-04-087 | 173-70-010  | REP-P | 94-05-037 |
| 132J-128-040 | REP   | 94-04-053 | 162-18-010  | REP-W | 94-04-087 | 173-70-020  | REP-P | 94-05-037 |
| 132J-128-050 | REP   | 94-04-053 | 162-18-020  | REP-W | 94-04-087 | 173-70-030  | REP-P | 94-05-037 |
| 132J-128-060 | REP   | 94-04-053 | 162-18-030  | REP-W | 94-04-087 | 173-70-040  | REP-P | 94-05-037 |
| 132J-128-070 | REP   | 94-04-053 | 162-18-040  | REP-W | 94-04-087 | 173-70-050  | REP-P | 94-05-037 |
| 132J-128-080 | REP   | 94-04-053 | 162-18-050  | REP-W | 94-04-087 | 173-70-060  | REP-P | 94-05-037 |
| 132J-128-090 | REP   | 94-04-053 | 162-18-060  | REP-W | 94-04-087 | 173-70-070  | REP-P | 94-05-037 |
| 132J-128-100 | REP   | 94-04-053 | 162-18-070  | REP-W | 94-04-087 | 173-70-080  | REP-P | 94-05-037 |
| 132J-128-110 | REP   | 94-04-053 | 162-18-080  | REP-W | 94-04-087 | 173-70-090  | REP-P | 94-05-037 |
| 132J-128-120 | REP   | 94-04-053 | 162-18-090  | REP-W | 94-04-087 | 173-70-100  | REP-P | 94-05-037 |
| 132J-128-130 | REP   | 94-04-053 | 162-18-100  | REP-W | 94-04-087 | 173-70-110  | REP-P | 94-05-037 |
| 132J-128-140 | REP   | 94-04-053 | 162-22-010  | AMD-W | 94-04-087 | 173-70-120  | REP-P | 94-05-037 |
| 132J-128-200 | NEW   | 94-04-053 | 162-22-020  | AMD-W | 94-04-087 | 173-95-010  | REP   | 94-04-030 |
| 132J-128-210 | NEW   | 94-04-053 | 162-22-030  | REP-W | 94-04-087 | 173-95-020  | REP   | 94-04-030 |
| 132J-136-020 | REP   | 94-04-054 | 162-22-040  | REP-W | 94-04-087 | 173-95-030  | REP   | 94-04-030 |
| 132J-136-025 | REP   | 94-04-054 | 162-22-050  | AMD-W | 94-04-087 | 173-95-040  | REP   | 94-04-030 |
| 132J-136-030 | REP   | 94-04-054 | 162-22-060  | AMD-W | 94-04-087 | 173-95-050  | REP   | 94-04-030 |
| 132J-136-040 | REP   | 94-04-054 | 162-22-070  | AMD-W | 94-04-087 | 173-95-060  | REP   | 94-04-030 |
| 132J-136-050 | REP   | 94-04-054 | 162-22-080  | AMD-W | 94-04-087 | 173-95-070  | REP   | 94-04-030 |
| 132R-190-010 | AMD   | 94-06-019 | 162-22-090  | AMD-W | 94-04-087 | 173-95-080  | REP   | 94-04-030 |
| 132R-190-020 | AMD   | 94-06-019 | 162-22-100  | AMD-W | 94-04-087 | 173-95-090  | REP   | 94-04-030 |
| 132R-190-030 | AMD   | 94-06-019 | 162-26-010  | AMD-W | 94-04-087 | 173-95-100  | REP   | 94-04-030 |
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| 356-09-030   | REP-W | 94-04-010 | 388-24-207 | REP-P | 94-07-114 | 388-28-475 | REP-P | 94-07-114 |
| 356-09-040   | REP-W | 94-04-010 | 388-24-210 | REP-P | 94-07-114 | 388-28-475 | REP-P | 94-07-114 |
| 356-09-050   | REP-W | 94-04-010 | 388-24-215 | REP-P | 94-07-114 | 388-28-480 | REP-P | 94-07-114 |
| 356-26-030   | AMD-E | 94-04-085 | 388-24-220 | REP-P | 94-07-114 | 388-28-481 | REP-P | 94-07-114 |
| 356-26-030   | AMD-P | 94-06-066 | 388-24-225 | REP-P | 94-07-114 | 388-28-482 | REP-P | 94-07-114 |
| 356-26-070   | AMD-E | 94-04-085 | 388-24-235 | REP-P | 94-07-114 | 388-28-483 | REP-P | 94-07-114 |
| 356-26-070   | AMD-P | 94-06-066 | 388-24-235 | REP-P | 94-07-114 | 388-28-484 | AMD-P | 94-05-029 |
| 356-30-285   | NEW   | 94-04-011 | 388-24-243 | REP-P | 94-07-114 | 388-28-484 | REP-P | 94-07-114 |
| 356-30-315   | NEW   | 94-04-011 | 388-24-250 | REP-P | 94-03-051 | 388-28-485 | REP-P | 94-07-114 |
| 356-30-328   | NEW-W | 94-04-009 | 388-24-250 | REP   | 94-06-026 | 388-28-500 | REP-P | 94-07-114 |
| 356-37-080   | AMD-P | 94-04-084 | 388-24-252 | REP-P | 94-03-051 | 388-28-515 | REP-P | 94-07-114 |
| 356-37-090   | AMD-P | 94-04-084 | 388-24-252 | REP   | 94-06-026 | 388-28-520 | REP-P | 94-07-114 |
| 356-56-015   | AMD-E | 94-03-069 | 388-24-253 | REP-P | 94-03-051 | 388-28-530 | AMD-P | 94-05-016 |
| 356-56-015   | AMD-P | 94-06-064 | 388-24-253 | REP   | 94-06-026 | 388-28-530 | REP-P | 94-07-114 |
| 356-56-030   | AMD-P | 94-06-064 | 388-24-254 | REP-P | 94-03-051 | 388-28-532 | REP-P | 94-07-114 |
| 356-56-115   | AMD-P | 94-06-064 | 388-24-254 | REP   | 94-06-026 | 388-28-535 | REP-P | 94-07-114 |
| 356-56-230   | AMD-E | 94-03-069 | 388-24-255 | REP-P | 94-03-051 | 388-28-555 | REP-P | 94-07-114 |
| 356-56-230   | AMD-P | 94-06-064 | 388-24-255 | REP   | 94-06-026 | 388-28-560 | AMD-P | 94-05-019 |
| 359-09-010   | AMD   | 94-06-063 | 388-24-260 | REP-P | 94-03-051 | 388-28-560 | REP-P | 94-07-114 |
| 359-09-012   | AMD   | 94-06-063 | 388-24-260 | REP   | 94-06-026 | 388-28-570 | REP-P | 94-07-114 |
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|              |       |           | 388-24-265 | REP   | 94-06-026 | 388-28-575 | REP-P | 94-07-114 |
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| 388-28-590 | REP-P | 94-07-114 | 388-33-458   | REP-P | 94-07-114 | 388-59-100   | REP   | 94-04-033 |
| 388-28-600 | AMD-P | 94-04-042 | 388-33-459   | REP-P | 94-07-114 | 388-80-002   | REP-P | 94-07-114 |
| 388-28-600 | REP-P | 94-07-114 | 388-33-460   | REP-P | 94-07-114 | 388-80-005   | REP-P | 94-07-114 |
| 388-28-650 | REP-P | 94-07-114 | 388-33-525   | REP-P | 94-07-114 | 388-81-005   | REP-P | 94-07-114 |
| 388-29-001 | REP-P | 94-06-035 | 388-33-535   | REP-P | 94-07-114 | 388-81-010   | REP-P | 94-07-114 |
| 388-29-005 | REP-P | 94-06-035 | 388-33-545   | REP-P | 94-07-114 | 388-81-015   | REP-P | 94-07-114 |
| 388-29-010 | REP-P | 94-06-035 | 388-33-550   | REP-P | 94-07-114 | 388-81-017   | REP-P | 94-07-114 |
| 388-29-020 | REP-P | 94-06-035 | 388-33-576   | REP-P | 94-07-114 | 388-81-020   | REP-P | 94-07-114 |
| 388-29-080 | REP-P | 94-06-035 | 388-33-579   | REP-P | 94-07-114 | 388-81-025   | REP-P | 94-07-114 |
| 388-29-100 | REP-P | 94-06-035 | 388-33-585   | REP-P | 94-07-114 | 388-81-030   | REP-P | 94-07-114 |
| 388-29-110 | REP-P | 94-06-035 | 388-33-595   | REP-P | 94-07-114 | 388-81-035   | REP-P | 94-07-114 |
| 388-29-112 | REP-P | 94-06-035 | 388-33-605   | REP-P | 94-07-114 | 388-81-038   | REP-P | 94-07-114 |
| 388-29-125 | REP-P | 94-06-035 | 388-38-010   | REP-P | 94-07-114 | 388-81-040   | REP-P | 94-07-114 |
| 388-29-130 | REP-P | 94-06-035 | 388-38-030   | REP-P | 94-07-114 | 388-81-042   | REP-P | 94-07-114 |
| 388-29-150 | REP-P | 94-06-035 | 388-38-040   | REP-P | 94-07-114 | 388-81-043   | REP-P | 94-07-114 |
| 388-29-160 | REP-P | 94-06-035 | 388-38-045   | REP-P | 94-07-114 | 388-81-044   | REP-P | 94-07-114 |
| 388-29-180 | REP-P | 94-06-035 | 388-38-050   | REP-P | 94-07-114 | 388-81-047   | REP-P | 94-07-114 |
| 388-29-200 | REP-P | 94-06-035 | 388-38-08501 | REP-P | 94-07-114 | 388-81-050   | REP-P | 94-07-114 |
| 388-29-210 | REP-P | 94-06-035 | 388-38-110   | REP-P | 94-07-114 | 388-81-052   | REP-P | 94-07-114 |
| 388-29-220 | REP-P | 94-06-035 | 388-38-120   | REP-P | 94-07-114 | 388-81-055   | REP-P | 94-07-114 |
| 388-29-230 | REP-P | 94-06-035 | 388-38-150   | REP-P | 94-07-114 | 388-81-060   | REP-P | 94-07-114 |
| 388-29-270 | REP-P | 94-06-035 | 388-38-172   | REP-P | 94-07-114 | 388-81-065   | REP-P | 94-07-114 |
| 388-29-280 | REP-P | 94-06-035 | 388-38-200   | REP-P | 94-07-114 | 388-81-070   | REP-P | 94-07-114 |
| 388-29-295 | AMD   | 94-04-035 | 388-38-220   | REP-P | 94-07-114 | 388-81-100   | REP-P | 94-07-114 |
| 388-29-295 | REP-P | 94-06-035 | 388-38-225   | REP-P | 94-07-114 | 388-81-175   | REP-P | 94-07-114 |
| 388-33-015 | REP-P | 94-07-114 | 388-38-230   | REP-P | 94-07-114 | 388-81-200   | REP-P | 94-07-114 |
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| 388-33-025 | REP-P | 94-07-114 | 388-38-255   | REP-P | 94-07-114 | 388-82-008   | REP-P | 94-07-114 |
| 388-33-045 | REP-P | 94-07-114 | 388-38-260   | REP-P | 94-07-114 | 388-82-010   | REP-P | 94-07-114 |
| 388-33-050 | REP-P | 94-07-114 | 388-38-265   | REP-P | 94-07-114 | 388-82-115   | REP-P | 94-07-114 |
| 388-33-051 | REP-P | 94-07-114 | 388-38-270   | REP-P | 94-07-114 | 388-82-126   | REP-P | 94-07-114 |
| 388-33-055 | REP-P | 94-07-114 | 388-38-280   | REP-P | 94-07-114 | 388-82-130   | REP-P | 94-07-114 |
| 388-33-080 | REP-P | 94-07-114 | 388-38-285   | REP-P | 94-07-114 | 388-82-135   | REP-P | 94-07-114 |
| 388-33-085 | REP-P | 94-07-114 | 388-38-290   | REP-P | 94-07-114 | 388-82-140   | REP-P | 94-07-114 |
| 388-33-090 | REP-P | 94-07-114 | 388-38-295   | REP-P | 94-07-114 | 388-82-150   | REP-P | 94-07-114 |
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| 388-33-115 | REP-P | 94-07-114 | 388-43-120   | NEW   | 94-04-037 | 388-83-005   | REP-P | 94-07-114 |
| 388-33-120 | REP-P | 94-07-114 | 388-44-010   | REP   | 94-05-045 | 388-83-006   | REP-P | 94-07-114 |
| 388-33-125 | REP-P | 94-07-114 | 388-44-020   | REP   | 94-05-045 | 388-83-010   | REP-P | 94-07-114 |
| 388-33-135 | REP-P | 94-07-114 | 388-44-035   | REP   | 94-05-045 | 388-83-012   | REP-P | 94-07-114 |
| 388-33-140 | REP-P | 94-07-114 | 388-44-046   | REP   | 94-05-045 | 388-83-013   | REP-P | 94-07-114 |
| 388-33-165 | REP-P | 94-07-114 | 388-44-050   | REP   | 94-05-045 | 388-83-014   | REP-P | 94-07-114 |
| 388-33-170 | REP-P | 94-07-114 | 388-44-110   | REP   | 94-05-045 | 388-83-015   | REP-P | 94-07-114 |
| 388-33-190 | REP-P | 94-07-114 | 388-44-115   | REP   | 94-05-045 | 388-83-017   | REP-P | 94-07-114 |
| 388-33-195 | REP-P | 94-07-114 | 388-44-120   | REP   | 94-05-045 | 388-83-020   | REP-P | 94-07-114 |
| 388-33-230 | REP-P | 94-07-114 | 388-44-125   | REP   | 94-05-045 | 388-83-025   | REP-P | 94-07-114 |
| 388-33-235 | REP-P | 94-07-114 | 388-44-127   | REP   | 94-05-045 | 388-83-026   | REP-P | 94-07-114 |
| 388-33-240 | REP-P | 94-07-114 | 388-44-140   | REP   | 94-05-045 | 388-83-029   | REP-P | 94-07-114 |
| 388-33-335 | REP-P | 94-07-114 | 388-44-145   | REP   | 94-05-045 | 388-83-031   | REP-P | 94-07-114 |
| 388-33-355 | REP-P | 94-07-114 | 388-44-150   | REP   | 94-05-045 | 388-83-03101 | REP-P | 94-07-114 |
| 388-33-365 | REP-P | 94-07-114 | 388-44-160   | REP   | 94-05-045 | 388-83-032   | REP-P | 94-07-114 |
| 388-33-375 | REP-P | 94-07-114 | 388-44-250   | REP   | 94-05-045 | 388-83-033   | REP-P | 94-07-114 |
| 388-33-376 | REP-P | 94-07-114 | 388-44-280   | REP   | 94-05-045 | 388-83-036   | REP-P | 94-07-114 |
| 388-33-377 | REP-P | 94-07-114 | 388-44-330   | REP   | 94-05-045 | 388-83-041   | REP-P | 94-07-114 |
| 388-33-382 | REP-P | 94-07-114 | 388-49-500   | AMD-P | 94-07-031 | 388-83-046   | REP-P | 94-07-114 |
| 388-33-385 | REP-P | 94-07-114 | 388-49-535   | AMD-P | 94-03-041 | 388-83-130   | REP-P | 94-07-114 |
| 388-33-387 | REP-P | 94-07-114 | 388-49-535   | AMD-W | 94-06-023 | 388-83-200   | REP-P | 94-07-114 |
| 388-33-389 | REP-P | 94-07-114 | 388-49-590   | AMD-P | 94-03-050 | 388-83-210   | REP-P | 94-07-114 |
| 388-33-400 | REP-P | 94-07-114 | 388-49-590   | AMD-C | 94-06-027 | 388-83-220   | REP-P | 94-07-114 |
| 388-33-420 | REP-P | 94-07-114 | 388-49-590   | AMD   | 94-07-080 | 388-84-105   | REP-P | 94-07-114 |
| 388-33-425 | REP-P | 94-07-114 | 388-53-010   | REP   | 94-04-036 | 388-84-110   | REP-P | 94-07-114 |
| 388-33-430 | REP-P | 94-07-114 | 388-53-050   | REP   | 94-04-036 | 388-84-115   | AMD-P | 94-05-026 |
| 388-33-440 | REP-P | 94-07-114 | 388-59-010   | REP   | 94-04-033 | 388-84-115   | REP-P | 94-07-114 |
| 388-33-442 | REP-P | 94-07-114 | 388-59-020   | REP   | 94-04-033 | 388-84-115   | AMD   | 94-07-132 |
| 388-33-444 | REP-P | 94-07-114 | 388-59-030   | REP   | 94-04-033 | 388-84-120   | REP-P | 94-07-114 |
| 388-33-446 | REP-P | 94-07-114 | 388-59-040   | REP   | 94-04-033 | 388-85-105   | REP-P | 94-07-114 |
| 388-33-447 | REP-P | 94-07-114 | 388-59-045   | REP   | 94-04-033 | 388-85-110   | REP-P | 94-07-114 |
| 388-33-448 | REP-P | 94-07-114 | 388-59-048   | REP   | 94-04-033 | 388-85-115   | REP-P | 94-07-114 |
| 388-33-449 | REP-P | 94-07-114 | 388-59-050   | REP   | 94-04-033 | 388-86-030   | AMD-C | 94-04-031 |
| 388-33-450 | REP-P | 94-07-114 | 388-59-060   | REP   | 94-04-033 | 388-86-030   | AMD-C | 94-05-044 |
| 388-33-453 | REP-P | 94-07-114 | 388-59-070   | REP   | 94-04-033 | 388-86-030   | AMD-C | 94-07-021 |
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| 388-86-040   | REP   | 94-07-022 | 388-96-721   | REP-P | 94-07-109 | 388-215-1200 | NEW-P | 94-07-114 |
| 388-86-04001 | NEW-C | 94-05-043 | 388-96-722   | AMD-P | 94-07-109 | 388-215-1225 | NEW-P | 94-07-114 |
| 388-86-04001 | NEW   | 94-07-022 | 388-96-727   | AMD-P | 94-07-109 | 388-215-1230 | NEW-P | 94-07-114 |
| 388-86-045   | AMD   | 94-03-052 | 388-96-735   | AMD-P | 94-07-109 | 388-215-1245 | NEW-P | 94-07-114 |
| 388-86-073   | AMD-P | 94-04-022 | 388-96-737   | AMD-P | 94-07-109 | 388-215-1300 | NEW-P | 94-07-114 |
| 388-86-073   | AMD-E | 94-04-023 | 388-96-745   | AMD-P | 94-07-109 | 388-215-1320 | NEW-P | 94-07-114 |
| 388-86-073   | AMD   | 94-07-030 | 388-96-753   | NEW-P | 94-07-109 | 388-215-1325 | NEW-P | 94-07-114 |
| 388-86-090   | AMD-P | 94-04-022 | 388-96-754   | AMD-P | 94-07-109 | 388-215-1330 | NEW-P | 94-07-114 |
| 388-86-090   | AMD-E | 94-04-023 | 388-96-763   | AMD-P | 94-07-109 | 388-215-1335 | NEW-P | 94-07-114 |
| 388-86-090   | AMD   | 94-07-030 | 388-96-774   | AMD-P | 94-07-109 | 388-215-1340 | NEW-P | 94-07-114 |
| 388-86-098   | AMD-P | 94-04-022 | 388-96-776   | NEW-P | 94-07-109 | 388-215-1345 | NEW-P | 94-07-114 |
| 388-86-098   | AMD-E | 94-07-023 | 388-96-777   | NEW-P | 94-07-109 | 388-215-1350 | NEW-P | 94-07-114 |
| 388-86-098   | AMD   | 94-07-030 | 388-96-904   | AMD-P | 94-07-109 | 388-215-1355 | NEW-P | 94-07-114 |
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| 388-92-015   | REP-P | 94-07-114 | 388-99-010   | REP-P | 94-07-114 | 388-215-1365 | NEW-P | 94-07-114 |
| 388-92-025   | REP-P | 94-07-114 | 388-99-011   | REP-P | 94-07-114 | 388-215-1370 | NEW-P | 94-07-114 |
| 388-92-027   | REP-P | 94-07-114 | 388-99-015   | REP-P | 94-07-114 | 388-215-1375 | NEW-P | 94-07-114 |
| 388-92-030   | REP-P | 94-07-114 | 388-99-020   | REP-P | 94-07-114 | 388-215-1380 | NEW-P | 94-07-114 |
| 388-92-034   | REP-P | 94-07-114 | 388-99-030   | REP-P | 94-07-114 | 388-215-1385 | NEW-P | 94-07-114 |
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| 388-92-041   | AMD-P | 94-05-028 | 388-99-050   | REP-P | 94-07-114 | 388-215-1420 | NEW-P | 94-07-114 |
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| 388-92-041   | AMD   | 94-07-131 | 388-99-060   | REP-P | 94-07-114 | 388-215-1440 | NEW-P | 94-07-114 |
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| 388-92-050   | REP-P | 94-07-114 | 388-100-005  | REP-P | 94-07-114 | 388-215-1460 | NEW-P | 94-07-114 |
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| 388-93-015   | REP-P | 94-07-114 | 388-100-020  | REP-P | 94-07-114 | 388-215-1490 | NEW-P | 94-07-114 |
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| 388-93-050   | REP-P | 94-07-114 | 388-200-1160 | NEW-P | 94-07-114 | 388-215-1620 | NEW-P | 94-07-114 |
| 388-93-055   | REP-P | 94-07-114 | 388-200-1200 | NEW-P | 94-07-114 | 388-215-1650 | NEW-P | 94-07-114 |
| 388-93-060   | REP-P | 94-07-114 | 388-200-1250 | NEW-P | 94-07-114 | 388-216-2000 | NEW-P | 94-07-114 |
| 388-93-065   | REP-P | 94-07-114 | 388-210-1000 | NEW-P | 94-07-114 | 388-216-2050 | NEW-P | 94-07-114 |
| 388-93-075   | REP-P | 94-07-114 | 388-210-1010 | NEW-P | 94-07-114 | 388-216-2075 | NEW-P | 94-07-114 |
| 388-93-080   | REP-P | 94-07-114 | 388-210-1020 | NEW-P | 94-07-114 | 388-216-2100 | NEW-P | 94-07-114 |
| 388-95-300   | REP-P | 94-07-114 | 388-210-1050 | NEW-P | 94-07-114 | 388-216-2150 | NEW-P | 94-07-114 |
| 388-95-310   | REP-P | 94-07-114 | 388-210-1100 | NEW-P | 94-07-114 | 388-216-2200 | NEW-P | 94-07-114 |
| 388-95-320   | REP-P | 94-07-114 | 388-210-1200 | NEW-P | 94-07-114 | 388-216-2250 | NEW-P | 94-07-114 |
| 388-95-335   | REP-P | 94-07-114 | 388-210-1220 | NEW-P | 94-07-114 | 388-216-2300 | NEW-P | 94-07-114 |
| 388-95-337   | AMD-P | 94-05-025 | 388-210-1230 | NEW-P | 94-07-114 | 388-216-2350 | NEW-P | 94-07-114 |
| 388-95-337   | REP-P | 94-07-114 | 388-210-1250 | NEW-P | 94-07-114 | 388-216-2450 | NEW-P | 94-07-114 |
| 388-95-337   | AMD   | 94-07-130 | 388-210-1300 | NEW-P | 94-07-114 | 388-216-2500 | NEW-P | 94-07-114 |
| 388-95-340   | REP-P | 94-07-114 | 388-210-1310 | NEW-P | 94-07-114 | 388-216-2550 | NEW-P | 94-07-114 |
| 388-95-360   | REP-P | 94-07-114 | 388-210-1320 | NEW-P | 94-07-114 | 388-216-2560 | NEW-P | 94-07-114 |
| 388-95-380   | REP-P | 94-07-114 | 388-210-1330 | NEW-P | 94-07-114 | 388-216-2570 | NEW-P | 94-07-114 |
| 388-95-390   | REP-P | 94-07-114 | 388-210-1340 | NEW-P | 94-07-114 | 388-216-2580 | NEW-P | 94-07-114 |
| 388-95-395   | REP-P | 94-07-114 | 388-210-1350 | NEW-P | 94-07-114 | 388-216-2590 | NEW-P | 94-07-114 |
| 388-95-400   | REP-P | 94-07-114 | 388-210-1400 | NEW-P | 94-07-114 | 388-216-2600 | NEW-P | 94-07-114 |
| 388-96-010   | AMD-P | 94-07-109 | 388-210-1410 | NEW-P | 94-07-114 | 388-216-2650 | NEW-P | 94-07-114 |
| 388-96-113   | AMD-P | 94-07-109 | 388-210-1420 | NEW-P | 94-07-114 | 388-216-2800 | NEW-P | 94-07-114 |
| 388-96-134   | AMD-P | 94-07-109 | 388-212-1000 | NEW-P | 94-07-114 | 388-216-2850 | NEW-P | 94-07-114 |
| 388-96-217   | AMD-P | 94-07-109 | 388-212-1050 | NEW-P | 94-07-114 | 388-216-2900 | NEW-P | 94-07-114 |
| 388-96-221   | AMD-P | 94-07-109 | 388-212-1100 | NEW-P | 94-07-114 | 388-217-3000 | NEW   | 94-04-043 |
| 388-96-226   | AMD-P | 94-07-109 | 388-212-1140 | NEW-P | 94-07-114 | 388-217-3050 | NEW   | 94-04-043 |
| 388-96-228   | AMD-P | 94-07-109 | 388-212-1150 | NEW-P | 94-07-114 | 388-217-3100 | NEW   | 94-04-043 |
| 388-96-525   | AMD-P | 94-07-109 | 388-212-1200 | NEW-P | 94-07-114 | 388-217-3150 | NEW   | 94-04-043 |
| 388-96-533   | AMD-P | 94-07-109 | 388-212-1250 | NEW-P | 94-07-114 | 388-217-3200 | NEW   | 94-04-043 |
| 388-96-534   | AMD-P | 94-07-109 | 388-215-1000 | NEW-P | 94-07-114 | 388-217-3250 | NEW   | 94-04-043 |
| 388-96-559   | AMD-P | 94-07-109 | 388-215-1025 | NEW-P | 94-07-114 | 388-217-3300 | NEW   | 94-04-043 |
| 388-96-565   | AMD-P | 94-07-109 | 388-215-1050 | NEW-P | 94-07-114 | 388-217-3350 | NEW   | 94-04-043 |
| 388-96-585   | AMD-P | 94-07-109 | 388-215-1060 | NEW-P | 94-07-114 | 388-218-1010 | NEW-P | 94-07-114 |
| 388-96-704   | AMD-P | 94-07-109 | 388-215-1070 | NEW-P | 94-07-114 | 388-218-1050 | NEW-P | 94-07-114 |
| 388-96-707   | REP-P | 94-07-109 | 388-215-1080 | NEW-P | 94-07-114 | 388-218-1100 | NEW-P | 94-07-114 |
| 388-96-709   | AMD-P | 94-07-109 | 388-215-1100 | NEW-P | 94-07-114 | 388-218-1110 | NEW-P | 94-07-114 |
| 388-96-710   | AMD-P | 94-07-109 | 388-215-1110 | NEW-P | 94-07-114 | 388-218-1120 | NEW-P | 94-07-114 |

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| 388-504-0405 | NEW-P | 94-07-114 | 388-513-1365 | NEW-P | 94-07-114 | 390-16-308  | AMD-P | 94-07-088 |
| 388-504-0410 | NEW-P | 94-07-114 | 388-513-1380 | NEW-P | 94-07-114 | 390-16-308  | AMD-W | 94-07-089 |
| 388-504-0420 | NEW-P | 94-07-114 | 388-513-1395 | NEW-P | 94-07-114 | 390-16-309  | NEW-E | 94-07-001 |
| 388-504-0430 | NEW-P | 94-07-114 | 388-513-1396 | NEW-P | 94-07-114 | 390-16-309  | NEW-P | 94-07-035 |
| 388-504-0440 | NEW-P | 94-07-114 | 388-515-1505 | NEW-P | 94-07-114 | 390-16-310  | AMD-P | 94-07-035 |
| 388-504-0450 | NEW-P | 94-07-114 | 388-515-1510 | NEW-P | 94-07-114 | 390-16-310  | AMD-P | 94-07-088 |
| 388-504-0460 | NEW-P | 94-07-114 | 388-515-1530 | NEW-P | 94-07-114 | 390-16-310  | AMD-W | 94-07-089 |
| 388-504-0470 | NEW-P | 94-07-114 | 388-517-1710 | NEW-P | 94-07-114 | 390-16-311  | NEW-P | 94-07-142 |
| 388-504-0480 | NEW-P | 94-07-114 | 388-517-1715 | NEW-P | 94-07-114 | 390-16-315  | AMD-P | 94-05-097 |
| 388-504-0485 | NEW-P | 94-07-114 | 388-517-1720 | NEW-P | 94-07-114 | 390-16-324  | NEW-P | 94-03-087 |
| 388-505-0501 | NEW-P | 94-07-114 | 388-517-1730 | NEW-P | 94-07-114 | 390-16-324  | NEW-W | 94-04-121 |
| 388-505-0505 | NEW-P | 94-07-114 | 388-517-1740 | NEW-P | 94-07-114 | 390-17-071  | NEW   | 94-05-010 |
| 388-505-0510 | NEW-P | 94-07-114 | 388-517-1750 | NEW-P | 94-07-114 | 390-17-300  | AMD-P | 94-03-087 |
| 388-505-0520 | NEW-P | 94-07-114 | 388-517-1760 | NEW-P | 94-07-114 | 390-17-300  | AMD-W | 94-04-121 |
| 388-505-0530 | NEW-P | 94-07-114 | 388-518-1805 | NEW-P | 94-07-114 | 390-17-300  | AMD   | 94-07-141 |
| 388-505-0540 | NEW-P | 94-07-114 | 388-518-1810 | NEW-P | 94-07-114 | 390-17-315  | AMD-P | 94-03-087 |
| 388-505-0560 | NEW-P | 94-07-114 | 388-518-1820 | NEW-P | 94-07-114 | 390-17-315  | AMD-W | 94-04-121 |
| 388-505-0570 | NEW-P | 94-07-114 | 388-518-1830 | NEW-P | 94-07-114 | 390-17-315  | AMD   | 94-07-141 |
| 388-505-0580 | NEW-P | 94-07-114 | 388-518-1840 | NEW-P | 94-07-114 | 390-17-320  | NEW-P | 94-07-035 |
| 388-505-0590 | NEW-P | 94-07-114 | 388-518-1850 | NEW-P | 94-07-114 | 390-17-405  | NEW-P | 94-07-142 |
| 388-505-0595 | NEW-P | 94-07-114 | 388-519-1905 | NEW-P | 94-07-114 | 390-20-148  | NEW-P | 94-07-035 |
| 388-506-0610 | NEW-P | 94-07-114 | 388-519-1910 | NEW-P | 94-07-114 | 390-20-052  | AMD-P | 94-07-035 |
| 388-506-0620 | NEW-P | 94-07-114 | 388-519-1930 | NEW-P | 94-07-114 | 390-24-030  | REP   | 94-05-010 |
| 388-506-0630 | NEW-P | 94-07-114 | 388-519-1950 | NEW-P | 94-07-114 | 390-24-031  | REP   | 94-05-010 |
| 388-507-0710 | NEW-P | 94-07-114 | 388-521-2105 | NEW-P | 94-07-114 | 390-24-160  | AMD   | 94-05-010 |
| 388-507-0720 | NEW-P | 94-07-114 | 388-521-2110 | NEW-P | 94-07-114 | 390-37-070  | AMD   | 94-05-010 |
| 388-507-0730 | NEW-P | 94-07-114 | 388-521-2120 | NEW-P | 94-07-114 | 390-37-105  | AMD   | 94-05-010 |
| 388-507-0740 | NEW-P | 94-07-114 | 388-521-2130 | NEW-P | 94-07-114 | 390-37-142  | AMD   | 94-05-010 |
| 388-508-0805 | NEW-P | 94-07-114 | 388-521-2140 | NEW-P | 94-07-114 | 392-127-700 | REP   | 94-04-096 |
| 388-508-0810 | NEW-P | 94-07-114 | 388-521-2150 | NEW-P | 94-07-114 | 392-127-703 | REP   | 94-04-096 |
| 388-508-0820 | NEW-P | 94-07-114 | 388-521-2155 | NEW-P | 94-07-114 | 392-127-705 | REP   | 94-04-096 |
| 388-508-0830 | NEW-P | 94-07-114 | 388-521-2160 | NEW-P | 94-07-114 | 392-127-710 | REP   | 94-04-096 |
| 388-508-0835 | NEW-P | 94-07-114 | 388-521-2170 | NEW-P | 94-07-114 | 392-127-715 | REP   | 94-04-096 |
| 388-508-0840 | NEW-P | 94-07-114 | 388-522-2205 | NEW-P | 94-07-114 | 392-127-720 | REP   | 94-04-096 |
| 388-509-0905 | NEW-P | 94-07-114 | 388-522-2210 | NEW-P | 94-07-114 | 392-127-725 | REP   | 94-04-096 |
| 388-509-0910 | NEW-P | 94-07-114 | 388-522-2230 | NEW-P | 94-07-114 | 392-127-730 | REP   | 94-04-096 |
| 388-509-0920 | NEW-P | 94-07-114 | 388-523-2305 | NEW-P | 94-07-114 | 392-127-735 | REP   | 94-04-096 |
| 388-509-0940 | NEW-P | 94-07-114 | 388-523-2320 | NEW-P | 94-07-114 | 392-127-740 | REP   | 94-04-096 |
| 388-509-0960 | NEW-P | 94-07-114 | 388-524-2405 | NEW-P | 94-07-114 | 392-127-745 | REP   | 94-04-096 |
| 388-509-0970 | NEW-P | 94-07-114 | 388-524-2420 | NEW-P | 94-07-114 | 392-127-750 | REP   | 94-04-096 |
| 388-510-1020 | NEW-P | 94-07-114 | 388-525-2505 | NEW-P | 94-07-114 | 392-127-755 | REP   | 94-04-096 |
| 388-510-1030 | NEW-P | 94-07-114 | 388-525-2520 | NEW-P | 94-07-114 | 392-127-760 | REP   | 94-04-096 |
| 388-511-1105 | NEW-P | 94-07-114 | 388-525-2570 | NEW-P | 94-07-114 | 392-127-765 | REP   | 94-04-096 |
| 388-511-1110 | NEW-P | 94-07-114 | 388-526-2610 | NEW-P | 94-07-114 | 392-127-770 | REP   | 94-04-096 |
| 388-511-1115 | NEW-P | 94-07-114 | 388-527-2710 | NEW-P | 94-07-114 | 392-127-775 | REP   | 94-04-096 |
| 388-511-1130 | NEW-P | 94-07-114 | 388-527-2720 | NEW-P | 94-07-114 | 392-127-780 | REP   | 94-04-096 |
| 388-511-1140 | NEW-P | 94-07-114 | 388-528-2810 | NEW-P | 94-07-114 | 392-127-785 | REP   | 94-04-096 |
| 388-511-1150 | NEW-P | 94-07-114 | 388-529-2910 | NEW-P | 94-07-114 | 392-127-790 | REP   | 94-04-096 |
| 388-511-1160 | NEW-P | 94-07-114 | 388-529-2920 | NEW-P | 94-07-114 | 392-127-795 | REP   | 94-04-096 |
| 388-511-1170 | NEW-P | 94-07-114 | 388-529-2930 | NEW-P | 94-07-114 | 392-127-800 | REP   | 94-04-096 |
| 388-512-1210 | NEW-P | 94-07-114 | 388-529-2940 | NEW-P | 94-07-114 | 392-127-805 | REP   | 94-04-096 |
| 388-512-1215 | NEW-P | 94-07-114 | 388-529-2950 | NEW-P | 94-07-114 | 392-127-815 | REP   | 94-04-096 |
| 388-512-1220 | NEW-P | 94-07-114 | 388-529-2960 | NEW-P | 94-07-114 | 392-127-820 | REP   | 94-04-096 |
| 388-512-1225 | NEW-P | 94-07-114 | 388-538-110  | AMD   | 94-04-038 | 392-127-825 | REP   | 94-04-096 |
| 388-512-1230 | NEW-P | 94-07-114 | 390-05-235   | AMD-P | 94-07-088 | 392-127-830 | REP   | 94-04-096 |
| 388-512-1235 | NEW-P | 94-07-114 | 390-12-010   | AMD   | 94-05-010 | 392-140-500 | NEW-P | 94-04-122 |
| 388-512-1240 | NEW-P | 94-07-114 | 390-14-040   | AMD   | 94-05-010 | 392-140-501 | NEW-P | 94-04-122 |
| 388-512-1245 | NEW-P | 94-07-114 | 390-16-011   | AMD   | 94-05-011 | 392-140-503 | NEW-P | 94-04-122 |
| 388-512-1250 | NEW-P | 94-07-114 | 390-16-012   | AMD   | 94-05-011 | 392-140-504 | NEW-P | 94-04-122 |
| 388-512-1255 | NEW-P | 94-07-114 | 390-16-031   | AMD   | 94-05-011 | 392-140-505 | NEW-P | 94-04-122 |
| 388-512-1260 | NEW-P | 94-07-114 | 390-16-032   | AMD   | 94-05-011 | 392-140-506 | NEW-P | 94-04-122 |
| 388-512-1265 | NEW-P | 94-07-114 | 390-16-033   | AMD   | 94-05-011 | 392-140-507 | NEW-P | 94-04-122 |
| 388-512-1275 | NEW-P | 94-07-114 | 390-16-041   | AMD   | 94-05-011 | 392-140-508 | NEW-P | 94-04-122 |
| 388-512-1280 | NEW-P | 94-07-114 | 390-16-050   | AMD   | 94-05-011 | 392-140-509 | NEW-P | 94-04-122 |
| 388-513-1305 | NEW-P | 94-07-114 | 390-16-071   | NEW-E | 94-07-001 | 392-140-510 | NEW-P | 94-04-122 |
| 388-513-1310 | NEW-P | 94-07-114 | 390-16-071   | NEW-P | 94-07-035 | 392-140-511 | NEW-P | 94-04-122 |
| 388-513-1315 | NEW-P | 94-07-114 | 390-16-207   | AMD-P | 94-07-035 | 392-140-512 | NEW-P | 94-04-122 |
| 388-513-1320 | NEW-P | 94-07-114 | 390-16-238   | NEW-P | 94-05-097 | 392-140-516 | NEW-P | 94-04-122 |
| 388-513-1330 | NEW-P | 94-07-114 | 390-16-238   | NEW   | 94-07-141 | 392-140-517 | NEW-P | 94-04-122 |
| 388-513-1340 | NEW-P | 94-07-114 | 390-16-245   | NEW-P | 94-05-097 | 392-140-518 | NEW-P | 94-04-122 |
| 388-513-1345 | NEW-P | 94-07-114 | 390-16-245   | NEW   | 94-07-141 | 392-140-519 | NEW-P | 94-04-122 |
| 388-513-1350 | NEW-P | 94-07-114 | 390-16-300   | AMD-P | 94-05-097 | 392-157-005 | NEW   | 94-04-097 |
| 388-513-1360 | NEW-P | 94-07-114 | 390-16-308   | AMD-P | 94-07-035 | 392-157-010 | NEW   | 94-04-097 |

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| 392-157-020 | NEW   | 94-04-097 | 392-320-005 | NEW-P | 94-04-025 |
| 392-157-025 | NEW   | 94-04-097 | 392-320-005 | NEW   | 94-07-102 |
| 392-157-030 | NEW   | 94-04-097 | 392-320-010 | NEW-P | 94-04-025 |
| 392-157-035 | NEW   | 94-04-097 | 392-320-010 | NEW   | 94-07-102 |
| 392-157-040 | NEW   | 94-04-097 | 392-320-015 | NEW-P | 94-04-025 |
| 392-157-045 | NEW   | 94-04-097 | 392-320-015 | NEW   | 94-07-102 |
| 392-157-050 | NEW   | 94-04-097 | 392-320-020 | NEW-P | 94-04-025 |
| 392-157-055 | NEW   | 94-04-097 | 392-320-020 | NEW   | 94-07-102 |
| 392-157-060 | NEW   | 94-04-097 | 392-320-025 | NEW-P | 94-04-025 |
| 392-157-065 | NEW   | 94-04-097 | 392-320-025 | NEW   | 94-07-102 |
| 392-157-070 | NEW   | 94-04-097 | 392-320-030 | NEW-P | 94-04-025 |
| 392-157-075 | NEW   | 94-04-097 | 392-320-030 | NEW   | 94-07-102 |
| 392-157-080 | NEW   | 94-04-097 | 392-320-035 | NEW-P | 94-04-025 |
| 392-157-085 | NEW   | 94-04-097 | 392-320-035 | NEW   | 94-07-102 |
| 392-157-090 | NEW   | 94-04-097 | 392-320-040 | NEW-P | 94-04-025 |
| 392-157-095 | NEW   | 94-04-097 | 392-320-040 | NEW   | 94-07-102 |
| 392-157-100 | NEW   | 94-04-097 | 392-320-045 | NEW-P | 94-04-025 |
| 392-157-105 | NEW   | 94-04-097 | 392-320-045 | NEW   | 94-07-102 |
| 392-157-110 | NEW   | 94-04-097 | 392-320-050 | NEW-P | 94-04-025 |
| 392-157-115 | NEW   | 94-04-097 | 392-320-050 | NEW   | 94-07-102 |
| 392-157-120 | NEW   | 94-04-097 | 392-320-055 | NEW-P | 94-04-025 |
| 392-157-125 | NEW   | 94-04-097 | 392-320-055 | NEW   | 94-07-102 |
| 392-157-130 | NEW   | 94-04-097 | 392-320-060 | NEW-P | 94-04-025 |
| 392-157-135 | NEW   | 94-04-097 | 392-320-060 | NEW   | 94-07-102 |
| 392-157-140 | NEW   | 94-04-097 | 415-02-030  | AMD-P | 94-05-012 |
| 392-157-145 | NEW   | 94-04-097 | 415-02-110  | NEW-P | 94-05-012 |
| 392-157-150 | NEW   | 94-04-097 | 415-100-190 | NEW-P | 94-07-143 |
| 392-157-155 | NEW   | 94-04-097 | 415-104-111 | NEW-P | 94-05-013 |
| 392-157-160 | NEW   | 94-04-097 | 415-108-010 | AMD-P | 94-07-144 |
| 392-157-165 | NEW   | 94-04-097 | 415-108-510 | AMD-P | 94-07-144 |
| 392-157-170 | NEW   | 94-04-097 | 415-108-530 | NEW-P | 94-07-144 |
| 392-157-175 | NEW   | 94-04-097 | 415-108-540 | NEW-P | 94-07-144 |
| 392-157-180 | NEW   | 94-04-097 | 415-108-580 | NEW-P | 94-05-013 |
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| 392-163-400 | AMD   | 94-07-103 | 415-112-415 | AMD-P | 94-07-144 |
| 392-163-405 | AMD-P | 94-04-094 | 415-112-840 | NEW-P | 94-05-013 |
| 392-163-405 | AMD   | 94-07-103 | 415-112-840 | NEW-P | 94-07-144 |
| 392-163-440 | AMD-P | 94-04-094 | 434-60-210  | NEW   | 94-07-018 |
| 392-163-440 | AMD   | 94-07-103 | 434-60-215  | NEW   | 94-07-018 |
| 392-163-445 | AMD-P | 94-04-094 | 434-60-220  | NEW   | 94-07-018 |
| 392-163-445 | AMD   | 94-07-103 | 434-60-230  | NEW   | 94-07-018 |
| 392-163-530 | AMD-P | 94-04-094 | 434-60-240  | NEW   | 94-07-018 |
| 392-163-530 | AMD   | 94-07-103 | 434-60-250  | NEW   | 94-07-018 |
| 392-163-580 | AMD-P | 94-04-094 | 434-60-260  | NEW   | 94-07-018 |
| 392-163-580 | AMD   | 94-07-103 | 434-60-270  | NEW   | 94-07-018 |
| 392-169-005 | NEW   | 94-04-095 | 434-60-280  | NEW   | 94-07-018 |
| 392-169-010 | NEW   | 94-04-095 | 434-60-290  | NEW   | 94-07-018 |
| 392-169-015 | NEW   | 94-04-095 | 434-60-300  | NEW   | 94-07-018 |
| 392-169-020 | NEW   | 94-04-095 | 434-60-310  | NEW   | 94-07-018 |
| 392-169-022 | NEW   | 94-04-095 | 434-60-320  | NEW   | 94-07-018 |
| 392-169-023 | NEW   | 94-04-095 | 434-60-330  | NEW   | 94-07-018 |
| 392-169-025 | NEW   | 94-04-095 | 434-60-340  | NEW   | 94-07-018 |
| 392-169-030 | NEW   | 94-04-095 | 434-60-350  | NEW   | 94-07-018 |
| 392-169-035 | NEW   | 94-04-095 | 434-663-001 | NEW-W | 94-03-081 |
| 392-169-040 | NEW   | 94-04-095 | 434-663-005 | NEW-W | 94-03-081 |
| 392-169-045 | NEW   | 94-04-095 | 434-663-020 | NEW-W | 94-03-081 |
| 392-169-050 | NEW   | 94-04-095 | 434-663-030 | NEW-W | 94-03-081 |
| 392-169-055 | NEW   | 94-04-095 | 434-663-050 | NEW-W | 94-03-081 |
| 392-169-057 | NEW   | 94-04-095 | 434-663-060 | NEW-W | 94-03-081 |
| 392-169-060 | NEW   | 94-04-095 | 434-663-070 | NEW-W | 94-03-081 |
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| 392-169-070 | NEW   | 94-04-095 | 434-663-200 | NEW   | 94-04-102 |
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| 392-169-080 | NEW   | 94-04-095 | 434-663-220 | NEW   | 94-04-102 |
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| 392-169-090 | NEW   | 94-04-095 | 434-663-240 | NEW   | 94-04-102 |
| 392-169-095 | NEW   | 94-04-095 | 434-663-250 | NEW   | 94-04-102 |
| 392-169-100 | NEW   | 94-04-095 | 434-663-260 | NEW   | 94-04-102 |
| 392-169-105 | NEW   | 94-04-095 | 434-663-300 | NEW   | 94-04-102 |
| 392-169-110 | NEW   | 94-04-095 | 434-663-310 | NEW   | 94-04-102 |
| 392-169-115 | NEW   | 94-04-095 | 434-663-320 | NEW   | 94-04-102 |
| 392-169-120 | NEW   | 94-04-095 | 434-663-400 | NEW   | 94-04-102 |
| 434-663-410 | NEW   | 94-04-102 | 434-663-420 | NEW   | 94-04-102 |
| 434-663-430 | NEW   | 94-04-102 | 434-663-440 | NEW   | 94-04-102 |
| 434-663-450 | NEW   | 94-04-102 | 434-663-460 | NEW   | 94-04-102 |
| 434-663-470 | NEW   | 94-04-102 | 434-663-480 | NEW   | 94-04-102 |
| 434-663-490 | NEW   | 94-04-102 | 434-663-500 | NEW   | 94-04-102 |
| 434-663-510 | NEW   | 94-04-102 | 434-663-520 | NEW   | 94-04-102 |
| 434-663-530 | NEW   | 94-04-102 | 434-663-600 | NEW   | 94-04-102 |
| 434-663-610 | NEW   | 94-04-102 | 434-663-610 | NEW   | 94-04-102 |
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